

D-R-A-F-T

**DURHAM TOWN COUNCIL
MONDAY, AUGUST 3, 2020
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Council Chair Kitty Marple (remotely)
Councilor Jim Lawson (remotely)
Councilor Al Howland (remotely)
Councilor Andrew Corrow (remotely)
Councilor Dinny Waters (remotely- joined the meeting at some point after it started)
Councilor Sally Tobias (remotely)
Councilor Sally Needell (remotely)
Councilor Wayne Burton (remotely- joined the meeting at some point after it started)

MEMBERS ABSENT: Councilor Ken Rotner

OTHERS PRESENT: Town Administrator Selig (remotely); Business Manager Gail Jablonski (remotely); Police Chief Rene Kelley (remotely); Fire Chief Dave Emmanuel (remotely)

I. Call to Order

Chair Marple called the meeting to order at 7:00 pm. She read Zoom call-in and public input/participation instructions for the viewing audience, as this meeting was held completely online using Zoom.

The roll call was taken:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>

II. Approval of Agenda

Councilor Lawson MOVED to approve the Agenda as published. Councilor Corrow SECONDED the motion and it PASSED unanimously 6-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
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<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>

III. Special Announcements

Chair Marple read COVID meeting preamble into the public record concerning providing public comments, including sending emails.

IV. Public Comments

Robin Mower, Britton Lane first thanked Charlotte Hitchcock for stepping up to serve on the HDC. She also read a prepared statement on membership on the Economic Development Committee as established by the Town Code, and included wording from the code itself. She said only the Planning Board could have more than one member on the EDC, and said one was an alternate member, who could not vote. She said as an elected person, a Town Councilor tended to have a weightier voice on a local board, and she asked the Council to maintain the balance of powers as laid out in the Code and not appoint a second Councilor to the EDC this evening.

Sam Flanders, Glasford Lane complimented UNH for their plans concerning COVID-19, but said he was apprehensive about whether off campus students would agree to follow these plans. He noted that last Friday, he saw students at a party at a local fraternity, and said this was behavior he'd seen before. He said a principal vector of the virus would be these unsupervised gatherings, and said the Town must insist on a full and equal partnership with UNH to better control these behaviors.

- He asked how residents would be able to communicate with UNH about compliance, and asked what plans UNH had to monitor off campus compliance issues.
- He said there needed to be testing transparency and contact tracing, and spoke in detail about how UNH should publish information daily on a public website. He asked how UNH would contract trace non-university individuals who'd come in contact with UNH students who'd tested positive.
- He said off campus housing was much more likely to be a vector of the virus, and asked what UNH plans were to monitor this. He said the proportion of tests for this population should be increased to reflect the additional risk involved.
- He said the Town Council had the responsibility to keep residents safe, and he spoke about the importance of negotiating with UNH now on this, and not waiting until there was an outbreak, when it would be too late. He said lives were at stake and said now was the time to negotiate.

Marisa Hedland, Madbury Road said she was going for her PhD in physics at UNH and was 23 years old. She said she was very concerned about the returning undergraduate

body at UNH. She said students weren't looking at the official documents on addressing COVID-19 at UNH, and instead were looking at social media posts, where there was a lot of misinformation. She said there were already plans for Corona parties, and said some students weren't taking the virus seriously. She said she personally had had the virus twice, and had permanent damage from it. She said she was able to attend classes remotely because of a disability classification, but said not everyone was that fortunate. She said the University had made it clear that they valued dollars over safety, and said they thought that offering testing was enough.

Ms. Hedland also noted that she lived on Madbury Road, and said there had been an issue with sex trafficking near her recently. She said she wanted the Council to be aware that these things were happening.

Tim Horrigan, Faculty Road, thanked the Council for bringing the mask ordinance forward and urged them to approve it. He said masks were a simple, low cost precaution that made a huge difference. He said the irresponsible behavior mentioned wasn't confined to young people, and noted that at the two legislative sessions at the Whittemore Center, about 10% of the NH House refused to wear masks and behaved badly in some other ways. But he said the vast majority of people were taking this issue seriously and were wearing masks and taking other precautions.

He noted that the Primary was coming up on September 8th, and spoke about the fact that people could get absentee ballots.

