



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

NOTICE: Although members of the Town Council will be meeting in the Council chambers, the Council meetings are still available for members of the public to participate via Zoom or in-person.

AGENDA

DURHAM TOWN COUNCIL
MONDAY, NOVEMBER 18, 2024
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM

NOTE: *The Town of Durham requires 48 hours notice if special communication aids are needed.*

- I. Call to Order**
- II. Town Council grants permission for fewer than a majority of Councilors to participate remotely**
- III. Roll Call of Members.** Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person
- IV. Approval of Agenda**
- V. Special Announcements**
- VI. Public Comments (*) - **Please state your name and address before speaking****
- VII. Report from the UNH Student Senate External Affairs Chair or Designee**
- VIII. Unanimous Consent Agenda** (*Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote*)
- IX. Committee Appointments**
- X. Presentation Items**
 - A. Receive Report on Strafford County operations, budget, and tax rate from Commissioner Chair George Maglaras and County Administrator Raymond Bower
 - B. Report from the Agricultural Commission - Theresa Walker, Chair
 - C. Report from the Parks & Recreation Committee - Cathy Leach, Chair

XI. Unfinished Business

- A. **Public Hearing** on the Administrator’s proposed FY 2025 Operating, Capital, and Special Fund Budgets.
- B. **Public Hearing on Ordinance #2024-10** Amending Chapter 175 “Zoning,” Article III, “Administration and Enforcement,” Article VI, “Zoning Board of Adjustment,” Article XII.1, “Use and Dimensional Standards,” Article XX, “Standards for Principal Uses,” and Article XX.1, “Standards for Agricultural Uses.”
- C. **Public Hearing on Ordinance #2024-09** Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XIX, “Conservation Subdivisions,” and the Zoning Map; and adding a new Article XVIII.1, “Workforce Housing Overlay District.
- D. Continued deliberation of the Administrator’s proposed FY 2025 Operating, Capital, and Special Fund Budgets and the 2025-2034 Capital Improvement Plan.

XII. Approval of Minutes – November 4, 2024

XIII. Councilor and Town Administrator Roundtable

XIV. New Business

XV. Nonpublic Session (if required)

XVI. Extended Councilor and Town Administrator Roundtable (if required)

XVII. Adjourn (NLT 10:30 PM)

() The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes. Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder, are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.*



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AGENDA ITEM: **# 10A** *TS*

DATE: November 18, 2024

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: RECEIVE REPORT ON STRAFFORD COUNTY OPERATIONS,
BUDGET AND TAX RATE FROM COMMISSIONER CHAIR
GEORGE MAGLARAS AND COUNTY ADMINISTRATOR
RAYMOND BOWER

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: George Maglaras, Commission Chair
Raymond Bower, County Administrator

AGENDA DESCRIPTION:

George Maglaras, Commission Chair, and Raymond Bower, County Administrator, have been invited to attend Monday night's Town Council meeting to provide a report on the Strafford County's Operations, Budget, and Tax Rate.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from the Strafford County Commission Chair and County Administrator and hold a question-and-answer session if desired.



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AGENDA ITEM: **#10B**

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: RECEIVE ANNUAL REPORT FROM THE AGRICULTURAL COMMISSION
– THERESA WALKER, CHAIR

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Theresa Walker, Chair, Agricultural Commission

AGENDA DESCRIPTION:

Section 11.1 (I) of the Durham Town Charter used to require that the Town Council meet annually with all Chairpersons of standing Town committees to review significant actions taken by the committees, projects currently under discussion, and anticipated activities for the coming year. At the March 10, 2020 Town Election, Charter amendment (Article 16 on the ballot) was adopted which amended the language within this section to now read:

- I. *On an annual basis, Chairs of the Town of Durham committees will be provided the opportunity to present to the Town Council any significant actions or projects taken by their respective committee. This report can be in the form of a written summary or a formal presentation. No action is required if there is nothing of significance to report, although the Town Council can ask for a presentation if there is interest.*

Theresa Walker has been invited to attend Monday night's Town Council meeting to provide a brief update to Council members regarding the Agricultural Commission's current activities.

LEGAL AUTHORITY:

Section 11.1 (I) of the Durham Town Charter.

LEGAL OPINION: N/A

FINANCIAL DETAILS: N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive report from the Agricultural Commission Chair, Theresa Walker, and hold question and answer session if desired.



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AGENDA ITEM: **#10C**

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: RECEIVE ANNUAL REPORT FROM THE PARKS & RECREATION COMMITTEE – CATHY LEACH, CHAIR

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Cathy Leach, Chair, Parks & Recreation Committee

AGENDA DESCRIPTION:

Section 11.1 (I) of the Durham Town Charter used to require that the Town Council meet annually with all Chairpersons of standing Town committees to review significant actions taken by the committees, projects currently under discussion, and anticipated activities for the coming year. At the March 10, 2020 Town Election, Charter amendment (Article 16 on the ballot) was adopted which amended the language within this section to now read:

- I. *On an annual basis, Chairs of the Town of Durham committees will be provided the opportunity to present to the Town Council any significant actions or projects taken by their respective committee. This report can be in the form of a written summary or a formal presentation. No action is required if there is nothing of significance to report, although the Town Council can ask for a presentation if there is interest.*

Cathy Leach has been invited to attend Monday night's Town Council meeting to provide a brief update to Council members regarding the Parks & Recreation Committee's current activities.

LEGAL AUTHORITY:

Section 11.1 (I) of the Durham Town Charter.

LEGAL OPINION: N/A

FINANCIAL DETAILS: N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive report from the Parks & Recreation Committee Chair, Cathy Leach, and hold question and answer session if desired.

DURHAM PARKS & RECREATION COMMITTEE

REPORT TO TOWN COUNCIL: January – August 2024

Accomplishments:

- The Community Needs Assessment and Visitor Use Management Study remains a primary project for 2024 and into 2025. The study is being conducted by the UNH Applied Recreation Research Collaborative (ARRC) and focuses on Jackson’s Landing, Woodridge Park, and recreational programming. In 2024 committee members and the Parks & Recreation Director worked with ARRC to achieve the following:
 - Organized three focus groups to inform the direction of the community survey. Groups were Woodridge Neighborhood; Jackson’s Landing & Woodridge Park Users; and Adults (without young kids) that use the Parks.
 - Assisted in developing the population survey that was distributed from approx. June 1 – August 17:
 - 3,000 survey kits distributed (about 60% resulted in physical contact with homeowners – significantly above average) and 3,000 reminder postcards distributed. Survey was also made available to all residents via Friday Updates & DPR communications.
 - The population survey responses were above average in number and resulted in a substantial volume of high-quality data.
 - With the data collection phase now complete, ARRC is moving into the data entry, data cleaning, and report preparation phase. This phase is quite time-consuming and will extend into the new year.
 - The final phase of the study, including the final report and outreach presentations will run from January 1 to May 1. We can expect a detailed technical management report, including specific managerial guidance, and a series of presentations by May 2025.
- A subgroup of committee members conducted data gathering and analysis for nine similar towns in two areas as requested by two former Town Councilors in late 2023:
 - Resident vs Non-Resident program user fees
 - Priority Registration for residentsOutcomes showed that Durham Parks & Rec has similar practices in these areas as the comparison towns. DPR has separate user fees and offers priority registration for residents for some programs. The subgroup and committee concluded it was not necessary to make any additional recommendations and supports the director in making these decisions.
- The committee and DPR staff are collaborating with the Land Stewardship Subcommittee in re-creating a Discover Durham Trails program. There are 3 educationally themed tours scheduled: Longmarsh Preserve (9/15), Oyster River Forest (10/6) and Stevens Woods (11/10).
- Supported the Parks & Recreation Department by volunteering at community events such as the Annual Egg Hunt, Memorial Day, Durham Day, Downtown Trick or Treat, Frost Fest, and the Durham Dash 5k road race.
- Town Council Rep Joe Friedman led us in a discussion of committee goals and how they align with our committee goals. Specifically, our 2024 goals most directly relate to TC goals 5 & 6. The committee appreciates Council support of our goals and the Parks & Recreation Department.

PARKS & RECREATION COMMITTEE – Town Council Report – 2

- Approved request from DPR Director Rachel Gasowski to use committee funds for the purchase of a new and more robust sound system to be used at community and other events.
- Provide advisory support for Director in budget & CIP planning.

Meetings:

- Receive monthly report and notice of upcoming events from Director Gasowski. Some information/data highlights (Jan – Aug, 2024):
 - Summary of DPR programs (reported at August meeting):
 - 66 youth opportunities/975 youth registrations (excluding summer camp)
 - 59 adult opportunities/533 adult registrations
 - 6 community events – 3 more scheduled before the end of the year
 - 179 registrants in the Gunstock Family Ski program
 - Summer Camp:
 - 9.5 weeks/561registrations (not including AM REACH)
 - Collaborations with ORCSD REACH, Seven Rivers Paddling, Let Go Your Mind
 - Department Partnerships: work with over 15 individual/orgs to offer broad youth & adult programming, after-school programs, teacher workshop days
 - Over 4,600 members on Rec Desk, departmental registration system
 - Over 2,300 members subscribed to email newsletter
 - Department offered 6 new programs including Adult Tours with Collette Travel, Surf Camp, After School Pottery, and installed temporary Pickleball Courts at Woodridge Park
- Receive periodic updates and provide input for Churchill Rink renovation and fundraising project.
- Received season-end report (Oct 2023-March 2024) from Bill Page, Churchill Rink manager, at the April meeting. Some information/data highlights:
 - Overall, a successful rink season!
 - Facility: no major malfunctions! Minor issues with refrigeration system and Zamboni were repaired in-house. Many improvements such as new LED lights installed, ceiling cleaned of rust, bird debris, and dust, safety net tuned up, new sound system installed, and others.
 - Programming/services include public skating, skate rental, stick & puck, pond hockey, drop-in hockey, concessions, skate sharpening, Slush Cup event, and Teen, All Ages, and Family Skates. Also host skating lessons offered by ORYA.
 - Some Stats:
 - Attendance at all public sessions: 15,037 (+3,955)
 - Hours Rented for Hockey: 907 (+154)
 - Season Pass Holders: 367 (+33)
 - Concession Sales: \$16,528 (+\$3873)
 - Net profit (unaudited) added to Fund Balance in Fiscal Year 2023: \$93,426
- The committee receives regular Land Stewardship Subcommittee reports from member Myrta Janosz.

Submitted by Cathy Leach, Chair



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AGENDA ITEM: **# 11A** *TS*

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA ITEM: PUBLIC HEARING ON THE ADMINISTRATOR'S PROPOSED FY 2025
OPERATING, CAPITAL, AND SPECIAL FUND BUDGETS

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA DESCRIPTION:

On November 4, 2024, the Council received a presentation on the Administrator's proposed FY 2025 Operating, Capital, and Special Fund Budgets and the 2025-2034 Capital Improvement Plan. The proposed Budgets can be found online at <https://www.ci.durham.nh.us/businessoffice/proposed-2025-operating-budget> and the proposed Capital Improvement Plan can be found online at <https://www.ci.durham.nh.us/businessoffice/proposed-2025-2034-capital-improvements-program>.

Section 5.3 of the Durham Town Charter requires that the Town Council hold a public hearing at least fourteen (14) days prior to the adoption of the budget by the Town Council. The Council scheduled a Public Hearing on the proposed FY 2025 budget for Monday, November 18, 2024. A public hearing notice was published in the *Fosters Daily Democrat* on Thursday, November 7, 2024. The notice was also posted on the public bulletin board located outside of the Town Hall, the Department of Public Works public bulletin board, the Durham Public Library, and on the Town's website.

At the conclusion of the Public Hearing, and as time allows, the Council will begin an interview session with each of the Department Heads and continue its initial discussion and deliberation on the proposed budgets and CIP.

LEGAL AUTHORITY:

Durham Town Charter, Article 5 "Finance", Sections 5.1 - 5.12.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Town Council does hereby OPEN the Public Hearing on the Administrator's proposed FY 2025 Operating, Capital, and Special Fund Budgets.

MOTION #2:

The Town Council does hereby CLOSE the Public Hearing on the Administrator's proposed FY 2025 Operating, Capital, and Special Fund Budgets.



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AGENDA ITEM: **#11B**

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE #2024-10 AMENDING CHAPTER 175 "ZONING," ARTICLE III, "ADMINISTRATION AND ENFORCEMENT," ARTICLE VI, "ZONING BOARD OF ADJUSTMENT," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," ARTICLE XX, "STANDARDS FOR PRINCIPAL USES," AND ARTICLE XX.1, "STANDARDS FOR AGRICULTURAL USES."

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The proposed amendments pertain to freestanding small group net metering uses in the five core commercial districts, childcare as an accessory use to all residential uses, requirements for accessory buildings to single-family houses, zoning enforcement, clarifying text consistent with state law, terminology, and formatting of the ordinance.

These are largely minor items that I have had on a to-do list for many months and here was an opportunity to address them. The items are independent from one another.

The Council did not have time to review this Ordinance at their meeting of October 21. They continued the presentation and first reading to their meeting of November 4.

At its meeting on November 4, 2024, the Town Council scheduled a Public Hearing on this item for their meeting on Monday, November 18, 2024. A Public Hearing notice was published in *Foster's/Seacoast Online* on Thursday, November 7, 2024. The notice

was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION:

A legal opinion was sought on the addition of Section 175-9C -The Zoning Administrator, or their designee, may request that any landowner or association certify, under oath, compliance with any zoning requirement, including but not limited to age restrictions, rental restrictions, or occupancy restrictions, if, in their discretion, there is a reasonable basis to believe that there is a zoning violation on the property. Should the owner refuse to provide such certification, the Zoning Administrator may seek an administrative search warrant to confirm compliance with the town's zoning ordinance.

The Town Attorney was consulted on this item a while ago, and she did not see a legal concern with the proposal.

FINANCIAL DETAILS:

Not applicable

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION#1:

The Durham Town Council does hereby OPEN the public hearing on Ordinance #2024-10 Amending Chapter 175 "Zoning," Article III, "Administration and Enforcement," Article VI, "Zoning Board of Adjustment," Article XII.1, "Use and Dimensional Standards," Article XX, "Standards for Principal Uses," and Article XX.1, "Standards for Agricultural Uses."

