



TOWN OF DURHAM

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Durham, NH 03824
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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.

DURHAM TOWN COUNCIL
MONDAY, JANUARY 6, 2025
DURHAM TOWN HALL - COUNCIL CHAMBERS
6:00 PM

IAW RSA 91-A:2 I: (b) Consultation with legal counsel
relative to the cable television franchise
renewal agreement

NOTE: This meeting is not open to the public.

AGENDA
DURHAM TOWN COUNCIL
MONDAY, JANUARY 6, 2025
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. **Presentation and Public Hearing** on the cable television franchise renewal agreement between the Town of Durham and Comcast for a period of ten (10) years, and authorizing the Administrator to sign said agreement on behalf of the Town.

B. Update on the Oyster River Cooperative School District's FY 2025/26 Budget Process - Dr. Robert Shaps, Superintendent

XI. Councilor and Town Administrator Roundtable

XII. Unfinished Business

Continued Discussion and First Reading on Ordinance #2025-01 Amending Chapter 175 "Zoning," Article II, "Definitions," Article XII.1, "Use and Dimensional Standards," Article XV, "Flood Hazard Overlay District," Article XVI, "Aquifer Protection Overlay District," Article XVII, "Durham Historic Overlay District," Article XVIII, "Personal Wireless Service Facilities Overlay District," Article XX.1, "Standards for Agricultural Uses," and Article XXIII, "Signs and Communications Devices." A Public Hearing can be set for February 17, 2025

XIII. Approval of Minutes - December 9, & December 16, 2024

XIV. New Business

A. **First Reading on Ordinance #2025-02** Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board," and scheduling a Public Hearing for Monday, February 17, 2025.

B. Discussion of Administrator's Progress Report (as of December 31, 2024) on the list of approved 2024/25 Town Council Goals adopted on June 3, 2024.

C. Begin the Administrator's Annual Performance Evaluation Process for 2024 in accordance with the Employment Agreement between the Administrator and the Town of Durham.

D. Discussion of the present composition of Downtown Durham.

XV. Nonpublic Session (if required)

XVI. 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**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Comcast Cable and Town of Durham

AGENDA ITEM: PRESENTATION AND PUBLIC HEARING ON THE CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT BETWEEN THE TOWN OF DURHAM AND COMCAST FOR A PERIOD OF TEN (10) YEARS, AND AUTHORIZING THE ADMINISTRATOR TO SIGN SAID AGREEMENT ON BEHALF OF THE TOWN

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's information is the draft cable contract.

A public hearing notice was published in the *Fosters Daily Democrat* on Thursday, December 26, 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.

LEGAL AUTHORITY:

RSA Chapter 53-C and the Cable Act

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION 1:

The Durham Town Council does hereby OPEN the Public Hearing on the proposed Cable Television Franchise Renewal Agreement between the Town of Durham and Comcast for a period of ten (10) years.

MOTION 2:

The Durham Town Council does hereby CLOSE the Public Hearing on the proposed Cable Television Franchise Renewal Agreement between the Town of Durham and Comcast for a period of ten (10) years.

MOTION 3:

The Durham Town Council does hereby APPROVE the Cable Television Franchise Renewal Agreement between the Town of Durham and Comcast for a period of ten (10) years and authorizes the Administrator to sign said agreement on behalf of the Town.

CABLE TELEVISION RENEWAL FRANCHISE

Granted By:

**TOWN OF DURHAM,
NEW HAMPSHIRE**

Granted To:

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

Term: January 6, 2025 – January 5, 2035

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Cable Television Renewal Franchise - Town of Durham, NH
Term: January 6, 2025 – January 5, 2035 (10 yrs.)

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TOWN OF DURHAM, NH FRANCHISE

INTRODUCTION

WHEREAS, the Franchising Authority of the Town of Durham, New Hampshire, pursuant to RSA Chapter 53-C and the Cable Act, is authorized to grant one or more nonexclusive, revocable Cable Television Renewal Franchises to construct, upgrade, operate and maintain a cable television system within the Town of Durham; and

WHEREAS, The Franchising Authority determined that the proposed Renewal Franchise is adequate to meet the future cable-related community needs and interests of Durham pursuant to 47 U.S.C. Section 546(a), conducted a public hearing and there has been opportunity for public comment on the proposed Renewal Franchise, on January 6, 2025; and

WHEREAS, the Franchising Authority has determined that the financial, legal, and technical ability of Franchisee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and desires to enter into this Franchise with Franchisee for the construction and operation of a cable system on the terms and conditions set forth herein;

WHEREAS, insofar as the State of New Hampshire has delegated to the Town the authority to grant a Franchise for cable system operation within the Town's territorial boundaries, the Town hereby exercises its authority to grant a non-exclusive Franchise permitting the operation of a cable communications system within the Town of Durham.

NOW THEREFORE, after due and full consideration, the Franchising Authority and Franchisee agree that this Franchise is issued upon the following terms and conditions:

ARTICLE 1

DEFINITIONS

SECTION 1.1 - DEFINITIONS

For the purpose of this Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 et seq. (the “Cable Act”), and the Revised Statutes Annotated of New Hampshire, as amended from time to time, unless otherwise defined herein.

(a) Basic Cable Service – means the lowest tier of service which includes the retransmission of local television broadcast signals, PEG Access Programming channels and other signals or services required by the FCC or the Cable Act.

(b) Cable Act – means the Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. § 521 et. seq., amending the Communications Act of 1934, as further amended by the 1992 Cable Consumer Protection and Competition Act, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-458, 110 Stat. 56 (1996) and as may be further amended.

(c) Cable Television System or Cable System – means the facility owned, constructed, installed, operated and maintained by Franchisee in the Town of Durham, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or

(d) an open video system that complies with Section 653 of the Cable Act, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

(d) Cable Service – means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Drop – means the coaxial cable that connects a home or building to the Subscriber Network or Video Return Line.

(f) Digital Starter Service – means the tier of service which currently includes Basic Cable Service and expanded basic programming.

(g) Dwelling Unit - means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household.

(h) Effective Date – means January 6, 2025.

(i) FCC – means the Federal Communications Commission or any successor governmental entity.

(j) Franchising Authority – means the Town Council of the Town of Durham, New Hampshire, or the lawful designee thereof.

(k) Franchise – means this Agreement and any amendments or modifications in accordance with the terms herein.

(l) Franchise Fee – has the meaning set forth in Section 622(g) of the Cable Act, 47 U.S.C. Section 542(g).

(m) Franchisee – means Comcast of Maine/New Hampshire, Inc., or any successor or transferee in accordance with the terms and conditions in this Franchise.

(n) Gross Annual Revenue – means the subscriber revenue received by the Franchisee from the operation of the Cable System in the Town of Durham to provide Cable Services, calculated in accordance with generally accepted accounting principles, including but not limited to monthly Basic Cable Service, premium and pay-per-view fees, installation fees, equipment rental fees, leased access fees and net advertising (less agency fees) on a pro rata basis and home

shopping revenue on a pro rata basis. Gross Annual Revenue shall not include refundable deposits, bad debt, late fees, investment income, or any taxes, fees or assessments imposed or assessed by any governmental authority and collected by Franchisee on behalf of such entity.

(o) Multichannel Video Programming Distributor – means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, Internet Protocol video service (“IPTV”) or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(p) Outlet – means an interior receptacle that connects a television set to the Cable Television System.

(q) PEG Access Programming or Access Programming – means (i) “Educational”: Non-commercial programming produced by the Town of Durham Public Schools, or other educational organizations as designated by the Franchising Authority, and other non-commercial educational programming offered by them which is not ordinarily offered by operators of cable systems; (ii) “Governmental”: Non-commercial programming produced by Town of Durham departments or agencies and other non-commercial programming offered by them or a duly authorized designee which is not ordinarily offered by operators of cable systems; (iii) “Public”: non-commercial programming produced by the residents of the Town of Durham, or produced by an access corporation or non-profit corporation operating within the Town of Durham, and other non-commercial programming not ordinarily offered by operators of cable systems.

(r) Person - means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

(s) Public Buildings – means those buildings owned or leased by the Franchising Authority for government administrative purposes or a public school district, for educational or administrative purposes, and shall not include buildings owned by Franchising Authority or a

school district but leased to third parties or buildings such as storage facilities at which government or school employees are not regularly stationed.

(t) Public Way – means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Town of Durham, which shall entitle Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Town of Durham for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Franchisee to the use thereof for the purposes of installing, operating, and maintaining Franchisee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(u) Signal – mean any transmission which carries Programming from one location to another.

(v) Standard Installation – means the standard three hundred foot (300) aerial Drop connection to the existing distribution system.

(w) Subscriber – means a Person or user of the Cable System who lawfully receives Cable Service with Franchisee’s express permission.

(x) Subscriber Network – means the trunk and feeder signal distribution network over which video and audio signals are transmitted to Subscribers.

(y) Town – means the Town of Durham, New Hampshire.

(z) Video Programming or Programming – means the Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

ARTICLE 2

GRANT OF FRANCHISE

SECTION 2.1 - GRANT OF FRANCHISE

(a) Pursuant to the authority of RSA Chapter 53-C and the Cable Act, the Franchising Authority hereby grants a non-exclusive Franchise to Comcast of Maine/New Hampshire, Inc. and permitting Franchisee to construct, operate and maintain a Cable Television System in the Public Way within the municipal limits of the Town of Durham. Nothing in this Franchise shall be construed to prohibit Franchisee from offering any service over its Cable System that is not prohibited by federal or state law.

(b) This Franchise is granted under and in compliance with the Cable Act and RSA Chapter 53-C of the Laws of New Hampshire, and in compliance with all rules and regulations of the FCC and other applicable rules and regulations in force and effect during the period for which this Franchise is granted.

(c) Subject to the terms and conditions herein, the Franchising Authority hereby grants to Franchisee the right to construct, upgrade, install, operate and maintain a Cable Television System within the Public Way.

SECTION 2.2 - TERM: NON-EXCLUSIVITY

The term of this non-exclusive Franchise shall be for a period of ten (10) years and shall commence on January 6, 2025 and shall expire at midnight on January 5, 2035. The term of this Franchise is subject to all provisions of New Hampshire law and applicable federal laws, as such laws may be from time to time amended.

SECTION 2.3 – RENEWAL OF FRANCHISE

The renewal of this Franchise shall be governed by applicable federal law and regulations promulgated thereunder and by applicable New Hampshire law as such laws may be from time to time amended.

SECTION 2.4 - NON-EXCLUSIVITY OF FRANCHISE

Franchisee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to other Cable Service providers within the Town for the right to use and occupy the Public Ways; provided, however, that in accordance with RSA Chapter 53-C as it may be amended, no such franchise agreement shall contain terms or conditions more favorable or less burdensome than those in any existing Franchise within the Town, when such terms are taken as a whole.

SECTION 2.5 - RESERVATION OF AUTHORITY

Nothing in this Franchise shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or bylaws/ordinances of general applicability and not specific to the Cable Television System, Franchisee, or this Franchise, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways. Any conflict between the terms of this Franchise and any present or future exercise of the municipality's police and regulatory powers shall be resolved by a court of appropriate jurisdiction.

SECTION 2.6 - POLE AND CONDUIT ATTACHMENT RIGHTS

(a) Franchisee must comply, if applicable, with all the requirements of RSA 231:160, et seq. for obtaining conduit or pole licenses for any conduits or poles that Franchisee wishes to install. Pursuant to RSA 231:161, permission is hereby granted to Franchisee to attach or otherwise affix including, but not limited to cables, wire, or optical fibers comprising the Cable Television System to the existing poles and conduits on and under public streets and ways, provided Franchisee secures the permission and consent of the public utility companies to affix the cables and/or wires to their pole and conduit facilities. By virtue of this Franchise, the Franchising Authority grants Franchisee equal standing with power and telephone utilities in the manner of placement of facilities on Public Ways, subject to the lawful exercise of the authority of the Town

to approve the location of all installations in the Public Ways, and subject to the Town's lawful use of the Public Ways.

(b) To the extent permitted by applicable law and to the extent Franchisee is not already subject to tax assessment in the Town under RSA 72:23, I(b), Franchisee using or occupying property of the state or of a Town, school district or village district pursuant to this Franchise shall be responsible for the payment of, and shall pay, all properly assessed current and potential personal and real property taxes, if any, for such use or occupation and all properly assessed current and potential personal and real property taxes, if any, on structures or improvements made by Franchisee pursuant to this franchise. Pursuant to the provisions of this section and subject to the provisions of Section 9.8 herein, failure of the Franchisee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this Cable Television Renewal Franchise Agreement by the Franchising Authority. Accordingly, this is a material term of the franchise and failure to pay duly assessed personal and real property taxes when due shall be cause for Franchising Authority to provide a written notice to Franchisee, pursuant to Section 9.8, to show cause by a date certain specified in the notice as to why this Franchise should not be revoked pursuant to Section 9.7 of the Franchise. To the extent applicable law provides authority for the Franchising Authority to assess taxes on Franchisee, pursuant to RSA 72:23, I(b), 72:8-a, 73:10 and/or 48-B:4 or otherwise, the Franchising Authority shall be authorized to impose such taxes and Franchisee shall be obligated to pay such properly assessed taxes. However, Franchisee reserves all rights to appeal any assessment of personal or real property taxes.

(c) Nothing in this Franchise shall be deemed a waiver or relinquishment of any rights, defenses or claims that Franchisee may have with respect to the application of any law referenced in this Section 2.6 to Franchisee's services or the operation of its Cable System. Franchisee shall have the right to pass through to Subscribers and to itemize separately on Subscribers' monthly bills any tax imposed on Franchisee by the Franchising Authority.

ARTICLE 3

SYSTEM SPECIFICATIONS & CONSTRUCTION

SECTION 3.1 - AREA TO BE SERVED

(a) The Franchisee, subject to Section 3.1 (c) below, shall make Cable Service available in the Town, upon request, to residents in Dwelling Units on Public Ways and Private Roads.

(b) The Franchisee shall make Cable Service available to every residential Dwelling Unit in the Town in accordance with Section 3.1 (c) and (d) below, provided that the Franchisee is able to obtain any necessary easements and/or permits and subject to the completion of make-ready work. The Franchisee shall make every reasonable effort to obtain private rights-of-way and MDU access agreements and will comply with applicable State laws and regulations.

(c) The Cable System shall be extended upon request, at the Franchisee's sole cost and expense, to any and all remaining areas of the Town containing twenty (20) Dwelling Units or more per aerial mile or thirty (30) Dwelling Units or more per underground mile of Cable System plant or fractional proportion thereof, both as measured from termination of the existing Trunk and Distribution System from which a usable signal can be obtained. However, if there is suitable available conduit to be used for the underground Cable Plant extension, then the density for underground installation will be twenty (20) Dwelling Units per underground mile. For purposes of this section, a home shall only be counted as a "Dwelling Unit", if such home is within three hundred (300') feet of the Public Way.

(d) Installation charges shall be non-discriminatory. A standard aerial installation charge shall be established by the Franchisee which shall apply to any residence located not more than three hundred feet (300') from the existing aerial trunk and distribution system and additions thereto. The Franchisee may charge residents located more than three hundred (300') feet from the existing aerial trunk and distribution system, and additions thereto, time and materials charges including a rate of return in accordance with applicable law in addition to the standard installation charge. The Franchisee shall have ninety (90) days to survey, design and install non-standard

installations that are more than three hundred (300') feet from the existing Trunk and Distribution System, subject to Force Majeure. Underground installations are considered non-standard installations and may be subject to additional charge(s).

(e) The Cable Television System shall be further extended to all remaining areas in the Town that do not meet the requirements of Section 3.1(c) above upon the request of Dwelling Unit owners in such areas and based upon the following cost calculation:

$$(C/LE) - (CA/P) = SC$$

* C equals the cost of construction of new plant measured from termination of the existing Cable System plant;

* LE equals the number of Dwelling Units requesting Service in the line extension area and who subsequently pay a contribution in aid;

* CA equals the average cost of construction per mile in the Town;

* P equals the twenty (20) Dwelling Units per aerial or thirty (30) Dwelling Units per underground mile of aerial plant or twenty (20) Dwelling units per underground mile if there is suitable available conduit; and

* SC equals the per Dwelling Unit contribution in aid of construction in the line extension area.

(f) Any Dwelling Unit owner located in an area of the Town without Cable Service may request such Service from the Franchisee. In areas meeting the requirements of Section 3.1 (c) and (d) above, the Franchisee shall extend Service to the area subject to Force Majeure and the performance of make ready. In those areas with less than twenty (20) Dwelling Units per aerial or thirty (30) Dwelling Units per underground mile or twenty (20) Dwelling Unites underground if there is suitable available conduit, both as measured from termination of the existing Trunk and Distribution System, the Franchisee shall, within thirty (30) days following a request for Service, conduct a survey to determine the number of Dwelling Units in the area and shall inform the requesting Dwelling Unit owner of the contribution in aid of construction (see Section 3.1 (d) above) that will be charged. The Franchisee shall apply for all necessary permits and pole attachment licenses within thirty (30) days of receiving the contribution in aid of construction from

all participating Dwelling Units. Cable Service(s) shall be made available and fully activated to all requesting Dwelling Units who made a contribution in aid of construction within ninety (90) days of receipt of all necessary permits and pole attachment licenses by the Franchisee, subject to Force Majeure (including the performance of make-ready work).

(g) The Franchising Authority shall make its best efforts to provide the Franchisee with written notice of the issuance of building permits for planned housing developments in the Town.

SECTION 3.2 - SUBSCRIBER NETWORK

(a) Franchisee shall maintain a Cable Television System, fully capable of carrying a minimum bandwidth of 750MHz.

(b) Notifications to Subscribers and the Franchising Authority regarding changes in rates, Programming services or channel positions shall be made in accordance with applicable FCC regulations, currently 47 C.F.R. Part 76, at §§ 76.16.01, 76.1602, 76.1603 and 76.1619, as they may be amended.

(c) Franchisee shall also comply with the requirements of N.H. RSA 53-C:3-d, as it may be amended, regarding annual notices to Subscribers and the Franchising Authority.

SECTION 3.3 - PARENTAL CONTROL CAPABILITY

(a) Pursuant to federal law and upon request, and at no separate additional charge (except as authorized by federal law), the Franchisee shall provide Subscribers with the capability to control the reception of any channels on the Cable System.

(b) The Franchising Authority acknowledges that the parental control capability may be part of a converter box and Franchisee may charge Subscriber for use of said box.

SECTION 3.4 - EMERGENCY OVERRIDE

The Cable System shall comply with the FCC Emergency Alert System (“EAS”) regulations.

SECTION 3.5 - DELIVERY OF SIGNALS

The Franchisee will abide by the applicable provisions of the Consumer Electronics Equipment Compatibility provision of federal law (currently 47 U.S.C. § 544a), as such provisions may apply from time to time.

SECTION 3.6 – GOVERNMENT CABLE DROPS TO THE CABLE SYSTEM

The parties agree that Franchisee will provide basic cable service to the locations identified in **Exhibit A** and has the right in accordance with applicable law to deduct the value of those services from franchise fees. Franchisee will notify the Town if it intends to implement said offset and the value of those services at least sixty (60) days prior to doing so.

Subject to the provisions herein the Franchisee shall provide, as directed in writing, by the Franchising Authority, (i) one cable drop connected to the Cable System within the standard installation requirements of Section 3.1(d), (ii) one Outlet, and (iii) the Basic Cable Service to all municipal and public school buildings which are listed in **Exhibit A** hereto and are located along the Cable System trunk and distribution system. The obligation of Franchisee to provide drops, Outlets and Basic Cable Service shall pertain throughout the life of this Renewal Franchise and shall apply specifically to municipal and public school buildings newly constructed or acquired subsequent to the commencement of this Renewal Franchise, which shall be wired within ninety (90) days of delivery of a written request from the Franchising Authority to Franchisee. The Franchisee shall consult with the Franchising Authority or its designee to determine the appropriate location of each Drop and Outlet prior to the installation of the service.

ARTICLE 4

TECHNOLOGICAL & SAFETY STANDARDS

SECTION 4.1 - SYSTEM MAINTENANCE

(a) In installing, operating and maintaining equipment, cable and wires, Franchisee shall avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Franchising Authority, except as may be approved by the Franchising Authority if required for the proper installation, operation and maintenance of such equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable Television System for which this Franchise is granted shall be done in conformance with all applicable laws, bylaws/ordinances of general applicability, codes and regulations, including but not limited to OSHA, the National Electrical Safety Code, and the rules and regulations of the FCC as the same exist or as same may be hereafter changed or amended.

(c) Operating and maintenance personnel shall be trained in the use of all safety equipment and the safe operation of vehicles and equipment. Franchisee shall install and maintain its equipment, cable and wires in such a manner as shall not interfere with any installations of the Town or any public utility serving the Town.

(d) All structures and all equipment, cable and wires in, over, under, and upon streets, sidewalks, alleys, and public rights of ways of the Town, wherever situated or located shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

(e) The signal of any broadcast station carried on the Cable Television System shall be carried without material degradation in quality at all subscribing locations within the limits imposed by the technical specifications of the Cable System and as set forth by the FCC. The Cable System shall be operated and maintained so as to comply with the technical standards set forth in the FCC's rules and regulations as they apply to cable television systems.

(f) The Town reserves the right to reasonably inspect all construction and installation work for compliance with applicable laws, codes, ordinances and regulations and with provisions

of the Franchise. The Franchising Authority or its designee(s) shall have the right to inspect the plant or equipment of the Franchisee in the Town at reasonable times and under reasonable circumstances in order to verify compliance with the terms and conditions of this Franchise. The Franchisee shall fully cooperate in such inspections; provided, however, that such inspections are reasonable and do not interfere with the operation or the performance of the Cable System or Franchisee's interconnected network, and that such inspections are conducted after reasonable written notice to the Franchisee. The Franchisee shall be provided prior written notice of said inspections and shall be entitled to have a representative present during such inspections. All inspections shall be at the expense of the Town.

(g) All lines, cables and distribution structures and equipment, including poles and towers, constructed by Franchisee for use as a Cable System within the Town shall be located so as not to obstruct or interfere with the proper use of the Public Ways, as defined herein, and not to interfere with the existing public utility installation. Franchisee shall have no vested right in a location except as granted herein by the franchise, and such construction shall be removed by Franchisee at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location of said Public Ways, provided, however, that this standard shall apply to all Persons or entities owning lines, cables, and distribution structures, and equipment located in the Public Ways, and provided further that the Franchisee shall not be required to remove any such construction solely to accommodate needs of competing Cable Systems or other providers of Cable Services.

(h) Upon written notice from the Franchising Authority, Franchisee shall remedy a general deficiency with respect to the technical standards described herein within sixty (60) days of receipt of notice and a safety deficiency within forty-eight (48) hours of receipt of notice and shall notify the Franchising Authority when the deficiency has been corrected.

SECTION 4.2 - REPAIRS AND RESTORATION

(a) Franchisee shall adhere to the applicable performance standard set by the FCC.

(b) Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any public right of way or public place, the same shall be replaced and the surface restored in as good condition as reasonably possible as before entry as soon as practicable, subject to all permitting and code specifications of general applicability. If not so repaired or restored, the Franchising Authority shall notify the Franchisee in writing and such repair or restoration shall be made within thirty (30) days, unless delayed by weather or events beyond the reasonable control of Franchisee, unless otherwise agreed by Franchisee and the Franchising Authority. Upon failure of the Franchisee to comply within the time specified (unless the Franchising Authority sets an extended time period for such restoration and repairs) or if such damage presents an emergency situation presenting a threat to public safety, the Franchising Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

(c) The Franchisee shall be subject to all laws of general applicability regarding private property in the course of constructing, installing, operating and maintaining the Cable System in the Town. The Franchisee shall, at its sole cost and expense, promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, installation, operation or maintenance of the Cable System.

SECTION 4.3 - CABLE LOCATION

(a) In all areas of the Town where all of the transmission and distribution facilities of all public or municipal utilities are installed underground, Franchisee shall install its Cable System underground provided that such facilities are actually capable of receiving Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality.

(b) In all areas of the Town where public utility lines are aurally placed, if subsequently during the term of the Franchise such public utility lines are required by local ordinance or State law to be relocated aurally or underground, Franchisee shall similarly relocate its Cable System if it is given reasonable notice and access to the public and municipal utilities facilities at the time

that such are placed underground. Franchisee shall be entitled to reimbursement on a pro rata basis for any costs incurred by Franchisee for relocating utility poles or trenching for the placement of underground conduits, in the event that such reimbursement from public or private funds are made available to other users of the public right of way. In the event that such public or private funds are not available for the project, Franchisee reserves the right to pass through such project costs in accordance with applicable law and regulation.

(c) In any area of the Town where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground.

(d) Nothing in this Section 4.3 shall be construed to require Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

SECTION 4.4 - TREE TRIMMING

Franchisee shall have authority to trim trees upon and overhanging public streets, alleys, sidewalks and ways and places of the Town so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of Franchisee, in accordance with applicable state law and any Town bylaws/ordinances and regulations. Notwithstanding the foregoing, the authority granted herein to trim trees is subject to state law, including, but not limited to, state laws governing scenic roads, including but not limited to New Hampshire RSA 231:157 and 158. In addition, Franchisee shall comply with all ordinances, laws or regulations of general applicability pertaining to designated historic districts in the Town.

SECTION 4.5 - BUILDING MOVES

In accordance with applicable laws, Franchisee shall, upon the written request of any person holding a building moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of the building(s). Franchisee shall be given not less than thirty (30) days' advance written notice to arrange for such temporary wire changes. The cost to raise or lower wires shall be borne exclusively by the person(s) holding the building move permit.

SECTION 4.6 - PLANT MAPS

Upon written request by the Town, Franchisee shall provide to the Town annually a detailed franchise area map of the Town, which will show those areas in which its facilities exist. Such a request can be made via email.

SECTION 4.7 - DIG SAFE

Franchisee shall comply with all applicable "dig safe" provisions, pursuant to RSA 374:51 of the New Hampshire Laws.

SECTION 4.8 - DISCONNECTION AND RELOCATION

(a) Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other Public Right of Ways, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

(b) In requiring Franchisee to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Franchising Authority shall treat Franchisee the same as, and require no more of Franchisee, than any other similarly situated company.

(c) In either case, Franchisee shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement.

SECTION 4.9 - PROHIBITION AGAINST RESELLING OF SERVICE

No Person shall resell, without the express prior written consent of Franchisee, any Cable Service, program or signal transmitted over the Cable System by Franchisee.

SECTION 4.10 - EMERGENCY REMOVAL OF PLANT

(a) If, at any time, in case of fire or disaster in the Town, it shall be necessary in the reasonable judgment of the Franchising Authority to cut or move any of the wires, cable or equipment of the Cable Television System, the Town shall have the right to do so without cost or liability, provided however that, wherever possible, the Franchising Authority gives Franchisee written notice and the ability to relocate wires, cable or other equipment.

(b) In either case, Franchisee shall have the right to seek reimbursement under any applicable insurance or government program for reimbursement. All cable operators or public or municipal utility companies shall be treated alike if reimbursed for such costs by the Town.

SECTION 4.11 - EMERGENCY POWER

The Cable System shall incorporate equipment capable of providing standby powering of the head end for a minimum of seventy-two (72) hours upon failure of the power furnished by the electric utility company, unless for reasons of Force Majeure.