Marjorie Smith, Dover Road said she said she was wearing a lot of hats, as a citizen of Durham, a voter, a member of the NH House, and the NH House Rep to the Board of Trustees the University system. She said she'd spent many hours in University system meetings, and was struggling desperately with others to address circumstances that were out of their control. She said the University Board, administration, faculty, staff, and students had been trying to come up with the best possible way to deal with the situation now, and after that. She said some things being said were fact based, and some weren't.

She said tomorrow evening, the Board of Trustees would vote on whether to accept the plans that had been laid out by each of the University system presidents. She said central to the success of these plans was to lend support to the obligation of everyone in Durham to wear masks when they were out and about. She noted that they might not have had to do the mask ordinance in Durham if the Governor had required masks. She said whatever efforts the University made, there was no way they would work unless the Council added its support to requiring masks. She commended the Council for having this on the agenda.

Joanna Wicklein, Packers Falls Road said the proposed mask ordinance looked really good, and she thanked the Council for their work on it. She suggested omitting the part about wearing a mask unless there was 6 ft of distancing, asking how it would be interpreted and enforced. She said she'd like to see wearing masks enforceable, and said it would make a difference in terms of whether she would go downtown or not.

Administrator Selig said the 6 ft distance issue had been discussed with staff and would be discussed tonight.

Ken Stuff, Oyster River Road said he was a legal fireworks participant on July 4th, noting that he got his permit for this. He said he didn't think a ban on fireworks was necessary, noting that it was easy to get a permit, and said the permit process simply needed to be enforced. He said the Fire Dept. said they mailed the permit form to the Police Dept., and said he had no issue with a police officer coming to his neighborhood as part of that process. He questioned where the \$25 for the permit would go and what it would do.

Concerning the proposed mask ordinance, Mr. Stuff said he lived in the Faculty neighborhood, and was a disabled vet with breathing issues. He spoke about how the 6 ft of distancing requirement would impact him, and also said people with breathing problems were told not to wear a mask. He asked people to respect those who had disabilities.

Administrator Selig said there would be conversation tonight about this, and said someone with a breathing disability would be exempt from having to wear a mask.

Barbara ___ said she was against the mask ordinance, and said she was against criminalizing non-mask wearing behavior, which she said was an extreme step. She noted that she was an attorney who worked in the judicial system, and said she was concerned about how the police would enforce this ordinance and the amount of time it would take to resolve the charges that were filed in court. She said the Dover court system was already very crowded these days. She said an ordinance wasn't the way to make the students take this issue seriously, and said there were other ways to deal with this problem. She said the problem was the interaction between UNH and the local Town population, and said she didn't know what the solution to that was.

Chair Marple said she appreciated this perspective that reflected the local court system.

V. Approval of Minutes

June 15, 2020

Councilor Lawson *MOVED* that the Durham Town Council does hereby approve the Town Council regular meeting minutes for Monday, June 15, 2020 (as presented Councilor Corrow *SECONDED* the motion and it *PASSED* 8-0 By a roll call vote:

Council Marple	Yes
Councilor Lawson	Yes
Councilor Howland	Yes
Councilor Corrow	Yes
Councilor Waters	Yes
Councilor Tobias	Yes
Councilor Needell	Yes
Councilor Burton	Yes

(Councilor Waters and Councilor Burton Dinny had joined the meeting at some point prior to taking this vote.)

July 6, 2020 (regular & nonpublic)

Page 3 under Public Comments, should say “Abraham Brody”

Councilor Needell MOVED that the Durham Town Council does hereby approve the Town Council regular meeting and nonpublic minutes for Monday, July 6, 2020 as amended. Councilor Tobias SECONDED the motion and it PASSED By a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

IV. Public Comments (continued)

Mark Morong, Emerson Road, first said he supported the mask ordinance. He said driving downtown, masks were worn at the market but said he didn’t see a lot of mask usage elsewhere.