MOTION#2:

The Durham Town Council does hereby CLOSE the public hearing on Ordinance #2024-10 Amending Chapter 175 "Zoning," Article III, "Administration and Enforcement," Article VI, "Zoning Board of Adjustment," Article XII.1, "Use and Dimensional Standards," Article XX, "Standards for Principal Uses," and Article XX.1, "Standards for Agricultural Uses."

MOTION#3:

The Durham Town Council does hereby ADOPT Ordinance #2024-10 (with or without non-substantive amendments) Amending Chapter 175 "Zoning," Article III, "Administration and Enforcement," Article VI, "Zoning Board of Adjustment," Article XII.1, "Use and Dimensional Standards," Article XX, "Standards for Principal Uses," and Article XX.1, "Standards for Agricultural Uses."

MOTION#4:

The Durham Town Council does hereby REMAND Ordinance #2024-10 Amending Chapter 175 “Zoning,” Article III, “Administration and Enforcement,” Article VI, “Zoning Board of Adjustment,” Article XII.1, “Use and Dimensional Standards,” Article XX, “Standards for Principal Uses,” and Article XX.1, “Standards for Agricultural Uses” back to the Planning Board for substantive amendments.

ORDINANCE #2024-10 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175 “ZONING,” ARTICLE III, “ADMINISTRATION AND ENFORCEMENT,” ARTICLE VI, “ZONING BOARD OF ADJUSTMENT,” ARTICLE XII.1, “USE AND DIMENSIONAL STANDARDS,” ARTICLE XX, “STANDARDS FOR PRINCIPAL USES,” AND ARTICLE XX.1, “STANDARDS FOR AGRICULTURAL USES.”

WHEREAS, RSA 674:17 is the statute establishing the purpose of zoning ordinances; and

WHEREAS, numerous fairly minor items have been brought to the attention of the Town Planner and the Planning Board over the years that should be addressed when time allows; and

WHEREAS, it is appropriate in certain circumstances to require landowners to certify compliance with the Zoning Ordinance to support enforcement of the ordinance; and

WHEREAS, New Hampshire requirements for childcare were recently changed and the amendment herein brings the Town into compliance;

WHEREAS, the Durham Planning Board held a public hearing on October 9, 2024 and duly voted (unanimously) to initiate this amendment; and

WHEREAS, the Durham Town Council held a duly noticed public hearing on November 18, 2024;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire, hereby adopt Ordinance #2024-08 and does hereby amend the following sections of the Code. Wording to be deleted is annotated with ~~striketrough~~ type. New wording is annotated with underlining.

AMENDMENTS TO BE MADE THROUGHOUT THE ORDINANCE

- ❖ Throughout the ordinance change formatting so that all numbers in a specific ordinance provision simply show the numeral. For example, change “within seven (7) years” or “within seven years” to “within 7 years.” However, where “one” is used in a non-numerical manner, such as “given that one must do this” retain “one” rather than changing to “1”.
- ❖ Change “single family home” and “single family residence(tial) to “single-family home” and “single-family residence(tial)” wherever the terms appear.
- ❖ Replace “chairman” wherever it may appear with “chair.”

ARTICLE III - ADMINISTRATION AND ENFORCEMENT

175-8. Administrative Officer.

Authority to administer this Zoning Ordinance is hereby vested in the Town Administrator, who is duly appointed by the Town Council. The Town Administrator shall have the authority to appoint a Zoning Administrator or duly qualified designee, who shall have the authority to administer, interpret, and enforce the provisions of this chapter. In the performance of these duties, the Zoning Administrator may request entry to any building, structure or premises, or any part thereof, at any and all reasonable times for the purpose of performing his or her official duties.

175-9. Zoning Administrator.

A. The Zoning Administrator, his or her assistant or designee shall:

1. Enforce any and all provisions of this chapter.
2. Keep complete, accurate and secure records.
3. Accept applications and ensure their appropriateness and completeness.
4. Accept and remit fees as established in the adopted administrative procedures.
5. Update these regulations and the Official Zoning Map as directed by the own Council.
6. Provide for the accuracy and security of the Official Zoning Map.
7. Undertake any other administrative function appropriate to the office of the Zoning Administrator.
8. Report to the Town Planning Board any recommendations for changes and improvements in these regulations and the procedures therein.
9. Issue any permit granted by the Planning Board or ordered by the Board of Adjustment and make periodic inspections to verify that all conditions of such granted permit are complied with by the applicant or his or her agent.

10. Receive and investigate allegations of noncompliance or violation of these regulations, report findings to the Town Council and file a complaint where such allegations are based in apparent fact.
11. Refer any matters under appeal to the Zoning Board of Adjustment for its action.
12. Make recommendations to the Planning Board in connection with any conditional use permit or to the Board of Adjustment in connection with any application for variance or appeal and recommend such conditions as may be necessary to fully carry out the provisions and intent of this Zoning Ordinance.

B. The Zoning Administrator shall not:

1. Make any changes in the uses categorically permitted in any zoning classification or zoning district, or make any changes in the terms of this Zoning Ordinance, or make any changes in the terms, classifications or their boundaries on the Official Zoning Map.
2. Issue any conditional use permit or variance without the specific direction to do so from the authorizing body.

C. The Zoning Administrator, or their designee, may request that any landowner or association certify, under oath, compliance with any zoning requirement, including but not limited to age restrictions, rental restrictions, or occupancy restrictions, if, in their discretion, there is a reasonable basis to believe that there is a zoning violation on the property. Should the owner refuse to provide such certification, the Zoning Administrator may seek an administrative search warrant to confirm compliance with the town's zoning ordinance.

175-10. Violations and Penalties, Methods of Corrections.

- A. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects, or refuses to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor offense and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a civil fine as set forth in RSA 676:17 for each day such violation continues.
- B. A violation or suspected violation may be brought to the attention of the Zoning Administrator by any individual who suspects that such violation has or may be occurring. The Zoning Administrator shall conduct an investigation into the alleged violation. ~~*If the investigation appears to uphold the allegation, the Zoning Administrator shall first notify the offending party, who shall have a maximum of ten (10) days in which to correct the violation or in which to come to an agreement on a time frame in which the violation will be abated. Such an agreement shall be binding.*~~ In the event that ~~these~~ efforts fail to result in an abatement of the violation, the Zoning Administrator shall notify the Town Administrator and file a complaint with the Town Attorney. The Town Attorney shall take appropriate legal action to address the complaint and the matter shall come before a court of competent jurisdiction for resolution.

- C. Every violation of these regulations shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be deemed a separate and distinct offense.

ARTICLE VI - ZONING BOARD OF ADJUSTMENT

175-19. Powers and Duties.

- A. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. In addition, the Zoning Board of Adjustment shall have the following powers pursuant to RSA 673:1 and 674:33:
1. Appeals. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter.
 2. Variances. To authorize, upon appeal, in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.
 3. Special Exceptions. The Board shall hear and decide requests for special exceptions only when the granting of a special exception is specifically provided for in this chapter. No other special exceptions shall be granted. The request for the special exception and the Board's action on the request shall reference the specific section whereby the granting of the special exception is provided for in this chapter. Appropriate conditions may be placed on special exception approvals when necessary to meet the standards of this chapter.
 4. Equitable Waivers. To hear and decide requests for equitable waivers of dimensional requirements as provided for in RSA 674:33-a.
 5. Appeals under the Building Code. The Zoning Board of Adjustment is hereby authorized and empowered to act as the Building Code Board of Appeals pursuant to RSA 673:1. The Building Code Board of Appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code. (RSA 674:34)
- B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or

decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

- C. The concurring vote of three (3) voting members of the Board shall be necessary to ~~reverse any action of such administrative official or to decide in favor of the applicant~~ take action on any matter upon which it is required to pass under this chapter or to affect any variation in this chapter.

ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

Section 175-53 Table of Land Uses.

- ❖ Change Child Care Home as shown below.
- ❖ Change Small Group Net Metering Host Principal Use – Freestanding in the five Commercial Core Zones as shown below.

CATEGORY OF USES

Uses Accessory To Any Residential Use

Home occupation-1

Home occupation-2

Accessory structure

Childcare home for not more than six children

Childcare home for more than six children See Article XX

Uses Accessory To a Single Family Residential Use

Accessory dwelling unit *See Article XX*

Accessory apartment *See Article XX*

~~Child care home for not more than six children~~

~~Child care home for more than six children See Article XX~~

Short-term rental

RESIDENTIAL ZONES

Rural (R)
Residence A (RA)
Residence B (RB)
Residence C (RC)

COMMERCIAL CORE ZONES

Central Business (CB)
Professional Office (PO)
Church Hill (CH)
Courthouse (C)
Coe' s Corner (CC)

RESEARCH-INDUSTRY ZONES

Office Research - Route 108 (OR)
Mixed Use and Office Research (MUDOR)
Office Research Light Industry
Durham Business Park (DBP)

P	P	P	P	X	P	P	P	P	P	P	P	X	X
P	X	X	P	X	CU	CU	X	P	P	P	X	X	X
P	P	P	P	X	P	P	P	P	P	P	P	P	P
<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
P	P	P	P	X	P	P	X	X	X	X	P	P	X
P	X	X	P	X	P	P	X	X	X	X	P	P	X
P	P	P	P	P	P	P	P	P	P	P	P	P	X
P	P	P	P	P	P	P	P	P	P	P	P	P	X
SE	SE	SE	SE	P	P	P	P	P	P	SE	SE	SE	X

CATEGORY OF USES	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORI)	Durham Business Park (DBP)
	<ul style="list-style-type: none"> • Small Group Net Metering Host-principal use (See Article XX) • Building-mounted • Freestanding 	P X	P X	P X	P X	P X <u>P</u>	P X <u>P</u>	P X <u>P</u>	P X <u>P</u>	P X <u>P</u>	P P	P P	P P

ARTICLE XX – STANDARDS FOR PRINCIPAL USES

175-109. Compliance Required.

This article establishes performance standards for specific uses. These standards must be met for all activities involving the specified uses.

B. *Accessory Buildings for Single-Family Use.* The following standards apply to buildings that are accessory to single-family use, not including garages and any additional connected space, agricultural buildings, and accessory apartments.

1. There is a limit of two accessory buildings per lot.
2. The maximum floor area of the building shall be 200 square feet.
3. The highest point on the building shall be not more than fourteen (14) feet above grade.
4. The building shall not be supplied with water, sewerage, or heat unless approved by special exception.
5. The building shall be used only for the personal use of the occupants of the premises on which it is located, and not for any commercial use except for an approved home occupation.
6. The building shall not be located forward of the front façade of the house.
7. The building shall be set back at least ten (10) feet from any property line.
8. The building shall be separated from any principal residential building on an abutting lot by not less than twenty (20) feet.

ARTICLE XX.1 - STANDARDS FOR AGRICULTURAL USES

175-109.2. Compliance Required.

This article establishes performance standards for agricultural uses. These standards must be met for all activities involving the specified uses.

A. General Provisions. The following provisions apply to all agricultural uses and activities:

3. Site plan review.
 - a. Site plan review is required as specified in the text of Section 175-53 – Table of Land Uses and in the Site Plan Regulations (except as specified in b., below). Site plan review is required for all buildings, driveways, parking areas, public use areas, and significant structures and for site changes that are part of any commercial agricultural operation. Site plan review is not required for noncommercial ~~non-commercial~~ agriculture.

PASSED AND ADOPTED this ____ day of **October, 2024** by a majority vote of the Durham Town Council with _____ affirmative votes, _____ negative votes, and abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk/Tax Collector



TOWN OF DURHAM

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AGENDA ITEM: **#11C**

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION ON ORDINANCE #2024-09 AMENDING CHAPTER 175 "ZONING," ARTICLE II, "DEFINITIONS," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," ARTICLE XVIII, "PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT," ARTICLE XIX, "CONSERVATION SUBDIVISIONS," AND THE ZONING MAP; AND ADDING A NEW ARTICLE XVIII.1, "WORKFORCE HOUSING OVERLAY DISTRICT."

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The proposed ordinance was originally developed by the Housing Task Force working with the Town Planner. That earlier version was presented to the Planning Board for which a public hearing was held on November 30, 2022. There was a negative response to various aspects of the proposal including a suggestion that the ordinance be written as an overlay district.

The Planning Board worked on the proposal for many months and presented a new version with an overlay district for public hearing on August 14 and August 28, 2024. Numerous comments were received. The board revised the proposal further after much discussion and placed a revised version for public hearing on October 9. Following the hearing the board made a few minor changes and then voted to formally initiate the amendment. The vote was 4-2 with Paul Rasmussen, Sally Tobias, Peyton McManus,

and Erika Naumann Gaillat voting in favor and Em Friedrichs and Tom DeCapo voting against.

**Please see the attached Frequently Asked Questions (FAQs) which addresses numerous issues related to the proposal. Also see the Planning Board website here which contains numerous documents and comments related to the amendment:*

https://www.ci.durham.nh.us/boc_planning/workforce-housing-overlay-district.

The Council began reviewing this Ordinance at their meeting of October 21. They continued the discussion and first reading to their meeting of November 4. A few non-substantive changes were made by Planner Michael Behrendt prior to the November 4 meeting. Those changes are incorporated into the current document as well as an updated Zoning Map.

At its meeting on November 4, 2024, the Town Council scheduled a Public Hearing on this item for their meeting on Monday, November 18, 2024. A Public Hearing notice was published in *Foster's/Seacoast Online* on Thursday, November 7, 2024. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

RSA 674:16, RSA 674:21, RSA 674:58-61 and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION: The Town Attorney reviewed an earlier draft of the proposal. The revised ordinance will be forwarded to her for review.

FINANCIAL DETAILS: One or more projects could have a fiscal impact though it is difficult to try to project what the impact might be.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby OPEN the public hearing on Ordinance #2024-09 Amending Chapter 175 "Zoning," Article II, "Definitions," Article XII.1, "Use and Dimensional Standards," Article XVIII, "Personal Wireless Service Facilities Overlay District," Article XIX, "Conservation Subdivisions," and the Zoning Map; and adding a new Article XVIII.1, "Workforce Housing Overlay District."