ARTICLE 5

PROGRAMMING

SECTION 5.1 - BASIC CABLE SERVICE

Franchisee shall make available a Basic Cable Service tier to all subscribers in accordance with 47 U.S.C. § 534.

SECTION 5.2 - PROGRAMMING

(a) Pursuant to 47 U.S.C. § 544, Franchisee shall maintain the mix, quality and broad categories of Video Programming as set forth in Exhibit **B**. Pursuant to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of Franchisee.

(b) Franchisee shall comply with 47 C.F.R. § 76.1603 of the FCC Rules and Regulations regarding notice of programming changes.

SECTION 5.3 - REMOTE CONTROLS

In accordance with applicable law, Franchisee shall allow Subscribers to purchase remote control devices which are compatible with the converter installed by Franchisee, if any, and allow the use of remotes. Franchisee takes no responsibility for changes in its equipment or services that might render inoperable the remote control devices acquired by Subscribers.

SECTION 5.4 - STEREO TV TRANSMISSIONS

All Broadcast Signals that are transmitted to Franchisee's head end in stereo shall be transmitted in stereo to Subscribers.

SECTION 5.5 - CABLE CHANNELS FOR COMMERCIAL USE

Pursuant to 47 U.S.C. § 532, Franchisee shall make available channel capacity for commercial use by persons unaffiliated with Franchisee. Rates for use of commercial access

channels shall be negotiated between Franchisee and the commercial user in accordance with federal law.

ARTICLE 6

PEG ACCESS CHANNEL & TECHNOLOGY FUNDING

SECTION 6.1 - PEG ACCESS PROGRAMMING

The Franchising Authority and/or its designee(s) shall be responsible for the provision of PEG Access Programming to Subscribers in the Town.

SECTION 6.2 - PEG ACCESS CHANNELS

(a) Subject to Section 6.2 (c) below, the Franchisee shall make available to the Franchising Authority and/or its designee(s) two (2) Downstream Channels for Durham PEG Access use, as follows:

(b) The Franchisee shall provide two (2) Access Channels, in standard definition (“SD”) format on the Effective Date, and one (1) in high definition (“HD”) format, within eighteen (18) months of the Effective Date. The Franchisee shall provide the two (2) activated Downstream Channels for PEG Access use in standard definition (“SD”) format in the Franchisee’s Basic Service, the Franchising Authority and/or its designee(s) shall be responsible for providing the PEG Access Channel Signal(s) in SD format to the demarcation point at the designated point of origination for the PEG Access Channel(s). The Franchisee shall distribute the PEG Access Channels Signal(s) on its Cable System in SD format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend. In addition, the Franchisee shall provide one (1) activated Downstream Channel within eighteen months of the Effective Date, in high definition (“HD”) format. The Franchising Authority and/or its designee(s) shall be responsible for providing one PEG Access Channel Signal in HD format, compatible to the Franchisee’s equipment, to the demarcation point at the designated point of origination for the HD PEG Access Channel, to coincide with the availability of the HD PEG Access Channel, within eighteen months of the Effective Date The

Franchisee shall distribute the HD PEG Access Channel Signal on its Cable System in HD format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend.

(c) In order to provide PEG Access Programming to subscribers, Franchisee and Franchising Authority shall bring PEG Access programming content onto the System via direct connections provided by Franchisee from specified PEG origination locations as set forth below in Section 6.3.

(d) Said PEG Access Channels shall be used to transmit PEG Access Programming to Subscribers at no cost to the Town and/or PEG Access Users.

(e) The Franchisee shall not move or otherwise relocate the channel location(s) of the PEG Access Channel(s), once established, without the advance, written notice to the Franchising Authority and/or its designee(s); such notice shall be at least thirty (30) days. The Franchisee shall use its best efforts, in good faith, to minimize any PEG Access Channel(s) relocations.

(f) The Franchising Authority and/or its designee(s) shall be responsible for the picture quality of PEG Access Programming at the input of the video transmission equipment that will be permanently located at each origination location listed below, which is the demarcation point between the video origination equipment owned, operated and maintained by the Franchisee and the Franchising Authority's and/or its designee(s) end-user equipment. The Franchisee may require access to said video transmission equipment for the purpose of testing, maintaining, and/or adjusting output levels of the video transmission equipment; the Franchisee shall test and adjust the levels of such output as reasonably necessary to ensure good picture quality. The Franchisee may request that the Franchising Authority and/or its designee(s) first test and determine if end-user equipment is the source of any Signal problems.

(g) The PEG Access Channels identified in this Section shall be available on the tier for Basic Cable Service to residential dwelling units located in the Town that are passed by the Cable

System and residential dwelling units located in the Town but served from a Comcast Cable System in an adjacent community.

SECTION 6.3 - ORIGATION POINTS

- Oyster River High School – 55 Coe Drive, Durham, New Hampshire.
- Durham Public Library – 7 Mill Road, Unit H, Durham, New Hampshire.
- The new Durham Public Library – 49 Madbury Road, Durham, New Hampshire.
- Town Hall – 8 Newmarket Road, Durham, New Hampshire.

SECTION 6.4 - PEG ACCESS CHANNEL(S) MAINTENANCE

The Franchisee shall monitor the PEG Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming.

SECTION 6.5 - CENSORSHIP

The Franchisee shall not engage in any program censorship or any other control of the content of the PEG Access Programming on the Cable System, except as otherwise required or permitted by applicable law.

SECTION 6.6 - PEG ACCESSCABLECASTING

(a) In order that PEG Access Programming can be cablecast over the PEG Access Downstream Channels, all PEG Access Programming shall be encoded and then transmitted from the PEG Access Origination Locations specified herein to the headend or hub, where such PEG Access Programming shall be retransmitted in the downstream direction on one of the PEG Access Downstream Channel(s).

(b) It shall be the Franchisee's sole responsibility to ensure that said PEG Access Programming is properly switched electronically to the appropriate PEG Access Downstream

Channel(s), in an efficient and timely manner. Any manual switching shall be the responsibility of the Franchising Authority and/or its designee(s). The Franchisee shall not charge the Franchising Authority and/or its designee(s) for such switching responsibility. The Franchisee and the Franchising Authority shall negotiate in good faith any difficulties that arise regarding cablecasting of PEG Access Programming.

(c) The Franchisee shall provide and maintain all other necessary switching and/or processing equipment located in its Headend facility in order to switch upstream PEG Access Signals from the Town and/or its designee(s) to the designated Downstream PEG Access Channel(s). Nothing herein shall require the Franchisee to provide any other switching equipment or any other end-user equipment.

(d) In accordance with applicable law, the Franchisee reserves the right to pass through or line-item costs associated with this Franchise, including the provision of PEG Access Programming to Subscribers.

ARTICLE 7

CUSTOMER SERVICE & CONSUMER PROTECTION

SECTION 7.1 - CUSTOMER SERVICE

Franchisee shall comply with all applicable customer service regulations of the FCC (47 C.F.R. §§ 76.309; 1601, 1602, 1603 and 1619) as they exist or as they may be amended from time to time.

SECTION 7.2 - CONSUMER COMPLAINT

Franchisee shall comply with RSA 53-C:3-d regarding Quality of Service and RSA 53-C:3-e regarding customer complaints.

SECTION 7.3 - SERVICE INTERRUPTIONS

In the event that Franchisee's service to any Subscriber is completely interrupted for twenty-four (24) or more consecutive hours, Franchisee will upon request grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or at its option, apply such credit to any outstanding balance then currently due. In the instance of other individual Subscriber service interruptions, credits shall be applied as described above after due notice to Franchisee from the Subscriber.

SECTION 7.4 - PROTECTION OF SUBSCRIBER PRIVACY

Franchisee shall comply with all applicable federal and state privacy laws and regulations, including 47 U.S.C. 551 and regulations adopted pursuant thereto.

SECTION 7.5 - PROPRIETARY INFORMATION

If the Franchisee reasonably believes that the documentation requested by the Franchising Authority involves proprietary or confidential information, then the Franchisee shall submit the information to its counsel, who shall confer with the Town Attorney for a determination of the validity of the Franchisee's claim of a proprietary or confidential interest. If

the Town Attorney agrees that the material is of a proprietary or confidential nature, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient for both parties. The Franchisee may require the Franchising Authority and/or its representatives to execute a confidentiality agreement before making any such information available. In the event of a disagreement, the parties may submit the matter to the appropriate appellate entity.

SECTION 7.6 - EMPLOYEE IDENTIFICATION CARDS

All of Franchisee's employees and contractors, including repair and sales personnel, entering private property shall be required to carry an employee identification card issued by Franchisee. All of Franchisee's vehicles or Franchisee's contractors' vehicles which have direct contact with customers shall be placarded to identify them. Agents and contractors hired by Franchisee to perform any substantial work on the Cable System in the Town shall reasonably inform the Town's Police Department of the general work location within the Town and provide relevant vehicle identification prior to commencing such work.

SECTION 7.7 - TERMINATION OF SERVICE

(a) In the event a Subscriber's Cable Service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by Franchisee to the Subscriber within forty-five (45) days of such termination provided, in the instance when the Subscriber is relocating, Subscriber has provided Franchisee a forwarding address and returned any equipment the subscriber has rented from the Franchisee has been returned.

(b) Franchisee shall have the right to disconnect a Subscriber for failure to pay an overdue account, for theft of services, or other violation of cable-related laws; provided that:

(i) Franchisee's billing practices and policy statement set forth the conditions under which an account will be considered overdue; and

- (ii) The Subscriber's account is at least thirty (30) days delinquent.

ARTICLE 8

PRICES & CHARGES

SECTION 8.1 - PRICES AND CHARGES

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be subject to regulation in accordance with applicable FCC's rate regulations and federal law, currently 47 U.S.C. § 543. Before any new or modified rate, fee, or charge is imposed, Franchisee shall follow the applicable FCC and State notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law. Nothing in this Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or retaining Subscribers.

ARTICLE 9

REGULATORY OVERSIGHT

SECTION 9.1-FRANCHISE FEE PAYMENTS

(a) The Franchisee shall pay to the Franchising Authority, throughout the term of this Franchise, a Franchise Fee equal to four percent (4%) of Franchisee's Gross Annual Revenues, derived during each year of this Franchise. The Franchising Authority shall have the option, to be exercised by vote of the Town Council at a public meeting, and made known to Franchisee in writing, to increase the Franchise Fee by not more than one percent (1%) annually as described herein, not to exceed five percent (5%) of Gross Annual Revenue as defined herein. The Franchisee shall have (90) days to implement the request.

(b) Franchisee's payments to the Town shall be made on a quarterly basis forty-five (45) days after the close of the previous quarter. The first and last payments shall be prorated, if necessary, to reflect the time period for which this Franchise is in effect.

(c) In accordance with Section 622(b) of the Cable Act (47 U.S.C. § 542(b)), Franchisee shall not be liable for a total financial commitment pursuant to this Franchise and applicable law in excess of five percent (5%) of its Gross Annual Revenues. That said five percent (5%) cap shall include (i) non-exempt PEG contributions whether in-kind or cash payments; and (ii) the marginal cost to Franchisee to provide the in-kind cable drops and services as enumerated within Exhibit A.

(d) Each payment shall be accompanied by a statement of the Gross Annual Revenues and a statement certifying the factual basis for payment, including a breakdown by category of Franchisee's Gross Annual Revenues upon which such payment is based. The Franchising Authority may designate in writing one or more particular accounts or funds, including any non-capital reserve fund duly established, to which Franchisee shall direct Franchise Fees due hereunder.

(e) The Franchising Authority may, within twelve (12) months of receipt of any Franchise Fee payment, conduct an audit of all of Franchisee's financial records relevant to the Gross Annual

Revenue, and Franchisee shall make such information available to the Franchising Authority or its agent(s). If, after such audit an additional fee is owed to the Franchising Authority, such fee shall be paid within thirty (30) days after such audit and the Franchisee shall contribute to the costs of such audit in an amount not to exceed One Thousand Dollars (\$1,000.00). The interest on such additional fee shall be charged from the due date at the rate of two percent (2%) above the Prime Rate during the period that such additional amount is owed. In the event any such audit reveals an overpayment, then the Town shall remit back to the Franchisee such overpaid amounts in a timely manner.

SECTION 9.2 - INDEMNIFICATION

Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Franchisee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorney's fees and costs, provided that the Franchising Authority shall give Franchisee written notice of its obligation to indemnify and defend the Franchising Authority within timely (best efforts of ten (10) business days) receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

SECTION 9.3 - INSURANCE

(a) Franchisee shall carry insurance throughout the term of this Franchise and any removal period with an insurance company authorized to conduct business in New Hampshire satisfactory to the Franchising Authority protecting, as required in this Franchise, Franchisee and listing the Town as an additional insured, against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance against liability for

damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000) and Two Million Dollars (\$2,000,000) on account of injury to or death of any number of Persons in any occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form.

(b) Franchisee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and consequent death and property damage per occurrence.

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this Franchise. All expenses incurred for said insurance shall be at the sole expense of Franchisee.

(d) Franchisee shall provide Franchising Authority with certificate(s) of insurance for all policies required herein upon written request.

SECTION 9.4 - PERFORMANCE BOND

(a) Franchisee has submitted and shall maintain throughout the duration of this Franchise and any removal period a performance bond in the amount of Fifty Thousand Dollars (\$50,000) running to the Town with a surety company satisfactory to the Franchising Authority to guarantee the following terms; subject to Section 9.8 herein (Notice and Opportunity to Cure):

- (i) The satisfactory completion of the construction and operation of the Cable System in the time schedule provided herein;
- (ii) The satisfactory restoration of pavements, sidewalks and other improvements;
- (iii) The satisfactory operation of the Cable System in compliance with the material terms and conditions of this Franchise;
- (iv) The indemnification of the Town; and

- (v) The satisfactory removal or other disposition of the Cable System.

Franchisee shall not reduce the amount of or cancel said bond, or materially change the terms of said bond from the provisions of Section 9.4(a) herein without the Franchising Authority's prior written consent. The Franchising Authority shall not unreasonably withhold its consent.

SECTION 9.5 - REPORTS

Franchisee shall maintain for public inspection all records required by the FCC and by N.H. RSA 53-C:3-e.

SECTION 9.6 - EQUAL EMPLOYMENT OPPORTUNITY

Franchisee is an Equal Opportunity Employer and shall comply with federal and state law and applicable FCC regulations with respect to Equal Employment Opportunities.

SECTION 9.7 - REVOCATION OF FRANCHISE

This Franchise may be terminated by the Select Board, after notice and opportunity to cure pursuant to Section 9.8 hereof and after a duly noticed public hearing, for any of the following reasons:

- (a) For failure to file and maintain the performance bond as described in Section 9.4 (Performance Bond) or to maintain insurance as described in Section 9.3 (Insurance);
- (b) A violation of any material obligation of Franchisee which remains uncured for thirty (30) calendar days after written notice from the Town Council, except as otherwise provided in this section;
- (c) Repeated failure to maintain signal quality under the standards required by this Franchise, or by the FCC, whichever is more stringent;

- (d) For any transfer or assignment of the Franchise made in violation of Section 9.9 herein;
- (e) For repeated failure to comply with the material terms and conditions of the Franchise;
- (f) For failure to pay the Franchise Fee within thirty days (30) calendar days after the due date. The Town shall have given the Franchisee ninety (90) days' notice, in writing, of its intent to terminate. Except as to subsection (e) above:
 - (i) If the Franchisee is contesting the validity of a claim of default in court, then any termination shall be delayed pending the outcome of the litigation;
 - (ii) If the Franchisee has defaulted due to a Force Majeure beyond the control of the Franchisee, this Franchise shall not be terminated and shall remain in effect as long as the Franchisee demonstrates to the Franchising Authority that it is diligently working to correct the default and the Franchisee provides an acceptable schedule to cure said default.

SECTION 9.8 - NOTICE AND OPPORTUNITY TO CURE

In the event the Franchising Authority has reason to believe that Franchisee has defaulted in the performance of any or several provisions of this Franchise, except as excused by Force Majeure, the Franchising Authority shall notify Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. Franchisee shall have ninety (90) days from the receipt of such notice to:

- (a) respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support Franchisee's position; or

(b) cure any such default (and provide written evidence of the same), or, in the event that, by nature of the default, such default cannot be cured within such ninety (90) day period, take reasonable steps to cure said default and diligently continue such efforts until said default is cured. Franchisee shall report to the Franchising Authority, in writing, by certified mail, at forty-five (45) day intervals as to Franchisee's efforts, indicating the steps taken by Franchisee to cure said default and reporting Franchisee's progress until such default is cured. The Franchising Authority shall issue a written acknowledgement after Franchisee's notice that it cured said default.

(c) In the event that (i) Franchisee fails to respond to such notice of default; and/or (ii) Franchisee fails to cure the default or to take reasonable steps to cure the default within the required ninety (90) day period; the Franchising Authority or its designee shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to Franchisee. Franchisee shall be provided reasonable opportunity to offer evidence, question witnesses, if any, and be heard at such public hearing.

(d) Within thirty (30) days after said public hearing, the Franchising Authority shall issue a written determination of its findings. In the event the Franchising Authority determines that Franchisee is in such default, the Franchising Authority may determine to pursue any lawful remedy available to it.

(e) In the event that (i) the Franchising Authority fails to issue a written reply within 30 days accepting or rejecting Franchisee's response pursuant to Section 9.8(a) above; (ii) the Franchising Authority fails to issue a written acknowledgement after Franchisee's notice that it cured said default pursuant to Section 9.8(b) above; and/or (iii) the Franchising Authority fails to schedule a public hearing pursuant to Section 9.8(c) above; and/or (iv) the Franchising Authority fails to issue a written determination with thirty (30) days after the public hearing pursuant to Section 9.8(d) above, then the issue of said default against Franchisee by the Franchising Authority shall be considered null and void.

SECTION 9.9 - TRANSFER OR ASSIGNMENT

This Franchise shall not be transferred or assigned without the prior written consent of the Franchising Authority, which consent shall not be arbitrarily or unreasonably withheld. No consent shall be required, however, for a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, or for a transfer of the Franchisee's interest in the Cable System to another entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify Franchisee in writing of the additional information, if any, that it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken action on Franchisee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 9.10 - REMOVAL OF SYSTEM

Upon termination of this Franchise or of any renewal hereof by passage of time or otherwise, Franchisee shall remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, the Franchising Authority shall cause all or part of same to be removed at Franchisee's expense.

SECTION 9.11 - INCORPORATION BY REFERENCE

(a) All presently and hereafter applicable conditions and requirements of federal, state and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State of New Hampshire, as they may be amended from time to time, are incorporated herein by reference, to the extent not enumerated herein. All such general laws, rules, and regulations, as amended, shall control the interpretation and performance of this Franchise to the

extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.

(b) Should the State of New Hampshire, the federal government or the FCC require the Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and the Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

SECTION 9.12- NO THIRD PARTY BENEFICIARIES

Nothing in this Franchise is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

SECTION 9.13 - ANNUAL TOWN REVIEW AND REPORT

(a) At the Town's written request the Franchisee will attend an annual meeting with the Town Council or its designee to review compliance with the terms of this Franchise and matters of interest to either party. No later than thirty (30) days prior to such meeting either party may submit a list of items to be reviewed.

(b) Additionally, at the Town's written request, Franchisee shall submit an annual report in the form attached as **Exhibit C**.

ARTICLE 10

MISCELLANEOUS

SECTION 10.1 - SEVERABILITY

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 10.2 - FORCE MAJEURE

If for any reason of Force Majeure Franchisee is unable in whole or in part to carry out its obligations hereunder, said Franchisee shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Franchise, the term "Force Majeure" as used herein shall have the following meaning: strikes; acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; tornados; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts, arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of materials and/or essential equipment; environmental restrictions or any other cause or event not reasonably within Franchisee's control.

SECTION 10.3 - NOTICES

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail (postage prepaid) or as allowed by applicable law to the following address or such other address as the Franchising Authority may specify in writing to Franchisee.

Town of Durham
Attn: Town Administrator

8 Newmarket Road
Durham, NH 03824

(b) Every notice served upon Franchisee shall be delivered or sent by certified mail (postage prepaid) to the following address or such other address as Franchisee may specify in writing to the Franchising Authority.

Comcast Cable Communications, Inc.
Attn: Vice President of Government Relations
5 Omni Way
Chelmsford, MA 01824

with copies to:

Comcast Cable Communications, Inc.
Attn: Vice President, Government Relations
676 Island Pond Road
Manchester, NH 03109

Comcast Cable Communications, Inc.
Attn: Government Affairs
One Comcast Center
Philadelphia, PA 19103

(c) Delivery of such notices shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

SECTION 10.4 - ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment following publication of the proposed amendment in a manner consistent with the publication and notice provisions of RSA Chapter 43.

SECTION 10.5 - CAPTIONS

The captions to sections throughout this Franchise are intended solely to facilitate reading and reference to the sections and provisions of the Franchise. Such sections shall not affect the meaning or interpretation of the Franchise.

SECTION 10.6 - APPLICABILITY OF FRANCHISE

All of the provisions in this Franchise shall apply to the Town, Franchisee, and their respective successors and assigns.

SECTION 10.7 - WARRANTIES

Franchisee warrants, represents and acknowledges that, as of the Effective Date of this Franchisee:

(a) Franchisee is duly organized, validly existing and in good standing under the laws of the State;

(b) Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the date of execution of this Franchise, to enter into and legally bind Franchisee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise;

(c) This Franchise is enforceable against Franchisee in accordance with the provisions herein; and

(d) There is no action or proceeding pending or threatened against Franchisee which would interfere with performance of this Franchise.

SIGNATURE PAGE

In Witness Whereof, the Franchise is hereby issued as of _____, 202_ by the
Town Council of the Town of Durham, New Hampshire, as Franchising Authority, and all terms and
conditions are hereby agreed to by Comcast of Maine/New Hampshire, Inc.

TOWN OF DURHAM, NH

By:

Todd I. Selig, Town Administrator
Duly Authorized

COMCAST OF MAINE/NEW HAMPSHIRE, Inc.

By:

Carolyne Hannan
Regional Senior Vice President
New England Region

EXHIBIT A

PUBLIC BUILDINGS*

Municipal Buildings:

Town Hall	8 Newmarket Road, Durham
Public Works Garage	100 Stone Quarry Drive, Durham
Police Station	86 Dover Road, Durham
Fire Station	51 College Road, Durham
Durham Public Library	7 Mill Road, Unit H, Durham
New Durham Public Library	49 Madbury Road, Durham
Parks and Recreation Department	2 Dover Road, Durham
Wastewater Treatment Plant	50 Piscataqua Road, Durham
Churchill Rink at Jackson's Landing	10 Old Piscataqua Road, Durham
Spruce Hole	Packers Falls Road
Old Concord Road Pump Station	200 Main Street, Durham
Dover Pump Station	46 Dover Road, Durham
Durham Historic Assoc.	Corner of Route 108 and Main St., Durham
Old Court House	2 Dover Road, Durham
Transfer/Recycling Station	100 Durham Point Road, Durham
Oyster River Youth Association	11 School House Lane, Durham

Schools and Libraries:

Moharimet Elementary School	11 Lee Road, Madbury
Mast Way Elementary School	23 Mast Road, Lee
Oyster River Middle School	1 Coe Drive, Durham
Oyster River High School	55 Coe Drive, Durham

*And, subject to Section 3.6, supra, any and all new municipal buildings and/or public schools that are constructed or put into use during the term of this Renewal Franchise.

EXHIBIT B
PROGRAMMING

Franchisee shall provide the following broad categories of Video Programming:

- News Programming;
- Sports Programming;
- Public Affairs Programming;
- Children’s Programming;
- Entertainment Programming;
- Local Programming; and
- Weather Programming.

EXHIBIT C
ANNUAL REPORT

TOWN of DURHAM for _____
(Year)

Location of and hours of Payment Center:

Location of and hours of Customer Service Office:

Customer Service Telephone Number:

Location of Head End (Reception Facility):

Franchise Fee Paid: \$ _____

Contact Person to Service Unresolved Customer Complaints:

Updated Labor/Material Costs (if applicable) for installation over 300 feet from existing plant:

Upon written request from the Franchising Authority, Franchisee shall also provide the following:

Customer Service Statistics:

- a) Number of reports of system outages and response time for such outages:
- b) A summary of written complaints and brief description re: resolution of such complaints:



TOWN OF DURHAM

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

AGENDA ITEM: **#10B**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Dr. Robert Shaps, Superintendent, ORCSD

AGENDA ITEM: UPDATE ON THE OYSTER RIVER COOPERATIVE SCHOOL DISTRICT'S FY 2025/26 BUDGET PROCESS – DR. ROBERT SHAPS, SUPERINTENDENT

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Dr. Robert Shaps, Superintendent, ORCSD

AGENDA DESCRIPTION:

Dr. Shaps has been invited to attend Monday evening's Town Council meeting to provide the Council with an overview of the Oyster River Cooperative School District's proposed FY2025/26 budget process.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from Superintendent Robert Shaps regarding the ORCSD's proposed 2025/26 budget process and hold discussion, if desired.



TOWN OF DURHAM

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

AGENDA ITEM: **#12**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: CONTINUED DISCUSSION AND FIRST READING ON ORDINANCE #2025-01 AMENDING CHAPTER 175 "ZONING," ARTICLE II, "DEFINITIONS," ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," ARTICLE XV, "FLOOD HAZARD OVERLAY DISTRICT," ARTICLE XVI, "AQUIFER PROTECTION OVERLAY DISTRICT," ARTICLE XVII, "DURHAM HISTORIC OVERLAY DISTRICT," ARTICLE XVIII, "PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT," ARTICLE XX.1, "STANDARDS FOR AGRICULTURAL USES," AND ARTICLE XXIII, "SIGNS AND COMMUNICATIONS DEVICES." A PUBLIC HEARING CAN BE SET FOR FEBRUARY 17, 2025.

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The Planning Board voted to formally initiate the amendment at its meeting on November 20, 2024. The changes pertain to Article II - Definitions and other articles of the Zoning Ordinance, including the Table of Uses, related to the changes being made to Article II.

The Planning Board originally initiated changes to Definitions on April 24, 2024. That amendment was forwarded to the Town Council, which discussed the proposal and offered numerous comments. The comments from the Town Council were sent back to the Planning Board for consideration. The board reviewed the comments, incorporated some, deleted others and then made a number of additional changes. The board then put the revised document out for a new public hearing on November 20. The board closed the public hearing and then voted to formally initiate the revised set of amendments.

The original document and the attached document both include the full table of uses because it is easier to include the full table rather than including only those lines that are being changed. It is recommended that the Town Council review only the specific items related to definitions that are proposed for amendment. In the prior review the Town

Council offered additional suggestions for other changes to the Table of Uses that were not related to definitions resulting in a more complicated review than necessary by the Planning Board. The Planning Board expects to do a thorough review of the Table of Uses as one of the next steps in the Zoning Rewrite and desired changes to the table could be made at that time.