He noted supporting data he’d provided concerning the fireworks issue, and read from the email he’d sent, which noted among other things that the state law that legalized fireworks in NH hadn’t been supported by the state Fire Marshall. He also noted that the state Fire Code outlined the many hazards of fireworks. He said the state law allowed individual municipalities to ban fireworks. He said in compact areas of Town residents shouldn’t be able to set off fireworks because they were too erratic in terms of where they landed. He also noted how the noise they created affected veterans with PTSD and pets. He spoke about his own experience with this, where his two dogs hid in the closet when fireworks were set off. He also said given the demographics of Durham, fireworks shouldn’t be condoned or encouraged. He asked the Council to weigh the benefits versus the real and potential hazards of fireworks to the Town.

Eddie McCaddin, _____ said she had noticed inconsistency regarding the wearing of masks in Town, and as an example said she’d seen a University police officer and a Town police officer not wearing a mask at The Works. She also said she agreed with Mr. Morong concerning the fireworks issue, and noted how they scared her dog, and also impacted her because she had tinnitus and the noise from fireworks was very distressing.

She said it was ridiculous to allow fireworks in a small town, and said the hazards were challenging. She said perhaps there was a safe public area where they could be set off. She noted that she was a therapist, and said PTSD could trigger veterans horrifically. She summarized that she supported the mask ordinance, and supported a ban on fireworks.

VI. Councilor and Town Administrator Roundtable

Councilor Corrow provided a number of updates.

- He said the agenda for the upcoming HDC meeting included VHB being there to discuss the Mill Pond dam study and the various alternatives that had been proposed to address the situation.
- He said when he and former Chief Kurz walked Wagon Hill Farm with someone from Burns Security, the estimate for a security system was around \$30,000. He said he didn't want to lose momentum on that issue, and said that cost was a non-starter, but perhaps additional estimates could be obtained that would be a lot less.
- He said he appreciated it that DPW Director Rich Reine talked with him about budgeting for the Wagon Hill Farm and Courthouse buildings, and about what the priorities should be for the first few years. He said it was realized this would be a really tough budget year.

Councilor Needell reported on the Conservation Commission's most recent meeting:

- She said there was discussion and advice provided on a conditional use permit application.
- She said they heard a presentation on groundwater modeling.
- She said Mr. Behrendt discussed plans for the climate adaption chapter of the Master Plan, which the Commission would provide advice on.
- She said they discussed questions they wanted to ask developers to make sure there was a comprehensive approach to looking at wetlands as part of a project application. She noted that the Gerrish Drive subdivision application had brought up a lot of questions on this, concerning larger watershed and wildlife corridor issues beyond the property itself.

Councilor Needell next reported on the most recent Land Stewardship Committee meeting:

- She said there was an update on the Oyster River bridge from Dennis Meadows, and said as part of this there was discussion on materials that might be used for it.
- She said Ellen Snyder provided an update on the Wagon Hill trails.
- She said there was further discussion on the issue of horses being allowed on trails located on Town properties.

- She said there was discussion on the proposed crosswalk on Route 108 to get the Merrick land.

Councilor Needell reported on the most recent Integrated Waste Management Advisory Committee meeting:

She said there was a regular meeting of the IWMAC in July, as well as a workshop with Agricycle concerning potentially expanding compost recycling in Durham, including possible curbside recycling of compost. She noted that the company took materials from Hannaford, UNH, etc., including compostable materials that were still in the package. She said the compost was added to manure to create a slurry that created methane and other gases, and said 3 MW of electricity was generated from this as part of the operation of their facility. She said material that couldn't be composted went to an incinerator or was used for bedding for the cows, and said the compost itself was used on the farm.

She said the downside for Durham was that the Agricycle facility was far away, and also said a sufficient volume of materials needed to be provided. She noted that Mr. Reine and Mr. Bullen were there for the workshop. She said there was also interest in speaking with Mr. Fox and Black Earth about expanding recycling of compost, and said it was exciting that there were some potential options for the future.

Councilor Needell said the best way to recycle things these days was to bring them to the Transfer Station. She said the materials that the Town could make money on were corrugated cardboard, aluminum cans that weren't crushed, and metals. She said they would also be recycling glass containers in the near future.