MOTION #2:

The Durham Town Council does hereby CLOSE the public hearing on Ordinance #2024-09 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XIX, “Conservation Subdivisions,” and the Zoning Map; and adding a new Article XVIII.1, “Workforce Housing Overlay District.”

MOTION #3:

The Durham Town Council does hereby ADOPT Ordinance #2024-09 (with or without non-substantive amendments) Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XIX, “Conservation Subdivisions,” and the Zoning Map; and adding a new Article XVIII.1, “Workforce Housing Overlay District.”

MOTION #4:

The Durham Town Council does hereby REMAND Ordinance #2024-09 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XIX, “Conservation Subdivisions,” and the Zoning Map; and adding a new Article XVIII.1, “Workforce Housing Overlay District” back to the Planning Board for substantive amendments.

ORDINANCE #2024-09 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175 “ZONING,” ARTICLE II, “DEFINITIONS,” ARTICLE XII.1, “USE AND DIMENSIONAL STANDARDS,” ARTICLE XVIII, “PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT,” ARTICLE XIX, “CONSERVATION SUBDIVISIONS,” AND THE ZONING MAP; AND ADDING A NEW ARTICLE XVIII.1, “WORKFORCE HOUSING OVERLAY DISTRICT.”

WHEREAS, RSA 674:17 is the statute establishing the purpose of zoning ordinances and RSA 674:21 allows for the adoption of innovative land uses; and

WHEREAS, RSA 58-61 promotes the establishment of Workforce Housing; and

WHEREAS, there is a significant shortage of affordable and workforce housing in the United States, New Hampshire, and Strafford County; and

WHEREAS, the Durham Housing Task Force and Durham Planning Board spent countless hours developing, modifying, and refining the proposed Workforce Housing Overlay District over the course of two years; and

WHEREAS, the proposed ordinance is carefully crafted to generate an optimal number of affordable and workforce housing units, recognizing that it is far easier to achieve density and affordability and to maintain permanent affordability with rental units rather than single-family houses and condominiums offered for sale; and

WHEREAS, the proposed ordinance is crafted to appeal to a broad range of moderate-income persons and households along with others who would be interested in living in Durham; and

WHEREAS, the community of Durham recognizes the innumerable benefits to the region and to the community of encouraging the creation of affordable and workforce housing; and

WHEREAS, the Frequently Asked Questions (FAQ’s) document that is included with this proposed ordinance addresses many questions related to this proposed ordinance; and

WHEREAS, the Planning Board held public hearings on prior drafts and one public hearing on this final draft, incorporating comments as appropriate and formally voted to initiate this zoning amendment; and

WHEREAS, the Durham Town Council held a duly noticed public hearing on November 18, 2024;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt **Ordinance #2024-09** and does hereby amend the following sections of the Code. Wording to be deleted is annotated with **strikethrough** type. New wording is annotated with underlining. *[Nonsubstantive notes only are shown like this.]*

Suggested additions since Town Council discussion on October 21 shown like this.

~~Suggested deletions since Town Council discussion on October 21 shown like this.~~

ARTICLE II - DEFINITIONS

❖ Add the following new definitions, in alphabetical order, in Article II. DEFINITIONS.

MISSING MIDDLE HOUSING – Types of housing that are intended to fill the gap in types of residential dwellings between single family houses (on their own lots) on one end and large apartment buildings and complexes on the other end. Missing middle housing includes duplexes, triplexes, triple deckers, quadraplexes, townhouses, rowhouses, single dwelling units not located on their own lot, tiny houses, cottage/bungalow courts, small courtyard apartment buildings, accessory dwelling units, and apartments over stores.

WORKFORCE HOUSING – Housing which is designed to provide a broad range of living options, including a variety of dwelling types at affordable prices, that meet the needs of families and individuals representing New Hampshire’s diverse workforce. Workforce housing is also intended to accommodate those of moderate means who are not currently employed.

ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS

❖ Add the column shown below for Workforce Housing Overlay District (WHOD) as a new column at the far right of Table 175-54 – Table of Dimensions:

STANDARD	ZONING DISTRICTS													
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLI)	Durham Business Park (DBP)	Workforce Housing Overlay District (WHOD)
Minimum Lot Size in Square Feet - Single-Family Residence (that is not part of a Conservation Subdivision) - Multiunit Housing - Allowed Nonresidential Use - Any Other Allowed Use	20,000 NA 20,000 20,000	40,000 NA 40,000 40,000	150,000 NA 150,000 150,000	150,000 NA 150,000 150,000	NA 5,000 5,000 5,000	10,000 10,000 10,000 10,000	5,000 5,000 5,000 5,000	5,000 5,000 5,000 5,000	30,000 30,000 30,000 30,000	40,000 80,000 80,000 80,000	40,000 40,000 40,000 40,000	150,000 150,000 150,000 150,000	40,000 40,000 40,000 40,000	NA 5,000 5,000 5,000
Minimum Lot Area Per Dwelling Unit³ in Square Feet	20,000	40,000	150,000 ²	150,000 ²	NA	3,000	4,200	4,200	4,200	4,200	40,000	150,000	20,000	4,200 (The density bonus under footnote³ does not apply in the WHOD)
Minimum Usable Area Per Dwelling Unit in a	20,000	40,000	150,000	150,000	1,200	3,000	4,200	4,200	4,200	4,200	40,000	150,000	NA	NA

STANDARD	ZONING DISTRICTS													
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLI)	Durham Business Park (DBP)	Workforce Housing Overlay District (WHOD)
Conservation Subdivision³ in Square Feet														
Minimum Lot Frontage in Feet - Minor Street - Collector Street - Arterial Street	100	150	300	300	50	100	50	50	100			150	150	<u>50</u>
										50	100			
										100	100			
										200	200			
Minimum Front Setback in Feet - Minor Street ¹ - Collector Street - Arterial Street	30	30	30	30	None – except per Note 5	30	15	15	30	50	30	30	30	<u>50</u>
	30	30	30	30		30	15	15	30	50	30	30	30	<u>50</u>
	40	40	40	40		50	15	15	50	See Note 6	100	50	50	<u>50</u>

STANDARD	ZONING DISTRICTS													
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLI)	Durham Business Park (DBP)	Workforce Housing Overlay District (WHOD)
Maximum Front Setback in Feet	NA	NA	NA	NA	See Note 5	NA	NA	25	NA	NA	NA	NA	NA	NA
Minimum Side Setback ⁴ in Feet	10	20	50	50	NA	15	5	10	15	25	20	20	20	25
Minimum Rear Setback ⁴ in Feet	20	30	50	50	NA	20	15	15	20	25	20	20	20	25
Minimum Shoreland Shorefrontage in Feet	200	200	200	200										NA See Underlying Zone
Maximum Permitted Building Height in Feet	30	30	30	30	30	30	30	30	30	50	40	40	40	NA – See WHOD ordinance
Maximum Permitted Building Height in Feet by Special Exception in the Four Residential Zones	35	35	35	35	60 See Note 7	35	35	35	35	75	50	50	50	NA – See WHOD ordinance

STANDARD	ZONING DISTRICTS													
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLI)	Durham Business Park (DBP)	Workforce Housing Overlay District (WHOD)
and by Conditional Use in Other Zones.														
Maximum Impervious Surface Ratio	33%	30%	20%	20%	100%	50%	80%	80%	30%	50 %	50%	50%	50%	50%

NOTES: 1. When the average front yard setback of other buildings within three hundred (300) ft. each way on the same side of a minor street is less than thirty (30) feet, the front yard setback may be reduced to the average existing setback.

2. Any single-family lot in the R and RC Districts existing as of July 1, 2003, including lots in approved subdivisions, shall only be required to have a minimum lot area of 120,000 square feet and shall not be subject to the minimum usable area per dwelling unit requirement. Pre-existing lots with a minimum of 120,000 square feet of area shall be deemed to be conforming lots for the purpose of the minimum lot size and minimum usable area provisions but shall conform to all other current applicable standards for the district in which they are located.

3. See 175-57(A) for the special density requirements for senior housing, eldercare facilities, and nursing homes.

4. See Article XX for requirements for accessory buildings.

5. Additional setback requirements for this district are provided in the Development Standards section for the zone.

6. The minimum front yard setback from Route 108 shall be 100 feet plus 2 feet for each foot of building height in excess of 25 feet.

7. No building along the sections of Main Street or Madbury Road delineated in Subsections 175-42(B)(9) and (10) shall exceed thirty five (35) feet in height.

[Existing language above. Town Council asked that this be added to assist in review only.]

- ❖ Add the new text as follows:

175-57. Special Situations Affecting Dimensions.

A. *Density*.

1. Density for senior residential uses and workforce housing. In determining the maximum density for Senior Housing, Senior care Facilities, ~~and~~ Nursing Homes, and Workforce Housing (as defined under RSA 674:58 IV.) the following provisions shall apply to the entire development:
 - a dwelling unit containing one bedroom or a studio unit without a separate bedroom shall count as 0.33 dwelling units for the purpose of the density calculation
 - a dwelling unit containing two or more bedrooms shall count as 0.50 dwelling units for the purpose of the density calculation
 - four (4) beds or accommodations for four (4) residents in those facilities that do not provide dwelling units shall count as one (1) dwelling unit for the purpose of the density calculation

ARTICLE XVIII – PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT

[Note only: These changes to Article XVIII are nonsubstantive formatting changes only to enhance the overall numbering of the ordinance.]

175-99. Purpose and ~~Intent~~ Applicability

- A. It is the express purpose of this Article to permit carriers to locate personal wireless service facilities within particular areas of the Town of Durham consistent with appropriate land use regulations that will ensure compatibility with the visual and environmental features of the Town. Compatibility with the visual features of Durham is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed personal wireless service facility. This Article enables the review of the locating and siting of personal wireless service facilities by the Town of Durham so as to eliminate or mitigate the visual and environmental impacts of personal wireless service facilities. This Article is structured to encourage carriers to locate on existing buildings and structures whenever possible. New ground mounted personal wireless facilities are permitted, but only when the use of existing structures and buildings are found to be infeasible. Co-location is encouraged for all personal wireless service facility applications and the review of a personal wireless facility shall be on the basis of the site being built using all positions on the mount. The Town of Durham encourages the location of personal wireless service facilities (PWSF) in non-residential areas.

~~175-100. —Applicability.~~

- B. The terms of this Article and the Site Plan Review Regulations shall apply to personal wireless service facilities proposed to be located on property owned by the Town of Durham, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier

Renumber the remaining sections as 175-100 to 175-105

.....

175-106 5. Abandonment or Discontinuation of Use.

- A. **Notification** - At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.
- B. **Removal** - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - 1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - 3. Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. **Failure to Remove** - If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Town Council shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Town Council. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

ARTICLE XVIII.1 - WORKFORCE HOUSING OVERLAY DISTRICT

- ❖ Add the following new article to the body of the ordinance including a listing in the Table of Contents.

ARTICLE XVIII.1 WORKFORCE HOUSING OVERLAY DISTRICT

175-106 Workforce Housing Overlay District (WHOD)

The following provisions apply to the Workforce Housing Overlay District.

A. Purpose of the Workforce Housing Overlay District. This overlay district is intended to:

- 1. provide reasonable and realistic opportunities for the development of workforce and affordable housing;
- 2. ensure the availability of a diverse supply of rental opportunities;

3. provide an adequate supply of affordable housing in Durham as set forth in the Town's 2015 and 2018 Master Plan including the Demographics and Housing Chapter (<https://www.ci.durham.nh.us/planning/master-plan-2015>) and the Town's May 2024 Housing Needs Assessment (<https://www.ci.durham.nh.us/bc-housingtaskforce>); and
4. address the regional need for workforce housing as documented in the [Strafford Regional Planning Commission's Housing Needs Assessment \(https://strafford.org/uploads/documents/plans/rpc/rhna_2023.pdf\)](https://strafford.org/uploads/documents/plans/rpc/rhna_2023.pdf) as updated.

B. Authority. The Town of Durham adopts this Workforce Housing Overlay District and related sections in this Zoning Ordinance under the authority of RSA 674:15-18 Purpose of Zoning Ordinance, RSA 674:58-61 Workforce Housing and RSA 674:21, Innovative Land Use Controls.

C. Applicability. The provisions of the Workforce Housing Overlay District apply to the following areas of Durham [See Workforce Housing Overlay District Zoning Map]:

1. The entirety of the land zoned Office and Research District – Route 108 (OR) that is situated on the easterly side of Dover Road/Route 108.
2. All portions of the lot identified as Map 209, Lot 39, currently zoned Residence Coastal, that are situated westerly of the ordinary high-water mark on the westerly side of Johnson Creek.
3. All of the land zoned Office Research Light Industry (ORLI) that is located northerly or westerly of U. S. Route 4.
4. Tax Map 210, Lots 10, 11, 12, 13, 14, and 15.

[Note: See the map on the last page.]

The references above are made as of the date when this amendment is adopted. Should any of the pertinent land be rezoned in the future or changes to map and lot numbers be made, the specific lands identified as being part of the overlay district included at the time of adoption of this overlay district shall not change unless a specific zoning amendment is made in the future to that effect.

The Workforce Housing Overlay District is depicted on the map identified as Workforce Housing Overlay District – Supplement to Official Zoning Map. In case of any conflict between the description above and the rendering on the map, the description of the zone, above, will prevail.

Any parcel of land located in the overlay district may be developed as a workforce housing project in accordance with the provisions of the Workforce Housing Overlay District by right at the option of the landowner pursuant to the provisions of this article.

D. Workforce Housing Option under Conservation Subdivisions. Special provisions for workforce housing that is part of a conservation subdivision are given in Article XIX - Conservation Subdivisions. Those provisions are entirely independent from this overlay district and neither may be applied to the other nor may the two be combined in any manner.