Changes are proposed to:

- Article II – Definitions. Changes are proposed to most existing definitions. All existing definitions are shown, including those that are not being changed.
- Table of Uses. Changes are made that are driven by changes in Definitions. For example, business services, professional offices, and business services are combined into simply *office* so the extra line items are deleted in the Table of Uses. Generally, the allowed uses with new names remain the same, though some changes (such as for parking as a principal use) are proposed.
- Several articles where a set of specific definitions is being relocated – Article XV – Flood Hazard Overlay District, Article XVI – Aquifer Protection Overlay District, Article XVII – Durham Historic Overlay District, Article XVIII – Personal Wireless Service Facilities Overlay District, Article XX.1 – Standards for Agricultural Uses. and Article XXIII – Signs and Communications Devices.

Planner Michael Behrendt would be very pleased to meet with Councilors in January who have questions about the proposed changes prior to a public hearing recommended for February 17, 2025. (Mr. Behrendt is having hip replacement surgery at the end of January and will not be able to attend the February 3, 2025 meeting. Therefore it is suggested to plan the public hearing for February 17, 2025.)

LEGAL AUTHORITY:

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

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby Approve on First Reading Ordinance #2025-01 Amending Chapter 175 “Zoning,” Article II, “Definitions,” Article XII.1, “Use and Dimensional Standards,” Article XV, “Flood Hazard Overlay District,” Article XVI, “Aquifer Protection Overlay District,” Article XVII, “Durham Historic Overlay District,” Article XVIII, “Personal Wireless Service Facilities Overlay District,” Article XX.1, “Standards for Agricultural Uses,” and Article XXIII, “Signs and Communications Devices” and schedules a Public Hearing for Monday, February 17, 2025.

ORDINANCE #2025-01 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175 “ZONING,” ARTICLE II, “DEFINITIONS,” ARTICLE XII.1, “USE AND DIMENSIONAL STANDARDS,” ARTICLE XV, “FLOOD HAZARD OVERLAY DISTRICT,” ARTICLE XVI, “AQUIFER PROTECTION OVERLAY DISTRICT,” ARTICLE XVII, “DURHAM HISTORIC OVERLAY DISTRICT,” ARTICLE XVIII, “PERSONAL WIRELESS SERVICE FACILITIES OVERLAY DISTRICT,” ARTICLE XX.1, “STANDARDS FOR AGRICULTURAL USES,” AND ARTICLE XXIII, “SIGNS AND COMMUNICATIONS DEVICES.”

WHEREAS, RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance authorize the Town Council to amend the Zoning Ordinance and specify the process for doing so;

WHEREAS, the Planning Board is undertaking an extensive rewrite of the Durham Zoning Ordinance pursuant to recommendations made in the 2015 Master Plan and the 2018 Future Land Use Chapter;

WHEREAS, the first initiative in the Town’s zoning rewrite is making significant changes to Article II – Definitions and other sections of the ordinance that follow from those changes;

WHEREAS, the zoning ordinance has not been thoroughly examined since the last rewrite of the Zoning Ordinance in 1999 and it is essential that the ordinance remain current and relevant given the substantial impacts of the ordinance upon property owners, residents, business owners, and other stakeholders in the community;

WHEREAS, crafting appropriate definitions is important because the language of the definitions impacts whether specific proposed uses are allowed or not allowed in particular zones and how those proposed uses are evaluated;

WHEREAS, the Planning Board has spent many months in detailed review of definitions in the Zoning Ordinance, carefully examining the appropriate terminology for every definition; and

WHEREAS, the Town Council held a First Reading on Ordinance #2024-04 on the changes to Definitions on June 3, 2024; and.

WHEREAS, the Town Council conducted a duly noticed Public Hearing on June 24, 2024;

WHEREAS, the Town Council voted to deny Ordinance #2024-04 and remand the Definitions section of the Zoning Ordinance back to the Planning Board for further amendments on June 24, 2024;

WHEREAS, the Planning Board made further amendments based on suggestions made by the Town Council and held a public hearing on November 20, 2024; and

WHEREAS the Planning Board voted to formally initiate these new amendments on November 20, 2024; and

WHEREAS, the Town Council conducted a duly noticed Public Hearing on February 17, 2025;

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 #2025-01** and does hereby amend the following sections of the Code.

Additions to the existing ordinance proposed by the Planning Board are shown like this.

~~*Deletions from the existing ordinance proposed by the Planning Board are shown like this.*~~

➤ *Directions for specific changes to be made to the current ordinance are shown like this.*

[Comments are shown like this.]

[All current definitions are shown below including those that are not proposed to be changed.]

ARTICLE II. DEFINITIONS

175-6. Meaning of Words.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section. Words used in the present tense include the future. The singular number includes the plural, and the plural the singular. Where terms are not defined in this *section article*, they shall have their ordinary accepted meanings or such as the context may imply. The words "shall" and "must" are mandatory, the word "may" is permissive, and the word "should" indicates a preferred or encouraged, but not *necessarily* a required, course of action. *Some definitions may incorporate the term itself in the definition, in which case that term as referenced has the customary meaning (See "Nursing Home," for example).*

Note that these definitions are descriptive and not prescriptive. They may, however, operate in a prescriptive manner in some cases. For example, a proposed home occupation using an area

of 1,500 square feet would not meet the definition of Home Occupation which is defined as having a maximum of 1,000 square feet, and would therefore not be permitted.

Definitions are given for some uses that are not allowed under the Table of Uses, but are included in this article for general reference.

175-7. Definitions.

As used in this chapter, the following terms shall have the meanings indicated. The inclusion of a particular use in this section does not *necessarily* indicate that the use is allowed anywhere in the town of Durham; some terms are included for general reference only.

Definitions pertinent to individual overlay districts and other specific topics (such as Agriculture and Signage) may be found in the article of this ordinance pertaining to that district and those topics.

- *Place all definitions in this section in alphabetical order once changes are made. Some changes below result in terms being shown out of alphabetical order.*

ABUTTER – (For the purposes of notification) Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board for the purposes of notification. "Directly across the street or stream" is determined by lines drawn perpendicular from all pairs of corner boundaries along the street or stream of the applicant to pairs of projected points on any property boundary across the street or stream that intersect these perpendicular lines. Any property that lies along the street or stream between each pair of projected points, or is within 50 feet of any projected point is considered an abutter. In the case of an abutting property being under a condominium or other collective form of ownership, "abutter" means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. (This definition incorporates the language used in RSA 672:3.)

ACCESSORY DWELLING UNIT (ADU) – *ATTACHED* – A dwelling unit located in, or attached to, a single-family residence as an accessory use. A single-family residence with an accessory dwelling unit is considered a single-family residence (not a duplex residence). See Article XX.

ACCESSORY ~~APARTMENT~~ DWELLING UNIT (ADU) – *DETACHED* – A dwelling unit ~~located in an accessory structure in conjunction with~~ not attached to a single-family residence ~~as an accessory use~~. A single-family residence with an accessory *apartment dwelling unit* is considered a single-family residence (not a duplex residence). See Article XX.

~~ACCESSORY SHED – A small shed for the storage of items in conjunction with a residential use. See Article XX~~

ACCESSORY STRUCTURE – A structure that is detached from the principal building; situated on the same lot as the principal building and use; incidental, subordinate, and related to the principal building and use; and customarily found as (or reasonably considered to be) an accessory to the type of principal building and use that is situated on the property.

ACCESSORY USE – A use of land or a building or structure which is situated on the same lot as the principal use; incidental, subordinate, and related to the principal use; and customarily found as (or reasonably considered to be) an accessory to the type of use that is situated on the property.

ACRE – A measurement of area equal to forty three thousand five hundred sixty (43,560) square feet.

~~ADAPTIVE REUSE – The repurposing of an existing building for a new type of use in which the exterior appearance and the structural and architectural elements of the building remain essentially unchanged except for minor renovations needed to provide access or to comply with code requirements.~~

ADAPTIVE REUSE – The repurposing of an existing building for a new use in which the overall form and exterior appearance remain largely unchanged except for changes needed to provide access or to comply with code requirements and other minor enhancements.

ADULT DAY CARE ~~FACILITY~~ – *See Day Care Center. A nonresidential facility for the care of adults.*

AGRICULTURE – See Article XX.1. Standards for Agricultural Uses.

[Items below being moved to Article XX.1 with no changes. See section toward end of this document.]

~~AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a – Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)~~

~~Accessory Uses. – The following are considered accessory uses to an allowed agricultural use:~~

- ~~1) The storage, use of, and spreading of soil amendments, as defined in this section.~~
- ~~2) The use and application of agricultural chemicals pursuant to state requirements.~~
- ~~3) The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.~~
- ~~4) The transportation of farm workers.~~

~~5) The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.~~

~~6) Irrigation of growing crops from private water supplies or public water supplies.~~

~~7) The use of dogs or other livestock guard animals for herding, working, and guarding livestock.~~

~~8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.~~

~~9) A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.~~

~~10) Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and appropriate agencies of the United States Department of Agriculture.~~

~~11) Agritourism, as defined in this section.~~

~~Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)~~

~~Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.~~

~~Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.~~

~~Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.~~

~~Aquaculture – Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.~~

~~Bees, Keeping of. The raising of bees and cultivation and sale of bee products.~~

~~Bees, Keeping of – Accessory Use. The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.~~

~~Best Management Practices For Agriculture (BMPs) Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.~~

~~[Reference ——— <http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>]~~

~~Chickens and Turkeys, Keeping of – Accessory Use. The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)~~

~~Crop Cultivation. The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.~~

~~Farm or Farming. Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.~~

~~Farmers' Market. An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.~~

~~Farmstand, Accessory. A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)~~

~~Forestry. The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.~~

~~Fur-bearing Animals, Keeping of. The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.~~

~~Goats and Sheep, Keeping of. The raising, breeding, and sale of goats and sheep.~~

~~Goats and Sheep, Keeping of—Accessory Use. The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.~~

~~Horses, Keeping of. The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.~~

~~Horses, Keeping of—Accessory Use. The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.~~

~~Livestock—Large, Keeping of. The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).~~

~~Livestock—Large, Keeping of—Accessory Use. The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.~~

~~Poultry, Keeping of. The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of—Accessory Use is restricted to only those two types of poultry.)~~

~~Rabbits, Keeping of. The raising, breeding and sale of rabbits.~~

~~Rabbits, Keeping of—Accessory Use. The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.~~

~~Soil Amendments. Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.~~

~~Swine, Keeping of. The raising, breeding, or sale of swine and swine products.~~

~~Swine, Keeping of—Accessory Use. The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.~~

AIRPORT, COMMERCIAL – A facility used for landings and takeoffs by commercial and private fixed wing or rotary wing aircraft. Such a facility typically includes aircraft parking and service facilities.

AIRPORT, PRIVATE – A tract of land used for landings and takeoffs by fixed winged or rotary wing aircraft belonging to the owner or lessor of the land or to a third party using the tract of land with the permission of the owner or lessor of the land.

~~ALL TERRAIN VEHICLE—Any motor-driven vehicle designed or adapted for travel over surfaces other than maintained roads with one or more tires designed to hold not more than 10 pounds per square inch of air pressure, having capacity for passengers or other payloads, not to exceed 1,000 pounds net vehicle weight, and not to exceed 50 inches in width.~~

~~ALL TERRAIN VEHICLE/OFF-HIGHWAY RECREATIONAL VEHICLE FACILITY—A facility or site where people who do not own the site or reside on the site are allowed to operate all-terrain vehicles or off-highway recreational vehicles with or without compensation. A trail that crosses a parcel and that is used by all-terrain vehicle or off-highway recreational vehicle operators that do not own or reside on the parcel is an all-terrain vehicle/off-highway recreational vehicle facility.~~

ALLOWED USE – Any use that is legally permissible on a given site under this zoning ordinance (subject to all other approvals which may be required such as site plan approval, issuance of a building permit, granting of state permits, etc.), including permitted uses, conditional uses when a conditional use is approved, uses allowed by special exception when a special exception is granted, uses that have been approved through a variance, and legal nonconforming uses.

~~ALTERATION—A change or rearrangement in the structural parts of a building or structure or in the means of egress or an enlargement, whether by an extension on a side or by an increase in height, or the moving from one location or position to another.~~

AND – When used in a series *of allowed activities*, such as “Dogs may be used for herding, working, and guarding livestock,” means “and/or,” such that any and all of the *activities are allowed items are included*, individually or in combination. *(In general, a reasonable judgment should be made based on the context for the intention of the use of “and.”)*

~~ANIMAL FEEDLOT—A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock in accordance with USDA regulations. Any activity that requires the filing of a Schedule F as part of the owner’s or operator’s federal income tax return shall constitute a commercial operation.~~

~~APARTMENT—See "Accessory Dwelling Unit."~~

AQUIFER – See Article XVI. Aquifer Protection Overlay District.

[Pertinent items below related to aquifers are being moved to Article XVI. See section toward end of this document.]

~~AQUIFER—A geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies. Aquifer includes both bedrock aquifers and stratified drift aquifers.~~

~~**AQUIFER, BEDROCK**—Bedrock comprised of a high concentration of interconnected fractures, fissures, or cracks that is able to produce a high quantity of water.~~

~~**AQUIFER, STRATIFIED DRIFT**—A geologic formation of predominantly well-sorted sediments deposited by or in bodies of glacial melt water, including gravel, sand, silt or clay, that contains sufficient saturated permeable materials to yield significant quantities of water to wells.~~

~~**AQUIFER PROTECTION DISTRICT**—The recharge area of designated aquifers. The "Aquifer Protection District" is shown on an overlay to the Official Zoning Map of the Town and is described in detail in Section 175-85 of this Ordinance.~~

~~**AQUIFER RECHARGE AREA**—The area in which water is absorbed that eventually reaches the zone of saturation in one or more aquifers.~~

ART CENTER – *A facility for the display or sale of objects of art, the teaching of art, or the creation of works of art. A facility focused on arts education or small-scale arts and crafts production which may include classrooms, studios, workshops, exhibit spaces, and retail spaces related to its primary functions.*

~~**AUTOMOBILE CAR WASH**—A facility equipped for washing cars manually or automatically.~~

~~**AUTOMOTIVE SERVICE STATION**—Any building or premises used primarily for the retail sale of gasoline and lubricants but which may also provide for the incidental servicing of motor vehicles and small engine repair, including grease racks, tire repairs, battery charging, hand washing of automobiles and the sale of merchandise and supplies related to the servicing of motor vehicles, but excluding body and fender work, engine overhauling, painting, storage of autos not in operating condition or other work involving noise, fumes, glare or smoke.~~

AUTOMOTIVE USES – *See Motor Vehicle definitions.*

~~**AWNING**—Any structure made of cloth or metal with a frame attached to a building or structure and projecting over a public way, when the same is so erected as to permit its being raised to a position flat or rolled against the building when not in use.~~

AWNING – *A structure attached to a building projecting over a public way. It may be used for signage, for decorative purposes, or to protect pedestrians from adverse weather.*

BASAL AREA – The cross sectional area of a tree measured at a height of 4-1/2 feet above the ground, usually expressed in square feet per acre for a stand of trees. "Total basal area" is the sum of the "basal areas" of all vegetation in the zone.

BASEMENT – That portion of a building that is fully below **existing finished** grade or partly below and up to two feet above **existing finished** grade. (*Also, see Story.*)

~~**BEDROOM**—A fully enclosed room designed for sleeping.~~

~~**BOARDING HOUSE**—An owner-occupied residential building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and having common cooking and dining facilities. See “Rooming House.”~~

BOARDING HOUSE – A residential building providing living accommodations in multiple rooms or units that are not complete dwelling units. Bathrooms may be provided in the units or in common areas. There may be limited kitchen facilities, such as a sink and microwave, provided in the units. There may or may not be common cooking and dining facilities. (Also called a “Rooming House.”)

~~**BOATYARD/BOAT CLUB** – Waterfront facilities for recreational boating, launching facilities and other water-related activities, but excluding the sale of products and accessories associated with boating needs.~~

~~**BOG**—A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.~~

~~**BUFFERING**—The use of landscaping (other than grass on flat terrain), or the use of landscaping along with berms, walls or fences that at least partially and periodically obstructs the view.~~

BUFFER (or BUFFERING) – The use of landscaping, earthen berms, walls, fences or some combination thereof serving to partially block or soften the view and mitigate the impacts from one site to another.

~~**BUILDABLE AREA**—That portion of a building site, exclusive of the required yard areas, on which a structure or building improvement may be erected.~~

BUILDABLE AREA – That portion of a lot, exclusive of required setback areas and buffers, in which a building or structure may be erected.

BUILDING – Any structure *with walls and a roof* designed or intended for the *continuous* support, enclosure, shelter or protection of persons, domestic animals, or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" ~~shall include~~ *includes* all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. See “Setback.”

BUILDING FOOTPRINT – The total area of the ground surface enclosed within the foundation of a building or within the downward projection of the exterior walls of a building.

BUILDING HEIGHT – See Section 175-56. General Dimensional Standards for procedure to determine building height.

~~**BUILDING INSPECTOR**—All references to Building Inspector are the same as if they were to the Code Enforcement Officer.~~

~~**BUSINESS SERVICES**—Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, building~~

~~*maintenance, employment service, management and consulting services, protective services, office equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services.*~~

~~*CAMPGROUND—Any area or tract of land used or designed to accommodate two (2) or more camping parties, including tents, camping trailers, recreation vehicles or other camping outfits, and includes the necessary accessory uses normally associated with such use.*~~

~~*CANOPY—Any structure, other than an awning or a wedding canopy made of cloth or metal with frames attached to a building projecting over a public way, and carried by a frame supported by the ground or sidewalk.*~~

~~*CANOPY—A structure projecting from a building, constructed of a frame and cloth or hard materials, used for signage, decorative purposes, or protecting pedestrians from the weather. A canopy is usually placed above a window or entryway. A canopy usually extends over a public way. (A canopy is often referred to also as an awning or marquee.)*~~

CAR SALES AND SERVICE – See Motor Vehicle definitions.

CAR WASH – A facility equipped for washing cars and other vehicles manually or automatically.

~~*CARETAKER APARTMENT—A dwelling unit that is incorporated into, and is accessory to, a nonresidential use and is occupied by an owner or an employee of the business occupying the principal use and having a gross floor area of less than two thousand (2,000) square feet.*~~

CARETAKER APARTMENT – An on-site dwelling unit that is accessory to a principal use and occupied by the person(s) maintaining the property.

~~*CATEGORY OF USE—Any use listed in Section 175-53, the Table of Land Uses or listed as permitted or conditional use in a zoning district.*~~

CARPORIT – A roofed structure designed to shelter motor vehicles and that is open on at least two sides. A carport may be a freestanding structure or attached to a building.

CHILD CARE – See Day Care Center and Day Care Home.

~~*CHILD DAY CARE CENTER – A nonresidential facility for the care of preschool and/or school-aged children or adults that is not located within a home or other residence the residence of the primary care provider. A nursery or a nursery school is also considered a day care center. See Article XX*~~

~~*CHILD-DAY CARE HOME – A nonresidential facility for the daytime care of preschool and/or school-aged children that is located within the residence in which of the primary care provider resides. See Article XX*~~

~~**CHILD CARE NURSERY**—A nonresidential facility for the care of children under~~

~~**CINEMA** – A motion picture theater See Theater.~~

~~**CLUB**—A building or portion thereof used by a group of people organized as a non-profit organization for a common purpose to pursue common goals, interests or activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws. A club includes the facilities occupied by a fraternal or similar organization.~~

CLUB – A building or portion of a building used by a group of people established as a not-for-profit organization to pursue common goals, interests and activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

~~**CO-HOUSING**—An intentional community of private homes clustered around shared space. Each attached or single-family home has traditional amenities, including a private kitchen. Shared spaces typically feature a common house, which may include a large kitchen and dining area, laundry, and recreational spaces. Shared outdoor space may include parking, walkways, open space, and gardens. Neighbors also tend to share resources like tools and lawnmowers.~~

~~**COMMERCIAL USE**—A nonresidential use operated for profit or compensation.~~

~~**COMMON OPEN SPACE**—Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership, or conservation easements. Common open space is not part of any house lot or developable lot within the subdivision and it not owned by the developer nor another resident in the subdivision. Rather, common open space is owned by the Town, another government entity, a nonprofit organization, or jointly/in common by the lot owners in the subdivision.~~

COMMUNITY CENTER – A building that accommodates recreational, educational, entertainment, and/or cultural activities ~~primarily for use by residents of a subdivision or by residents of the community-at-large.~~

~~**CONDITIONAL USE**—Those uses that because of particular characteristics or because of size, technological processes or equipment or because of the exact location with reference to surroundings, streets and existing improvements or because of demands upon public facilities, require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area.~~

CONDITIONAL USE – See Article VII. Conditional Use Permits.

~~**CONDITIONAL USE PERMIT**—An authorization to conduct a conditional use when such authorization is required by these regulations and when established according to the procedures outlined in Article VII of these regulations.~~

~~**CONDOMINIUM**—A building or group of buildings in which units are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional undivided basis. Condominiums shall be considered a subdivision and reviewed accordingly.~~

CONDOMINIUM – A building, group of buildings or site in which units or portions of the building(s) or site are owned individually, and the larger structure, common areas, facilities and land are owned jointly by all of the owners on a proportional undivided basis. Condominiums are considered a subdivision and are reviewed accordingly.

CONFERENCE CENTER – A facility used for conferences, seminars, and other gatherings. It does not include accommodations for sleeping. ~~A facility used for conferences and seminars which may include accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms. If sleeping accommodations are part of the facility, transients who are not attending activities at the center may occupy not more than fifty percent (50%) of the accommodations at any time.~~

CONSERVATION ACTIVITIES – Non-structural activities involved with the maintenance of the natural resource value of land, including forest management activities that do not involve the creation of ~~motorized vehicle ways~~ **trails** or the disturbance of the soil. Activities to stabilize erosion or address emergency conditions are part of this use.

CONSERVATION SUBDIVISION – A subdivision meeting the requirements of Section 175-107 in which a **substantial** portion of the site is set aside as common open space.

CONTIGUOUS – Touching at a point or along a boundary; ~~Adjoining~~.

~~**CONTRIBUTING STRUCTURE**—A property or structure in the Historic Overlay District that is part of Durham’s heritage and contributes to the district’s sense of time, place and historical development by virtue of its age, historical use, location, design, setting, materials, workmanship, aesthetics, or association.~~

~~**CONVENIENCE STORE WITH GASOLINE SALES**—A retail store with less than five thousand (5,000) square feet of gross floor area that includes the retail sales of gasoline and similar petroleum products but provides no other automobile services such as repairs or washing.~~

CONVENIENCE STORE – See Motor Vehicle Gas Station and Retail Store, Small.

CONVENTIONAL RESIDENTIAL SUBDIVISION – A **residential** subdivision in which all or most of the area of the parcel is put into lots and roads, **and any other allowed uses**, with little or no common open space. *(In contrast to a Conservation Subdivision.)*

~~**CORNER CLEARANCE**—An unobstructed area at street intersections free from any object, vegetation or slope that impedes visibility within a triangle, two (2) of whose sides extend twenty (20) feet from the intersection along the street lines and between two (2) planes three (3) feet and seven (7) feet above the level of the traveled way.~~

~~**CRAFTSHOP WITH ACCESSORY PRODUCTION**—A studio of a crafts person or group of crafts people. A craftshop may include the sale of crafts and the production of crafts for sale on the premises.~~

~~**CURB LEVEL**—The elevation of the street curb as established in accordance with an ordinance.~~

~~**CURB LINE**—The vertical plane of the street side of a curb.~~

~~**DAY CARE**—A use which provides daytime care and supervision of any number of children or handicapped, disabled or elderly adults not related by blood or marriage and licensed by the appropriate state agency.~~

DEVELOPER – An owner, the owner’s agent, or any other person, firm or organization with authorization from the owner, who intends to **improve alter** or to construct improvements upon ~~his or her~~ **their** property.

~~**DEVELOPMENT**—Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.~~

DEVELOPMENT – Significant construction, reconstruction, alteration, or enlargement of any building or structure; paving, adding parking spaces, or adding or expanding driveways; a significant change of use; the subdivision, resubdivision, or combination of lots or other units of a building or land; and mining, excavation, landfill, and other significant land disturbance.

DISTURBED AREA – An area where **natural** vegetation is removed, exposing the underlying soil or where the ground surface is altered, ~~in any significant manner~~.

DORMITORY – A building occupied by a resident manager and used, designed and adapted to provide housing for ~~more than ten (10) occupants~~ **employees or students or people otherwise connected to an institution, such as a school, hospital, or church**. Such units are distinguished by separate ~~study and~~ sleeping quarters for each individual or pair of individuals; common social assembly rooms; common toilet facilities; and common cooking and dining facilities, where provided.

DRIVE-THROUGH FACILITY – A service facility designed for the convenience of the motoring public that is intended to enable the customer to transact business with a person located within a structure or a machine without exiting the motor vehicle.

~~**DRIVEWAY**—A private, vehicular access connecting a house, parking area, garage or other building with the street.~~

DRIVEWAY – A private, vehicular access connecting the street to one or more structures or sites.

~~*DUST-FREE SURFACE—The top of a road, driveway, parking area, walkway or other area covered in bituminous paving, concrete, compacted crushed rock or gravel, or other such stable materials.*~~

~~*DWELLING GROUP OR CLUSTER—A pattern of residential development where units are grouped together on a single lot around access courts with the remainder of the lot left in its natural condition or as common open space.*~~

DWELLING UNIT – One ~~(1)~~ or more rooms arranged, designed or used for residential purposes for one ~~(1)~~ household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use *the space* for residential purposes.

EDUCATIONAL ~~FACILITIES FACILITY~~ – ~~*A building or part thereof principally used, designed or adapted for educational use or instruction and operated by an educational institution approved by the New Hampshire Postsecondary Educational Commission.*~~ *A facility principally used, designed or adapted for educational use or instruction, including a trade school, and operated by an educational institution approved by the New Hampshire Department of Education.*

EXCAVATION – A land area that is used, or has been used, for the commercial *taking removal* of earth, including all slopes. This includes removal from its natural location of soil, sand, gravel, rock, topsoil, loam, clay, peat, or other mineral deposits. This does not include the excavation of material incidental to approved construction of buildings, driveways, or parking areas; or the excavation of material incidental to and at the site of construction or repair of streets.

~~*EXTERIOR ARCHITECTURAL APPEARANCE—The architectural character, general composition, and arrangement of the exterior of the structure, including the kind, color, and texture of the building materials and type and character of windows, doors, light fixtures, signs, and appurtenant elements.*~~

~~*FAMILY—See “Household.”*~~

FINANCIAL INSTITUTION – A business or nonprofit organization providing retail financial services, including *but not limited to* banks, credit unions *and financial exchanges*, ~~*financial exchanges, free-standing Automatic Teller Machines (ATM), and check cashing facilities.*~~

FLOOD HAZARDS. See Article XV. Flood Hazard Overlay District.

[Items below are being moved to Article XV, with no changes. See section toward end of this document.]