Councilor Lawson said last Wednesday he and town representatives from Madbury, and Lee met with the Cooperative School District's Finance Committee, and he noted that this meeting was covered in the most recent Friday Update. He said there was an overview provided at the meeting on the types of issues the District was dealing with in developing an opening plan. He said they discussed the impacts of COVID-19 on school budgets. He said it was disappointing to learn the state distributed relief funds to schools based on their Title 1 status, and said because of this the Oyster River School District only received \$39,000 when other similar sized districts received much more.

He said there was discussion with Town reps about concerns about impacts on town finances, and said the focus was on year end property tax receipts and how to manage that from a cash flow standpoint if they were less than expected. He said the School District provided an overview on their fund balance and the things they were doing regarding the budget and COVID-19.

He said this was the first time he'd been with reps from other communities, and said there was discussion about areas where they could cooperate concerning providing services and reducing costs, - in the areas of recreation, shared clean energy procurement, trash

and recycling, and health insurance. He said it was a good meeting and said he expected that they would meet again in the fall.

Chair Marple thanked Councilor Lawson for attending the meeting, and said it was good to get some of these ideas out on the table.

Councilor Burton thanked Councilor Lawson for taking this on. He said he attended the most recent Agricultural Commission meeting and said there was discussion on the draft ordinance. He said the Energy Committee meeting tomorrow was packed with interesting issues.

Councilor Howland said at the most recent IWMAC meeting, Mr. Bullen discussed the contract with Waste Management. He said initially there was supposed to be a 6% increase per year in the tipping fees, but said it was now down to 3.5%. He said recycling fees would be determined month by month.

He thanked Councilor Lawson and Administrator Selig for coming to the School Board meeting. He noted that Scott Bugby from Lee spoke at the meeting about the Lamprey River Cooperative, which had a contract with Waste Management. He said it was potentially possible for Durham to link into the contract, and said it would be important to investigate this possible opportunity.

He said at the EDC meeting, there would be discussion about the proposed Zoning amendments for the downtown. He said they would also get information from Sarah Wrightsman on the work the Housing Subcommittee was doing.

Councilor Howland said there were two workshops in July concerning opening up the school system in September, and said it was extraordinarily complex to do this. He said there would need to be a robust online setup, which was the one thing they could control, and said they'd learned some lessons about this in the spring. He also said there was discussion at the workshops about targeting populations at risk, which were special needs kids, kids who just couldn't do online learning, and younger kids in first and second grade. He said the questions were about identifying them and how they would be brought into the school system, and said they were supposed to make a decision on this this week.

Councilor Tobias said the proposed Bagdad Woods addition was discussed at the July 8th meeting, and said there was an extra meeting on the application on July 15th, when it was approved. She said the proposed Agricultural zoning amendments were discussed at both meetings. She said at the July 22nd meeting there was a lot line adjustment application. She said the Board also continued its review of the Mill Plaza application, focusing on the architectural design of the project. She noted that on Saturday, members of the Mill Plaza team would be holding a community forum on Zoom about this design. She also said the Board reviewed an application for a proposed barn replacement at Harmony Homes.

VII. Report from the UNH Student Senate External Affairs Chair or Designee

Katrina Wilson said the concerns about COVID-19 on campus were valid. She said UNH, including the Student Senate was taking things very seriously, and stood with Durham on the mask ordinance. She said she had not heard of any COVID-19 parties but said UNH was taking this issue very seriously. She noted that the companies that ran off campus housing like The Lodges, where she lived, had leases that restricted people other than the tenants from being in the units. She spoke in further detail about measures in place on campus to protect the students and the Town, including testing of students twice a week. She said they were totally supportive of the mask ordinance and wanted to make sure the community was safe.

Councilor Lawson said this past week, a number of Councilors had seen students in large groups on fraternity properties who were not social distancing and weren't wearing masks. He asked what they all should be doing about that.

There was discussion with Ms. Wilson about this. Student Senate President Nick Fitzgerald noted that Senate Vice President Tyler Silverwood was also on the call. He said he'd met with the fraternity leaders, and said they were working on putting restrictions in place including limiting who was allowed in the houses. He said he didn't think these restrictions would be enacted until school started, and spoke further.

Councilor Lawson asked about unrecognized fraternities and off campus housing. Ms. Wilson said the unrecognized fraternities would not be there this semester. She also spoke about restrictions on fraternities and sororities this semester.