E. Dwelling Units. Within a project developed under this ordinance:

1. No single family house lot may be created.

2. Units shall be offered exclusively for rent, not for sale.

3. Bedrooms. No units may contain more than three bedrooms. The number of three-bedroom units may not exceed 1/3 of the total number of dwelling units in the project. Otherwise, the mixture of units by number of bedrooms is set at the discretion of the applicant. A mix of studios, and one- two- and three- bedroom units is encouraged.

4. Housing Types. Residential units in a workforce housing development are restricted to missing middle housing types only (See Definition). A mix of housing types and unit sizes arranged in different configurations is encouraged but not required. No individual building (including rowhouses and townhouses) may contain more than 12 dwelling units.

F. HUD Fair Market Rent. Rent levels are established for all workforce housing units (including any units that are subleased) based upon the U. S. Housing and Urban Development (“HUD”) Fair Market Rent which is set based on the number of bedrooms in a unit. The rent levels are reset by HUD every year. The fair market rent (or some percentage of the fair market rent, below) is the figure for which the unit is offered. It does not consider other costs to tenants.

Rents may be set at the discretion of the property owner provided:

1. Most units will likely be rented at the HUD Fair Market Rent with the exceptions of 2. and 3., below.

2. There is some flexibility in setting rent levels. Each unit shall be rented at some percentage of the HUD Fair Market Rent, e.g., exactly at HUD Fair Market Rent which would be 100%, at 80%, etc. The average of all of the percentages for all of the units in the project (independent of the number of bedrooms in

units) shall not exceed 100%. (For example: 10 units are rented at 100% of the HUD Fair Market Rent level, 5 units are rented at 60% of HUD Fair Market Rent, and 5 units are rented at 120% of HUD Fair Market Rent. The average of those percentages is 95% which would be in compliance since the average is less than 100%.)

3. At least 20% of the overall number of units (independent of the size of the units) shall be rented at 80% of HUD Fair Market Rent level or less.
4. Rental units must be the primary residence for all lessees.

G. Housing Vouchers. Property owners must be willing to accept Section 8/Housing Vouchers for payment of rent provided the total amount of rent paid for a unit is consistent with the established rent for the unit. This provision does not require that priority be given to Section 8/Housing Vouchers, but only that the property owner be willing to accept them.

H. Housing Guarantees. The primary purpose of this overlay district is to provide affordable housing for members of the workforce and the community. The property owner shall not accept guarantees from third parties who will not reside in the rental unit (This provision does not apply to Section 8/Housing Vouchers).

I. Allowed Uses. The uses allowed in any project developed under this overlay district are the residential uses specified in this section, all uses allowed in the underlying base zoning district, day care centers, and common accessory uses to these uses (such as a clubhouse and outdoor recreation serving residents). Institutional Uses, Offices, Restaurants, and small Retail Stores (with less than 5,000 gross square feet), are allowed by conditional use (unless allowed by right in the underlying zoning district).

J. Density and Dimensional Standards. The density and dimensional standards for the Workforce Housing Overlay District are specified in the Table 175-54 – Table of Dimensions. These standards (in the table and below) apply throughout the Workforce Housing Overlay District superseding the standards otherwise applicable to the underlying base zoning districts.

1. Density. The density standard is given in the Table of Dimensions. The standard is established for the overall site based upon lot area per dwelling unit. All areas of the subject parcel apply to the density calculation except for wetlands and areas of open water.
2. Maximum number of units. The maximum number of dwelling units for any workforce housing development is 200 units. This maximum applies to any individual lot or tract proposed for a project, including any project to be

developed in phases. Appropriate restrictions may be specified for any project to prevent pre-emptory subdivision that might circumvent this provision. The Planning Board may approve more than 200 units in a project by conditional use.

3. Senior units. There is no density bonus for senior residential units. Section 175-57 A. I. Density for senior residential units does not apply to projects developed under this overlay district.
4. Building Height. The maximum height for any building is three stories. There is no maximum height in number of feet. The maximum height for any building is four stories if that building is set back at least 100 feet from any property line.
5. Other Dimensional Standards. Other dimensional standards given in the Table 175-54 – Table of Dimensions may be altered by the Planning Board by conditional use for good cause.

K. Other Zoning Parameters. All other standards in the Zoning Ordinance shall apply to a project unless superseded by a specific provision in this overlay district. The limitation allowing for a maximum of three unrelated occupants in a dwelling unit does not apply to any project developed through this overlay district.

L. Buffers. Depending on the location and characteristics of the proposed development, the surrounding properties, and the adjacent roads, the Planning Board may require that the developed area be buffered from surrounding property and the adjacent roads.

M. Low Income Housing Tax Credit project. The Planning Board may approve by conditional use any departure from this article and from the Zoning Ordinance to accommodate a project proposed to be funded through the Low Income Housing Tax Credit, where any requirement of the tax credit program is inconsistent with this article or the Zoning Ordinance.

N. Perpetuity. All workforce housing units must remain affordable as workforce units in perpetuity in accordance with HUD figures and the conditions of project approval. As part of any project, appropriate provisions, such as deed restrictions or easements, shall be incorporated to carry out this requirement. The Town of Durham or their agents may require periodic reporting and audits at its option.

O. Site Plan and Subdivision Regulations. A workforce housing project developed under this overlay district is exempt from Article XIX – Conservation Subdivisions and from all sections under the Subdivision Regulations related to conservation subdivisions. Where there is no subdivision into separate lots of land a project is reviewed under the Site Plan Regulations. Separate components of a project may be subdivided into separate parcels as part of phasing of a project or an overall

development plan, in which case creation of new parcels will be reviewed as a subdivision under pertinent elements of the Subdivision Regulations. Lots which are not intended to be part of a workforce housing development may be subdivided from the parent parcel of land provided that portion of the development complies with other applicable requirements.

P. Topography and Open Space. A full topographic survey shall be prepared. A minimum of 60% of the gross acreage of the parcel shall be set aside as permanent open space. The applicant shall prepare an open space plan providing for the appropriate use, maintenance, and protection of the open space to be approved by the Planning Board. On sites where neither Town water nor sewer are available the applicant shall prepare a HISS analysis of the entire site. A HISS analysis is not required when both Town water and sewer are available.

The Planning Board will determine which portions of the parcel will be set aside for open space in order to optimally preserve natural and cultural resources, enhance forest management, and provide opportunities for agriculture and passive recreation in accordance with criteria a. through g. under Article XIX. Conservation Subdivisions, Section 175-107, Subsection H. Common Open Space, Subsection 3.

Q. Design. The Planning Board shall use its judgment in reviewing the proposed design, layout, and density of the project to ensure a harmonious living environment for the future residents.

1. All residential buildings must front a pedestrian-oriented designed street or way and not simply a parking lot.

2. All residential buildings must form a pedestrian-oriented ensemble.

3. There must be a network of streets or ways allowing for pedestrian movement through the site.

4. All parking areas must be broken up into smaller areas or with sufficient landscaping to avoid large expanses of parking.

R. Parking and Transportation. The applicant shall develop a transportation plan for the project pursuant to Article 11 – Pedestrian, Bicycle, and Transit Facility Standards in the Site Plan Regulations. The minimum number of parking spaces required for any dwelling unit is one.

S. Infrastructure. Roads, water and sewer infrastructure, and other infrastructure shall be owned and maintained by the developer or by the Town of Durham as determined by the Planning Board in consultation with the Town Administrator and Durham

Public Works Department (and/or the Town Council pursuant to other applicable law).

T. **Incentives.** The Planning Board may negotiate with the applicant to allow for additional density or reduced open space in exchange for inclusion of various elements that will enhance the quality of the project, including, but not limited to, additional open space, public recreation facilities, agricultural leases, active transportation connections, sustainability measures, and a reduction in the average rent level significantly below 100% of the HUD Fair Market level. This bonus should not be provided for elements that would likely be incorporated in the regular course of site plan review. The maximum increase in density allowed under this provision is 20%. This allowance could also be used to raise the threshold of 200 units beyond which a conditional use would be required.

ARTICLE XIX - CONSERVATION SUBDIVISIONS

- ❖ Add the following new provision under **Section 175-107. Conservation Subdivisions** at the end of **C. Exempt Subdivisions**:

C. **Exempt Subdivisions.** A proposed subdivision is exempt from being developed as a Conservation Subdivision only if the proposed subdivision meets one of the following criteria. In determining if the criteria are met, any lot that has been or will be transferred to a qualified conservation organization (as defined in Article II) and will be restricted to conservation use in perpetuity, shall not be counted as a lot for the purpose of this provision.

5. Any subdivision created under **Article XVIII.1 Workforce Housing Overlay District.**

- ❖ Under **Section 175-107.1 Workforce Housing Option**, change the title of the section and insert a new paragraph without a letter designation right below the title as follows:

175-107.1 Workforce Housing ~~Option~~ in a Conservation Subdivision
Applicants who seek to incorporate workforce housing into a conservation subdivision shall follow the procedures laid out in this section. Workforce housing developed under this section is entirely separate from workforce housing developed under the Workforce Housing Overlay District.

- ❖ Under **Section 175-107.1 Workforce Housing in a Conservation Subdivision**, replace F. Density Incentive, in entirety with the following:

~~F. **Density Incentive.** Any Conservation Subdivision that seeks to include workforce housing shall be permitted to increase the number of market units by 20% above the Maximum Development Density as calculated per Section 175-107 E (2) and that will~~

~~guarantee an additional 20% of units above the Maximum Development Density to be designated as workforce housing.~~

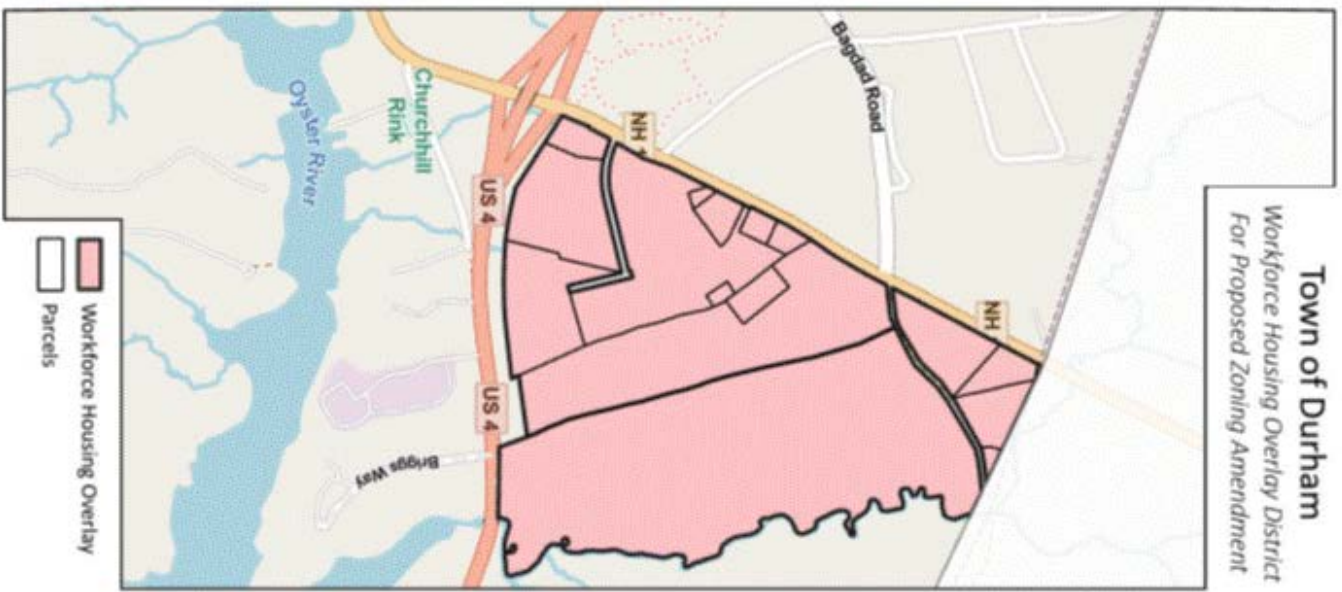
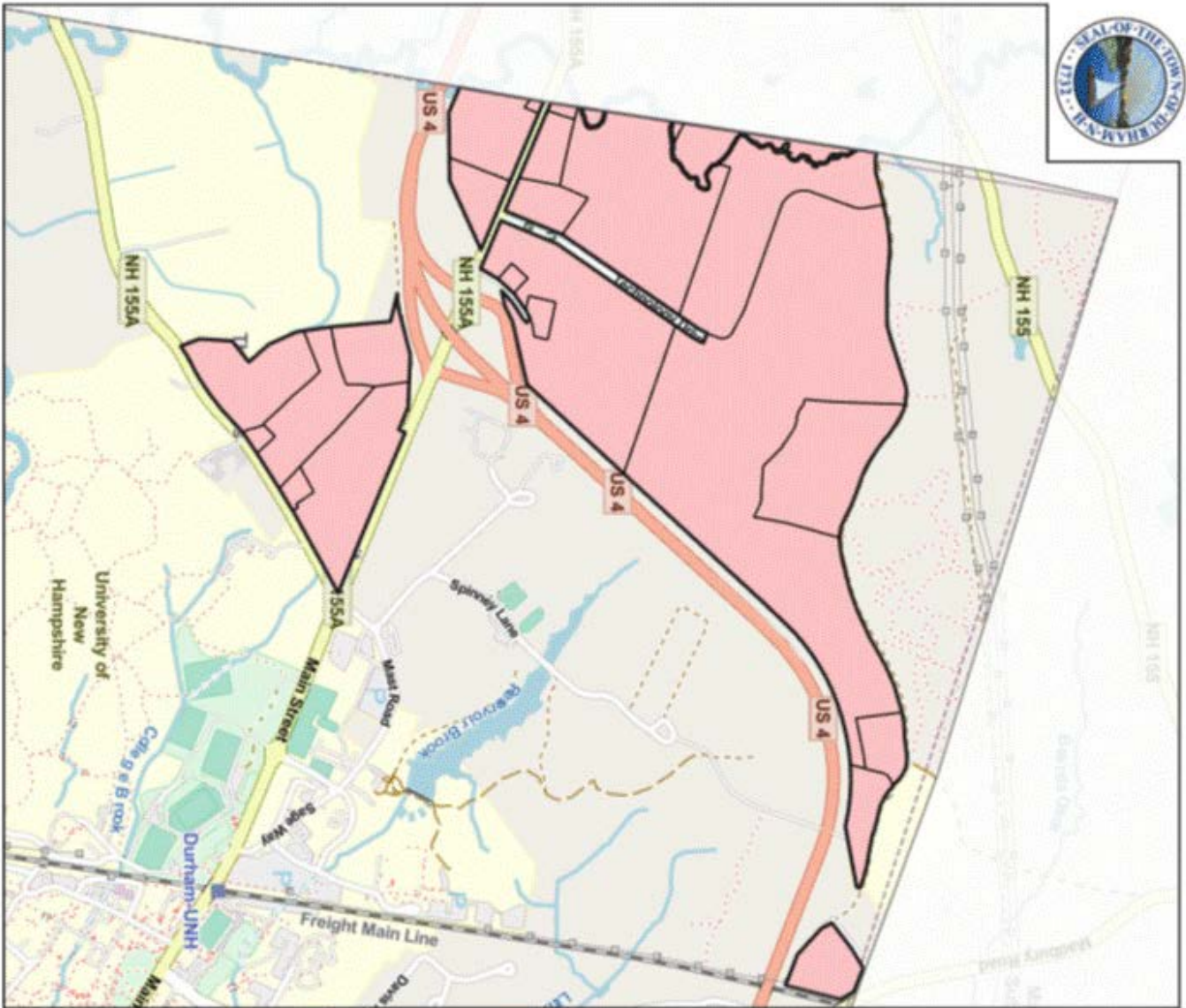
Density Incentive. In determining the maximum number of workforce housing dwelling units that are allowed in a conservation subdivision, these standards apply:



1. A workforce housing dwelling unit containing one bedroom or a studio unit without a separate bedroom counts as 0.33 dwelling units for the purpose of the density calculation; and

2. A workforce housing dwelling unit containing two or more bedrooms counts as 0.50 dwelling units for the purpose of the density calculation;

ZONING MAP

- ❖ Rezone the lots as shown on the Zoning Map on the next page and as specified under Applicability above.



 Workforce Housing Overlay
 Parcels

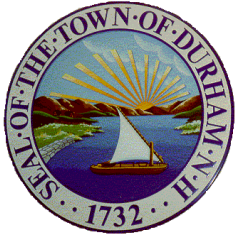
Town of Durham
Workforce Housing Overlay District
For Proposed Zoning Amendment

PASSED AND ADOPTED this ____ day of **November, 2024** by a majority vote of the Durham Town Council with ____ affirmative votes, ____ negative votes, and abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk/Tax Collector



MICHAEL BEHRENDT
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MEMORANDUM

TO: Town Council

FROM: Michael Behrendt, Durham Town Planner

DATE: November 13, 2024

SUBJ: **Workforce Housing Ordinance** – memo for November 18 public hearing

The Town Council is holding a public hearing on the proposed Workforce Housing Ordinance on Monday, November 18.

Councilors Needell and Friedman asked that the document which included items discussed on October 21 be presented for the public hearing. This document (from the packets sent for November 4) is the same except for the map which has been revised as requested.

After holding the public hearing I recommend that the Town Council make any desired changes to the draft and then determine whether or not it is necessary to hold a new public hearing or send the document back to the Planning Board, based on the extent of any changes. *I can present a revised recommended draft for review by the Town Council at a separate meeting following the public hearing.*

I recommend including the following changes in the draft after the public hearing.

- 1) Incorporate the four items shown in green in the document posted for the public hearing. (This does not include the addition of notes at the end of the table, which are not part of the amendment.)
- 2) I spoke with the Town Attorney who recommends that **the name of the overlay district** be changed from “Workforce Housing.” We have crafted our own ordinance which departs from the state’s parameters for workforce housing, which we can do, but for clarity and if we were ever challenged under the workforce housing statute, the Town Attorney advises that we use a different term. The Planning Board had discussed this matter earlier but preferred workforce housing, though now with the Town Attorney’s guidance we should make this change. I suggest the “Attainable Housing (or Affordable Housing) Overlay District.” The term workforce housing should still be used outside of this overlay district -

in the Conservation Subdivision article and in Section 175-57 for dimensions. I will provide suggested revised language for a Council review at a follow-up meeting after the public hearing.

- 3) Review allowed uses under **I. Allowed Uses**. John Randolph, a developer who might be interested in doing a workforce housing project under this ordinance, asked me about other potential uses. He will probably speak to this during the public hearing.
- 4) I will provide some suggested changes after the public hearing for **P. Topography and Open Space** to clarify some questions that have arisen such as whether active recreation should be allowed and to confirm that land which is not of high environmental value, such as building setbacks, can be included in the open space.
- 5) Under Section **R. Parking and Transportation**, add this as a new final sentence pursuant to a new statute in 2024, at the suggestion of the Town Attorney, in the unlikely event that an applicant sought to include fewer than one parking space per dwelling unit: “The applicant may submit an alternative parking solution at their option for consideration by the Planning Board in accordance with Article 10. Parking and Circulation Standards in the Site Plan Regulations and RSA 674:16-a.”
- 6) Any appropriate changes that arise from the public hearing.

I also attached my responses to comments from Councilor Bubar given in the draft ordinance and in the Frequently Asked Questions document.

Proposed Zoning Amendment
WORKFORCE HOUSING OVERLAY DISTRICT
 Formally Initiated by the Planning Board on October 9, 2024

Proposed additions to the current Zoning Ordinance are shown like this.

~~*Proposed deletions from the current Zoning Ordinance are shown like this.*~~

1) **ARTICLE II - DEFINITIONS**

✚ Add the following new definitions, in alphabetical order, in Article II. DEFINITIONS.

***MISSING MIDDLE HOUSING** – Types of housing that are intended to fill the gap in types of residential dwellings between single family houses (on their own lots) on one end and large apartment buildings and complexes on the other end. Missing middle housing includes duplexes, triplexes, triple deckers, quadraplexes, townhouses, rowhouses, single dwelling units not located on their own lot, tiny houses, cottage/bungalow courts, small courtyard apartment buildings, accessory dwelling units, and apartments over stores.*

***WORKFORCE HOUSING** – Housing which is designed to provide a broad range of living options, including a variety of dwelling types at affordable prices, that meet the needs of families and individuals representing New Hampshire’s diverse workforce. Workforce housing is also intended to accommodate those of moderate means who are not currently employed.*

2) **ARTICLE XII.1 – USE AND DIMENSIONAL STANDARDS**

✚ Add the column shown below for Workforce Housing Overlay District (WHOD) as a new column at the far right of Table 175-54 – Table of Dimensions:

	Workforce Housing Overlay District WHOD
Minimum Lot Size in Square Feet	
- Single-Family Residence (that is not part of a Conservation Subdivision)	NA
- Multiunit Housing	5,000
- Allowed Nonresidential Use	5,000
- Any Other Allowed Use	5,000

Commented [JAB1]: Affordable is generally defined by one’s disposable income. Does that mean this ordinance could be used to build starter castles? This definition doesn’t really define anything as it covers every option.

At least add some reference to HUD Fair Market Rents, which would clearly describe a price level but without reference to income level.

Commented [MB2R1]: This is just the general definition. The ordinance below gives the rules.

Commented [JAB3]: It isn’t clear whether setbacks only apply to the entire lot area or if they apply to the structures build within the lot.

Commented [MB4R3]: Setbacks apply only from actual lot lines.

Commented [JAB5]: How does this relate to the minimum lot area per dwelling unit?

Commented [MB6R5]: This is just the minimum lot size for any project.

Minimum Lot Area Per Dwelling Unit ³ in Square Feet	4,200 (The density bonus under footnote ³ does not apply in the WHOD)
Minimum Usable Area Per Dwelling Unit in a Conservation Subdivision ³ in Square Feet	NA
Minimum Lot Frontage in Feet - Minor Street - Collector Street - Arterial Street	50
Minimum Front Setback in Feet - Minor Street ¹ - Collector Street - Arterial Street	50 50 50
Maximum Front Setback in Feet	NA
Minimum Side Setback ⁴ in Feet	25
Minimum Rear Setback ⁴ in Feet	25
Minimum Shoreland Shorefrontage in Feet	NA
Maximum Permitted Building Height in Feet	NA – See WHOD ordinance
Maximum Permitted Building Height in Feet by conditional use	NA – See WHOD ordinance
Maximum Impervious Surface Ratio	50%

Commented [JAB7]: I am assuming that this applies to the entire developable lot and not to individual structures build within the lot.

Commented [MB8R7]: That is correct.

Commented [JAB9]: I am assuming that this applies to the entire developable lot and not to individual structures build within the lot.

How are setbacks front/rear described for streets that are inside of the developable lot?

Commented [MB10R9]: That is correct.

Commented [MB11R9]: That is correct.

Commented [MB12R9]: Those are established as part of Site Plan Review. The Building and Fire Code will also affect these setbacks.

Commented [JAB13]: I am assuming that this applies to the entire developable lot and not to individual structures build within the lot.

Why not 5 or 10 ft to improve density and maximize aggregate open space? Are there any provision for row houses or brownstones with zero side setbacks, aka duplexes

Commented [MB14R13]: That is correct.

Commented [JAB15]: This has been changed to “See underlying Zone” Text added 2 Nov 2024

Commented [MB16R15]: I recommend making this change after the public hearing.

- NOTES:** 1. When the average front yard setback of other buildings within three hundred (300) ft. each way on the same side of a minor street is less than thirty (30) feet, the front yard setback may be reduced to the average existing setback.
2. Any single-family lot in the R and RC Districts existing as of July 1, 2003, including lots in approved subdivisions, shall only be required to have a minimum lot area of 120,000 square feet and shall not be subject to the minimum usable area per dwelling unit requirement. Pre-existing lots with a minimum of 120,000 square feet of area shall be deemed to be conforming lots for the purpose of the minimum lot size and minimum usable area provisions but shall conform to all other current applicable standards for the district in which they are located.
3. See 175-57(A) for the special density requirements for senior housing, eldercare facilities, and nursing homes.

4. See Article XX for requirements for accessory buildings.
5. Additional setback requirements for this district are provided in the Development Standards section for the zone.
6. The minimum front yard setback from Route 108 shall be 100 feet plus 2 feet for each foot of building height in excess of 25 feet.
7. No building along the sections of Main Street or Madbury Road delineated in Subsections 175-42(B)(9) and (10) shall exceed thirty five (35) feet in height.

[Existing language above. Town Council asked that this be added to assist in review only.]

Commented [JAB17]: See green inserted section above, existing text was put in submitted document 1 Nov 2024

Commented [MB18R17]: This is existing language shown at the request of the Town Council. It is not part of the amendment.

✦ Add the new text as follows:

175-57. Special Situations Affecting Dimensions.

A. Density.

1. Density for senior residential uses *and workforce housing*. In determining the maximum density for Senior Housing, Senior care Facilities, ~~and~~ Nursing Homes, *and Workforce Housing (as defined under RSA 674:58 IV.)* the following provisions shall apply to the entire development:
 - a dwelling unit containing one bedroom or a studio unit without a separate bedroom shall count as 0.33 dwelling units for the purpose of the density calculation
 - a dwelling unit containing two or more bedrooms shall count as 0.50 dwelling units for the purpose of the density calculation
 - four (4) beds or accommodations for four (4) residents in those facilities that do not provide dwelling units shall count as one (1) dwelling unit for the purpose of the density calculation

Commented [JAB19]: I assume this would also apply to a phased development project with independent applications. Refer to ARTICLE XVIII.I O. Site Plan and Subdivision Regulations.

Commented [MB20R19]: It would if phases are all submitted and reviewed as part of one project.

3) **ARTICLE XVIII – PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT**

[Note only: These changes to Article XVIII are nonsubstantive formatting changes only to enhance the overall numbering of the ordinance.]

✦ Make the following changes:

- Change the title of Section 175-99 to Purpose and Applicability
- Delete heading “175-100. Applicability.”
- Identify the first paragraph, starting, “It is the express purpose...” as A.
- Identify the new second paragraph in Section 175-99, starting, “The terms of this Article...” as B.
- Renumber the remaining sections as 175-100 to 175-05.

4) **ARTICLE XVIII.1 - WORKFORCE HOUSING OVERLAY DISTRICT**

- ✦ Add the following new article to the body of the ordinance including a listing in the Table of Contents.

ARTICLE XVIII.1 WORKFORCE HOUSING OVERLAY DISTRICT

175-106. Workforce Housing Overlay District (WHOD)

The following provisions apply to the Workforce Housing Overlay District.

- A. Purpose of the Workforce Housing Overlay District.** This overlay district is intended to:
1. provide reasonable and realistic opportunities for the development of workforce and affordable housing;
 2. ensure the availability of a diverse supply of **rental opportunities**;
 3. provide an adequate supply of affordable housing in Durham as set forth in the Town's 2015 and 2018 Master Plan including the Demographics and Housing Chapter (<https://www.ci.durham.nh.us/planning/master-plan-2015>) and the **Town's May 2024 Housing Needs Assessment** (<https://www.ci.durham.nh.us/bc-housingtaskforce>); and
 4. address the regional need for workforce housing as documented in the Strafford Regional Planning Commission's Housing Needs Assessment (https://strafford.org/uploads/documents/plans/rpc/rhna_2023.pdf) as updated.
- B. Authority.** The Town of Durham adopts this Workforce Housing Overlay District and related sections in this Zoning Ordinance under the authority of RSA 674:15-18 Purpose of Zoning Ordinance, RSA 674:58-61 Workforce Housing and RSA 674:21, Innovative Land Use Controls.
- C. Applicability.** The provisions of the Workforce Housing Overlay District apply to the following areas of Durham [See Workforce Housing Overlay District Zoning Map]:
1. The entirety of the land zoned Office and Research District – Route 108 (OR) that is situated on the easterly side of Dover Road/Route 108.
 2. All portions of the lot identified as Map 209, Lot 39, currently zoned Residence Coastal, that are situated westerly of the ordinary high water mark on the westerly side of Johnson Creek.