~~*FLOOD HAZARD OVERLAY DISTRICT—Specific definitions pertinent to the Flood Hazard Overlay District follow:*~~

~~Area Of Special Flood Hazard – The land in the floodplain within the Town of Durham subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the (FIRM).~~

~~Base Flood – The flood level having a one-percent possibility of being equaled or exceeded in any given year.~~

~~Base Flood Elevation – The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.~~

~~Basement – Any area of a building having its floor subgrade on all sides.~~

~~Building – Any structure designed or intended for the support, enclosure, shelter or protection of persons, domestic animals, chattels or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" shall include all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. (Also see "Structure" for floodplain management purposes.)~~

~~Development – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.~~

~~FEMA – The Federal Emergency Management Agency.~~

~~Flood or Flooding – A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.~~

~~Flood Insurance Rate Map (FIRM) – The official map incorporated with this ordinance, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.~~

~~Flood Insurance Study – An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.~~

~~Floodplain or Flood-Prone Area – Any land area susceptible to being inundated by water from any source. See "flood or flooding."~~

~~Floodproofing – Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.~~

~~Floodway, Regulatory – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than a designated height.~~

~~Highest Adjacent Grade – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.~~

~~Historic Structure – Any structure that is:~~

~~a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;~~

~~b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;~~

~~c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or~~

~~d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:~~

~~(i) by an approved state program as determined by the Secretary of the Interior; or~~

~~(ii) directly by the Secretary of the Interior in states without approved programs.~~

~~Lowest Floor – The lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.~~

~~Manufactured Home – A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.~~

~~Manufactured Home Park Or Subdivision – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.~~

~~Mean Sea Level – The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.~~

~~New Construction – For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.~~

~~Recreational Vehicle – A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.~~

~~Special Flood Hazard Area – See "Area of Special Flood Hazard."~~

~~Start Of Construction – Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.~~

~~Structure (For Floodplain Management Purposes) – A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.~~

~~Substantial Damage – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or~~

~~exceed fifty (50) percent of the market value of the structure before the damage occurred.~~

~~**Substantial Improvement** – Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."~~

~~**Violation** – The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.~~

~~**Water Surface Elevation** – The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.~~

FLOOR AREA, GROSS – The sum of the areas of all floors of a building as measured from the exterior dimensions, but not including cellars, attics, porches, garages or areas occupied by heating and ventilating equipment.

FLOOR AREA, HABITABLE – Heated areas used daily for living, eating, cooking or sleeping, including bathrooms and bedroom ~~closets;~~ ~~closets.~~ **Habitable floor area does not include but excluding** garages, circulation areas **outside of individual units** (stairways, hallways, corridors), **and** storage ~~areas;~~ ~~areas~~ (including ~~but not limited to~~ attics, unfinished basements, and utility rooms). ~~For the purposes of this chapter, "habitable floor area"~~ **Habitable floor area** is deemed to be ~~seventy (70)~~ **70** percent of the gross floor area of a given building unless evidence sufficient to rebut that presumption in the form of complete floor plans drawn to a standard scale is submitted to **and approved by** the Durham Code Enforcement Officer. This presumption ~~shall does~~ not apply in any instance where the owner or occupant(s) of the building ~~allow allows~~ inspection and measurement of such interior floor areas by the Code Enforcement Officer. ~~It is recognized that under~~ **Under** this definition it is possible for the "habitable floor area" to exceed 70 percent of the gross floor area.

FOUNDATION, PERMANENT – A continuous perimeter foundation of masonry or concrete constructed in accordance with the Building Code of the Town of Durham.

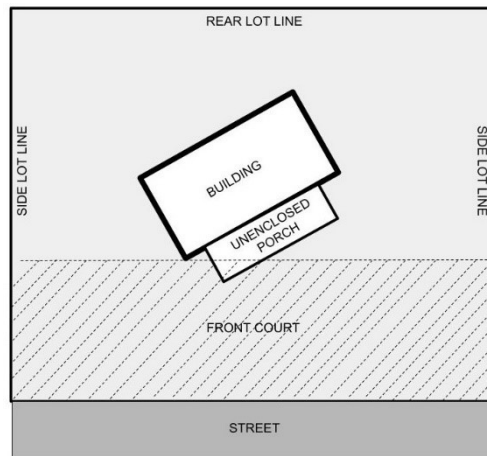
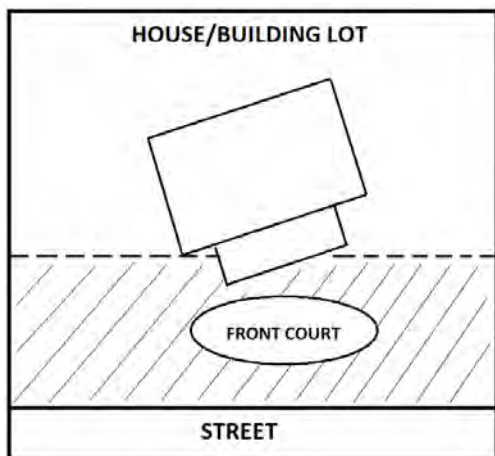
~~FRANCHISE ARCHITECTURE – A stylized building design in which the shape, detailing, ornamentation, materials, or use of color is clearly identified with a specific brand or company.~~

~~FRATERNITY/SORORITY – A fraternal organization officially recognized by the University of New Hampshire, and organized to benefit the Durham and University of New Hampshire communities through the efforts of its members, who are students currently enrolled at the University of New Hampshire.~~ An organization officially recognized as such by the University of New Hampshire.

FRATERNITY/SORORITY HOUSE – A building used to provide lodging facilities for the exclusive use of the *bonafide* members of a fraternity or sorority.

FRONT COURT – The portion of a lot in front of a house or the principal building demarcated by the front lot line, a line parallel to the front lot line running through the fully enclosed part of the building located closest to the front lot line, and sections of the two side lot lines that connect these two lines.

- *Remove the existing image that goes with the definition for “Front Court,” shown on the left below and insert the new image in its place, shown on the right below.*



FRONTAGE – See *"lot frontage."* Lot Frontage.

FUNERAL HOME – An establishment where the dead are prepared for burial or cremation and where wakes and *funerals funeral services* may be held. A funeral home may include a chapel and/or facilities for the storage of vehicles used in the business.

~~GALLERY – A business involving the display and sale of objects of art such as paintings, sculpture, assemblages, and collages. A gallery may include the studio of one or more artists.~~

GAS STATION – See Motor Vehicle uses.

GOLF COURSE – A tract of land laid out with at least nine holes for playing the game of golf and improved with fairways, greens, landscaping, and/or hazards. A golf course may include a club house that provides services to golfers and/or members including, but not limited to, the sale and repair of golf equipment and food and beverage service, and accessory buildings and structures necessary for the operation of the course.

~~**GOVERNMENT FACILITY** – A structure or parcel of land the use of which is governmental, as defined in RSA 674:54. As stated therein, the use, construction or development of land owned or occupied, or proposed to be owned or occupied, by the state, university system, or by a county, town, city, school district or village district, or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.~~

GOVERNMENTAL USE – The use or development of a parcel of land or building by a governmental body, agency, or organization or by a quasi-governmental agency or organization carrying out a recognized governmental function.

~~**GREENWAY** – A network of connected common open spaces and/or other conservation land that typically extends along or around a natural feature such as a stream, pond, wetland, or wildlife travel corridor, or includes an area with significant scenic, historic, archeological, or cultural value, or provides for passive or active recreation such as trails or similar linear facilities.~~

GROUNDWATER – All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

GROUNDWATER RECHARGE – The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

HABITABLE FLOOR AREA. See “Floor Area, Habitable.”

HELIPORT – A facility used for landings and takeoffs by helicopters.

HIGH INTENSITY SOIL SURVEY – See “Soil Survey, High Intensity.”

~~**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.~~

~~**HIGH WATER LEVEL** – On saltwater bodies, the seasonal high-water level (the wrack line where tidal debris is deposited at seasonal high tides); on freshwater rivers and streams, the average springtime high-water level, including contiguous wetlands; or for dammed streams, the height of the dam.~~

HISTORIC OR SPECIAL-INTEREST TREE - A tree which has been found by the Tree Warden to be of notable interest because of its age, type, size or historic association.

HOME OCCUPATION – Any occupation, profession, activity or use which is clearly an incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood. *It is further defined as follows: ~~and is further defined as follows:~~*

1. HOME OCCUPATION-1 – A home occupation *meeting with* the following *requirements characteristics*:
 - a. It occupies no more than ~~five hundred (500)~~ 500 square feet of floor area.
 - b. The principal operator resides on the premises, has not more than one ~~(1)~~ other person employed on-site and does not sell on-site any *principal* manufactured products prepared by others *except for any products that are incidental to the service being provided on site*. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
 - c. The activity is completely enclosed in a primary or accessory structure. There is no indication of such occupation visible on the exterior of the building or on the lot, except permitted signs.
 - d. The activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.
2. HOME OCCUPATION-2 – A home occupation *meeting with* the following *requirements characteristics*:
 - a. It occupies no more than ~~one thousand (1,000)~~ 1,000 square feet of floor area, with the exception of existing farm structures, which may utilize ~~one hundred (100)~~ 100 percent of the floor area.
 - b. The principal operator resides on the premises, has not more than three ~~(3)~~ other persons employed on-site and does not sell on-site any *principal* manufactured products prepared by others *except for any products that are incidental to the service being provided on site*. Services provided electronically and off-site employees who interact electronically with the home occupation are not limited.
 - c. The activity, except for outdoor storage, is completely enclosed in a primary or accessory structure. Outdoor storage of materials or equipment ~~shall not be is~~ located *in-outside of* any required setback or yard area and shall be at least ~~ten (10)~~ 10 feet from any lot line and so screened as not to be visible from any public way or shoreline or public park.
 - d. The activity does not produce noise, odor, traffic or other nuisances perceptible at the lot line at a higher level than is usual in a residential neighborhood.

HOSPITAL – An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

HOTEL – ~~A building containing seven (7) or more~~ *A commercial operation offering multiple* sleeping rooms or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for stays of less than ~~30 thirty~~ consecutive days ~~for compensation~~ and usually providing on-site dining facilities, recreational services, function rooms, housekeeping, laundry and related services. Access to guest rooms is provided through interior corridors. *See Article XX*

HOUSEHOLD – A group of occupants of a dwelling unit defined by one of the following two categories:

1. **FAMILY** – An individual or two ~~(2)~~ or more persons related within the second degree of kinship by civil law or by marriage or adoption or foster care arrangement living together as a single housekeeping unit, including necessary domestic help ~~such as nurses or servants not to exceed three (3) in number.~~
2. **UNRELATED HOUSEHOLD** – Any household not conforming to the definition of a "family," above. (~~Note.~~ See specific requirements for unrelated households in Section 175-56 - General Dimensional Standards.)

HYDROGEOLOGIST, QUALIFIED – Any person certified in New Hampshire as a Licensed Professional Geologist pursuant to RSA 310-A:125. The Planning Board, at its discretion, may accept as a Qualified Hydrogeologist any person possessing similar credentials from any other state.

IMPERVIOUS SURFACE – A material with low permeability that impedes the natural infiltration of moisture into the ground so that the majority of the precipitation that falls on the surface runs off or is not absorbed into the ground. Common impervious surfaces include, but are not limited to, roofs, concrete or bituminous paving, sidewalks, patios, driveways, ~~roads,~~ parking spaces or lots, and storage ~~areas; areas;~~ compacted gravel including drives and parking ~~areas; areas; and oiled or~~ compacted earthen materials, stone, concrete or composite pavers, wood, and swimming pools.

IMPERVIOUS SURFACE AREA – The total area of a site or parcel that is covered by impervious surfaces. The area covered by a deck or similar structure ~~shall be~~ *is* included in the impervious surface area unless the surface of the deck or structure provides for precipitation to pass through it and reach the ground in a dispersed pattern and the material under the deck or structure is not an impervious surface.

IMPERVIOUS SURFACE RATIO – The impervious surface area of a site or parcel divided by the total area of the site or parcel expressed as a percentage.

INN – *A commercial operation within an* ~~An~~ owner-occupied, ~~single-family residence property~~ containing, in addition to living accommodations for the owner and ~~his or her~~ *their* family, four ~~(4)~~ to six ~~(6)~~ *sleeping guest* rooms, without cooking facilities, for the purpose of providing ~~lodging. to the general public, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for less than thirty consecutive days.~~

JUNKYARD – An area of land used for the exterior storage (i.e., not contained within a completely enclosed ~~structure~~) ~~building~~) of used and discarded materials, including but not limited to wastepaper, rags, metal, building materials, furnishings, machinery, vehicles or parts thereof. "Junkyard" also means any business or any place of storage or deposit which has stored or deposited two ~~(2)~~ or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles, or old iron, metal, glass, paper, cordage or other waste, or discarded or secondhand material which has been a part or is intended to be a part of any motor vehicle, the sum of which parts shall be equal in bulk to two ~~(2)~~ or more motor vehicles.

KENNEL – Any lot or premises on which four ~~(4)~~ or more dogs, cats or similar small animals, or a combination thereof, which are ~~in excess of four (4) months of age, at least four months old~~ are boarded for compensation or bred for sale. A kennel ~~shall does~~ not include licensed veterinary medical facilities.

~~LANDSCAPE BUFFER – See "solid planting" in landscaping definitions.~~

LANDSCAPING – Some combination of planted, living trees, shrubs, hedges, vines, ground cover and flowers suitable for the climate, exposure and site condition. In addition, ~~the combination or design landscaping~~ may include earth sculpture, cobbles, bark, mulch, edgers, flower tubs, rock and such structures as fountains, pools, artworks, screens, walls, fences or benches, but such objects alone ~~do not define landscaping. shall not meet the requirements of this provision. The selected combination of objects and plans for landscaping purposes shall be arranged in a manner compatible with the building and its surroundings. Specific definitions pertinent to landscaping, buffers, the Wetland Conservation Overlay District, and the Shoreland Protection Overlay District follow:~~

[These landscaping terms below are not used in the Zoning Ordinance.]

~~Damage – Includes any intentional or negligent act which will cause vegetation to decline and die within a period of five (5) years, including but not limited to such damage inflicted upon the root system by the operation of heavy machinery, the change of the natural grade above the root system or around the trunk of a tree and damages from injury or from fire inflicted on vegetation which results in or permits infection or pest infestation.~~

~~Diameter at Breast Height (DBH) – The diameter of a tree trunk at a height of four and one-half (4.5) feet.~~

~~Ground Cover – Low-growing plants, below the shrub layer, that grow to form a continuous cover over the ground, such as grasses, vinea, English ivy or like material.~~

~~Hazard Tree – Any tree that has the potential to have parts of or the entire tree fall under moderate to mild environmental changes, conditions or man-made forces.~~

~~Historic or Special-Interest Tree – A tree which has been found by the Tree Warden to be of notable interest because of its age, type, size or historic association.~~

~~Landscaped Area – That area within the boundaries of a given lot devoted to and consisting of landscaping material, including but not limited to grass, trees, shrubs, flowers, vines and other ground covers, native plant materials, planters, brick, stone, natural forms, water forms, aggregate and other landscape features; provided, however, that the use of brick, stone, aggregate or other inorganic materials shall does not predominate over the use of organic plant material.~~

~~Landscape Development – Trees, shrubs, ground cover, vines, grass and other materials as listed in the definition of "landscaped area" above, installed in planting areas for the purpose of fulfilling the requirements of these regulations.~~

~~Landscaped Street Yard – The area of a lot which lies between the street right-of-way line and the actual front wall line of the building, parallel to the street, until such imaginary extensions of such front building wall line intersect the side property lines. In determining the actual building wall of the building for the purposes of this definition, steps and unenclosed porches shall be excluded, but such building wall line shall follow and include the irregular indentations of the building. Further, for the purposes of these regulations, canopies, gas pump islands, overhangs and similar extensions will be figured as part of the "landscaped street yard." A front building wall is a building wall fronting on a street or publicly used area.~~

~~A. On corner lots, the "landscaped street yard" shall consist of all of the area of such lot between all abutting street right-of-way lines and their corresponding actual front building wall lines, as such lines are imaginarily extended in the manner provided above.~~

~~B. When there are multiple buildings on a lot, the "landscaped street yard" shall consist of all the area of the lot between the street right-of-way line(s) and an imaginary line beginning at one side of the property line, running parallel to the street, connecting to the front most corner of the building wall, fronting the street and nearest such side property line, then following and connecting the front most walls of all buildings fronting on the street and then extending to the other side property line, running parallel to the street. If a building has a rounded front, the front building wall corners shall be the points closest to the side boundaries.~~

~~C. Notwithstanding all of the foregoing, on land used only for parking purposes or only as a commercial or private parking lot, the "landscaped street yard" shall consist of the area between the street right-of-way line and the back property line.~~

~~Landscaped Yard Area – The front, side and rear yard areas as established below. In defining the side and rear yard area, the property line shall replace the street right-of-way line defined in the landscaped street yard.~~

~~Maintenance (or Maintain) – In reference to landscaping, includes pruning, mulching, mowing, spraying, fertilizing, propping, bracing, treating for disease or injury, snow removal and any other similar act which promotes the life, growth, health or beauty of the landscape vegetation.~~

~~Natural Woodland Buffer – A forested area consisting of various species of trees, saplings, shrubs and ground covers in any combination and at any stage of growth.~~

~~Public Area – Includes parks, playgrounds, areas around public buildings and all other areas under the supervision and maintenance of the town.~~

~~Removal (or Removed) – Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.~~

~~Sapling – Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.~~

~~Shrub – Bushy, woody plant, usually with several permanent stems and usually not over ten (10) feet high at its maturity.~~

~~Solid Planting – A planting of evergreen trees and/or shrubs which will prevent the penetration of sight and light to a minimum height of five (5) feet.~~

~~Specimen Tree – A tree which has been determined by the judgment of the Tree Warden to be of high value because of its type, age or other professional criteria.~~

~~Tree – Any self-supporting, woody perennial plant which has a trunk diameter of two (2) inches or more when measured at a point of four and one-half (4 1/2) feet above the ground level and which normally attains an overall height of at least ten (10) feet at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of ash and others.~~

~~Tree Warden – The person whose duties shall include the inspection of landscaping installations according to the Town of Durham performance guaranty guidelines, and ensuring that the landscaping provisions of this chapter are being carried out and installed according to the plans submitted and approved.~~

~~Vegetation – Includes a tree, plant, shrub, vine or other form of plant growth.~~

~~LEACHABLE WASTES – Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that are capable of leaching contaminants to groundwater or surface water sources.~~

~~LIBRARY – A place in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, and prints are kept for reference or reading.~~

LIGHT MANUFACTURING – See "manufacturing, light." As described in Article XX.

LOT – A legally recorded and defined parcel of land ~~or two (2) or more contiguous parcels to be used as a unit under the provisions of these regulations.~~

LOT, CORNER – A lot abutting ~~on~~ two (2) or more intersecting streets where the interior angle of intersection does not exceed ~~one hundred thirty five (135)~~ 135 degrees. A "corner

lot" ~~shall be~~ *is* considered to be in that block in which the lot fronts. [See "lot line," Subsection (1)(a).]

LOT AREA – The total area within ~~the confines of~~ the boundary lines of a lot. The "lot area" ~~shall does~~ not include any part of a ~~public road~~ right-of-way ~~which it fronts or abuts~~.

~~LOT COVERAGE – The aggregate gross ground floor area of all buildings on a lot expressed as a percentage of the total lot area, excluding parking facilities, sidewalks and driveways.~~

LOT FRONTAGE – ~~A lot line dividing the lot from a street right-of-way. The lot line shared with a street right-of-way. In cases where an existing or proposed lot line is squiggly the frontage is measured along one or more chords from end point to end point of the lot line.~~

LOT LINE:

1. ~~LOT FRONT~~ **LOT LINE** – The front property line of a lot ~~shall be~~ *is* determined as follows:

a. CORNER LOT *or LANDLOCKED LOT* – The front property line on a corner lot is as determined by the Zoning Administrator based upon a reasonable consideration of the following: location of the front door, location of the driveway and garage, configuration of other buildings in the vicinity, the lot layout (generally, the shorter lot line is the front lot line as lots tend to be deep and narrow rather than wide and shallow), and other pertinent issues.

b. INTERIOR LOT – The front property line of an interior lot ~~shall be~~ *is* the line bounding the street frontage.

c. THROUGH LOT – *A through lot has frontage on opposite streets.* The front property line of a through lot ~~shall be~~ *is that line where the house or building faces or is proposed to face. that line which is obviously the front by reason of the prevailing custom of the other buildings in the block.*

➤ *Switch the order of Rear Lot Line and Side Lot Line, below (as the side lot line is usually given first).*

2. ~~LOT REAR~~ **LOT LINE** – The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line ~~shall be~~ *is* assumed to be a line not less than ~~ten (10)~~ **10** feet long lying within the lot and parallel to the front property line. In the event that the front property line is a curved line, then the rear property line shall be assumed to be a line not less than ~~ten (10)~~ **10** feet long lying within the lot and parallel to a line tangent to the front property line at its midpoint.

3. ~~LOT SIDE~~ **LOT LINE** – The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

~~**LOWEST FLOOR**—The lowest floor of the lowest enclosed area, including the basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.~~

MAINTENANCE – The replacing or repair of a part or parts of a building or structure which have been made unusable, unsafe, or unsightly, or have been damaged by ordinary wear or tear or by the weather.

MANUFACTURED HOUSING (*formerly known as a mobile home*) – Any structure, transportable in one or more sections, which, in the traveling mode, is eight ~~(8)~~ body feet or more in width and ~~forty (40)~~ 40 body feet or more in length, or when erected on site, is ~~three hundred twenty (320)~~ 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing ~~shall~~ **does** not include ~~pre-site built, modular or pre-site built prefabricated~~ housing as defined in RSA 674:31-a. *See Article XX*

~~**MANUFACTURING, LIGHT**—An establishment engaged in the production, packaging, and/or distribution of products or components of products involving processing, fabrication, and/or assembly of parts or components produced off the site that meets the performance standards for a light manufacturing use. See Article XX.~~

MARINE SALES AND SERVICE – A business establishment located on a navigable water ~~within the Town of Durham~~ providing boat sales, rental and storage, marine supplies and equipment, marine engine and hull repairs, construction and outfitting of commercial or pleasure craft, fuel and oil, electricity, freshwater, ice, and other supplies for owners and crew.

MARQUEE - Any hood or awning of permanent construction projecting from the wall or roof of a building or structure above an entrance or extending over a public way.

MASTER PLAN – The Town of Durham Master Plan, and any amendments which may be made thereto, adopted by the Durham Planning Board as a guide to the prudent development and protection of the resources of the community, *as laid out in RSA 674:2 Master Plan.*

~~**MEDICAL CLINIC**—A structure or group of structures occupied by one or more medical practitioners for the purpose of providing health services to people on an outpatient basis.~~

~~**MINING**—Activities performed in the extraction of minerals including the excavation of pits, removal of minerals, removal of dimension stone, removal or quarrying for the production of construction aggregate, disposal of overburden, and the construction of roads for the haulage of mining materials but not including removal activities that are part of development projects that have received site plan or subdivision approval or that are undertaken only for the purpose of improvement of or use on the owner's property in which there will be no removal of materials from the site.~~

MINING – *Commercial extraction of materials from the earth.*

MINOR SITE COMMITTEE. A staff committee empowered to review minor site plan applications pursuant to RSA 674:43 III. (See Section 175-17 *and the Durham Site Plan Regulations*.)

MIXED USE WITH RESIDENTIAL ~~(OFFICE/RETAIL DOWN, MULTIUNIT RESIDENTIAL UP)~~ (*Office/Retail down, Multi-unit Residential Up*) – A building in which the first floor is used for office/retail uses (*as defined in this article*) and the upper floor(s) is used, in whole or in part, for multi-unit residential use. (*See alternate allowed options for this use specified in Section 175-42 in the Central Business District.*)

~~MIXED USE WITH PARKING (PARKING AND OFFICE/RETAIL) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office/retail (as defined in this article). If only part of the first or ground floor is used for parking, the remainder is used for office/retail.~~

~~MIXED USE WITH PARKING (PARKING AND OFFICE) – A building in which all or part of the first floor or ground floor is used for parking and the upper floor(s) is used for office or similar non-residential uses. (If only part of the first or ground floor is used for parking, the remainder is used for office or other non-residential uses.)~~

MODULAR HOUSING – See “Pre-site Built Housing.”

MOTEL – ~~A building containing seven (7) or more sleeping rooms~~ *A commercial operation offering guest rooms* or suites, each with a private bathroom, for the purpose of providing overnight lodging facilities to the general public for compensation ~~for stays of less than thirty consecutive days;~~ with or without meals, and usually providing ~~on-site function rooms;~~ housekeeping, laundry and related services. Access to guest rooms is provided directly from ~~a parking lot the outside~~ or from exterior corridors or walkways. See Article XX

MOTOR VEHICLE GAS STATION – *The conventional gas station with gas sold and dispensed at pumps, but with no servicing or repairs performed. This use may include a retail store (small) with up to 5,000 square feet.*

MOTOR VEHICLE SALES ~~FACILITY AND SERVICE~~ – The use of any building or land area for the ~~display and sale~~ *display, sale, lease and maintenance* of new or used automobiles, trucks, vans, trailers, recreation vehicles, motorcycles, or similar motorized vehicles. This use may include repair facilities ~~for such vehicles~~.

MOTOR VEHICLE SERVICE FACILITY – A business that provides service, maintenance, and repairs for motor vehicles *and engines*, including *accessory sales*. ~~the accessory sale of parts and supplies. This use includes muffler, transmission, and brake shops, tune-up centers, repair garages, and similar uses but shall not include operations involving body work, painting, structural repairs or alterations.~~

MUSEUM – A nonprofit institution operated principally for the purpose of preserving, acquiring, and exhibiting objects of historical, cultural, scientific, or artistic interest and which may also engage in the incidental retail sales of items related to its principal purpose.

~~*NEIGHBORHOOD—An area of land local to the use concerned, generally lying within a radius of one thousand (1,000) feet, which has a set of unifying characteristics such as housing style or quality, similar income strata, topographic features, water features, local recreational facilities or convenience shopping. Factors such as a railroad and highway rights-of-way, major streets, rivers, water bodies and severe topographic constraints may form boundaries and serve to separate "neighborhoods."*~~

NEIGHBORHOOD – A contiguous area of a community with: a) defining characteristics such as an integrated network of streets, walkability within the area, similar architecture or period of development, a compatible mix of uses; and b) one or more distinct boundaries such as major roads, railroads, other physical barriers, or natural features like streams, woods, and steep topography.

~~*NEON—Any tubular gas filled light or lighting device.*~~

➤ *Switch the order of the following two definitions:*

NONCONFORMING ~~*STRUCTURE BUILDING*~~ – A structure or building, the size, dimensions and location of which were lawful prior to the adoption, revision or amendment of ~~*a this*~~ Zoning Ordinance but which fails, by reason of ~~*such said*~~ adoption, revision or amendment, to conform to the present requirements of the zoning ~~*ordinance district*~~.

NONCONFORMING LOT – A lot, the area, dimensions and location of which were lawful prior to the adoption, revision or amendment of ~~*the this*~~ Zoning Ordinance but which fails, by reason of ~~*such said*~~ adoption, revision or amendment, to conform to the present requirements of the zoning district.