Councilor Lawson said it would be a dynamic environment, and said Student Senate leaders would be key to success. He said they all had a lot of work to do, and said he and other Council members were lucky to have them on their side, and appreciated that they were at the meeting tonight and that they were in this for the long haul. He said they would all do the best they could. Ms. Wilson said she was glad to be there to help. She said there was new information coming out every day, and said they were doing their best to get this information out.

Mr. Fitzgerald said the University was fully aware of the idea of COVID parties, and was looking at possible expulsion of students who did this.

Ms. Wilson said an overwhelming number of students wanted to be back on campus whether they took classes on campus or not. She said there had been clear communication with them about repercussions of violating the rules.

Councilor Needell asked if the hotline would be available to residents and Ms. Wilson said yes.

Councilor Waters asked under what circumstances students would be removed from campus, and if the UNH police would be involved with this. Mr. Fitzgerald provided details on the process for determining this, involving something like three strikes you're out approach, and there was discussion.

Councilor Waters asked if there was a demarcation between enforcement on campus and off campus, and there was further discussion. Administrator Selig said if someone was off campus and there was a mask ordinance in place, the person would be cited by the Town and the University would then be notified about this. He said after additional strikes, the person wouldn't be allowed to participate in classes and other activities.

Chair Marple thanked Ms. Wilson, Mr. Fitzgerald, and Mr. Silverwood, and said they'd been very helpful.

VI A. Town Administrator Roundtable

Administrator Selig provided a number of updates:

- He said in the Friday Updates there was a Goals update from the Town Council.
- He said they were tracking and monitoring closely a tropical storm that was likely to arrive in Durham on Tues-Wed.
- He said the roadside mowing program was making progress, and provided details on the roads being worked on.
- He said the Dover Road sewer project was substantially complete at this point. He noted that as part of the project they were able to observe the interior of the old sewer line, and found that its condition was pretty good so it was hoped it could be used as a backup if needed.
- He said a small footbridge off of the Pettee Brook parking lot that was put in privately needed attention, and said the DPW was discussing this with the owner of Durham Dental.
- He said the DPW was looking at how to maximize air exchange in the newer Town buildings.
- He said they were working closely with UNH on reopening planning. He said if the Council moved forward with the mask ordinance, there would be signage placed at the entries to the Town to make it clear that masks were required. He said they would also ask local businesses to put up signs about wearing masks, social distancing, etc.
- He said because of the \$30,000 cost estimated for Wagon Hill Farm security, this would be a budget item for next year. He also said there would be discussion on this issue with the DPW Director and Police Chief in the coming weeks.
- He suggested that the Lamprey River Coop idea should be looked at by the IWMAC.

VIII. Unanimous Consent Agenda (Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)

Shall the Town Council approve the 3rd Warrant for 2020 Water and Sewer totaling \$490,965.82 and authorize the Administrator to sign said warrant?

Administrator Selig said there had been an incorrect number in one of the Where As's, and said it should read \$490,965.82.

Chair Marple MOVED that the Durham Town Council does hereby approve the 3rd 2020 Warrant for Water and Sewer totaling \$490,965.82 commits the bills for charges to the Tax Collector for collection, and authorizes the Administrator to sign said warrant on its behalf. Councilor Needell SECONDED the motion and it PASSED 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

IX. Committee Appointments

- A. Shall the Town Council appoint Charlotte Hitchcock, 14 Stone Quarry Drive, to fill a regular member term on the Historic District Commission/Heritage Commission?

Councilor Corrow said he'd spoken to Ms. Hitchcock by email. He said she was very well qualified and would be a wonderful addition to the team. Chair Marple said she agreed, and said she was thrilled to have Ms. Hitchcock with them.

Ms. Hitchcock introduced herself, and said she was excited about contributing to the community.

Councilor Corrow MOVED that the Durham Town Council does hereby appoint Charlotte Hitchcock, 14 Stone Quarry Drive, to fill a regular member term on the Historic District Commission/Heritage Commission, with a term expiration of April 30, 2023. Councilor Waters SECONDED the motion and it PASSED 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>

<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

- B. Shall the Town Council, upon recommendation of the Economic Development Committee, move Sally Tobias from an alternate member to a regular member position on the Economic Development Committee to fill the unexpired term of Roger Hayden?