3. All of the land zoned Office Research Light Industry (ORLI) that is located northerly or westerly of U. S. Route 4.
4. Tax Map 210, Lots 10, 11, 12, 13, 14, and 15.

[Note: See the map on the last page.]

The references above are made as of the date when this amendment is adopted. Should any of the pertinent land be rezoned in the future or changes to map and lot numbers be made the specific lands identified as being part of the overlay district included at the time of adoption of this overlay district shall not change unless a specific zoning amendment is made in the future to that effect.

The Workforce Housing Overlay District is depicted on the map identified as Workforce Housing Overlay District – Supplement to Official Zoning Map. In case of any conflict between the description above and the rendering on the map, the description of the zone, above, will prevail.

Any parcel of land located in the overlay district may be developed as a workforce housing project in accordance with the provisions of the Workforce Housing Overlay District by right at the option of the landowner pursuant to the provisions of this article.

D. Workforce Housing Option under Conservation Subdivisions. Special provisions for workforce housing that is part of a conservation subdivision are given in Article XIX - Conservation Subdivisions. Those provisions are entirely independent from this overlay district and neither may be applied to the other nor may the two be combined in any manner.

E. Dwelling Units. Within a project developed under this ordinance:

1. No single family house lot may be created.
2. Units shall be offered exclusively for rent, not for sale.
3. **Bedrooms.** No units may contain more than three bedrooms. The number of three-bedroom units may not exceed 1/3 of the total number of dwelling units in the project. Otherwise, the mix of units by number of bedrooms is set at the discretion of the applicant. A mix of studios, and one- two- and three- bedroom units is encouraged.
4. **Housing Types.** Residential units in a workforce housing development are restricted to missing middle housing types only (See Definition). A mix of housing types and unit sizes arranged in different configurations is encouraged

Commented [JAB21]: Implies that store fronts are allowed within the development.

Refer to ARTICLE XVIII.1 E. 4.

Are these commercial operations restricted to those allowed in the underlying zones?

Commented [MB22R21]: See I. Allowed Uses.

but not required. No individual building (including rowhouses and townhouses) may contain more than 12 dwelling units.

F. HUD Fair Market Rent. Rent levels are established for all workforce housing units (including any units that are subleased) based upon the U. S. Housing and Urban Development (“HUD”) Fair Market Rent which is set based on the number of bedrooms in a unit. The rent levels are reset by HUD every year. The fair market rent (or some percentage of the fair market rent, below) is the figure for which the unit is offered. **It does not consider other costs to tenants.**

Commented [JAB23]: How will rents for commercial units be determined?

Commented [MB24R23]: They are not affected under this ordinance. The private market controls.

Commented [JAB25]: What are the other costs that you are referring to? Unit maintenance costs, association fees?

Commented [MB26R25]: The ordinance controls only the rent charged to the tenant. It does not address other costs, notably utility costs.

Rents may be set at the discretion of the property owner provided:

1. Most units will likely be rented at the HUD Fair Market Rent with the exceptions in 2. and 3., below.

2. There is some flexibility in setting rent levels. Each unit shall be rented at some percentage of the HUD Fair Market Rent, e.g., exactly at HUD Fair Market Rent which would be 100%, at 80%, etc. **The average of all of the percentages for all of the units in the project (independent of the number of bedrooms in units) shall not exceed 100%. (For example: 10 units are rented at 100% of the HUD Fair Market Rent level, 5 units are rented at 60% of HUD Fair Market Rent, and 5 units are rented at 120% of HUD Fair Market Rent. The average of those percentages is 95% which would be in compliance since the average is less than 100%.)**

Commented [JAB27]: Who will verify this and how often will that occur?

Commented [MB28R27]: The Planning Board will likely require that the owner submit annual reports.

Commented [JAB29]: This is not consistent with the FAQ that states as part of How long will the units remain affordable? “The maximum rent on every unit is set based on the HUD Fair Market Rent levels.”

Commented [MB30R29]: They must follow this formula in perpetuity. This merely gives some flexibility in setting rent levels.

3. At least 20% of the overall number of units (independent of the size of the units) shall be rented at 80% of HUD Fair Market Rent level or less.

4. Rental units must be the **primary residence for all lessees.**

Commented [JAB31]: How and who is responsible to verify this?

Commented [MB32R31]: This will be enforced like other provisions in the Zoning Ordinance. The Planning Board could require some kind of reporting if desired.

G. Housing Vouchers. Property owners must be willing to accept Section 8/Housing Vouchers for payment of rent provided the total amount of rent paid for a unit is consistent with the established rent for the unit. This provision does not require that priority be given to Section 8/Housing Vouchers, but only that the property owner be willing to accept them.

H. Housing Guarantees. **The primary purpose of this overlay district is to provide affordable housing for members of the workforce and the community.** **The property owner shall not accept guarantees from third parties who will not reside in the rental unit** (This provision does not apply to Section 8/Housing Vouchers).

Commented [JAB33]: a.k.a. Everyone? That is not what the purpose states in A above. Why state the purpose in multiple locations? The first sentence is unrelated to Housing Guarantees.

I. Allowed Uses. The uses allowed in any project developed under this overlay district are the residential uses specified in this section, all uses allowed in the underlying base zoning district, day care centers, and common accessory uses to these uses (such as a clubhouse and outdoor recreation serving residents). Institutional Uses, Offices,

Commented [MB34R33]: The purpose is to avoid housing undergraduate students for whom parents often provide a guarantee.

Restaurants, and small Retail Stores (with less than 5,000 gross square feet), are allowed by conditional use (unless allowed by right in the underlying zoning district).

J. Density and Dimensional Standards. The density and dimensional standards for the Workforce Housing Overlay District are specified in the Table 175-54 – Table of Dimensions. These standards (in the table above and below) apply throughout the Workforce Housing Overlay District superseding the standards otherwise applicable to the underlying base zoning districts.

1. Density. The density standard is given in the Table of Dimensions. The standard is established for the overall site based upon lot area per dwelling unit. All areas of the subject parcel apply to the density calculation except for wetlands and areas of open water.
2. Maximum number of units. The maximum number of dwelling units for any workforce housing development is 200 units. This maximum applies to any individual lot or tract proposed for a project, including any project to be developed in phases. Appropriate restrictions may be specified for any project to prevent pre-emptory subdivision that might circumvent this provision. The Planning Board may approve more than 200 units in a project by conditional use.
3. Senior units. There is no density bonus for senior residential units. Section 17557 A. 1. Density for senior residential units does not apply to projects developed under this overlay district.
4. Building Height. The maximum height for any building is three stories. There is no maximum height in number of feet. The maximum height for any building is four stories if that building is set back at least 100 feet from any property line.
5. Other Dimensional Standards. Other dimensional standards given in the Table 175-54 – Table of Dimensions may be altered by the Planning Board by conditional use for good cause.

K. Other Zoning Parameters. All other standards in the Zoning Ordinance shall apply to a project unless superseded by a specific provision in this overlay district. The limitation allowing for a maximum of three unrelated occupants in a dwelling unit does not apply to any project developed through this overlay district.

L. Buffers. Depending on the location and characteristics of the proposed development, the surrounding properties, and the adjacent roads the Planning Board may require that the developed area be buffered from surrounding property and the adjacent roads.

M. Low Income Housing Tax Credit project. The Planning Board may approve by conditional use any departure from this article and from the Zoning Ordinance to accommodate a project proposed to be funded through the Low Income Housing Tax

Commented [JAB35]: Must the non-residential structures be rented only?

Commented [MB36R35]: No. The rental requirement applies only to the residential units.

Commented [JAB37]: Text added 1 Nov 2024

Commented [MB38R37]: I suggest adding this text after the public hearing.

Commented [JAB39]: What is the maximum height that our Fire Department Ladder Truck can safely accommodate?

Commented [MB40R39]: It is greater than three or four stories. This standard is set based on what the board deemed an appropriate height for a project.

Commented [JAB41]: Text Added 1 Nov 2024

Commented [MB42R41]: I recommend adding this provision after the public hearing.

Commented [JAB43]: What implication does this have, if any, to a variance application? Can or should the ZBA grant a variance for something that the Planning Board has yet to deny in a conditional use motion?

This seems to be a normal ZBA variance request.

Commented [MB44R43]: The conditional use and variance procedures are entirely separate. If some allowance will make sense and even be desirable under certain circumstances then a conditional use is a good approach, as I believe is the case here. Applying for a variance is a much more open and uncertain process.

Commented [JAB45]: Is there a maximum number of unrelated or related occupants in a dwelling unit?

Commented [MB46R45]: None that is proposed here.

Commented [JAB47]: Isn't that covered by the first sentence in K above?

Commented [MB48R47]: There is a potential concern with buffering a large project from the road and abutters. It is useful to call this out specifically.

Credit, where any requirement of the tax credit program is inconsistent with this article or the Zoning Ordinance.

N. **Perpetuity.** All workforce housing units must remain affordable as workforce units in perpetuity in accordance with HUD figures and the conditions of project approval. As part of any project, appropriate provisions, such as deed restrictions or easements, shall be incorporated to carry out this requirement. The Town of Durham or their agents may require periodic reporting and audits at its option.

O. **Site Plan and Subdivision Regulations.** A workforce housing project developed under this overlay district is exempt from Article XIX – Conservation Subdivisions and from all sections under the Subdivision Regulations related to conservation subdivisions. **Where there is no subdivision into separate lots of land a project is reviewed under the Site Plan Regulations.** Separate components of a project may be subdivided into separate parcels as part of phasing of a project or an overall development plan, **in which case creation of new parcels will be reviewed as a subdivision under pertinent elements of the Subdivision Regulations.** Lots which are not intended to be part of a workforce housing development may be subdivided from the parent parcel of land provided that portion of the development complies with other applicable requirements.

P. **Topography and Open Space.** A full topographic survey shall be prepared. A minimum of 60% of the gross acreage of the parcel shall be set aside as permanent open space. **The applicant shall prepare an open space plan providing for the appropriate use, maintenance, and protection of the open space to be approved by the Planning Board.** On sites where both Town water and sewer are not available the applicant shall prepare a HISS analysis of the entire site. **A HISS analysis is not required when both Town water and sewer are available.**

The Planning Board will determine which portions of the parcel will be set aside for open space in order to optimally preserve natural and cultural resources, enhance forest management, and provide opportunities for agriculture and passive recreation in accordance with criteria a. through g. under Article XIX. Conservation Subdivisions, Section 175-107, Subsection H. Common Open Space, Subsection 3.

Q. **Design.** The Planning Board shall use its judgment in reviewing the proposed design, layout, and density of the project to ensure a **harmonious living environment** for the future residents.

1. **All residential buildings must front a pedestrian-oriented designed street or way and not simply a parking lot.**
2. All residential buildings must form a **pedestrian-oriented ensemble.**

Commented [JAB49]: Does this allow for a reduction a property taxes?

Commented [MB50R49]: I cannot speak to this. It would depend on the specific project. The tax credit is from federal taxes.

Commented [JAB51]: This is not consistent with the FAQ that states as part of How long will the units remain affordable? "And the Town can always amend requirements later for good cause."

Commented [MB52R51]: It would be in perpetuity. That is the expectation. However, a Town government can always amend an ordinance.

Commented [JAB53]: Why no Conservation Commission involvement?

Commented [MB54R53]: The Conservation Commission could weigh in at its option or the Planning Board could ask the commission for input.

Commented [JAB55]: Will this be defined as in Article XIX. Conservation Subdivisions Section 175-107, Subsection H Common Open Space, Subsection !?

The opening paragraph of this Subsections seems to imply 60% of gross acreage which could include all the required setbacks, including wetlands, ledge outcroppings, steep slopes and other unusable areas of land, which is not allowed under the Conservation Subdivision Ordinance.

Commented [MB56R55]: This ordinance does not use the term "unusable" areas that is used for Conservation Subdivisions. The valuable natural resources would be preserved and other setbacks and buffers would be included in order to meet the 60% open space threshold. It is helpful to think of this in terms of the applicant selecting an appropriate 40% of the land that would function well for the construction.

Commented [JAB57]: Are the Cultural Resources those referenced in Article 4. of our current Site Plan Regulations?

Are the Natural Resources those referenced in Article 8. of our current Site Plan Regulations?

Commented [MB58R57]: Yes. The Planning Board can use appropriate references in these situations of its choosing which naturally would include those in the Site Plan Regulations.

Commented [JAB59]: Is there a definition for passive recreation?

Commented [MB60R59]: Yes, in the Definitions section of the Zoning Ordinance, under Recreation, Passive.

Commented [JAB61]: How will a "harmonious living environment" be defined? Why are there no design criteria for commercial buildings?

Commented [MB62R61]: The intent here is to give the Planning Board some language to review the residential layouts, not to include extensive architectural design standards. We have that - for residential and commerc...

Commented [JAB63]: How is this defined?

3. There must be a network of streets or ways allowing for pedestrian movement through the site.

4. All parking areas must be broken up into smaller areas or with sufficient landscaping to avoid large expanses of parking.

R. **Parking and Transportation.** The applicant shall develop a transportation plan for the project pursuant to Article 11 – Pedestrian, Bicycle, and Transit Facility Standards in the Site Plan Regulations. The minimum number of parking spaces required for any dwelling unit is one.

S. **Infrastructure.** Roads, water and sewer infrastructure, and other infrastructure shall be owned and maintained by the developer or by the Town of Durham as determined by the Planning Board in consultation with the Town Administrator and Durham Public Works Department (and/or the Town Council pursuant to other applicable law).

T. **Incentives.** The Planning Board may negotiate with the applicant to allow for additional density or reduced open space in exchange for inclusion of various elements

that will enhance the quality of the project, including, but not limited to, additional open space, public recreation facilities, agricultural leases, active transportation connections, sustainability measures, and a reduction in the average rent level significantly below 100% of the HUD Fair Market level. This bonus should not be provided for elements that would likely be incorporated in the regular course of site plan review. The maximum increase in density allowed under this provision is 20%. This allowance could also be used to raise the threshold of 200 units beyond which a conditional use would be required.