NONCONFORMING USE – ~~*A use of a building, structure or parcel of land which was lawful prior to the adoption, revision or amendment of this Zoning Ordinance but which fails, by reason of said adoption, revision or amendment, to conform to the present requirements of the zoning ordinance. A lawful use of a building, other structure or use of land which predated the adoption of the zoning use regulations now and/or previously in effect and which would not be a use authorized in the district designation currently applied to that site.*~~

~~*NONCONTRIBUTING STRUCTURE—A property or structure which, due to its recent vintage, incompatible design, incompatible and irreversible alterations, or secondary or incidental use, would not be considered to contribute to that character or quality of the Historic Overlay District that the Town seeks to preserve.*~~

~~*NONMUNICIPAL WELL—Any well not owned and operated by the Town of Durham or its agent.*~~

~~*NURSERY OR PRE-SCHOOL—A school for children primarily between the ages of three and five that provides preparation for elementary school.*~~

NURSING HOME – A facility licensed by the State of New Hampshire as a nursing home ~~*and that provides intermediate and/or skilled nursing care to individuals, who by reason of*~~

~~advanced age, chronic illness, or infirmity, are unable to care for themselves. (See Senior Care Facility.)~~

~~OCCUPANCY—The predominant use classification of a building, structure or land.~~

~~OFF-HIGHWAY RECREATIONAL VEHICLE—Any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. All legally registered motorized vehicles when used for off-highway recreational purposes shall fall within the meaning of this definition; provided that, when said motor vehicle is being used for transportation purposes only, it shall be deemed that said motor vehicle is not being used for recreational purposes.~~

OFFICE – A place of business, including for nonprofit and governmental organizations, which includes these types of operations and practices: accounting, architecture, bookkeeping, business services, dentistry, engineering, financial services, general management, general sales, insurance, law, medicine, minor repair services (such as for bicycles, scooters, and lawnmowers but not including automotive engines or comparable components), personal services, professional services, real estate, research and development, telephone sales, and telecommunications. An “office” does not include uses that involve the sale of goods and materials or the physical production of goods and materials, other than those that are incidental to the primary office use, above.

~~OFFICE, BUSINESS—A place of business where activities such as general management, bookkeeping, accounting, telephone sales, and telecommunications take place, but where no “walk-in” consumer retail sales of physical products occur. A business office may include research and development activities, software development, and information transfer and management activities but shall not include the production of physical products for sale or distribution.~~

~~OFFICE, PROFESSIONAL—A building containing one (1) or more offices in which there is no display of unrelated stock or wares in trade commodity sold, nor any commercial use conducted other than the professional offices of a doctor, dentist, lawyer, architect, engineer and related laboratories, insurance agent, realtor or other similar professional services, but excluding barbershops, beauty salons or similar services.~~

OFFICE/RETAIL – For the land uses Mixed Use with Residential *or any other mixed use that includes office/retail uses and Mixed Use with Parking (parking and office/retail)*, “office/retail” includes retail sales, personal and business services, offices, restaurants, and other comparable commercial uses such as public, institutional, research, and industrial which are allowed in the zoning district. “Office/Retail” for this purpose does not include parking, storage uses, utility uses where there is minimal flow of people in and out of the building, nor uses that are accessory to the residential use in the building (such as laundry, bicycle storage, and exercise rooms).

OLDER SINGLE-FAMILY RESIDENCE – A single-family residence that has been at its current location since 1950 *or earlier*. See *Reuse of an Older Single-Family Residence in Article XX*.

~~OPACITY, VERTICAL VERTICAL OPACITY~~ – The percentage of the area of a fence or wall *that is* covered by boards, slats, metal links, and other materials, through which one cannot see. Vertical opacity is measured from an elevation drawing.

~~OPEN SPACE—Land such as, but not limited to, recreational areas, playgrounds, and conservation land that contains no structures other than those incidental to recreation or agriculture.~~

OPEN SPACE – Forests, fields, wetlands, and other undeveloped lands that contribute to the rural and pastoral character of Durham. Open space may include, but is not limited to, conservation areas, public lands, undeveloped land in private ownership whether protected or not, land being used for passive recreation, and agricultural lands (both cropland and grazing land). (Common Open Space is defined separately in Article XIX. Conservation Subdivisions.)

OR – When used in a series of two or more allowed activities, such as “Dogs may be used for herding, working, or guarding livestock,” means “and/or,” such that any and all of the activities are allowed, individually or in combination. (In general, a reasonable judgment should be made based on the context for the intention of the use of “or.”)

ORDINARY HIGH WATER MARK – The line on the shore, running parallel to the main stem of ~~the river~~ *a river or stream*, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the NH Department of Environmental Services (NH DES).

OVERLAY DISTRICT - A defined area(s) of the town within which an additional set of standards is applied to all property, independent of the standards established in the underlying base zoning district. Six overlay districts are established as described in Articles XIII-XVIII.

~~OVERSTORY—Vegetation ranging from fifteen (15) feet to the top of the forest canopy.—~~

~~OWNER—An individual, firm, association, syndicate, partnership or corporation having sufficient proprietary interest to seek development of land~~

PARKING GARAGE – A building or portion of a building that includes two or more levels of parking or a mixed-use building with two or more levels where parking is situated on at least one level. A parking garage may be completely or partially enclosed. A parking garage includes a fully enclosed parking area that is situated below ground.

PARKING LOT – An open-air parking area situated on the ground, at finished grade, on a single level and not within a parking garage. A parking lot may incorporate one or more retaining walls to provide an adequate finished grade. A car port and a parking lot covered with solar panels are considered parking lots.

~~*PARKING SPACE – A space within or outside of a building, exclusive of driveways, meeting the minimal requirements of this chapter, used to temporarily park a motor vehicle and having access to a public street or driveway.*~~

~~*PERENNIAL STREAM – A stream or brook that, under normal circumstances, runs all year long.*~~

PERFORMANCE GUARANTY – Any security acceptable ~~by the town~~ to the Town as a guaranty that improvements required as part of an application for development ~~are will be~~ satisfactorily completed.

PERMEABLE PAVEMENT – See “Porous Pavement/Pavers.”

PERMITTED USE – A use specifically permitted or analogous to those specifically permitted as set forth in the Table of Uses or the zoning district standards.

~~*PERSONAL SERVICES – Establishments primarily engaged in providing services involving the care of a person or his or her apparel. Personal Services includes fitness centers.*~~

PERSONAL WIRELESS SERVICE FACILITY – See definitions in Article XVIII. Personal Wireless Service Facilities Overlay District.

[Items below being moved to Article XVIII with no changes. See section toward end of this document.]

~~*PERSONAL WIRELESS SERVICE FACILITY – Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment. Specific definitions pertinent to Personal Wireless Service Facilities follow.*~~

~~*Alternative Tower Structure – Innovative siting structures that include artificial trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.*~~

~~*Antenna – The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.*~~

~~*Antenna Array – A collection of antennas attached to a mount to send and receive radio signals.*~~

~~**Average Tree Canopy Height** – An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section 175-103.A.4.~~

~~**Camouflaged** – A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.~~

~~**Carrier** – A company that provides personal wireless services, also sometimes referred to as a provider.~~

~~**Co-location** – The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.~~

~~**Concealment** – The enclosure of a personal wireless service facility within a natural or human-made feature resulting in the facility being not visible from the outside or being part of the feature enclosing it.~~

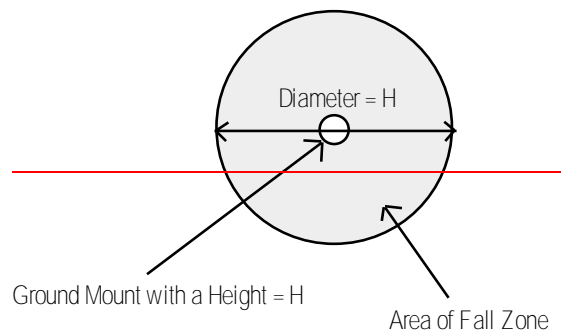
~~**Disguise** – Changing the appearance of a PWSF to appear to be something it is not.~~

~~**Environmental Assessment (EA)** – A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.~~

~~**Equipment Shelter** – An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.~~

~~**Fall Zone** – The area on the ground from the base of a ground-mounted personal wireless service facility that forms a circle with a diameter equal the height of the facility, including any antennas or other appurtenances, as set forth in Figure H-1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.~~

Figure H-1



~~Guyed Tower – A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.~~

~~Height – The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.~~

~~Lattice Tower – A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.~~

~~Mast – A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.~~

~~Monopole – A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.~~

~~Mount – The structure or surface upon which antennas are mounted, including the following four types of mounts:~~

~~A. — Roof-mounted. Mounted on the roof of a building.~~

~~B. — Side-mounted. Mounted on the side of a building.~~

~~C. — Ground-mounted. Mounted on the ground.~~

~~D. — Structure-mounted. Mounted on a structure other than a building.~~

~~Personal Wireless Services – The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.~~

~~Radio Frequency (RF) Engineer – An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.~~

~~Radio Frequency Radiation (RFR) – The emissions from personal wireless service facilities.~~

~~Security Barrier - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.~~

~~Separation – distance between one carrier's array of antennas and another carrier's array.~~

PLANNED UNIT DEVELOPMENT (PUD) - A Planned Unit Development is an innovative planning tool that allows a landowner to propose their own development project with a fair degree of independence from zoning, site plan, and subdivision requirements otherwise applicable to that property. A PUD master plan functions as a special zoning

district designation for a particular tract of land in terms of uses, dimensions, and other development standards.

PORKCHOP SUBDIVISION – A porkchop subdivision involves limited subdivision of relatively large lots where there is significant back land but not sufficient street frontage to provide the minimum required frontage for each new lot. *See Article XX*

POROUS PAVEMENT/PAVERS – *An alternative to conventional asphalt that uses a variety of porous media, often supported by a structural matrix, concrete grid, or modular pavement, which allows water to percolate through to a sub-base for gradual infiltration.*

PREFABRICATED HOUSING – *See “Presite Built Housing.”*

PREMISES – A lot, parcel, tract, *site* or plot of land together with the buildings and structures thereon. ~~*Premises may be further defined as the principal use dwelling unit/residence, or non-residential building, and any accessory structures to that principal use, where there are multiple principal buildings on a single lot.*~~

PRESITE BUILT HOUSING – Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. ~~*For the purposes of this subdivision, pre-site built housing shall*~~ *Presite built housing does* not include manufactured housing as defined in RSA 674:31. *Presite built housing is also called “Modular Housing” or “Prefabricated Housing.” (Presite built housing is not regulated under this Zoning Ordinance.)*

~~**PRIMARY BUILDING LINE**—*The setback from the reference line.*~~

~~**PRINCIPAL USE**—*The primary or predominant use to which the property is or may be devoted and to which all other uses on the premises are accessory.*~~

PRINCIPAL USE – *The primary or predominant use(s) on a property to which all other uses are accessory. There is typically, but not necessarily, one principal use on a property.*

~~**PROHIBITED USE**—*A use which is not specifically permitted.*~~

~~**PUBLIC UTILITY**—*A public service corporation performing some public service and subject to special governmental regulations, or a governmental agency performing similar public services, the services by either of which are paid for directly by the recipients thereof. Such services shall include, but are not limited to, water supply, electric power, telephone, television cable, gas and transportation for persons and freight.*~~

PUBLIC UTILITY – *A public service corporation, municipal body, or authority providing a specific public service subject to special governmental regulations, for which the recipients pay the provider directly. Utilities may include water supply, sewer service, piped gas, electric supply, telephone, television cable.*

PUBLIC WAY – A road, sidewalk, footpath, trail, ~~or~~ navigable waterway, *or right of way* accessible to the public.

QUALIFIED CONSERVATION ORGANIZATION (~~See Article XIX – Conservation Subdivisions~~) – As defined in Section 170(h)(3) of the Internal Revenue Code of 1986 or any successor section, and the regulations promulgated thereunder, an organization that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of that Code. (*See Article XIX – Conservation Subdivisions.*)

~~RARE AND EXEMPLARY COMMUNITY – A natural community that has been identified by the New Hampshire Natural Heritage Bureau as being an exemplary example of a particular type of community and/or location of rare plants or animals.~~

~~RECREATION, ACTIVE – Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed sites, locations, or fields. Active recreation includes, but is not limited to, swimming, tennis and other court games, baseball, track and field sports, and playground activities. Active recreation generally requires altering the land for recreational use.~~

~~RECREATION, PASSIVE – Non-motorized recreational activities that typically occur in a natural setting, that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting, and do not require structures. Such passive recreation uses include, but are not limited to, walking, hiking, picnicking, nature observation, and cross-country skiing.~~

RECREATIONAL FACILITY, INDOOR – *A building designed and equipped for leisure and recreational activities. A building or structure enclosed by walls and a roof designed and equipped for the conduct of indoor sports, leisure activities, and other customary and usual recreational activities. These include, by way of example only, skating rinks, gymnasia, bowling alleys, fitness centers, and arcades.*

RECREATIONAL FACILITY, OUTDOOR – A ~~place or structure~~ *site* designed and equipped for ~~the conduct of~~ outdoor sports, ~~leisure activities, and other customary and usual outdoor leisure and~~ recreational activities. *An outdoor recreational facility shall not involve* ~~It does not include~~ the use of individual motorized vehicles, all-terrain vehicles, off highway recreational vehicles, motorized rides (*except for electronic bicycles*), or fire arms. ~~Outdoor recreation facilities include, by way of example only, miniature golf courses, cross-country ski centers, stadia, tennis courts, and ball fields.~~

RECREATIONAL PLAYING FIELDS, OUTDOOR – Noncommercial ~~outdoor~~ playing fields for ~~organized practices like soccer, field hockey, baseball and similar~~ outdoor sports *as approved by the Planning Board of the Town of Durham through Site Plan Review*. No structures ~~allowed are included~~ except for necessities like small sheds for maintenance and portable toilets. No lighting, voice amplification equipment or paved parking lots or areas ~~shall be permitted are included~~.

~~RECREATIONAL VEHICLE – A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be~~

~~*self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.*~~

RECREATIONAL VEHICLE – A vehicle which is built on a single chassis, designed to be self-propelled or permanently towable by a light duty vehicle, and designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use. (Also called an “RV” or a “Motor Home.”)

REFERENCE LINE – The regulatory limit of a surface water or wetland determined as follows:

1. For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by NHDES
2. For artificially impounded water bodies with established flowage rights, the limit of the flowage rights and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
3. For coastal waters the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.
4. For rivers and streams, the ordinary high water mark.

RELIGIOUS USE/FACILITY – A structure or place in which worship ceremonies, rituals and education pertaining to a particular system of beliefs are held.

~~*REPAIR—Work conducted to restore an existing legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.*~~

~~*REPAIR SERVICES—Businesses providing for the repair of personal and business property such as radios and televisions; electrical and electronic equipment; watches, clocks, and jewelry; furniture and upholstery; sporting equipment; small engines and equipment; and similar items but not including the repair of motor vehicles, boats, or heavy equipment. Retail sales of parts and supplies shall be allowed provided such sales are accessory to the repair service.*~~

~~*RESEARCH FACILITY—A facility for the investigation into the natural, physical, or social sciences, and other such disciplines, including commercial product development and testing.*~~

RESIDENCE, DUPLEX – ~~*A building and accessories thereto principally used, designed or adapted with two (2) dwelling units, each of which is completely separate.*~~ *A building with two dwelling units that are part of the same building.*

RESIDENCE, MULTI-UNIT – ~~A building and accessories thereto principally used, designed or adapted with three (3) or more dwelling units. A multi-unit residence includes “townhouse” style attached dwelling units even if the units are separated by a fire wall. A building with three or more dwelling units.~~

RESIDENCE, MULTI-UNIT COMPLEX – Two or more buildings of any residential type (single unit, duplex, multi-unit or a combination thereof) with a total of three or more dwelling units.

RESIDENCE, SINGLE-FAMILY – A building *with a single dwelling unit and accessories thereto principally used, designed or adapted as a single dwelling unit. A single-family residence is* situated on its own separate lot with no other dwelling units nor nonresidential uses other than those that are accessory to the single-family use **including** (such as accessory dwellings/apartments and home occupations, where allowed).

RESTAURANT – A commercial establishment open to the general public where food and beverage are prepared **and served.** ~~, served and consumed primarily within the principal building. Adequate seating shall be provided.~~

~~**RESTAURANT, CARRYOUT** – A commercial establishment open to the general public which, by design of physical facilities or by service or packaging procedures, permits or encourages the purchase, either within or outside the premises, of prepared ready-to-eat foods intended to be consumed either on or off the premises.~~

RESTAURANT OR CAFETERIA ACCESSORY TO ~~AN OFFICE BUILDING~~ **A NONRESIDENTIAL USE** – A food service establishment that primarily serves occupants and other users of ~~an office building or complex~~ **a nonresidential use** rather than the general public.

RETAIL STORE, MEDIUM ~~SIZED~~ – ~~An establishment~~ **A retail store** with ~~five thousand (5,000) to twenty thousand (20,000)~~ **5,000 to 20,000** square feet of gross floor area ~~engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.~~

RETAIL STORE, SMALL – A retail store with less than ~~five thousand (5,000)~~ **5,000** square feet of gross floor area.

ROOMING HOUSE – ~~An owner-occupied building principally used, designed or adapted to provide living accommodations for not more than ten (10) occupants and without individual or owner-provided cooking and dining facilities. See “Boarding House.”~~

SAWMILL, TEMPORARY – A portable facility for the sawing, milling, planing, or similar processing of timber or other wood products harvested from the site upon which the temporary sawmill is located. A portable sawmill use shall not include the retail sale of lumber or other wood products on the site. *See Article XX*

SCHOOLS – *See "educational facilities."* **“Educational Facility.”**

~~**SCREENING**—A device or materials used to conceal one (1) element of a site from other elements or from adjacent or contiguous sites. Screening may include one (1) or a combination of the following materials of sufficient mass to be opaque or which shall become opaque after twelve (12) months and which shall be maintained year-round in an opaque condition: walls, fences, berms or plantings.~~

SCREEN (or SCREENING) – A device or materials used to visually shield one site or one element of a site from a neighboring site or the street. Screening devices may include walls, fences, berms, plantings or a combination thereof. Screening incorporates a high year-round vertical opacity. (Also see “Buffer.”)

~~**SEASONAL HIGH WATER TABLE**—The highest level of the groundwater table during the wettest season of the year, usually in the spring.~~

SENIOR CARE FACILITY – Housing principally used, designed, or adapted for use by citizens fifty-five (55) years of age and older who are not capable of living independently and who require assistance in activities of daily living. Residents of a senior care facility receive a package of services to meet their needs. A senior care facility may be contained in a single building or group of buildings and may include assisted living, memory care, and/or nursing home facilities. A ~~“life-care community”~~ **life-care community, continuous care retirement community (CCRC)** or other retirement community that provides a continuum of care including both independent living units and units for residents ~~that who~~ require ~~assistance,~~ **assistance** is considered to be a senior care facility. (See *Nursing Home*.)

SENIOR HOUSING – ~~In accordance with~~ Pursuant to RSA 354-A:15, **age-restricted housing refers to a development in which** either: a) housing where at least 80% of the units are occupied by at least one person 55 years of age or older; or b) housing where 100% of the occupants are 62 years of age or older. **In any development or portion of a development in Durham referred to as “age-restricted housing” 100% of the units include at least one person 55 years of age or older, unless otherwise specified.**

SEPTAGE - Material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, but not including sewage sludge from public treatment works and industrial waste and any other sludge. (As defined in RSA 485-A:2.)

SETBACK – The required minimum (except where “maximum” is specified) horizontal distance in feet from a lot line, shoreline, or other **designated referenced line or point to any a** structure. **See The Table of Dimensions and Subsection 175-56. D. Setbacks. Where eaves, overhangs, cladding materials, and architectural details on a building project 18” or less from the building face, the setback is measured from the applicable building foundation. Where eaves, overhangs, cladding materials, and architectural details on a building project more than 18” from the building face, the setback is measured from the furthest point where those elements extend from the building. Table 175-54, Table of Dimensions, gives front, side, and rear setbacks, which are measured from front, side, and rear lot lines, respectively. See “Building” and “Structure.”**

SETBACK AREA – The section of the front, side, or rear of a lot corresponding to the area within which structures may not be placed in accordance with front, side, or rear setbacks, respectively. *(Also called “Yard.”)*

SEWAGE - The water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present. (As defined in RSA 485-A:2.)

SHALL – Where the term “shall” is used, the person or party is required to do what is referred to.

~~SHOREFRONTAGE SHORE FRONTAGE~~ – The width of a lot bordering ~~on a waterbody or wetland on the following waterbodies~~, measured in a straight line between the intersections of the lot lines with the reference line (*See definition*): ~~Great Bay, Little Bay, the Oyster River, the Lamprey River, Johnson Creek, Bunker Creek, Folletts Brook, and the tidal sections of their tributary streams.~~

~~SHORELAND PROTECTION ZONE~~—~~Encompasses all land within two hundred fifty (250) feet of the reference line of Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributary streams; and within seventy-five (75) feet of all other perennial brooks. These water bodies are designated on the Durham Shoreland Protection Zone Overlay Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham.~~

SHORT-TERM RENTAL – An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than thirty consecutive days. A short-term rental is not considered a home occupation. *(See Article XX.)*

~~SIDEWALK~~—~~Any public or private way or thoroughfare, paved or unpaved, intended for the use of pedestrians or foot traffic.~~

SIGN – *See definitions in Article XXIII. Signs.*

[Pertinent items below being moved to Article XXIII. See section toward end of this document.]

~~SIGN~~—~~Any exterior or exterior-oriented structure, or part thereof, or device attached thereto, or other outdoor surface including billboards or any combination of one or more of the foregoing containing any word, letter, symbol, drawing, model, banner, flag, picture or design, or any device used for visual communication which identifies or calls attention to any premises, person, product activity, or business, directing the subject thereof to the attention of the public. Specific definitions pertinent to signage follow.~~

~~Accessory Sign~~—~~Any sign relating to a business on the premises on which the sign is located.~~

~~Advertising Sign – Any sign for the purpose of portraying a business, product or location situated on or away from the premises on which the said sign is located.~~

~~Combination Sign – Any sign which combines the characteristics of two or more types of signs.~~

~~Flashing Sign – Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.~~

~~Freestanding Sign – Any sign which is not a part of or attached to any building but is located elsewhere on a lot.~~

~~Identifying Sign – Any sign or plate giving the name and/or address only of the business or occupant of the premises on which the said sign or plate is located.~~

~~Illuminated Sign – Any sign that is lit by electricity either directly or indirectly.~~

~~Monument Sign – A type of freestanding sign that is anchored to the ground without poles or posts, often with a masonry surround.~~

~~Neon Sign – Any light sign using exposed neon tubes for illumination or display.~~

~~Non-Accessory Sign – Any sign advertising a business or businesses at other locations.~~

~~Private Directional Sign – Any sign of a permanent nature that directs the traveling public to specific buildings, areas, people or things.~~

~~Projecting Sign – Any sign which is attached to a building or other structure and extends more than twelve (12) inches beyond the line of the said building or structure or beyond the surface of that portion of the building or structure to which it is attached.~~

~~Public Clock and Thermometer – Any time piece or thermometer erected upon a structure upon the sidewalk or ground or on the exterior of a building or structure for the convenience of the public.~~

~~Pole Sign – A type of freestanding sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.~~

~~Reader Board – A sign that is flush mounted, does not exceed three (3) square feet in size and provides a fixed location for the advertisement of daily specials.~~

~~Roof Sign – Any sign erected upon or over the roof of any building.~~

~~***Sandwich Board Sign* – A portable sign with an A-frame shape intended to be placed in a front yard or on a public sidewalk.**~~

~~***Size of Sign* – The total exposed surface area in square feet. Where a sign is composed of fabricated letters attached to a wall, the size of the sign shall be determined as twice the average height of the letters times the length of the message.**~~

~~***Snipe Sign* – Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.**~~

~~***Temporary Sign* – Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard or wallboard or other light materials, with or without frames, intended to be displayed for a short period of time only.**~~

SITE PLAN – A plan of a lot, tract or parcel of land showing the specific location of all existing and proposed features, such as buildings, other structures, driveways, parking, landscaping, easements, utilities, and drainage structures.

SLOPE – A measurement of the deviation of a ground surface from horizontal measured in percent (rise over run) or in degrees. (See Grade.)

SLUDGE - The solid or semisolid material produced by water and wastewater treatment processes, but not including domestic septage. However, sludge which is disposed of at solid waste facilities as permitted by the New Hampshire Division of Environmental Services is considered solid waste. (As defined in RSA 485-A:2.)

SOIL, POORLY DRAINED – Any soil type having a soil drainage classification of “poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL, SOMEWHAT POORLY DRAINED – Any soil type having a soil drainage classification of “somewhat poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOIL SURVEY, HIGH INTENSITY – A soils map and related materials prepared and certified by a New Hampshire Certified Soil Scientist in accordance with ~~the most recent standards for high intensity soils surveys and/or mapping published by the~~ **The Society of Soil Scientists of Northern New England (SSSNNE) Special Publication - No.1, High Intensity Soil Maps for New Hampshire (www.sssnne.org), as amended.**

SOIL, VERY POORLY DRAINED – Any soil type having a soil drainage classification of “very poorly drained” when classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England.

SOLAR ENERGY SYSTEMS – Specific definitions pertinent to solar energy systems follow.

Building-Mounted Solar Energy System – A solar energy system attached to and completely supported by a building that does not extend more than 5 feet beyond the building footprint. The system may include necessary accessory equipment that is ground mounted.

Freestanding Solar Energy System – A ground-mounted solar energy system, including a stationary or tracking system (either single axis or dual axis). A Solar Photovoltaic (PV) Parking Canopy is not a Freestanding Solar Energy System.

Group Net Metering Host, Small – A Solar Photovoltaic (PV) System less than or equal to 100 KW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Group Net Metering Host, Large – A Solar Photovoltaic (PV) System greater than 100 KW and less than 5 MW that shares energy and Net Metering benefits with members of a registered group per N.H. PUC 909.

Multi-unit Residential or Nonresidential Solar Energy System – An accessory use designed to provide solar energy for the principal and accessory uses of Multi-Unit Residential, mixed Use with Residential and other Nonresidential uses.

Name Plate Rating - The maximum sustained electric power-generating capacity of the Solar Energy System.

Solar Energy – Radiant energy emitted by the sun.

Single-Family or Duplex Residential Solar Energy System – A Solar Energy System that is an accessory use designed to generate energy for use at the property. A Single-Family or Duplex Residential Solar System may also be a Small Group Net Metering Host up to the size limits specified in 175-109.N.4.

Solar Energy System – A structure and the related components used to transform solar energy into electricity (through a solar photovoltaic system) or heat (through a solar thermal system).

Solar Photovoltaic (PV) Parking Canopy – An elevated structure that supports solar panels over a parking area. A solar photovoltaic parking canopy is not a carport. The structure is not used with single-family and duplex uses, nor is it considered *structured parking*.

Solar Photovoltaic (PV) System – A solar collection, mounting, inversion, storage and distribution system that converts sunlight into electricity.

Solar Thermal System – A solar collection system that directly heats a heat-transfer medium.

Utility-Scale Solar Energy System, Small - A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity equal to or less than 100 kW that generates energy for use off site by customers. A Small Utility-Scale Solar Energy System does not function as a Small Group Net Metering Host.

Utility-Scale Solar Energy System, Large – A limited electrical energy producer as defined in RSA 362-A:1 with a solar energy generating capacity of greater than 100 kW and less than 5 MW that generates energy for use off site by customers. A Large Utility-Scale Solar Energy System does not function as a Large Group Metering Host

SOLID WASTE – Any discarded or abandoned material, including refuse, putrescible material, septage or sludge, as defined by New Hampshire Solid Waste Rule He-P 1901.03. ~~"Solid waste"~~ *Solid Waste* includes solid, liquid, semisolid or gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations.