Chair Marple said she understood the reasoning behind what Ms. Mower had said under Public Comments. She said Councilor Tobias had served on the EDC for many years and had been very effective. She said having more than one Council member on the committee didn't bother her, and said there didn't appear to be other people clamoring to be on it.

Councilor Howland said it was a somewhat ironic situation, and noted that there had been and now were two Councilors on the IWMAC. He said the EDC had tried to get a lot of business owners with experience on the committee. He said Councilor Tobias had been a very hard worker on this committee, and had gotten business owners together and gotten to know them. He said he and Councilor Tobias were absolutely not dominating the conversation on the committee, and said he didn't see this as an issue. He also said if they were going to be consistent, there shouldn't be two Councilors on other committees either.

Councilor Waters said he was in favor of Councilor Tobias being a regular member of the Committee.

Councilor Howland MOVED that the Durham Town Council does hereby move alternate member Sally Tobias to fill the unexpired regular member term of Roger Hayden on the Economic Development Committee, with said term to expire on April 30, 2023. Councilor Corrow SECONDED the motion and it PASSED 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

- X. **Presentation Items Quarterly Financial Report through 06/30/20 – Gail Jablonski, Business Manager**

Ms. Jablonski said things were looking wonderful. She said about 51% of the Budget had been spent. She said that concerning revenues, taxes were 88% collected as of June 30th and were now in the mid 90% range so she didn't see problems with collecting taxes. She noted that there was a loss of approximately \$75,000 of anticipated revenues from the parking meters for the first six months of the year due to the shutdown of the meters from mid-March through May 31st.

She said the Recreation Department was anticipating a loss in revenue of approximately 30% due to program cancellations, but said this would be offset because of fewer expenses since there were fewer programs.

Ms. Jablonski said Police Department revenues from court fines were currently less than expected due to a backlog of approximately 100 cases at the court level, but said those revenues should start coming in when the backlog was cleared up. She also noted that arrests had virtually stopped at both the Durham and UNH Police Departments due to COVID-19.

She said to date \$313,576.74 had been expended relating to the COVID-19 pandemic, and said it was estimated that all but approximately \$82,000 of it was reimbursable from several CARES ACT grants.

Ms. Jablonski said they didn't see any problems, moving forward.

Councilor Lawson asked what category motor vehicles taxes and registration was in, under General Revenue, and Ms. Jablonski said it was under permit fees. She said there had been no significant change in this revenue. Administrator Selig said Town Clerk Laurie Pitt had noted that during lockdown these revenues had been running behind, but said once that ended, they got caught up.

He said they would continue to monitor Town finances closely, and would let the Council know if there were concerns.

XI. Unfinished Business

DISCUSSION AND POSSIBLE REFERRAL TO THE PLANNING BOARD FOR ITS REVIEW AND STUDY ORDINANCE #2020-10, a Council-initiated ordinance amending Chapter 175 "Zoning" of the Durham Town Code regarding height, stories, and uses in the Central Business District; method for determining building height and drive-through facilities

Town Planner Michael Behrendt provided an introduction on the proposed changes. He noted the informal group of people who'd discussed strategies to enhance development in the Central Business District while also preserving its character. He said this group included 4 Council members, Administrator Selig, Ms. Souter, Mr. Rice, Ms. Cline, and himself. He said after a number of iterations, this was the document that had been developed. He reviewed the proposed changes to the Zoning Ordinance.

- An additional story would be allowed on a mixed-use building by Conditional Use. A 5th story would be allowed where currently 4 stories are allowed, and a 4th story would be allowed where currently 3 stories were allowed.
- The configuration of office/retail use, depending on the number of floors in a mixed-use building
- A revision of the definition of building height
- Drive through facilities would be allowed more flexibly; food service would only be allowed in the Courthouse zone.

Councilor Lawson said there were a number of things a developer would have to do in order to get an extra story. He noted that getting a variance for an extra story was very unlikely because it wasn't a hardship and the economics couldn't be considered by the ZBA.

