

## **ARTICLE IV INTERPRETATION, AMENDMENTS, AND LEGAL PROVISIONS**

### **175-11. Scope and Interpretation.**

In interpreting and applying the provisions of this chapter, affected parties shall be held to be the minimum requirements for the promotion of the health, safety, convenience and general welfare of the Town of Durham and its residents. Where a provision of this chapter differs from that prescribed by any other applicable statute, ordinance or regulation, that provision which imposes the greater restriction or the higher standard shall govern. Any use not specifically permitted or permitted by conditional use permit is prohibited.

### **175-12. Administrative Appeals.**

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his or her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.

### **175-13. Severability.**

The provisions of this chapter are severable. If a court finds that any section or provision of this ordinance is invalid, this finding shall not invalidate any other section or provision of this chapter and those other sections shall remain in force without further action by the Town Council.

### **175-14. Amendment Procedure.**

Amendments to the Zoning Ordinance including the Official Zoning Map may be initiated by the Planning Board, Town Council, or citizens in accordance with the following procedures:

- A. ***Amendments Initiated by the Planning Board.*** The Planning Board may, upon its own initiative, from time to time, consider amendments to the Zoning Ordinance, including its overlay districts and the zoning map, and submit recommendations thereon to the Town Council. The referral shall be made in writing by the chair of the Planning Board. Such amendments shall be developed pursuant to the notice and public hearing requirements contained in Subsection D below.
- B. ***Amendments Initiated by the Town Council.*** The Town Council may, upon its own initiative, from time to time, consider changes to the Zoning Ordinance, including its overlay districts and the zoning map. All such Council-initiated changes shall be referred to the Planning Board for its review and study. The referral shall be made in writing by the Town Administrator. The Planning Board shall, after following the public notice and hearing requirements contained in Subsection D below, submit a recommendation regarding the changes to the Town Council members within 60 days of their referral. (the date of the letter from the Town Administrator). The Town Council may grant extensions to this timeframe at its discretion.
- C. ***Amendments Initiated by Citizens.*** Citizens submitting amendments to the Zoning Ordinance, including its overlay districts, shall forward their proposed changes to the Planning Board for its consideration. Such submission shall be by typed petition signed by not fewer than 50 properly registered voters of the Town of Durham, and shall set out the language of the proposed amendment or the proposed change to the Official Zoning Map. The Planning Board

shall have the request placed on the agenda for its next regularly scheduled meeting. It shall, after following the notice and public hearing requirements contained in Subsection D below, make its recommendation concerning such request to the Town Council within 60 days of the date of the Planning Board's initial consideration. A 30-day extension of the above time limit may be granted by the Town Council.

**D. *Public Notice and Hearing Requirements.***

1. Notice. Notice shall be given for the time and place of the public hearing at least 10 days before the hearing. The notice required under this section shall not include the day notice is posted or published or the day of the public hearing. Notice of the public hearing shall be posted prominently on the Town's website and in at least 2 other public places.
2. Text of Ordinance. The full text of the proposed amendment to the Zoning Ordinance need not be included in the notice if an adequate statement describing the proposal and designating a place where the proposal is on file for public inspection is stated in the notice.

**E. *Ordinance Form.*** Any amendment to the aforementioned ordinances approved by the Planning Board or submitted through it pursuant to Subsection G below shall be submitted to the Town Administrator, who shall be responsible for putting the amendment into proper ordinance form beginning with the words "The Town of Durham ordains..." Whenever practical, the Town Administrator shall set out in full the ordinance sections or subsections to be repealed or amended and shall indicate the material to be omitted by enclosing it in brackets or by strikeout type and shall indicate new material by underscoring it or by typing it in italics. In every case, the recommendation of the Planning Board shall follow immediately at the end of the proposed amendment.

**F. *Action by Town Council.***

1. Agenda. The proposed amendment shall be placed on the agenda of the Council at the next regularly scheduled Council meeting for first reading.
2. First Reading. If the Council votes not to pass at the first reading, the proposed amendment dies. If the Council votes to pass the amendment to second reading, it shall be scheduled for a public hearing before the Council. The Council may, however, refer an amendment initiated by petition that has not passed at the first reading to the Planning Board to be revised and resubmitted to the Town Council for reconsideration. Such reconsideration shall be considered to be the first reading of the amendment.
3. Notice and Public Hearing Requirements. Prior to final Council action, the notice provisions contained in Subsection D above shall be followed.
4. Minor Revisions. After the public hearing, the Council may make minor changes to the proposed amendment, so long as the proposed amendment remains substantially the same as that which was advertised for the public hearing.
5. Second Reading. Following the second reading and public hearing, the Council shall vote on the proposed amendment.
6. Majority Vote Required. Any proposed amendment shall require a majority affirmative vote of Council members present in order to pass.
7. Recording of Amendment. If passed by the Council, the ordinance amendment shall be recorded, authenticated, indexed and printed in accordance with the provisions of the municipal charter.

G. ***Protest Process.*** Pursuant to RSA 675:5, concerned property owners may protest proposed amendments to the Zoning Ordinance.

1. Required Signatures. All protest petitions must be signed by either:
  - a. The owners of 20 percent of the area of the lots included in such proposed change; or
  - b. The owners of 20 percent of the area within 100 feet immediately adjacent thereto or across a street therefrom.
2. Requirements for Council Consideration of Protest Petition(s).
  - a. In order to have any protest considered:
    - (1) The owners signing the petition shall identify themselves on the petition by name and address and by address of the property involved or by lot and map number or by whatever other means is used within the town to identify the land in question so that the Durham Town Council may identify such others as interested and affected parties.
    - (2) The signed protest petition shall be submitted to the Durham Town Council at least 10 days prior to the next Town Council meeting; provided, however, that each protest petition shall apply to that petition only. The Chair of the Durham Town Council shall announce at the opening of the Council meeting that a protest petition has been received.
  - b. Any such amendment or repeal developed pursuant to this subsection shall not become effective except by the favorable vote of 2/3 of all Council members present at its second reading. (See Subsection F above.)