SPECIAL EXCEPTION – ~~A use which would not be appropriate generally or without restriction in a particular district, and accordingly, is allowable as specifically authorized in this chapter and only after a public hearing and determination by the Zoning Board of Adjustment.~~ *See Article VIII. Variances and Special Exceptions.*

~~SPECIAL FLOOD HAZARD AREA—See “Area of Special Flood Hazard.”~~

~~START OF CONSTRUCTION—The date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations on the property or accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.~~

STEEP SLOPE – A slope exceeding 15% where there is a change in elevation of at least 4 feet. See Slope.

STORY - The complete horizontal division of a building, situated at or above ground level, comprising the usable space or room(s) on one level. Each such division is considered one full story, except for the top level when it is under a sloped roof, which is considered a half story. For the purpose of determining the total number of permitted stories, a sloped roof that does not contain usable space (other than crawl-type storage space) is not considered a half story. For the purposes of this ordinance, a lower level is considered to be a story if the front

exterior wall of the lower floor level rises more than two feet above the finished grade. Cupolas with areas of 100 square feet or less do not count as a story.

STREET, ARTERIAL – A high-order street designed to provide access to the regional transportation system and move traffic through or around the town or from one general area of the town to another. "Arterial streets" include Main Street west of Mast Road, U.S. Route 4, Route 108, Route 155A and Route 155.

STREET, COLLECTOR – A middle-order street which is functionally classified as a "collector" and ~~that~~ collects local traffic from neighborhoods and moves it to an adjacent neighborhood or transfers the traffic to the arterial system. *Bagdad Road*, Bay Road, Bennett Road, Durham Point Road, *Emerson Road*, Madbury Road, Main Street (from Newmarket Road to Mast Road), Mill Road, and Packers Falls Road are considered collector streets.

~~STREET LINE – The line dividing a lot from a street right-of-way.~~

STREET, MINOR – A low-order local street. If a particular street is not classified as an arterial or collector street, it is considered a minor street.

STREET, PRIVATE – A private right-of-way for vehicles which provides a principal means of access to two (2) or more lots and is subject to an easement for ingress and egress running with the land to the benefit of all lots having frontage thereon. ~~Such easement shall define the parties responsible for maintenance, the collection of trash and recyclables, and snow removal.~~

STREET, PUBLIC – A dedicated public right-of-way for vehicles which affords a principal means of access to abutting properties.

~~STREET LINE – The street right of way line/lot boundary line separating the street right of way from the lot.~~

STRUCTURE (~~See additional definitions immediately below.~~) – That which is built or constructed with a fixed location on the ground or attached to something having a fixed location on the ground. *See Section 175-56. D. for setbacks applicable to structures and exemptions thereof. Structure includes, but is not limited to, a building, swimming pool, mobile home, billboard, pier, wharf, septic system, parking space/parking lot and deck. Structure does not include a minor installation such as a fence six (6) feet high or less in height, a mailbox, a flagpole, or an accessory shed.*

~~STRUCTURE – (For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.~~

~~STRUCTURED PARKING – A structure or portion of a structure that provides parking. The parking may be above or below grade, may be covered or uncovered, and may be on multiple levels. See "Surface Parking"~~

~~SUBDIVISION – The division of a lot, tract or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division or resubdivision of a lot into two or more lots, a lot line adjustment, the creation of a condominium, or the conversion of land or a building(s) to a condominium form of ownership.~~

~~The division of a parcel of land, held in common and subsequently divided into parts among the several owners, shall be deemed a subdivision under these regulations.~~

~~The granting of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters, and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be construed as a subdivision under these regulations, and shall not be deemed to create any new division of land for any other purpose.~~

~~SUBSTANTIAL DAMAGE—Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.~~

~~SUBSTANTIAL IMPROVEMENT—Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."~~

~~SURFACE PARKING—A parking lot or similar uncovered, single-level parking facility that provides at-grade parking that is not located within a structure.~~

THEATER – A building or part of a building ~~devoted to~~ whose principal use is showing motion pictures or ~~providing~~ live ~~dramatic or musical~~ performances.

TOXIC OR HAZARDOUS MATERIAL – Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant actual or potential hazard to water supplies or other hazard to human health. "Toxic or hazardous materials" include, but are not limited to: volatile organic chemicals; petroleum products; heavy metals; radioactive materials;

infectious materials or wastes; acids; alkalis; products such as pesticides, herbicides, solvents and thinners; or such other substances as defined in New Hampshire Department of Environmental Services Rules Section Env-Wm-400, in New Hampshire Solid Waste Rule Env-Wm 100 and in the Code of Federal Regulations 40 CFR 261, as amended. The more-restrictive rules shall apply in all cases.

The following commercial activities are presumed to use toxic or hazardous materials and/or to generate wastes containing toxic or hazardous materials, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board. In all cases the burden of proof shall rest with the applicant:

- A. Airplane, boat and motor vehicle service and repair, including gasoline stations.
- B. Chemical and biological laboratory operations.
- C. Dry cleaning.
- D. Electronic circuit manufacturing.
- E. Metal plating, finishing and polishing.
- F. Motor and machinery service and assembly.
- G. Painting, wood preserving and furniture stripping.
- H. Pesticide and herbicide application.
- I. Photographic processing.
- J. Printing.
- K. Any other commercial or industrial activity which, in the judgment of the Planning Board, typically uses toxic or hazardous materials or produces wastes containing toxic or hazardous materials.
- L. Storage and/or distribution of chemicals or any other hazardous materials used in any of the above activities.

TREATED SOILS – Soils decontaminated by a treatment process and certified for distribution and use as soil under NH Env-Wm 3203.11, having originally been contaminated with liquids or materials not regulated by the State of New Hampshire as hazardous waste defined under NH Env-Wm 2603.01.

TREE WARDEN - *The person designated by the Town Administrator to assist the Town boards, residents, and other Town staff in any appropriate matters related to the conservation, protection, and enhancement of native and naturalized trees and other vegetation located on both public and private property in Durham, in furtherance of the*

goals of this Zoning Ordinance and other Town ordinances and regulations, and pursuant to RSA 231:139 (II).

~~**TRUCKING AND DISTRIBUTION FACILITY**—A facility for the short-term storage and trans-shipment of materials or goods including express delivery, common carriers, oil terminals, moving companies, and similar operations.~~

~~**UNDERSTORY**—Vegetation ranging from three (3) feet to fifteen (15) feet in height.~~

UNRELATED OCCUPANTS – Persons living in an unrelated household. (See definition for “Household.”)

UNRELATED HOUSEHOLD – See “Household.”

UNSUITABLE AREA – The area of a parcel that must be subtracted from the gross area of the parcel to determine the usable area of the parcel. See “Usable Area.”

Reverse the order of Use and Usable Area, below.

USE – The specific purpose(s) for which a building or lot *or a portion thereof* is arranged, intended, designed, occupied or maintained.

USABLE AREA – The area of any conservation subdivision, that is suitable, in its natural state, for development or intensive use and, therefore, can be used in determining the allowed density of development. The usable area of a parcel of land ~~shall be~~ *is* determined in accordance with the provisions of Section 175-56(E).

VARIANCE – A ~~variation~~ *deviation* from the terms of this chapter, ~~not otherwise permitted within the district concerned, which may be granted by the Zoning Board of Adjustment pursuant to its discretionary power allowed when the Zoning Board of Adjustment determines that the required criteria are met.~~ See Article VIII.

~~**VERNAL POOL**—A body of water, typically seasonal, that provides essential breeding habitat for certain amphibians and invertebrates, does not support viable fish population, and meets the criteria established by the New Hampshire Fish and Game Department, Nongame and Endangered Wildlife Program, Identification and Documentation of Vernal Pools in New Hampshire, rev 2004, as amended.~~

VETERINARY CLINIC – See Animal Care.

~~**VETERINARY CLINIC/GROOMING ANIMAL CARE** – A facility where animals or pets are given medical or surgical treatment, provided with grooming, or provided with training or where animals and pets are groomed,~~ and in which the boarding of animals is short-term and incidental to the ~~medical care or grooming~~ *medical care, grooming, or training*.

~~**WAREHOUSE, MINI-STORAGE SELF STORAGE FACILITY** – Any self-service facility composed of individual units or lockers rented to the public for storage of personal or business belongings. Any self-service storage building housing individual storage units or~~

~~lockers, each of which is accessible through a private entrance, and rented to the public for storage of personal or business belongings.~~

~~**WATER-DEPENDENT STRUCTURE**—A structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.~~

~~**WETLAND** – See the *Wetland and Shoreland Overlay District*. An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands include, but are not limited to, swamps, marshes, bogs, vernal pools, and similar areas.~~

~~**WETLAND, NON-TIDAL**—A wetland that is not subject to periodic inundation by tidal waters.~~

~~**WETLAND, PRIME**—A wetland designated by the Town Council in accordance with RSA 482-A:15 as having one or more of the values set forth in RSA 482-A:1 and that, because of its size, unspoiled character, fragile condition or other relevant factors, makes it of substantial significance.~~

~~**WETLAND, TIDAL**—A wetland whose vegetation, hydrology, or soils are influenced by periodic inundation of tidal waters.~~

~~**WHOLESALE SALES**—Trade that involves the sale of merchandise, in bulk or large quantities, exclusively to retailers for resale or to industrial, commercial, or institutional users.~~

~~**WORKFORCE HOUSING CONSERVATION SUBDIVISION** – A conservation subdivision that provides housing for rent and/or for sale which meets the standards for Workforce Housing in accordance with RSA 58-61. See Article XIX. Conservation Subdivisions.~~

~~**YARD** – See *Setback Area*.~~

PROPOSED CHANGES TO OTHER ARTICLES, RELATED TO THE PROPOSED CHANGES ABOVE

- Replacement of current terms with new terms. Replace the terms throughout the Zoning Ordinance, wherever they currently appear, as stated below. Capitalize letters as appropriate consistent with the current context.
- Replace *accessory dwelling unit* with *accessory dwelling unit – attached*.
 - Replace *accessory apartment* with *accessory dwelling unit – detached*.

- Replace *child care (or childcare) center* with *day care center*.
 - Replace *child care (or childcare) home* with *day care home*.
 - Replace *shorefrontage* with *shore frontage*.
 - Replace *structured parking* with *parking garage (or a parking garage, as appropriate)*
 - Replace *surface parking* with *parking lot (or a parking lot, as appropriate)*
- ***Throughout the ordinance, replace multiunit with multi-unit, wherever the former currently appears. Capitalize letters as appropriate consistent with the context.***

ARTICLE XII.1. USE AND DIMENSIONAL STANDARDS

175-53. Table of Land Uses.

- ***Change the term “eldercare facilities” in Note 3 at the end of the Table of Dimensions to “senior care facilities”.***

Table of Uses – [*Proposed changes pursuant to changes in Article II – Definitions]**

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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	Durham Business Park (DBP)
I. NATURAL RESOURCE USES													
Principal Uses													
Conservation activities	P	P	P	P	P	P	P	P	P	P	P	P	P
Excavation and/or mining	CU	X	X	X	X	X	X	X	X	X	X	X	X
II. RURAL USES													
Principal Uses													
Commercial agriculture	P	X	X	P	X	X	X	X	X	P	P	P	X
Commercial animal husbandry	P	X	X	P	X	X	X	X	X	P	P	P	X
Plant nursery	P	X	X	P	X	X	X	X	X	P	P	P	X
Kennel	CU	X	X	CU	X	X	X	X	X	CU	X	CU	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Stable	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
Forestry (See Article XX)	P	P	P	P	X	X	X	X	P	P	P	P	P
Temporary sawmill (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	P
Reuse of existing agricultural building (See Article XX)	CUA	X	X	CUA	X	X	X	X	X	P	P	P	P
Uses Accessory to Commercial Agriculture and Animal Husbandry													
Retail sales of farm products	P	X	X	P	X	X	X	X	X	CU	CU	CU	X
III. RESIDENTIAL USES													
Principal Uses													
Residence, single-family	P	P	P	P	X	P	P	X	X	X	CU	CU	X
Residence, duplex	X	X	X	X	X	X	X	X	X	X	X	X	X
Residence, multi-unit	X	X	X	X	X	CUA	X	X	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Accessory agricultural activities (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Accessory animal husbandry - livestock (See Article XX)	P	P	P	P	X	X	X	X	X	CU	CU	CU	X
Accessory animal husbandry - goats (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Accessory animal husbandry - poultry (See Article XX)	P	P	P	P	X	X	X	X	X	P	P	P	X
Uses Accessory To a Single Family Residential Use													
Accessory dwelling unit – <i>attached</i> (See Article XX)	P	P	P	P	X	P	P	X	X	X	P	P	X
Accessory apartment <i>dwelling unit - detached</i> (See Article XX)	P	X	X	P	X	P	P	X	X	X	P	P	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Short term rental	SE	SE	SE	SE	P	P	P	P	P	SE	SE	SE	X
IV. INSTITUTIONAL USES													
Principal Uses													
<i>Adult day care facility</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>CU</i>
Art center	X	X	X	X	P	X	P	P	CU	X	X	X	X
<i>Child care center or child care nursery</i> Day care center (See Article XX)	P	X	X	P	P	P	<i>CU P</i>	P	<i>CU P</i>	P	<i>CU P</i>	<i>CU P</i>	<i>CU P</i>
<i>Nursery or pre-school</i>	<i>P</i>	X	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>CU</i>	<i>P</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>	<i>CU</i>
Club	X	X	X	X	P	X	CU	CU	CU	X	X	X	X
Community center	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Educational facility	X	X	X	X	CU	P	CU	P	X	X	CU	CU	CU
Fraternity/sorority house	X	X	X	X	CU	CUA	X	X	X	X	X	X	X
<i>Government facility</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>
Hospital	X	X	X	X	X	X	X	X	X	X	CU	CU	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Library	X	X	X	X	P	P	P	P	P	P	X	X	X
Museum	CU	X	X	CU	P	P	P	P	CU	X	X	CU	CU
Religious use/facility	CU	CU	CU	CU	CU	P	P	X	CU	CU	X	X	X
V. RECREATIONAL USES													
Principal Uses													
Golf course	CU	X	X	CU	X	X	X	X	X	X	X	X	X
Recreational facility, indoor	X	X	X	X	X	X	X	X	X	P	P	P	P
Recreational facility, outdoor	CU	X	X	CU	X	X	X	X	CU	CU	CU	CU	CU
Recreational playing fields, outdoor	P	P	P	P	X	X	X	X	CU	P	P	P	CU
VI. UTILITY & TRANSPORTATION USES													
Principal Uses													
Structured parking Parking garage	X	X	X	X	CU	X	X	CU X	CU X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Surface parking Parking lot	X	X	X	X	CU	X	CU X	CU	X	X	X	X	X
Public utility facility	CU	X	X	CU	X	X	X	X	X	P	P	P	P
Personal Wireless Service Facility (See Article XVIII)	P	P	P	P	P	P	P	P	P	P	P	P	P
VII. COMMERCIAL & INDUSTRY USES													
Principal Uses													
Reuse of older single-family residence for a low impact nonresidential use (See Article XX)	CUA	X	X	CUA	P	P	P	P	P	P	P	X	X
Bed & breakfast	P	P	P	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Inn	P	X	X	P	CUA	CUA	CUA	CUA	CUA	CUA	CUA	X	X
Conference center	X	X	X	X	CU	P	CU	P	P	CU	X	X	CU
Hotel	X	X	X	X	P	P	CU	P	CU	CU	CU	CU	CU
Restaurant	X	X	X	X	P	X	P	P	X	X	X	X	X
Restaurant, carry-out	X	X	X	X	P	X	X	P	X	X	X	X	X

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	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 (MUDOP)	Office Research Light Industry	Durham Business Park (DBP)
Office, professional	X	X	X	X	P	P	P	P	P	P	P	P	P
Repair services	X	X	X	X	P	X	CUA	P	X	CU	CU	CU	CU
Automotive service Motor vehicle gas station	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle service facility	X	X	X	X	X	X	X	P	X	X	X	X	X
Motor vehicle sales and service facility	X	X	X	X	X	X	X	P	X	X	X	X	X
Automobile/car Car wash	X	X	X	X	X	X	X	P	X	X	X	X	X
Marine sales and service	X	X	X	CU	X	X	X	X	X	X	X	X	P
Boatyard/Boat club	X	X	X	CU	X	X	X	X	X	X	X	X	P
Research facilities and labs	X	X	X	X	X	X	X	X	X	P	P	P	P
Manufacturing, light	X	X	X	X	P	P	P	P	P	P	P	P	P
Warehouse	X	X	X	X	X	X	X	X	X	CU	X	CU	CU
Self storage facility	X	X	X	X	X	X	X	X	X	X	X	X	X
Wholesale sales	X	X	X	X	X	X	X	X	X	CU	X	CU	CU

175-56. General Dimensional Standards.

- *Change “D. Permitted uses in setback areas.” to “D. Setbacks. Setbacks apply to all structures with the following exceptions and additional provisions:”*
- *Add the following provisions under D. Setbacks:*
 3. *Setbacks do not apply to the following structures unless another provision provides setbacks specifically to those structures: fences, retaining walls less than six feet in height, signs, light poles, utility poles, flagpoles, structures such as piers and docks where the setback would prevent installation of the structure where it must inherently be situated, driveways, and minor installations like mailboxes,*
 4. *Where eaves, overhangs, cladding materials, and architectural details on a building project 18” or less from the building face, the setback is measured from the applicable building foundation. Where eaves, overhangs, cladding materials, and architectural details on a building project more than 18” from the building face, the setback is measured from the furthest point where those elements extend from the building.*

ARTICLE XV. FLOOD HAZARD OVERLAY DISTRICT

- *Add a new Section 175-77.1. Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-77.1 Definitions. Specific definitions pertinent to the Flood Hazard Overlay District, as defined by the Federal Emergency Management Agency, follow:

Area of Special Flood Hazard - The land in the floodplain within the Town of Durham subject to a one percent or greater possibility of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.

Base Flood - The flood level having a one-percent possibility of being equaled or exceeded in any given year.

Base Flood Elevation - The water surface elevation having a one percent possibility of being equaled or exceeded in any given year.

Basement - Any area of a building having its floor subgrade on all sides.

Building - Any structure designed or intended for the support, enclosure, shelter or protection of persons, domestic animals, chattels or property. For purposes of determining exterior measurements or footprint in order to locate the setback line, "building" includes all attached structures such as open or closed porches, carports, garages, balconies, stairways and other similar structures. (Also see “Structure” for floodplain management purposes.)

Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FEMA - The Federal Emergency Management Agency.

FIRM –Flood Insurance Rate Map.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) - The official map incorporated with this ordinance, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

Floodplain or Flood-Prone Area - Any land area susceptible to being inundated by water from any source. See "flood or flooding."

Floodproofing - Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway, Regulatory - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than a designated height.

Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure - Any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(i) by an approved state program as determined by the Secretary of the Interior, or

(ii) directly by the Secretary of the Interior in states without approved programs.

Lowest Floor - *The lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's "lowest floor," provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.*

Manufactured Home - *A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.*

Manufactured Home Park or Subdivision - *A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.*

Mean Sea Level - *The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum to which base flood elevations shown on a community's FIRM are referenced.*

New Construction - *For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.*

Recreational Vehicle (RV) - *A vehicle which is: (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use.*

Special Flood Hazard Area - *See "Area of Special Flood Hazard."*

Start Of Construction - *Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement occurs within one hundred eighty (180) days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of manufactured housing or pre-site presite built housing on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of*

accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

Structure (for Floodplain Management Purposes) - A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial Improvement - Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure shall be the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Violation - The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required under this ordinance is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

ARTICLE XVI. AQUIFER PROTECTION OVERLAY DISTRICT

➤ *Insert a new Section 175-84.1 Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-84.1. Definitions.

The following definitions apply in this overlay district:

Aquifer. *A geologic formation, group of formations or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies. Aquifer includes both bedrock aquifers and stratified drift aquifers.*

Aquifer Recharge Area. *The area in which water is absorbed that eventually reaches the zone of saturation in one or more aquifers.*

Leachable Wastes. *Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes, that can leach contaminants into the groundwater or surface water resources.*

Article XVII. Durham Historic Overlay District

- *Create a new Section 175-90.1 Definitions with new definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-90.1 Definitions. The following definitions apply within the Historic Overlay District:

Contributing Structure. *A property or structure in the Historic Overlay District that is part of Durham’s heritage and contributes to the district’s sense of time, place and historical development by virtue of its age, historical use, location, design, setting, materials, workmanship, aesthetics, or association, as determined by the Historic District Commission.*

Exterior Architectural Appearance. *The architectural character, general composition, and arrangement of the exterior of the structure, including the kind, color, and texture of the building materials and type and character of windows, doors, light fixtures, signs, and appurtenant elements.*

Noncontributing Structure. *A property or structure which, due to its recent vintage, incompatible design, or incompatible alterations would not be considered to contribute to that character or quality of the Historic Overlay District that the Town seeks to preserve.*

Structure. *Anything that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.*

Article XVIII. Personal Wireless Service Facilities Overlay District.

- *Add new Section 175-100.1 Definitions, as follows:*

[The definitions below are not being changed, only relocated.]

175-100.1. Definitions.

The following terms apply to personal wireless service facilities.

Alternative Tower Structure - Innovative siting structures that include artificial trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna - The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.

Antenna Array - A collection of antennas attached to a mount to send and receive radio signals.

Average Tree Canopy Height - An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height for a defined area, such as the area delineated in Section 175-103.A.4.

Camouflaged - A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier - A company that provides personal wireless services, also sometimes referred to as a provider.

Co-location - The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Concealment - The enclosure of a personal wireless service facility within a natural or human-made feature resulting in the facility being not visible from the outside or being part of the feature enclosing it.

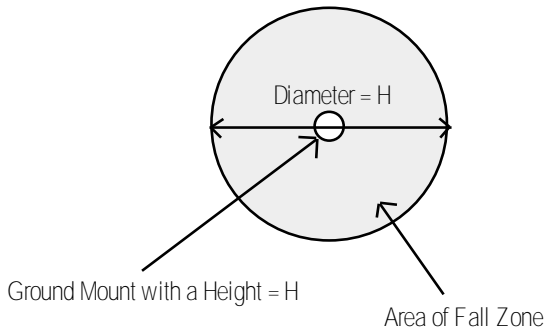
Disguise - Changing the appearance of a Personal Wireless Service Facility to appear to be something it is not.

Environmental Assessment (EA) - A document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

Equipment Shelter - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Fall Zone - The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal the height of the facility, including any antennas or other appurtenances, as set forth in Figure II-1. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Figure XVIII-1



Guyed Tower - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice Tower - A type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

Mast - A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel, concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount - The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. **Roof-mounted.** Mounted on the roof of a building.
- B. **Side-mounted.** Mounted on the side of a building.
- C. **Ground-mounted.** Mounted on the ground.
- D. **Structure-mounted.** Mounted on a structure other than a building.

Personal Wireless Service Facility – Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service facilities include a mount, antenna, equipment shelter, and other related equipment. Specific definitions pertinent to Personal Wireless Service Facilities follow.

Personal Wireless Services - The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

Radio Frequency (RF) Engineer - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio Frequency Radiation (RFR) - The emissions from personal wireless service facilities.

Security Barrier - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation - distance between one carrier's array of antennas and another carrier's array.

- *Change the label for the figure in Section 175-104 A. 7. from “Figure XVIII” To “Figure XVIII-2*

ARTICLE XX.1 STANDARDS FOR AGRICULTURAL USES.

- *Add a new Section 175-109.2 Definitions as follows (and renumber the current section 175-109.2 to 175-109.3):*

[The definitions below are not being changed, only relocated.]

175-109.2 Definitions. The following definitions apply to this article:

AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a - Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)

Accessory Uses. *The following are considered accessory uses to an allowed agricultural use:*

- 1. The storage, use of, and spreading of soil amendments, as defined in this section.*
- 2. The use and application of agricultural chemicals pursuant to state requirements.*
- 3. The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.*
- 4. The transportation of farm workers.*
- 5. The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.*
- 6. Irrigation of growing crops from private water supplies or public water supplies.*
- 7. The use of dogs or other livestock guard animals for herding, working, and guarding livestock.*
- 8. The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.*

9. *A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.*
10. *Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and appropriate agencies of the United States Department of Agriculture.*
11. *Agritourism, as defined in this section.*

Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)

Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.

Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.

Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.

Aquaculture – Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.

Bees, Keeping of. The raising of bees and cultivation and sale of bee products.

Bees, Keeping of - Accessory Use. The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.

Best Management Practices For Agriculture (BMPs) – Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.

[Reference: <http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>]

Chickens and Turkeys, Keeping of - Accessory Use. *The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)*

Crop Cultivation. *The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.*

Farm or Farming. *Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.*

Farmers' Market. *An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.*

Farmstand, Accessory. *A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)*

Forestry. *The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.*

Fur-bearing Animals, Keeping of. *The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.*

Goats and Sheep, Keeping of. *The raising, breeding, and sale of goats and sheep.*

Goats and Sheep, Keeping of – Accessory Use. *The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.*

Horses, Keeping of. *The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.*

Horses, Keeping of - Accessory Use. *The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.*

Livestock - Large, Keeping of. *The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).*

Livestock – Large, Keeping of – Accessory Use. *The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.*

Poultry, Keeping of. *The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of – Accessory Use is restricted to only those two types of poultry.)*

Rabbits, Keeping of. *The raising, breeding and sale of rabbits.*

Rabbits, Keeping of – Accessory Use. *The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.*

Soil Amendments. *Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.*

Swine, Keeping of. *The raising, breeding, or sale of swine and swine products.*

Swine, Keeping of – Accessory Use. *The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.*

ARTICLE XXIII. SIGNS AND COMMUNICATIONS DEVICES

- *Change the name of this Article from “Article XXIII. Signs and Communications Devices” to “Article XXIII. Signs.” wherever the name of this article appears in the Zoning Ordinance.*
- *Insert a new Section 175-119.1 Definitions as follows:*

[The definitions below are not being changed, only relocated.]

175-119.1 Definitions.

Accessory Sign - *Any sign relating to a business on the premises on which the sign is located.*

Flashing Sign - *Any sign that moves, flashes, contains traveling lights, or gives the impression of any movement or flashing.*

Freestanding Sign - *Any sign which is not a part of or attached to any building but is located elsewhere on a lot.*

Neon Sign - *Any light sign using exposed neon tubes for illumination or display.*

Projecting Sign - Any sign which is attached to a building or other structure and extends more than twelve (12) inches beyond the line of the said building or structure or beyond the surface of that portion of the building or structure to which it is attached.

Pole Sign - A type of freestanding sign supported by or suspended from a freestanding column or columns of structural steel, pipe or poles.

Reader Board - A sign that is flush mounted, does not exceed three (3) square feet in size and provides a fixed location for the advertisement of daily specials.

Roof Sign - Any sign erected upon or over the roof of any building.

Sandwich Board Sign - A portable sign with an A-frame shape intended to be placed in a front yard or on a public sidewalk.

Sign - Any exterior or exterior-oriented structure, or part thereof, or device attached thereto, or other outdoor surface including billboards or any combination of one or more of the foregoing containing any word, letter, symbol, drawing, model, banner, flag, picture or design, or any device used for visual communication which identifies or calls attention to any premises, person, product activity, or business, directing the subject thereof to the attention of the public.