Commented [JAB64]: What are the setback requirements from these streets? Must these streets comply with dimensions determined by the Fire Department?

Are there any lighting requirements on the streets or pedestrian pathways?

Commented [MB65R64]: There are no setbacks under zoning most likely as the streets would probably be private ways that are part of the main lot. The Planning Board can establish reasonable setbacks as part of the site plan review as needed.

Commented [JAB66]: Is there a definition for this?

Commented [MB67R66]: It is a common term in the Planning field, meaning multiple ways and intersections, depending on project size.

Commented [JAB68]: Are the parking requirements for commercial operations reduced or do they remain as specified in the underlying zone?

Commented [MB69R68]: Parking requirements are given in the Site Plan Regulations. Those regulations would govern commercial use.

Commented [JAB70]: 60% Open Space not guaranteed nor is the "maximum 200 units allowed" alluded to in the FAQ. It should also be noted that the 200 units is per project and not a maximum for the Town.

Refer to FAQ "Isn't the allowed density very high?"

Refer to FAQ "Why is a maximum of 200 units allowed?"

Commented [MB71R70]: As an incentive the Planning Board could adjust those parameters here at its option.

5) **ARTICLE XIX - CONSERVATION SUBDIVISIONS**

✚ Add the following new provision under **Section 175-107. Conservation Subdivisions** at the end of **C. Exempt Subdivisions**:

5. Any subdivision created under **Article XVIII.1 Workforce Housing Overlay District.**

✚ Under **Section 175-107.1 Workforce Housing Option**, change the title of the section and insert a new paragraph without a letter designation right below the title as follows:

175-107.1 Workforce Housing in a Conservation Subdivision

Applicants who seek to incorporate workforce housing into a conservation subdivision shall follow the procedures laid out in this section. Workforce housing developed under this section is entirely separate from workforce housing developed under the Workforce Housing Overlay District.

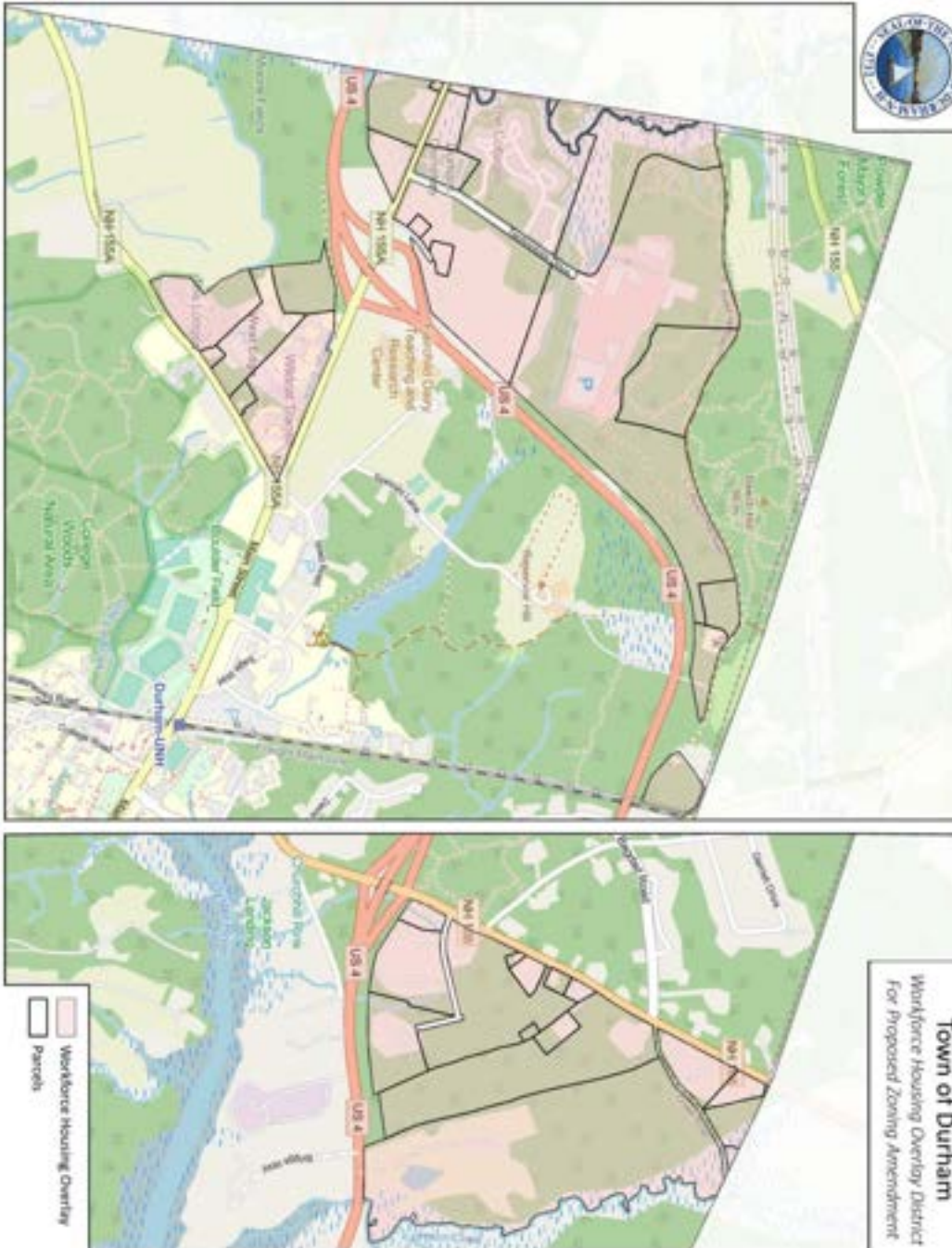
‡ Under **Section 175-107.1 Workforce Housing Option**, replace F. Density Incentive, in entirety with the following:

F. Density Incentive. In determining the maximum number of workforce housing dwelling units that are allowed in a conservation subdivision these standards apply:

1. A workforce housing dwelling unit containing one bedroom or a studio unit without a separate bedroom counts as 0.33 dwelling units for the purpose of the density calculation; and
2. A workforce housing dwelling unit containing two or more bedrooms counts as 0.50 dwelling units for the purpose of the density calculation;

6) **ZONING MAP**

‡ Rezone the lots as shown on the Zoning Map on the next page and as specified under Applicability above.





PLANNING DEPARTMENT

Town of Durham
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FREQUENTLY ASKED QUESTIONS (FAQ'S)
PROPOSED WORKFORCE HOUSING OVERLAY DISTRICT
October 11, 2024

What is the purpose of this proposed ordinance?

The purpose of the proposed ordinance is to encourage the private market to build a meaningful number of new affordable/workforce housing units in Durham.

What does affordable housing mean? What is workforce housing?

Affordable housing is rental housing or owner-occupied housing where the occupant is paying no more than 30% of their gross income on housing costs, including the rent and utilities or the mortgage, property tax, and housing insurance.

Affordable housing has a broader meaning as well. It refers to housing, usually rental housing, that a person or household of moderate means can afford to rent without paying a burdensome percentage of their income.

Workforce housing under the state of New Hampshire definition refers to rental housing that is affordable to a household with an income not exceeding 60 percent of the median income for a 3-person household in the Seacoast region and housing intended for sale that is affordable to a household with an income not exceeding 100 percent of the median income for a 4-person household in the Seacoast region. Clearly, this is a confusing metric so in the Workforce Housing Overlay District we use HUD Fair Market Rent as the metric, below.

Workforce housing has a broader meaning as well. It refers to housing, more commonly rental housing, that is intended to be occupied (though it is rarely so restricted by law) by persons who are employed in occupations with moderate incomes and who provide fundamental services to residents in a community, including teachers, nurses, firefighters, police officers, health care workers, retail workers, etc.

As a practical matter, *affordable housing*, *workforce housing*, and a term currently in vogue, *attainable housing*, are all fairly interchangeable in meaning.

Commented [JAB1]: What does “burdensome” mean and how is it defined?

Commented [MB2R1]: It is just a general statement. There is no particular definition.

Commented [JAB3]: What does the “and” mean in context of this sentence?

None of this is in sync with the definition used in the ordinance.

Commented [MB4R3]: This is a general concept of workforce housing.

Is there really a need for more housing in Durham?

That depends on one's perspective. There is certainly a **great shortage** of housing (and affordable housing, in particular) in New Hampshire and across the country. There are **numerous reasons** for this shortage, but essentially the cost of producing housing has been rising much faster than incomes for middle- and lower-income people over many years.

Some people have stated that every town, including Durham, has a moral obligation to allow more housing, including accommodating our "fair share" of growth given that we are part of the larger Seacoast community.

Durham has experienced slow growth for many years. Some argue that we need more residents to make Durham a more interesting and vibrant community and to help pay for the significant infrastructure that the community has added in recent years or may add in coming years (the new Town Hall, the new library, expanded police station, prospective future Fire Station etc.). **New residents can also support the downtown.**

Many residents and potential residents have expressed frustration that there are few options, and fewer yet affordable options, for people to live in Durham or relocate within Durham. To a **large degree**, housing in Durham consists of multi-unit student housing (off campus), senior housing in both expensive market and subsidized developments, and single-family houses that have been rising in value so that they are no longer affordable to people with **moderate** incomes.

Hasn't Durham already contributed its fair share with over 2,000 new student housing beds created in recent years?

There are **various** legal requirements for a community to accommodate housing. It is a complicated determination whether or not any given city or town meets the requirements. *Nonetheless, the Town Administrator, the Town Planner and other Town officials have stated unequivocally that they believe Durham is in compliance with state law, due in large part to the many new student beds that have been built in private student housing projects over the last 15 years or so.*

Thus, arguably, **the impetus to build housing is for reasons other than compliance with the law.** At any rate, if Durham were ever to be challenged in court, establishing these kinds of initiatives only bolsters our stated position that we are now in compliance.

How many housing units are needed in Durham?

Commented [JAB5]: What are the counterpoints to those you provide here to support more housing?

Commented [MB6R5]: I leave that to others to determine as they see fit.

Commented [JAB7]: My understand there are numerous housing units available in rural parts of New Hampshire.

Perhaps the point should be that housing is restricted in proximity to the majority of employment opportunities.

Commented [MB8R7]: One may differ from the statement as one sees fit.

Commented [JAB9]: Are you suggesting that it was financially unwise for Town Council to have undertaken these projects?

That the Town Council or Town Administration did not act responsibly in exercising their fiduciary capacity for the benefit of the Town's residents?

Commented [MB10R9]: No.

Commented [JAB11]: What is the penalty for non-compliance?

Commented [MB12R11]: We could theoretically be compelled I court to accept a particular development even if it did not meet current zoning or was opposed by the Town.

Commented [MB13R11]: ...in court...

A recent Housing Needs Assessment conducted for the Town of Durham by RKG Associates concluded that the town should add 455 housing units by 2040 not counting housing for students.

This is a debatable point as well. There are various perspectives for what “need” means for any given community.

What kinds of housing do housing advocates say is needed?

Many housing advocates state that there are three general goals:

- Increasing the overall number of housing units (*independent of cost or type of units*);
- Creating affordable housing units; and
- Building a wider range of housing types (See Missing Middle below)

Won't this proposal result in countless new housing units?

No. It is very difficult to develop affordable housing, especially under the proposed ordinance that requires that virtually all units be relatively affordable. Few developers have the skills to do these projects. But some do. The high density is needed to make such a project financially viable.

There are a limited number of appropriate lots in the subject area. We could adopt the ordinance and find that no projects come forward. If one large project is developed and the community is dissatisfied with the results then the Planning Board and Town Council could certainly amend the ordinance or even abolish the ordinance in the future.

Will this proposal create a housing ghetto?

No. There is a huge need for housing. We will most likely see all sorts of people applying to live in a project – singles including young professionals, couples, retired people (some downsizing from large houses in Durham), some undergraduate students, graduate students, families, etc. The relative affordability of the units will be attractive to many people and there is no income means test.

Most new residential developments in general and in Durham are fairly homogeneous – whether built as student housing, senior housing, or single-family subdivisions. The kind of project envisioned is potentially significantly more diverse than conventional projects.

Why are single-family houses on their own lots not allowed under this proposal? Isn't home ownership the path to the middle class? And why only rental housing and no sale of condominiums?

Commented [JAB14]: Why not adopt the numerous Public Comments that asked for a cap on number of units overall in the Town. In order to provide a pause and evaluation period, then if warranted lift/increase the cap. It would work like a sunset provision and force a thorough review and evaluation.

If you are comfortable defending the position that Durham has already done enough, “done it’s fair share”, then a cap on units with a reevaluation step is a prudent management phase.

Commented [MB15R14]: I do not recommend that approach. Again, if the Town were dissatisfied with the outcome of this ordinance it could be changed in the future.

Commented [JAB16]: Isn't the ghetto defined more by management and maintenance practices of the landlord which in turn attract a demographic that can pay the rent and is willing to live in substandard housing.

Article XVIII.1 175-106 Subsection K doesn't appear to limit the number of occupants in any dwelling unit.

Commented [MB17R16]: In this proposal there would be no limit on unrelated persons in a unit.

This ordinance is oriented toward rental housing. The goal is to create a meaningful number of units. It is far easier to achieve density with rental multi-unit housing. In addition, less land is taken up than in subdividing land for single family housing.

Yes, facilitating home ownership offers benefits for people of moderate means but **that is not part of this ordinance.** No ordinance can accomplish all of the **nice things** that we would like to do. Plus, even if we included single-family housing, **we would place a limited equity provision on the sale of units in order to keep the units affordable in perpetuity.** As such, no individual would receive a windfall significantly improving their economic status.

We do have a conservation subdivision ordinance now in place which is based on single family housing and provides a density bonus for affordable housing (though that provision has never been used). If creating affordable single-family housing for purchase is desired then it should be accomplished through this existing ordinance, especially if the allowed density is increased (from a minimum now of almost 3-1/2 acres of land needed for each lot or unit).

Does one have to qualify by income?