Snipe Sign - Any sign of a non-permanent nature or construction attached to trees, poles, posts or sides of buildings or structures.

Temporary Sign - Any sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard or wallboard or other light materials, with or without frames, intended to be displayed for a short period of time only.

PASSED AND ADOPTED this _____ day of _____ 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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Durham, NH 03824
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Fax: 603-868-1858
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AGENDA ITEM: **#13**
DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL MEETING MINUTES FOR
DECEMBER 9, 2024 AND DECEMBER 16, 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 meetings held on December 9, 2024 and December 16, 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 #1:

The Durham Town Council does hereby approve the Town Council meeting minutes for December 9, 2024 (as presented/as amended).

MOTION #2:

The Durham Town Council does hereby approve the Town Council meeting minutes for December 16, 2024 (as presented/as amended).



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AGENDA ITEM: **#14A**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Planning Board

AGENDA ITEM: **FIRST READING ON ORDINANCE #2025-02 AMENDING CHAPTER 175, "ZONING," ARTICLE XVII, "DURHAM HISTORIC OVERLAY DISTRICT," SECTION 175-94, "PURVIEW OF THE BOARD," AND SCHEDULING A PUBLIC HEARING FOR MONDAY, FEBRUARY 17, 2025.**

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

The Historic District Commission voted to request this amendment on October 10, 2024. It was presented to the Planning Board which then held a public hearing for the change on December 11. Following the hearing the board voted to formally initiate the amendment. The amendment involves: 1) establishing a procedure for the review of tree removal; and 2) eliminating review of benches, other types of seating, and tables.

Tree removal. The Historic District Commission has purview over the removal or destruction of any healthy tree in the Historic District with a diameter of 12 inches or more. The Durham Tree Warden is the appropriate person to determine whether or not a tree is healthy. The Tree Warden is customarily the Director of Public Works. The current tree warden is a certified arborist so that is helpful. In the event that the tree warden is not an arborist (as was the case with the prior tree warden), they would seek assistance in making a determination, when needed.

The procedure for review needs to be clarified. If the tree warden determines that a tree is "not healthy," then arguably removal of that tree is not subject to review by the Historic

District Commission. However, there is no reference to the tree warden in the provision regarding tree removal, so one might argue that their “determination” does not rule.

Currently, except in very obvious situations, the opinion and recommendation of the tree warden has been requested, and then an application has been presented to the Commission for a decision. If the tree warden is the best person to make the determination, then it should not be necessary to also present an application to the Commission once such a determination is made. The proposed ordinance spells out a revised procedure accordingly.

Benches and tables. The Historic District Commission has purview over the installation of structures in the Historic District. Structure is defined as follows. In the proposed amendment for Definitions, this definition would be relocated to the article on the Historic District but the language would not change.

STRUCTURE – (For Historic Overlay District purposes) Anything within the Historic Overlay District that is built or constructed with a fixed location on the ground or attached to anything with a fixed location on the ground including but not limited to buildings, fences, walls, signs, light fixtures, decks, porches, and steps.

Recently, an individual sought to install a bench in the Town Landing Park (where the HDC does have purview). Because the bench would be permanently attached to the ground it was considered a “structure.” The HDC reviewed and approved the bench but questioned the value of its reviewing such a minor item. The HDC decided it would be appropriate to remove review of benches, other types of seating, and tables, as the impact of such elements is not significant.

Entirety of current purview. The information below lists from the current Zoning Ordinance which items the Historic District Commission reviews and those that are exempt from review.

175-94. Purview of Board.

A. ***Activity Within the Historic District Overlay District Subject to Review.*** Approval of the HDC is required for the following activity within the HOD:

1. Modifications to the exterior architectural appearance (See definition) of the property including erection of new structures (See definition for “Structure” in the Historic District), additions to existing structures, alterations to existing structures, demolition of existing structures or portions of existing structures, or relocation of any structure into, out of, or within the HOD.
2. Installation, modification, or removal of exterior freestanding lighting structures.
3. Erection, alteration, or removal of any kind of wall, barrier or fence.

4. Installation of pavement or other impervious or semi-impervious material on the ground or establishment of any parking or driveway area.
5. Installation of any new roofing material where the material, form, or color will change significantly. However, where failure to repair a roof will result in immediate damage to the structure the Code Enforcement Officer may grant approval for emergency temporary repairs and immediately notify the HDC, which will then review the work at its next opportunity (unless exempt under Section B., below)
6. Signage, except for temporary signs (See Subsection 175-126.C), such as political, contractor, and real estate signs. See section on Signage, below, for special provisions.
7. Removal or destruction of any healthy tree with a diameter at breast height (4-1/2 feet above grade) of 12" or more.
8. Any substantial change in topography (cuts and fills).
9. Building and ground-mounted utilities and roof penetrations that would be visible from a public street within the Historic District at any time of the year.

B. ***Activity Exempt from Review.*** No review or Certificate of Approval shall be required for the following:

1. Work performed on the interior of buildings.
2. General maintenance and in-kind repair which does not involve any significant change in materials or the outward appearance of the structure or site. Alternative materials may be used for general maintenance when the material and its application have been preapproved by the HDC. See the Historic District Regulations for acceptable alternative materials.
3. Installation or removal of any plant materials (except for tree removal as described in 175-94.A.7).
4. Any of the following items if they are situated on a building or on a lot such that no part of them will be visible from a public street within the Historic District at any time of the year: antenna, wall siding, a change in roofing material, outbuilding not exceeding 400 square feet, deck, swimming pool, fence, patio, wall, barbecue pit, satellite dish, solar panels, roof vents and other structures situated on or penetrating through the roof, septic tank, leach field, well, any other utilities, and other yard appurtenances.

5. Construction, alteration, or demolition of any structure or element of a structure that the Code Enforcement Officer certifies as being the only means of avoiding an immediate health or safety emergency prior to the HDC convening a meeting to consider the matter. In such an instance, the Code Enforcement Officer shall immediately notify the Commission of his or her certification. The HDC may review such work at its first opportunity if it deems appropriate.
6. Painting or staining a building when the color will not change.
7. Colors of paint and stain applied to a single-family house.
8. Flagpoles, mailboxes, window air conditioning units in a single-family residence or accessory apartment, utility poles.
9. Installation of any new roofing material where the material, form, or color will not change significantly.
10. Items which are not explicitly addressed in this subsection but for which the proposed work clearly:
 - a. would not have any significant adverse impact;
 - b. would be barely noticeable, if at all, from any public street; and
 - c. would be consistent with the intent of this article, all as reasonably determined by the Planning Department in consultation with the HDC chair.

LEGAL AUTHORITY:

RSA 674:16, RSA 674:46-a, and RSA 675:2 and Section 175-14 of the Durham Zoning Ordinance

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby approve on First Reading Ordinance #2025-02 Amending Chapter 175, "Zoning," Article XVII, "Durham Historic Overlay District," Section 175-94, "Purview of the Board," and schedules a Public Hearing for Monday, February 17, 2025.

ORDINANCE #2025-02 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175, "ZONING," ARTICLE XVII, "DURHAM HISTORIC OVERLAY DISTRICT," SECTION 175-94, "PURVIEW OF THE BOARD,"

WHEREAS, RSA 674:16, RSA 675:2, and Section 175-14 of the Durham Zoning Ordinance authorize the Town Council to amend the Zoning Ordinance and specify the process for doing so; and

WHEREAS, the Historic District Commission recognized it necessary to specify a procedure for the review of applications to remove trees with a diameter of 12 inches or greater incorporating the expertise of the Durham Tree Warden, and thought it appropriate to eliminate review of benches, other seating areas, and tables from its purview since installation of those items does not have a significant impact on the Historic District; and

WHEREAS, the Historic District Commission voted on October 10, 2024 to recommend these appropriate changes to the Historic District section of the Zoning Ordinance; and

WHEREAS, the Planning Board reviewed the proposed amendment from the Historic District Ordinance on November 13 and held a public hearing on the proposal on December 11; and

WHEREAS, following the public hearing and deliberations, the Planning Board voted unanimously to formally initiate the amendment after making a few minor adjustments; and

WHEREAS, the Town Council determined that the proposed changes to the Zoning Ordinance are appropriate and beneficial; and

WHEREAS, the Town Council conducted a duly noticed Public Hearing on February 17, 2025;

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 #2025-02** and does hereby amend the following sections of the Code.

- ❖ Add the following text *shown in this manner* to **Section 175-94. Purview of Board under Article XVII - Durham Historic Overlay District.**

175-94. Purview of Board.

A. *Activity Within the Historic District Overlay District Subject to Review.* Approval of the HDC is required for the following activity within the HOD:

7. Removal or destruction of any healthy tree with a diameter at breast height (4-1/2 feet above grade) of 12" or more, *per the following procedure:*

a. When a request or an inquiry is made, the Durham Tree Warden will consult with the Durham Town Planner, visit the site, and prepare a report or commentary as appropriate. The Durham Tree Warden may authorize the removal of the subject tree, without review by the Historic District Commission, if the Durham Tree Warden finds that the tree is: i) unhealthy or diseased such that a substantial recovery is unlikely; ii) dead; iii) invasive or toxic; or iv) a realistic threat to persons or property. In such case the Durham Town Planner will notify the commission at their first opportunity.

b. If the Durham Tree Warden does not authorize the removal of the subject tree then the property owner may apply to the Historic District Commission for removal.

B. *Activity Exempt from Review.* No review of Certificate of Appropriateness shall be required for the following:

11. Benches, other types of seating, and tables.

PASSED AND ADOPTED this ____ day of _____ 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: **#14B**

DATE: **January 6, 2025**

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: DISCUSSION OF ADMINISTRATOR'S PROGRESS REPORT (AS OF DECEMBER 31, 2024) ON THE LIST OF APPROVED 2024/25 TOWN COUNCIL GOALS ADOPTED ON JUNE 3, 2024.

CC PREPARED BY: Karen Edwards, Administrative Assistant

CC PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

On Monday, June 3, 2024, the Council adopted its goals for 2024/25. In order to measure the progress of the goals adopted by Council, the Administrator believes it is important to provide the Council with periodic status reports.

Attached for the Council's information is an updated progress report prepared by the Administrator which outlines the status of each of the goals as of December 31, 2024.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Receive progress report of the 2024/25 Town Council goals updated by the Administrator as of December 31, 2024.



2024/25 Town Council Goals*
(Adopted 6/3/24)
Progress Report as of December 31, 2024

Mission

To provide ongoing stewardship for the Durham community including effective and efficient municipal services.

Core Values

Excellence, Honesty, Integrity, Justice, Resilience, Respect, Transparency

Goals

- 1. Facilitate optimal functioning of Town government through continuous improvement, new efficiencies, waste reduction, and inter-agency collaboration.**
 - a. Move forward with key infrastructure projects.

DPW: Goal Achieved and Ongoing - Continue to make steady progress on identified projects in prior 3rd quarter report including nearing substantial completion of Phase 2 Segment 1 of the Madbury Road Complete Streets Project, Completion of first phase of the Wastewater Major Component Rehab., Completion of Chapter 118 Solid Waste Ordinance rewrite and adoption by Town Council on 11/4/24, installation of water tank mixing systems, substantial completion of Edgewood and Madbury Road Major Culvert replacement, completion and Bidding of Emergency Generator Project, completion of Wagon Hill Farm Phase 2 Shoreline design and permitting with Wetland Permit expected before end of 2025, finalization of Bickford Chesley House Rehabilitation Options for inclusion in FY2025 CIP, and final Completion of Technology Drive Pump Station Project. It's been a very active year for DPW!

- b. Utilizing the UNH Sustainability Fellow program, update the Town's Climate Action Plan in 2024/25 and integrate conclusions into the Town's long-term planning efforts by involving committees and departments and encouraging them to actively suggest ideas and spearhead initiatives.

Sophie Goodwin: The various Town committees involved with the effort have been surveyed and have been provided an opportunity to provide feedback. This has been integrated into a working draft document and format. We have also reviewed examples of recent CAP plans from other communities. At this time, we're inserting the various goals into a master document and are working to calculate potential carbon reductions associated with each.

- c. Strategize on ways to effectively advertise and fill vacant alternate and regular positions on Town boards/committees and positions at the polls and ensure a sufficient number and diverse mix of volunteers.

Admin: Karen Edwards has begun contacting prospective Board/Committee/Commission members to see who might be willing to be highlighted in the Friday Updates. We've had a little difficulty finding board members interested in participating, but we have one in the works for the Integrated Waste Management Advisory Committee and hope to feature a member of the ZBA in March/April 2025.

d. [Expand outreach around services, amenities, information, and programs provided by the Town.](#)

Admin: We continue to utilize the Friday Updates as the primary medium of informing individuals about services and opportunities in the community along with, to a lesser degree, social media, which pull info. from the Friday Updates. We continue to look at an update to the web site but this has met some technical, time, and cost challenges that staff is working to overcome. Monies have been included as part of the FY 2025 budget to move forward with a web site update. Admin. Selig has enrolled in a remote course at the Kennedy School of Government called Leading Through the Changing Media Landscape program, offered virtually from February 3 – 14, 2025.

e. [Continually evaluate cybersecurity risks and take steps to address potential vulnerabilities. Consider providing Town Councilors with town email addresses.](#)

IT: Jumpcloud (JC) account have now been rolled out to all users of the Microsoft 365 tenant. IT has switched modes to start pushing JC onto desktops and hardware completing the loop to move away from localized domain services. At the end of this phase, a small directory "shim" may be maintained to allow access to certain applications that cannot support other modes of authentication. However, that directory will no longer be the authoritative identity and authentication source.

We are delaying the implementation of Microsoft Multi Factor Authentication (MFA) until at least one full password aging cycle has occurred. We also recognize the MFA will not be available initially on any of the desktop platforms, but will be supported for single sign-on, portal access, and directory sync. Microsoft has started its own independent initiative to implement MFA through Microsoft Authenticator, the department is evaluating this event timing to minimize the disruption to users.

IT Manager Luke Vincent was able to attend the most recent MS-ISAC monthly call but has started work on the Town's NCSR submission for the year.

WWTP, DPW and IT attended a Cybersecurity Assessment for the WWTP done by request of department through CISA and the EPA. The assessment focused on both IT and OT networks in use currently by the plant and honed-in on the SCADA systems and the PLCs which drive them. The resulting assessment was released to the departments in late October for review and consideration.

Separately, Admin. Selig and IT were approached by the Overwatch Foundation to consider their programs and grant opportunities to help implement concrete steps to improve the Town's overall security posture, in particular they are looking for our participation in their "in a box" grant programs ([Grants — The Overwatch Foundation](#)).

Lastly, regarding Council email accounts, 8 of 9, now have active Town email account (which they may or may not be checking/using...), council@ci.durham.nh.us will be repointed when the last account is made active. At that point, new councilors and current councilors will be asked to not use private email for Town council business.

Admin: After more than twelve-months of work, the negotiation of a new cable franchise agreement with Comcast/Xfinity is nearly COMPLETE. We plan to bring to the Town Council for approval in January 2025.

- f. Fill the vacant Assessor position and work to ensure a smooth transition.

Admin: COMPLETE After the departure of Jay Ferreira, Jim Rice returned to the position of Assessor. Through his networking, he contacted the Assessor in Rochester, Darcy Freer, and was able to convince her to apply for the position in Durham. She was hired at the end of June. Jim Rice continued to work until mid-July to ensure a smooth transition. Darcy has been a wonderful asset and addition to Durham.

2. Conduct planning and take steps as necessary to protect public health and safety and provide ongoing service continuity given the anticipated impacts of climate change, the post-pandemic era, and general operational challenges.

- a. Align long-range capital improvement planning (CIP) with the recently approved 2024 Durham Multi-hazard Climate Mitigation Plan and the 2023 Climate Adaption Chapter of the Master Plan.

DPW: CIP planning and execution is aligned with Climate Mitigation and Climate Adaptation Goals including stormwater system operation and design, wetland permitting and sea level rise considerations, urban forestry and tree planting program, infrastructure flood resiliency, water system long term planning and wastewater system upgrades.

- b. Work to begin updating long-term feasibility planning with UNH on the future Durham Fire Station capital project to be located on Waterworks Road.

Fire: UNH conducted a presentation of the Master Plan on Wednesday December 4, 2024, which identified the fire station as a critical infrastructure need for the University and Town. The presentation noted that the fire station project would require collaboration and showed a building site footprint in the area of B Lot between McDaniel Drive and Academic Way in Phase 2 with a projected implementation timeline ranging from 2034-2039.

- c. Maintain Durham Police Department national accreditation through the Commission on Accreditation for Law Enforcement Agencies (CALEA) with an upcoming cyclical review date of spring 2025.

Police: We are scheduled for our annual file review by CALEA in February 2025, and in April, we will have an Assessor from CALEA at the Police Department for their in-person evaluation. We are scheduled to appear before the entire Commission in late July 2025, in Arkansas to learn if we will be awarded accredited status for the next four years.

3. Pursue long-term economic strength and resiliency, anticipating the community's, the region's, and the nation's economic characteristics and opportunities.

- a. The Council and Administrator, working together, will strive to hold the municipal tax rate at the 2024 level plus inflation (CPI-U for Boston-Cambridge-Newton, MA-NH) or less, and continue to make an effort to control spending, enhance revenues, broaden the tax base, and explore innovative ways to stabilize or reduce the municipal tax rate.

Admin: COMPLETE. The Town Council was successful in achieving this goal through the development and approval of a solid budget and the use of unreserved fund balance.

- b. Thoughtfully develop and adopt an ordinance that advances efforts to create increased availability of a full range of housing types by April 2025.

Planning: The Planning Board COMPLETED its proposal. The Attainable Housing Overlay District was approved by the Town Council on 12/16/24 by a vote of 6-2. The Housing Task Force continues to look into this issue.

- c. Encourage downtown business development and growth of the tax base and housing opportunities within the commercial core through the application of smart growth principles focusing on planned economic and community development that attempts to curb urban sprawl in a sustainable manner, to include the future of 66 Main St. and the Town-owned Pettee Brook parking lots.

Planning: The Downtown Zoning Subcommittee of the task force has met twice. So far there are three particular tasks it has identified and which it will be pursuing shortly: 1) adjust zoning to make mixed-use with residential a permitted use; 2) remove the resolution related to RSA 79E that imposes special restrictions on 79E; and 3) remove the three-story limit on buildings in a large section of the CB district.

- d. Collaborate with UNH on The Edge at West End project to include the development and adoption of a Planned Unit Development (PUD) Zoning Overlay District, evaluation of the long-term buildout for necessary infrastructure supporting Town and UNH economic expansion, and myriad other aspects concerning the initiative including research, public-public-private opportunities, mixed-use, and housing.

Planning: We continue to work with Ken Weston, UNH Campus Architect. Staff commented on the RFP, which was released to the public on 12/11/24. The Town's parcel at 66 Main Street is referenced as part of the RFP on pages 13-14. The Planning Board has started to review the draft PUD ordinance.

- e. Look at Federally owned properties in Durham (US Post Office and US Fish & Wildlife) and evaluate whether there is opportunity for redevelopment.

Planning: US Fish and Wildlife property is part of a long-term lease arrangement with UNH. There is not potential there at this time. Admin. Selig has reached out to the USPS. At present they have no plans to change current operations. USPS reps. note the need to retain parking/loading space around the existing building. Staff have not had time to follow up further on this issue as a result of time spent on the annual budget development process.

4. Pursue long-term environmental sustainability and resiliency, taking into account existing and predicted impacts of climate change in multiple areas including drinking water, wastewater, stormwater, agriculture, food, society, transportation, ecology, solid waste, and economy.

- a. Work toward continued Town-wide reductions in solid waste on a resident generation per pound basis through full implementation of a volume-based collection system.

DPW: Chapter 118 Solid Waste Ordinances have been rewritten and adopted by the Town Council on 11/4/24. The department has now entered the procurement and public outreach phase. Project team has met with cab, chassis and body suppliers to finalize specifications and procurement docs. Will utilize Sourcewell or BPCD contract for the most competitive pricing and terms. Expect procurement of trucks and carts to be completed in first quarter of 2025

- b. Support public and active transportation alternatives to the automobile and continue taking steps to address downtown multi-modal options.

DPW: Goal Achieved and Ongoing - continue construction of phase 2 Madbury Road Complete Streets Project. Received TC funding approval of Phase 3 within FY 2025 budget on 12/16/24. Design underway for 2025/2026 construction cycle. Submitted Letter of Interest for Funding request for Transportation Alternative Program for Phase 4 of Madbury Road Complete Streets Project. Working with SRPC to complete Safe Streets for All (SS4A) safety plan to include Durham Point Road. Upon acceptance will submit implementation grant for construction funding.

Planning: This is an ongoing effort coordinating with Durham Public Works, the Traffic Safety Committee, enhancing bike paths, creation of sidewalks, and other supportive infrastructure, and the UNH Transportation Policy Committee to enhance bikeways, improve sidewalks, and support transit.

- c. Increase local food production in the short and long-term to support a regional goal of reaching 30% local food consumption for the Northeast.

Admin: Administrative Assistant Karen Edwards has signed up to receive the briefs from the NH Food Alliance as they seek to create the NH Food and Agriculture Strategic Plan. The Ag Comm's goal is to work with town boards and commissions to increase opportunities for more local food production with the understanding that it will take many years to do so.

- 5. Pursue long-term social resiliency and quality of life in Durham intended to strengthen the community in a welcoming and inclusive manner by supporting the needs of residents, families, and other identified stakeholders by offering a wide array of active and passive parks & recreation and library opportunities, programming, events, facilities, and publicly facing educational information celebrating the rich tapestry of Durham history.

- a. Strive to be inclusive of all gender options within overall Town operations.

Admin: This remains an ongoing effort across departments including reviewing policies such as providing domestic partner health benefits for same sex couples, which after review is scheduled for implementation July 1, 2025.

- b. Support the recreational, educational, and social needs of residents through Parks & Recreation, Durham Public Library, and social programming for all ages of life.

Admin: The Durham Public Library and Parks & Rec. both are offering programming and opportunities that accomplish this objective and transcend traditional roles for these departments.

6. Continue cooperative and collaborative efforts with UNH to enhance mutual intellectual, cultural, environmental, social, and economic benefits associated with hosting New Hampshire's flagship state university.

- a. Encourage the UNH administration to engage and work with Durham's Administrator in decision making and short & long-term planning that impacts UNH, the Town, local businesses, and local residents.

Admin: We arranged for President Chilton and Chief of Staff Tom Cronin to meet with the Council on 12/2/24 to follow up on questions crafted by the Council. Mr. Selig, Dir. of Planning Michael Behrendt, DPW Director Rich Reine, Town Engineer April Talon, and other reps. from the Town as appropriate interact with UNH on an ongoing basis across all disciplines including master planning, transportation, policing, fire, public safety, roads, water, wastewater, stormwater, and more. President Chilton recently hosted Councilors at a UNH home football game for a purely social encounter in November 2024.

- b. Encourage UNH to actively advertise and solicit Durham resident awareness of and participation in athletic, cultural, social, health/fitness, recreation, and educational opportunities on campus.

Admin: We regularly endeavor to include opportunities for residents on campus as part of the weekly Friday Updates. In December, for example, UNH hosted a skating event for the community at the Whittemore Center.

- c. Endeavor to establish Durham as an epicenter of off campus volunteerism and research by UNH students/faculty/staff.

Admin: This item continues to be a work in progress through many inter-connections/opportunities that exist, which include the UNH Sustainability Fellow program, UNH class review of EV at the Police Department, UNH ongoing graduate research at the Spruce Hole kettle bog, UNH students who work with the parking enforcement division at DPD, continued shoreline stabilization at Wagon Hill Farm let by UNH scientists, a recent UNH class review of the efficacy of body-worn cameras at the DPD, etc.

7. Leverage Town committees and subcommittees to develop tactical plans to align with the broader goals of the Council and encourage them to collaborate with each other and communicate as necessary with the community at large.

- a. Encourage all Town committees, boards, commissions, and departments to:
 - i. Become familiar with and develop programming/action steps, as appropriate, to prompt widespread community involvement in implementing Durham's Climate Action Plan;

Admin: The Climate Action Plan is currently under development for the next five-year period. Boards and Committees have been surveyed to obtain suggestions for areas to include.

- ii. Work toward supporting the development of a full range of housing types (workforce, seniors, missing middle) enabling a larger portion of Durham's workforce to live in town;

Planning: The Attainable Housing ordinance was adopted by the Town Council on 12/16/24.

- iii. Support an expanded and vibrant downtown business mix;

Planning: The Downtown Zoning Subcommittee met with Mark Henderson on December 11. We talked about setting up a meeting with downtown property owners to talk about the range of issues affecting the downtown. Tideline is now for sale. We are available to speak with real estate brokers and potential buyers about prospective changes to the property (retaining the key elements, of course).

- iv. Adopt a complete streets approach to transportation planning.

DPW: Goal Achieved and Ongoing on all feasible roadway and sidewalk projects.

Planning: The complete streets approach is the guiding method for all transportation planning through the Planning Department.

- b. Periodically highlight the contributions of local elected and appointed officials serving on local committees to give praise and increase the attractiveness of civic participation.

Admin: Will begin in early 2025 as we approach the renewal date for boards/commissions/committees' terms.



TOWN OF DURHAM

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AGENDA ITEM: **#14C**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: **BEGIN THE ADMINISTRATOR'S ANNUAL PERFORMANCE EVALUATION PROCESS FOR 2024 IN ACCORDANCE WITH THE EMPLOYMENT AGREEMENT BETWEEN THE ADMINISTRATOR AND THE TOWN OF DURHAM**

CC PREPARED BY: Todd I. Selig, Administrator

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Pursuant to Section 17 of Administrator Selig's Employment Agreement dated February 19, 2024 [*which was specifically requested to be included in the Employment Agreement by Mr. Selig*] with the Town:

"Commencing in January 2025, and for each January thereafter, the Town Council shall review/evaluate Selig's performance in accord with the criteria provided to Selig by the Town the preceding April. The Town Council shall provide Selig with a written summary of this Annual Performance Evaluation and shall provide Selig with an opportunity to discuss this evaluation with the Town Council."

Over each of the last many years of Mr. Selig's service, the Council has utilized varying approaches to fulfilling this contractual requirement. In 2012 the Council began utilizing a one-page evaluation form/matrix (**attached**) outlining key elements of importance and ranking the administrator's performance (on a scale of 1 to 5) for each of these elements, which included five categories: Ability to maintain or improve strong relationships, Financial oversight, Leadership, Initiative, and Other. Rankings included: 5=Excellent, 4=Very Good, 3=Good, 2=Acceptable, 1=Unacceptable.

Unless during its discussion on Monday evening the Council decides to use another evaluation process, Administrator Selig recommends using the same format as last year with the objective being to develop a consensus of the Council regarding the performance of the Administrator over the course of the previous year and to offer collective guidance (one voice to the extent possible) for the upcoming year.

Using this process, Council members will be provided with the matrix via email in Microsoft Word format by January 7, 2025. Councilors will then have until **Wednesday, January 15th** to return their responses electronically to Council Chair Sally Needell. Chair Needell will then compile the responses for distribution to Councilors electronically in advance of the February 3rd Council meeting at which time the Council and Mr. Selig will discuss the results.

Attached for the Council's information is a timeline developed initially by Councilor Wayne Burton and approved by the Council in 2014, which illustrates the process that will be followed throughout the year relating to Administrator Selig's annual evaluation. Also attached is a "year-end wrap up" prepared by Mr. Selig. A quarterly goal progress report as of December 31, 2024, is included as a separate item in the Council packet.

In accordance with Mr. Selig's Employment Agreement, the term of his employment "*shall be for a period of seven (7) years (except as it may be modified as explained herein) commencing on January 01, 2024 and ending December 31, 2030.*" Mr. Selig's compensation is outlined in the Employment Agreement.

LEGAL AUTHORITY:

Article 4 "Administration of Government", Section 4.1 of the Durham Town Charter:
"The chief administrative officer of the town shall be the Town Administrator (hereinafter called the "Administrator"), who shall be a full-time regular employee of the Town. The Council shall appoint a person especially qualified by experience and training, who receives the votes of at least five (5) members of the Council, to be Administrator. The Administrator shall serve at the pleasure of the Council, which will fix the Administrator's salary and terms of employment."

Article 4 "Administration of Government", Section 4.3 of the Durham Town Charter:
"The Administrator may be reprimanded or removed for cause by the affirmative vote of at least six (6) members of the Council as herein provided. At least thirty (30) days before the proposed reprimand or removal of the Administrator, the Council shall adopt a resolution stating its intention to reprimand or remove him, the reasons therefor and an effective date. A copy of the resolution shall be served forthwith on the Administrator, who may, within ten (10) days, demand a public hearing, in which event the Administrator shall not be reprimanded or removed until such public hearing has been held. Upon or after passage of a resolution of intent to remove, the Council may suspend the Administrator from duty, but his pay shall continue until removal. In case of such suspension, the Council shall, by the affirmative vote of the Council, appoint an Acting

Administrator to serve at the pleasure of the Council for not more than ninety (90) days. The action of the Council in removing the Administrator shall be final.”

In addition to the above Charter provision, Section 14 of the Employment Agreement also addresses termination of the Administrator, as follows:

14. Termination.

- A. **By the Town with Cause.** This Agreement may be terminated by the Town for cause, in accord with the provisions of Section 4.3 of the Town Charter, if Selig willfully breaches or habitually neglects the duties to be performed under Paragraph 2 of this Agreement; engages in dishonest conduct; or for the conviction of any crime for which the punishment involves incarceration.
- B. In the event Selig's employment is terminated pursuant to subparagraph A, Selig shall be entitled to his base salary compensation earned prior to the date of termination (minus all appropriate federal, state and authorized withholdings), as provided for in Paragraph 4 of this Agreement, computed pro rata up to and including the date of termination, as well as any other benefits to which he may be entitled as a matter of law.
- C. **By Selig.** This Agreement may be terminated by Selig, without cause, by giving eight (8) months' notice to the Town, unless a shorter notice is mutually agreed to by Selig and the Council, which shall not be unreasonably withheld.
- D. **By the Town without Cause.** In the event that this Agreement is terminated by the Town for reasons other than those outlined in subparagraph A above, the Town shall be responsible for the payment to Selig of one (1) full year's base salary (minus all appropriate federal, state and authorized withholdings) plus all benefits (or their monetary equivalent) accrued during that one (1) year period regardless of the length of the remaining term of this Agreement.

Article II, “Administrative Organization”, Section 4-4 of the Administrative Code”:

“The chief administrative officer of the town shall be the Town Administrator (“Administrator”), who shall be appointed by the Council based upon his training and experience. The Administrator shall serve at the pleasure of the Council, who will also establish his compensation and terms of employment.”

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

Begin discussion concerning Administrator Selig’s 2024 annual performance evaluation.

Town of Durham
Year End Wrap Up for 2024

Todd Selig, Administrator

12/31/24

2024 was another solid year for the Town of Durham. Town staff, as well as Elected and appointed officials, worked diligently to address the community's needs and maintain transparency, integrity, respect for one another, a welcoming atmosphere, free and fair elections, a high quality of life for residents, outstanding service delivery, and improvement in sustainable practices across the organization. Despite competing pressures, we also managed to maintain the municipality's fiscal position and ensure long-term resilience for the community.

Our Independent Auditor's most recent year-end audit (FY 2023) prepared by Plodzick and Sanderson indicates strong financial health with no adverse findings. Moody's Investors Services indicates that the credit position for Durham is very high quality. Our Aa2 bond rating is a little stronger than the US cities median of Aa3. The Town's unassigned fund balance of the General Fund has increased to \$7,757,790, which is at long last after more than twenty years of effort, in line with Town goals and industry best practices. These metrics are all indicative of measured success in realizing the Town's fiscal goals.

After holding the municipal portion of the tax rate unchanged for the last two years, the FY 2025 general fund budget, which was approved by the Town Council on December 16, is projected to keep the local portion of the rate in line with the rate of inflation for the Boston-Cambridge-Newton-MA-NH region at 3.4%. Due to a development boom in the early 2010's, we held the municipal tax rate constant for 2015, 2016, 2017 and 2018 despite significant capital investment in municipal infrastructure (i.e., new Library, new Town Hall, and renovation/addition to the Police Department). Unfortunately, there is no significant new development on the near-term horizon to broaden the tax base and offset the cost of local services. This should be an area of focus for 2025 as the cost of providing municipal services will continue to grow.

The Town Council approved moving forward with Phase III of the Madbury Road Complete Streets Project as part of the FY 2025 capital budget, which at full buildout will reconstruct the 8,200 lineal foot Madbury Road corridor, connecting Main Street to Route 4 utilizing a "complete streets" framework. The Town was successful in obtaining substantial American Rescue Plan Act (ARPA) funding totaling over \$608,000 to address culvert and drainage improvements associated with the project and we continue to pursue external funding for project components.

The Town Council adopted several notable resolutions in 2024:

- Res. #2024-02 recognizing Assessor Jim Rice upon his retirement following 11 years of service.
- Res. #2024-04 accepting \$286,600 in grant funds from LCHIP to support the rehabilitation of the Bickford-Chesley House at Wagon Hill Farm.
- Res. #2024-05 recognizing Michael Everngam for his many years of dedicated volunteer service to the Town of Durham since 1994.
- Res. #2024-06 opposing House Bill 1281, which sought to prohibit a zoning ordinance or regulation from restricting the number of occupants in a residential rental property to less than 2 occupants per bedroom.
- Res. #2024-07 renewing the employment contract with Administrator Todd I. Selig for an additional 7 seven years through 12/31/30.
- Res. #2024-09 recognizing those whose steadfast efforts resulted in the historic 1974 Town vote to prohibit construction of an oil refinery along the shore of Great Bay on the 50th anniversary of the event.
- Res. #2024-10 acknowledging the impact of the Israel-Hamas conflict on resident of the Town, affirming the Town’s stance against hate, bigotry, and discrimination, and calling for an immediate ceasefire, the safe release of all hostages, the provision of humanitarian aid to civilians in Gaza, and a durable bilateral ceasefire among the parties to the Israel-Hamas conflict.
- Res. 2024-12 accepting \$1,994,539 in grant funding from the National Fish and Wildlife Foundation for shoreline restoration work at Wagon Hill Farm.
- Res. 2024-14 accepting up to \$2,040,000 in funding from the US EPA for the Bennett Road Stormwater and Flood Resiliency Project.
- Res. 2024-15 affirming Juneteenth Independence Day as a recognized holiday in Durham and reaffirming the Town’s opposition to oppression.
- Res. 2024-17 expressing Durham’s interest in partnering with UNH to ensure that the constitutional right to freedom of speech for residents and visitors remains unimpeded and to emphasize de-escalation in all conflicts.
- Res. 2024-23 recognizing Durham Fire and DPW for their quick response to the Town Hall major water leak, and recognizing employees in the Planning, Zoning, Assessing, Business, IT, and Town Clerk/Tax Collector’s Office for their patience and flexibility during the clean-up and subsequent rehabilitation efforts.

Durham’s weekly “Friday Updates” continue to keep the Town Council and members of the community informed of news and happenings in Durham. Nearly 4,300 individuals (up 600 from last year alone) subscribe to this weekly publication, which doubles as a part of our local emergency broadcast system. The goal is to keep

residents informed of local affairs so they may become engaged when issues are of interest/importance to them. Durham also continues to utilize its web site, Twitter (X), and Facebook presence in order to meet the demands of residents' varying preferences for information distribution. A complete refresh of the Town's web site is planned in 2025.

Years of planning paid off in late 2023 when Durham representatives went to the State House to receive a Land and Community Heritage Investment Program (LCHIP) award from Gov. Chris Sununu. The \$286,000 grant is intended to help pay for rehabilitation of the historic Bickford-Chesley House at Wagon Hill Farm. Local resident historians Carolyn Singer, Janet Mackie, Nancy Sandberg, and Charlotte Hitchcock have been working diligently with Public Works Director Rich Reine to plan for improvements to the building since that time, navigating market-driven cost increases and project complications with the historic structure. Exterior and interior restoration and renovation are needed to return the building to a fully usable condition including ADA accessibility. The improvements will accommodate the building's adaptive reuse, which with supplemental funding totaling \$1,173,425 allocated by the Council as part of the FY 2025 budget process, will ultimately create a caretaker's apartment on the second floor and public uses including an exhibit gallery and meeting rooms on the first floor, as well as allowing for three-season use of the barn, which is currently unusable for anything but dry storage due to code requirements. The Bickford-Chesley House Gallery will house temporary exhibits on Durham's history as well as the work of local artists. Wagon Hill Farm is on land originally occupied by the Indigenous Abenaki, and it became one of the first farms in the area to be settled by English colonists. It remained in continuous agricultural use for nearly 300 years. In addition to the LCHIP grant, the Town has received a Moose Plate Grant in the amount of \$20,000 for a total of \$306,600 in external capital funding. Work on the Bickford-Chesley House is expected to begin in late Spring 2025.

Durham received a top-ranking score in NH by the Human Rights Campaign's Municipal Equity Index (MEI) in 2024 relative to addressing LGBTQ inclusive practices – 93 out of 100 points.

As part of the 2021 budget, the Council approved \$1,385,000 to replace Durham's public safety Land and Mobile Radio (LMR) communication infrastructure because it exceeded its scheduled end of life. We were subsequently notified by the US Department of Justice in 2022 that \$900,000 was awarded to Durham under the COPS Technology and Equipment Program to offset the cost of the project. After substantial planning and numerous delays outside of the Town's control, the LMR project became fully operational in 2024.

Staffing headwinds impacted our fire and police departments this year. Several employees, after many years of dedicated service, chose to move on, some through retirement and others in pursuit of different job opportunities or vocations, and we have struggled to attract new prospects. There were long-term medical issues/injuries at the Fire Department driving up overtime costs. Increased competition for fire/police personnel across NH emerged providing alternatives for staff in terms of where to work for increasingly competitive pay. Fewer people across society appear to be moving into emergency service professions, making it harder to fill vacancies. In response, we made several adjustments within the existing firefighters' contract to address the issue of compensation as a stopgap measure, yet formal collective bargaining contract negotiations will commence in 2025. A new contract for Durham's police officers was negotiated and ratified in 2024, which we believe will allow the Town to compete in current market conditions. The topic of compensation will demand additional focus in 2025 as three collective bargaining agreements are set to expire – fire, middle managers, and public works.

The team at the fire department has submitted a grant application totaling \$562,120.00 for replacement SCBA equipment that would provide Durham firefighters with the safest available PPE that meets modern standards consisting of a SCBA harness/backpack, face piece, and two cylinders.

The Durham Police Department is certified as part of a professional external accreditation process through the Commission on Accreditation for Law Enforcement Agencies (CALEA). This provides the Town with an assurance that our department is engaged in providing best practices in policing services to citizens as evidenced by ongoing inspections by an outside independent entity. A review by external examiners of 25% of the department's policies took place in July 2024. In 2025, a full CALEA review will occur involving opportunities for public engagement/feedback.

It was a productive year for Durham Parks & Recreation. We estimate that 19.25% of Durham households participated in Parks & Rec. programming in 2024. This calculation does not include community-wide programming undertaken such as: Memorial Day, Frost Fest, Durham Day, Halloween Downtown Trick-or-Treating, Turkey Trot; Durham Day Dash 5K; Trot In the Trees 5K; Sweetheart Skate; Drop In Adult Basketball; Drop in Adult Volleyball; Knitting; Vacation week drop in open gym sessions; and Open Play Pickleball at Woodridge.

Through the efforts of Sara Callaghan, our recently former part-time contract Land Stewardship Coordinator, and the Land Stewardship Subcommittee of the Conservation Commission, the Town continues to make significant inroads in sustainably managing the numerous lands and easements under the Town's stewardship. Sara departed to take a full time position with UNH Cooperative Extension

in October and the Town was able to hire Veronique Luddington to take her place in December.

The Town works to maintain a positive and cooperative relationship with the Oyster River School District. With the impending retirement of former School Superintendent James Morse in June, I was asked by the School Board to participate as part of the Superintendent selection process, which resulted in the hiring of Robert Shaps as of July 1, 2024. Superintendent Shaps and I remain in regular communication with one another regarding issues of mutual interest. He will provide the Council with an update on the district's budget process in early-2025.

We completed Durham's first Climate Action Plan (CAP) in 2022, a requirement of the Town's membership with the Global Covenant of Mayors for Climate and Energy. This plan outlines mitigation and adaptation actions, measures how much each action will contribute to Durham meeting its mitigation and adaptation goals, and includes a plan for implementing the identified tasks. It establishes a course of action for local efforts toward a reduction in GHG emissions of 2019 levels by 42.8% by 2030, and achieving zero emissions by 2050. In 2023, our UNH Sustainability Fellow updated a Greenhouse Gas Inventory for Durham utilizing 2021 and 2022 data. In 2024, our Sustainability Fellow has been working to update the Town's CAP for use over the course of the next five years.

The Energy Committee and staff have made numerous strides in local sustainability efforts, in particular shepherding an initiative for the Town to join the Community Power Coalition of New Hampshire (CPCNH) to work toward providing wider accessibility of green energy for our community's residential and business electric utility customers, at a price equal to or less than Eversource, and working to assist Durham residents and business owners make the built environment more energy efficient, thereby reducing overall emissions. As part of this work, Durham officially launched Durham Community Power, offered through CPCNH, in February 2024!

As part of our planned DPW solid waste collection vehicle replacement program in 2024/25, the Town is moving ahead with a volume-based collection system in which each household will be issued a standard size solid waste collection toter for trash and another for recycling. DPW will then accept solid waste, limiting trash materials collected curbside to what can fit within the issued standard-size receptacles, utilizing new collection vehicles equipped with hydraulic arms to grab and dump each container, thereby encouraging less solid waste per household generation, enhancing recycling, and reducing employee exposure to potential lift, poke, and strain injuries. DPW was able to secure external state grant funds to offset 45% of the purchase price of an electric (EV) collection vehicle, which if secured, we understand would be the first EV municipal collection truck in NH.

The Town obtained \$20,000 in grant funds to pay for the cost of a Housing Needs Assessment by RKG Associates dated May 2024. As a college town that is home to UNH's main campus, the report concludes that Durham has disproportionately higher shares of non-family renter households. With its rental housing market driven by the college student population, we have a relatively expensive housing market, which makes it difficult to develop workforce housing that is affordable for homeowners. Though Durham's recent housing market trends show some positive signs as development interest has been shifting to higher-density residential developments, its housing market has not been delivering new housing that either meets the workforce housing affordability requirement or is affordable to a broader section of the population beyond student renters in recent years. To meet its housing objectives over the next 16 years, the report concludes Durham will have to encourage diverse types of housing, smaller housing, and higher densities to reduce its average development cost. The RKG report concludes that Durham should also consider zoning changes to lower the minimum usable area requirement for Conservation Subdivisions, and to allow multi-unit development in more areas that are deemed suitable for workforce housing development. Following two years of work by numerous boards, the Town Council adopted a new Attainable Housing Overlay District on 12/16/24. Additional initiatives are in process at the present time through the Housing Task Force and Planning Board.

Durham and UNH have been in active conversations concerning future development at The Edge at West End and also at Durham's 66 Main St. parcel. An RFP for a Master Developer for the project was issued by UNH in December 2024. The EDGE Innovation District is envisioned to create a research-based live-work-play community on the UNH Durham Campus. By leveraging 43 acres of available land, The EDGE could become a hub for innovation, technology transfer, and entrepreneurship that capitalizes on UNH's strengths and expands industry collaboration while providing expanded tax base for Durham and potential new customers to support our downtown. If successful, entrepreneurs, researchers, students, and professionals will mingle and collaborate in a lively new district, but with connectivity to downtown Durham.

The Town Council voted on 9/13/21, to award a Final Design Contract to Vanasse Hagen Brustlin, Inc. (VHB) for removal of the Mill Pond Dam. Subsequent to a Town-wide referendum vote on the issue, staff began pursuing external grant funding opportunities to support the cost of dam removal, working with the US Army Corps of Engineers and the NH Division of Historic Resources, as part of a Section 106 historic mitigation review, and planning engineering for the project. The historic mitigation, design, and wetland permitting have all been in process since 2023 with permitting envisioned to be in hand for 2025 with dam removal commencing in 2025, depending upon timing of the various detailed steps involved.

The National Fish and Wildlife Foundation and the National Oceanic and Atmospheric Administration announced a November 2023 round of funding for National Coastal Resilience Fund projects. \$1.9 million in funding was earmarked to create a living shoreline to stabilize an additional 1,835 linear feet of tidal shoreline and restore both 4,060 square feet of salt marsh habitat and 2,810 square feet of tidal buffer at Wagon Hill Farm. The project underwent extensive permitting in 2024 and slated to begin in 2025, will stabilize severe erosion while protecting and increasing the adaptive capacity of critical conservation and community spaces. This is a continuation of our living shoreline project at WHF dating back to 2019.

Durham worked closely with the City of Portsmouth in 2024 to ensure Portsmouth's access across Wagon Hill Farm to repair their water line at the shore of Little Bay was undertaken with as little disruption as possible to the property and the quiet enjoyment thereof by our residents. The project was a success.

We have painstakingly worked over many years to create a municipal water system that is inherently resilient in order to reliably provide approximately 1.2 million gallons/day of water to both Town and the UNH campus. Together, Durham/UNH operate four water sources, one of which utilizes an artificial recharge system pumping raw water from the Lamprey River to our Spruce Hole Aquifer in Lee during times of plentiful flow, increasing our reserves for drought conditions. This, combined with a new state of the art \$20 million Water Treatment Plant on the UNH campus (funded 100% by UNH), places the combined Durham/UNH community in a very sustainable position in the face of anticipated climate change.

Durham and UNH, through the joint administrative Water, Wastewater, Stormwater, and Roads Committee, continue to cooperatively address a multitude of Town/Gown items to include efficient operation of our combined water system as described above, focusing attention on water quality deficiencies within the Great Bay Estuary as identified by the NHDES and the EPA, meeting EPA wastewater and stormwater MS-4 mandates under our EPA Total Nitrogen General Permit, maintaining a required NHDES backflow prevention program, general water/sewer infrastructure, our Lee water line to address MBTE contamination at the Lee Traffic Circle, and more. On the front lines of our utility infrastructure both on and off campus, the Town and UNH are joined at the hip and work seamlessly together.

We refreshed signage at the train trestle adjacent to the Durham/UNH Train Station this fall. Modeled on advertisements utilized in the London Underground, the Town installed several vertical billboard-type advertising panels years ago intended at the time to combat recurring graffiti in this location. The effort was a success, eliminating the graffiti problem entirely and allowing for several of the Town's then business establishments to advertise their wares, as well as for UNH to promote some of

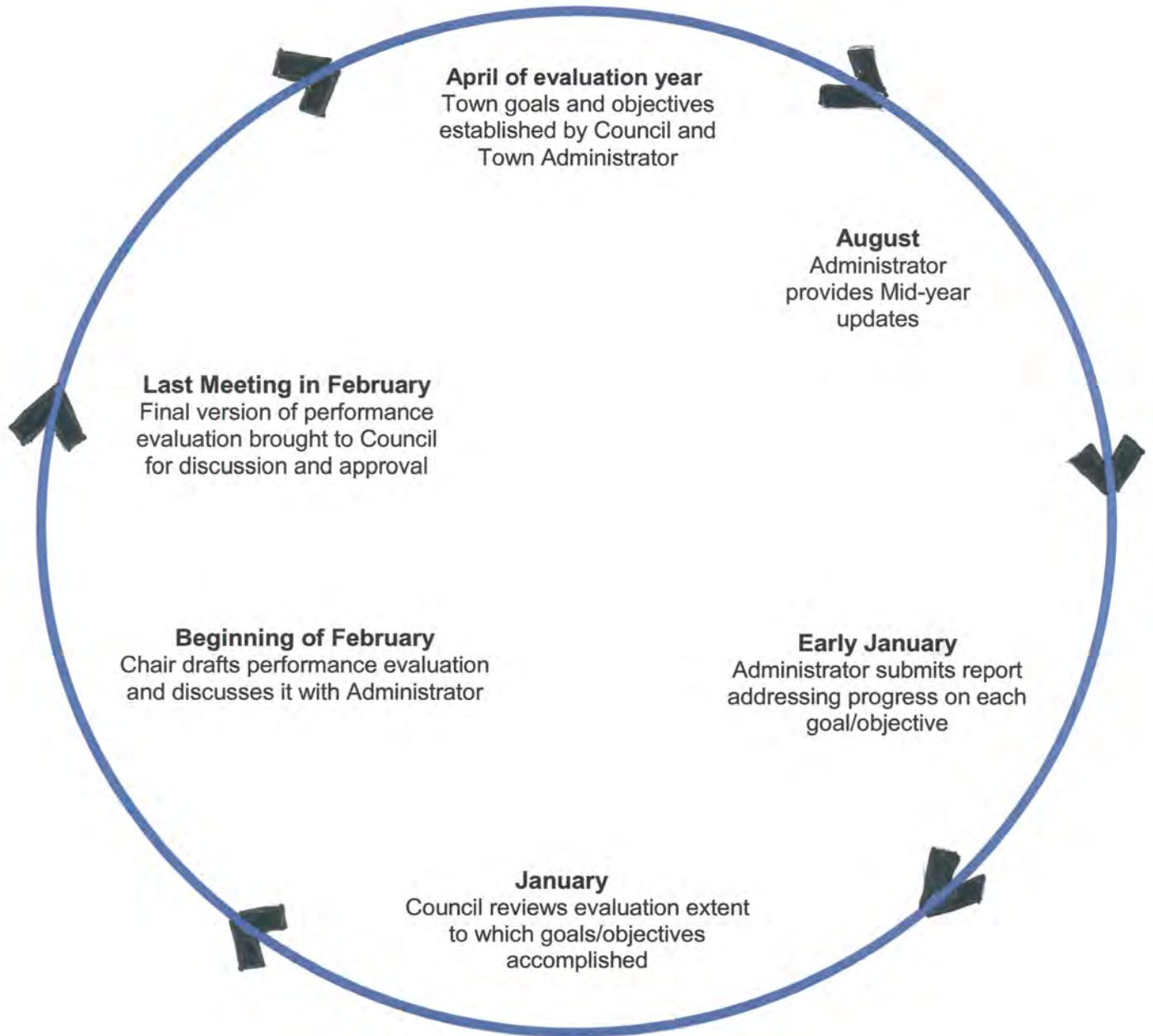
its offerings to travelers. Two decades later, the panels were faded with many of the businesses no longer in operation. As such, over the course of more than a year, the Town and UNH worked together to redesign the panels, moving away from a business advertising approach to instead focus on positive/interesting attributes of both Durham and UNH. Cost for the effort was shared equally between Durham and UNH.

I wish to acknowledge our modest but mighty team of employees within public works, police, fire, planning, zoning, town clerk/tax collector's office, informational technology, DCAT, and more. These are outstanding people, working hard with finite resources to meet the needs of a demanding citizenry with high expectations for exceptional service delivery. Our Town Council is comprised of thoughtful, hard-working, and dedicated individuals with varied backgrounds and perspectives. The Council, along with the benefit of ongoing public feedback and active involvement by dedicated citizens on local boards, committees, and commissions, all contribute to ensuring Durham remains a strong, vibrant, and welcoming community.



Town of Durham

Town Administrator Performance Evaluation Process



**ANNUAL EVALUATION OF TODD SELIG
2024**

1 = Unacceptable 2 = Acceptable 3 = Good 4 = Very Good 5 = Excellent

	1	2	3	4	5	N/A
Ability to maintain or improve strong relationships with:						
• Town Council (responsiveness to concerns)						
• External entities such as UNH, town businesses, etc.						
• Town department heads and staff						
• Town committees and boards						
• Serves citizens effectively and efficiently						
Financial oversight:						
• Financial performance of the Town						
• Fiscal responsibility						
• Budget (process, preparation, dissemination)						
• Budget (creation of budget within Council guidelines)						
• Accomplishment of meaningful modifications in the economic relationship with UNH						
Leadership:						
• Provides clear guidance to the Council on all issues						
• Provides effective management of town staff and departments						
• Improves the performance of town staff, when needed. When necessary, has removed individuals who have failed to perform consistent with their job description and/or compensation						
• Competency in human resource area with new hires during his administration						
• Provides leadership and support to town committees and boards as necessary.						
Initiative:						
• Proposes appropriate initiatives/strategic direction to the Council						
• Is timely in follow up reports to Council initiatives						
• Accomplishment of Council's goals and objectives						
• Ability to be a visionary for future community planning						
Other:						
• Appropriately challenges the status quo						
• Willingness to challenge and support his convictions						
• Appropriate allocation of time and energies, including delegating non-essential tasks						

Provide additional written evaluation below or separately if you wish. **Evaluation forms are due to Sally Needell not later than WEDNESDAY, JANUARY 15, 2025.**



TOWN OF DURHAM

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AGENDA ITEM: **#14D**

DATE: January 6, 2025

COUNCIL COMMUNICATION

INITIATED BY: Joe Friedman, Chair Pro Tem
Todd Selig, Administrator

AGENDA ITEM: DISCUSSION OF THE PRESENT COMPOSITION OF DOWNTOWN DURHAM.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Joe Friedman, Chair Pro Tem
Todd Selig, Administrator

AGENDA DESCRIPTION:

The 2024 Council Goals includes the following goal:

“Encourage downtown business development and growth of the tax base and housing opportunities within the commercial core through the application of smart growth principles focusing on planned economic and community development that attempts to curb urban sprawl in a sustainable manner, to include the future of 66 Main St. and the Town-owned Pettee Brook parking lots.”

Administrator Selig has received emails recently from downtown business owners who have been concerned about the health and vibrancy of the downtown area. On August 7 Administrator Selig sent an email to Planner Michael Behrendt asking him to work with the Planning Board and the Housing Task “to evaluate what might be done to bring additional housing to our commercial core, utilizing smart growth principles, to help downtown Durham increase in vibrancy.” The Housing Task Force has since created a Downtown Zoning Subcommittee to begin this work.

Tonight the Council can begin discussing their thoughts on the current composition of Downtown Durham’s commercial and residential offerings and any future changes that should be made.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

No formal action required. Discuss the current composition of Downtown Durham and any future changes that should be made.