No. These units could be rented by anybody, even a wealthy person. The ordinance functions to create affordable housing units (not necessarily to provide units exclusively for people with low or moderate incomes). **Many** of the units will hopefully be rented by people of moderate means who have fewer options. One advantage of not having a means test is that there will be **more** diversity in the project. The Planning Board evaluated in depth whether to include a means test and it would add substantial complications to the ordinance and is simply not worth doing. Neither the Town nor a likely developer would have the resources to conduct ongoing means tests. Public housing authorities, on the other hand, are set up for this kind of evaluation. Landlords want to confirm that applicants have the minimum income to pay for rent. A means test would require that landlords confirm that applicants have the maximum income allowed. This would require submission of more extensive private financial information (such as tax returns) and still not ensure that there is other income not being revealed. In addition, would an existing tenant be evicted if their income rises later on or has another person move in with them? It is **very unlikely** that any project would be dominated by affluent residents. People with choices will look at other higher-end housing opportunities, including housing for purchase.

How long will the units remain affordable?

The units will remain affordable in perpetuity. The maximum rent on every unit is set based on the HUD Fair Market Rent levels. The Town will likely require an annual reporting to ensure compliance. The recording would likely be fairly simple and not be burdensome. Some ordinances require units to remain affordable for a limited period of time, such as 30 years. If a condition of a project is beneficial when the project is initiated, the condition

Commented [JAB18]: You are crafting a new ordinance, with new setbacks, minimum lot sizes, etc. If you wanted, you could accommodate ownership housing.

Are we seriously looking for what is easy after two years of studying. Weren't we looking what is best for Durham.

Commented [MB19R18]: This ordinance is oriented toward rental housing. That is how it is structured. The conservation Subdivision ordinance is oriented toward housing for purchase (though not exclusively).

Commented [JAB20]: Then those people wouldn't buy. But not everyone is looking for windfall profits, that requires you to sell and go somewhere else.

Some people are looking for their last home and don't feel a great need to leave a large inheritance.

Some people are looking for a place to call home, something more than a place to sleep. A place to have a small garden and be a member of a neighborhood.

Commented [MB21R20]: That is what we hope to foster.

Commented [JAB22]: So it really can be done.

Commented [MB23R22]: This is a specific ordinance oriented toward a particular type of project. The Town can look at other ordinances in the future to achieve other goals.

Commented [JAB24]: What will happen over time as the cost to maintain outstrips the Fair Market Rent?

Maintaining roads, sewer, water infrastructure can be expensive. Even quality appliances seem to expire within 15 years.

Rents based on wage levels may or may not be synchronized with ever increasing infrastructure and housing maintenance costs.

Commented [MB25R24]: It is the same case with any multifamily project. It is the responsibility of the developer to figure out their finances to make the project successful. Revenues may be constrained but they should rise roughly with inflation. Initial costs per unit should be less for more basic units, in line with projected revenues.

generally should continue indefinitely. It is **very unlikely** that there will no longer be a need for affordable housing in 50 years. **And the Town can always amend requirements later for good cause.**

Commented [JAB26]: So I guess it isn't affordable in perpetuity?

Commented [MB27R26]: It should be unless the Town government determines otherwise in the future.

Why not create an inclusionary housing ordinance instead where only a small percentage of units are affordable with most being available at market levels? A **decent amount** of affordable housing units are created in cities like Boston through inclusionary housing laws where there must be a percentage (such as 10% or 20%) of affordable units created along with market units in any given development. We have had so **little** residential development in Durham other than student and senior housing that virtually no units could be created through this approach. **There have been only two subdivisions with more than three house lots created in the past 12 years.**

Commented [JAB28]: Isn't that result caused by our existing ordinances which could be changed to encourage subdivisions.

Commented [MB29R28]: Yes, the allowed density is very low.

Is this proposal specifically oriented towards low-income housing and Section 8 housing?

No. The ordinance includes a provision that the developer/owner must be willing to rent units to people with Section 8 vouchers (but not that such applicants be given any priority). Section 8 vouchers pay a little less than market rent in many cases and many landlords refuse to rent to people on Section 8 for whatever reason. They can do so legally. We would not anticipate a large number of Section 8 tenants as any project should be attractive to a broad range of potential renters.

What is HUD Fair Market Rent?

HUD sets a "Fair Market Rent" level which it uses for certain HUD programs in each region. The rent level is based on bedroom size, and it is adjusted annually. These rent levels are **actually higher** than one might expect. This makes the units a **little** pricey, but they are still more affordable than market units. The higher rents will support the viability of a project and attract some people with higher incomes (and accomplish some diversity in the population).

What is missing middle housing?

Since World War II we have built **predominantly** two types of housing – single family houses and large apartment buildings and complexes. Traditionally, we created **much more interesting** walkable neighborhoods with a mix of housing types including duplexes, triplexes, triple deckers, rowhouses, cottage courts, small courtyard apartments, apartments over stores (Durham has lots of these), and accessory dwelling units (**We have lots of these**). These types of units were **generally more** affordable than single family houses and **much more** pleasant than units in large apartments. They fit in between the small individual single-family houses and large apartments, hence, "missing middle housing."

Isn't the allowed density very high?

The allowed density is quite high but 60% of the gross parcel will be in permanent open space and there should be significant buffers from roads and abutters. We would not anticipate any project being very visible unlike Riverwoods, for example. It is often difficult to build to maximum allowed density, especially for smaller lots, given this open space requirement and the need to accommodate parking, stormwater management, and utilities.

Commented [JAB30]: This reads like we are embarrassed to have this housing seen so we feel a need to make sure it is hidden away.

Commented [MB31R30]: Many people in town wish to have buffers from the roads, especially for larger projects on gateways.

Why is a maximum of 200 units allowed? This seems so high.

We thought it useful to include a maximum size for any one project should a development occur on a very large parcel that could accommodate lots of units. This is a maximum. One could potentially build to this amount probably only on one property in the overlay district.

Why are the lots along Dover Road/Route 108 included? This is an important gateway for Durham.

Zoning standards require that districts be drawn with a fairly broad brush without special consideration for individual lots (except in certain cases more surgical delineation is justified). Excluding smaller lots along Dover Road would be impermissible spot zoning. The proposal should not have any adverse impact on this gateway given that many of the lots fronting on Dover Road are already built upon or are too small to accommodate workforce housing under the ordinance. There are also setback and buffer requirements in the proposal.

What impact will the ordinance have upon Agricultural Resources?

Some areas included in the overlay district include high value agricultural soils. Unfortunately, given the cost of land in Durham, it would be challenging for a farmer to purchase these lands in any case. With the requirement to preserve 60% of the open space in the proposed ordinance, including the most sensitive lands, there is a potential for significant areas to be set aside for potential agricultural use.

Commented [JAB32]: How is this open land required to be managed? Will invasives be continually removed, will it be kept open or will it be allowed to go in woodland?

There doesn't appear to be any clause in the proposed ordinance that actually defines nor protects "the most sensitive lands", the ordinance allows for wetland setbacks to be included within the open space as well as other land that may be unusable for agriculture.

Commented [MB33R32]: The applicant will need to submit a maintenance plan for the open space subject to approval by the Planning Board.

Commented [JAB34]: What is the AMI for ORCSD teachers? How does 30% of their wages compare to the base that HUD uses to set rental rents? Are teachers and their average income the target market for the proposed Workforce Housing ordinance.

Durham is and has been a seller's market with more people looking for housing here than there are houses on the market. So one can say there is an unavailability of housing at any levels in Durham.

Commented [MB35R34]: The target market is people of moderate incomes including teachers, firefighters, nurses, and others who could not otherwise likely afford to live in Durham.

What impact will this proposal have on the Oyster River School District?

This is a legitimate concern, of course. Dr. James Morse, the former Oyster River School Superintendent, spoke with the Planning Board in depth about this issue. He felt quite confident that the likely amount of pupil generation would be manageable. Dr. Morse also emphasized how challenging it is to hire teachers in the school district given the unavailability of affordable housing, noting that this proposed ordinance could be helpful in that regard.

There are different situations with capacity at the elementary schools, the middle school, and the high school. Most likely, new students will be spread somewhat across grades. Any

large project will likely be phased in over a number of years making absorption in the schools easier.

Could any development be dominated by undergraduate students?

That is quite unlikely for several reasons:

- Enrollment at UNH is flat for the foreseeable future.
- We have added several thousand new beds off campus in recent years.
- Students prefer to live closer to campus and the areas included in the overlay district are somewhat further out.
- There is a set rent for each unit so the property owner won't have an incentive to rent by the bed.
- Frequently, parents cosign for their children in student housing, but no third-party guarantors are allowed under the ordinance.
- The units will be rented to a wide range of people who would not tolerate obtrusive behavior.

Can we build more housing and also protect open space?

Yes. Any subdivisions in Durham creating more than three lots must be developed as conservation subdivisions where a substantial amount of land must be permanently protected (at least 50% of the gross parcel in most residential areas). Any lot developed under the Workforce Housing Overlay District must conserve at least 60% of the gross parcel. As part of any project review the Planning Board will determine which land is to be protected, to include the most sensitive and valuable natural and cultural resources on the parcel.

Durham has a tremendous amount of open space including conservation lands owned by the Town of Durham; land owned by UNH (some of which, like College Woods, are not necessarily permanently protected); conservation lands owned in fee or covered by easements owned by nonprofit organizations including The Nature Conservancy, the Southeast Land Trust, and New Hampshire Audubon; several parcels owned by the state (some may not be permanently protected); and a handful of parcels connected with conservation subdivisions.

Why is this district being created in outlying areas rather than in the core downtown? Isn't that sprawl?

There are not many significant developable parcels in close-in areas. We would like to enhance housing opportunities in the core areas but that will not be accomplished with an ordinance like this. We will need a more surgical approach, perhaps allowing for infill development, duplexes here, taller buildings there, a small rowhouse over there, etc. The Housing Task Force has created a committee to explore creating another ordinance to bring more housing into these areas.

Commented [JAB36]: Is there a State or Federal grant limit for only 50 housing units per year?

Is there any external limitation on developments that would restrict a developer's desire or financial incentives to build more units in a year?

Commented [MB37R36]: A developer will seek to build as many units as they can as quickly as they can but projects are usually constrained by market absorption.

Commented [JAB38]: What will these housing units rent for compared to the average per bed rent currently being charged?

How many housing units will have multiple beds?

Commented [MB39R38]: The units will be rented at the HUD Fair Market Rent levels with some flexibility in the formula. The unit sizes will be up to the developer with some constraints built into the ordinance.

Commented [JAB40]: What guarantees are required to rent these housing units?

Commented [MB41R40]: None are required. For undergraduate students it is common for parents to guarantee the rent.

Commented [JAB42]: That didn't work out so well on Young Drive.

Commented [MB43R42]: That is true. It is extremely unlikely that any project under this ordinance would resemble the old Young Drive site.

Commented [JAB44]: Why shouldn't the Conservation Commission provide this oversight?

Commented [MB45R44]: The commission would be welcome to provide input or the Planning Board could ask for their input.

Commented [JAB46]: What type of ordinance would be needed?

Commented [MB47R46]: The Housing Task Force has created a Downtown Zoning Committee to look into this.

If we are going to create housing it must happen where the land is. We do have Town water and sewer in these areas covered in the ordinance. The proposed district is readily accessible to the core and is situated on major roads. **Most** everybody has a car these days so it is simply unrealistic to think that we can create a significant housing development in Durham for nonstudents where people will not have cars. Considering that **many** people commute from places as far away as Farmington, a local project **could have** a positive impact in reducing our carbon footprint.

Adopting this ordinance simply creates too much of a risk for Durham.

What exactly is the risk to the community from this proposal? The Housing Task Force and Planning Board have spent countless hours crafting, deliberating, and refining the ordinance to address myriad potential concerns. Again, there is a real **possibility** that no project will be developed once the ordinance is adopted given the difficulty of building affordable housing and the small number of parcels in the overlay district that could realistically accommodate a project. There are **numerous provisions** in the ordinance providing protections and any proposal would be reviewed through a rigorous site plan review with substantial public input.

Commented [JAB48]: Because the ordinance is open ended with no cap on housing units it could get out of hand before rules are revised.

It could become another Young Drive, just less visible.

There doesn't appear to be measurable metrics to sound an early alarm if student populations are skewed and an age group bubble is created.

Given the lack of a comprehensive financial analysis on the Impact to our Town's operations we could be building in unsupportable future tax burdens.

This FAQ is short on definitive projections and over utilizes should, could, might too much.

Commented [MB49R48]: We do not provide any projections as part of this proposed ordinance. Projections are rarely given with this kind of proposed change. But the Planning Board has listened to a lot of testimony about the proposal. It remains to be determined by the Town Council if members want to adopt this initiative.



TOWN OF DURHAM

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AGENDA ITEM: **# 11D** *TS*

DATE: November 18, 2024

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA ITEM: CONTINUED DELIBERATION OF THE ADMINISTRATOR'S PROPOSED FY 2025 OPERATING, CAPITAL, AND SPECIAL FUND BUDGETS AND THE 2025-2034 CAPITAL IMPROVEMENT PLAN.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA DESCRIPTION:

At the conclusion of the Public Hearing, and as time allows, the Council will begin an interview session with each of the Department Heads and continue its initial discussion and deliberation on the proposed budgets and CIP. The following is the order that the Departments will be interviewed.

- Assessing
- Code Enforcement
- Planning
- Town Clerk/Tax Collector
- Recreation
- MIS/DCAT/GIS
- Business Office
- Library
- Public Works
- Police
- Fire

LEGAL AUTHORITY:

Durham Town Charter, Article 5 "Finance", Sections 5.1 - 5.12.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

No formal action required. Continue deliberation on the proposed FY 2025 Operating, Capital and Special Fund Budgets, and the 2025-2034 Capital Improvement Plan received from the Administrator and Business Manager and hold question and answer session if desired.



TOWN OF DURHAM

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AGENDA ITEM: **#12**

DATE: **November 18, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL MEETING MINUTES FOR NOVEMBER 4, 2024.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the meeting held on November 4, 2024. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings:

"Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of anybody or agency, or any subordinate body thereof, without exception."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby approve the Town Council meeting minutes for November 4, 2024 (as presented /as amended).