He spoke about the fact that in recent years some Zoning changes were made concerning the characteristics of apartments downtown, including only allowing two people to occupy a unit. He said these changes would allow the units to appeal to more than one demographic, and said doing this necessitated the proposed remix of residential and commercial space.

Councilor Lawson said a value was put on true public space by those working on the Zoning changes, and said if a developer put an emphasis on this, one of the proposed changes recognized that. He said a lot of work went into these proposed Zoning changes, and said they were worthy of being sent on to the Planning Board. He said he didn't think there needed to be a protracted discussion on them there, and said he'd like to get them back to the Town Council for its public hearing process.

Councilor Tobias said the provision on increasing the amount of public space provided would be a great addition to the Zoning Ordinance, and would be very important going forward. She said they'd heard that residents wanted gathering spaces, and said COVID-19 had brought home the importance of open air, large gathering spaces.

Councilor Howland said something that had been mentioned about Jenkins Court was that the Town wasn't supportive of possible changes there. He said the proposed Zoning changes were supportive of possible changes there, and were creative ways to make some good space downtown in order to bring back residents to support the businesses there.

Administrator Selig thanked everyone who'd spent many meetings working through some thoughtful Zoning changes for the downtown core. He said it was important to hear from the Planning Board on them at this point.

Councilor Lawson MOVED that the Durham Town Council does hereby refer to the Durham Planning Board for its review and study Ordinance #2020-10 amending Chapter 175 "Zoning" of the Durham Town Code, Section 175-7. "Definitions," Section 175-42. B. "Development Standards in the Central Business District," Section 175-53. "Table of Land Uses," Section 15-54. "Table of Dimensions," and Section 175-56. "General Dimensional Standards." Councilor Tobias SECONDED the motion and it PASSED unanimously 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

XII. New Business

A. DISCUSSION AND ACTION ON EMERGENCY ORDINANCE #2020-11, requiring the wearing of face coverings under certain conditions within the Town of Durham

Administrator Selig said the Town had monitored the pandemic very closely for many months. He said the idea of the ordinance came up early on, and legal counsel said she didn't believe municipalities had the authority to do this. But he said Nashua had adopted such an ordinance, which was immediately challenged. He said the judge ruled that the ordinance was enforceable and said based on that and the clear and present harm from students returning to Durham, it made sense to bring forward a facial covering ordinance.

He said the ordinance focused on 4 areas:

1. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a coworker or a customer.
2. Members of the public entering or queued to enter, remaining in, or exiting from any business, including without limitation any outdoor area where business of any sort is conducted, work site, or Town of Durham government building, including the designated polling place at the Oyster River High School while elections are being held, must wear a face covering. The Oyster River Cooperative School District, University of New Hampshire, and State and Federal authorities may have different regulations for their facilities.
3. Members of the public entering or queued to enter a restaurant or establishment serving alcoholic beverages for the purpose of picking up food for takeout or any other purpose must wear a face covering. Members of the public dining indoors or outdoors at a restaurant may remove face covering while seated at their table.

- Members of the public must wear a face covering when entering, using, or leaving the restroom of a restaurant
4. Members of the public utilizing sidewalks and other public ways within the Central Business, Professional Office, Church Hill, and Courthouse zoning districts as defined by the Durham Zoning Ordinance (https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21561/zoning_map_downtown_march_2012_22x34.pdf) Chapter 175 of the Town Code, must wear a face covering when coming into contact with others and social/physical distancing of at least six feet is not be possible.

Administrator Selig said the Town had opted not to require masks on private residential property, although noting that Nashua did require this. He said there would be private property issues involved in doing this, and said enforceability would be difficult. He said the Police Dept. had talked about their concerns about the ordinance, given the difficult times they were in after the killing of George Floyd. He said in terms of enforcement, the goal of the ordinance was compliance, and educating people. He noted that the penalty wording was written carefully, and he spoke further on this.

He said they got some helpful feedback over the weekend on addressing the issue of aerosol droplets, and said wording on this had now been integrated into the ordinance. He said the fines proposed were up for discussion, and noted that the goal wasn't to fine anyone.

Administrator Selig noted that the issue was raised as to whether people should not have to wear masks in the downtown core if they weren't within 6 ft of someone. He said particulars like this needed to be considered.

He said if someone was wearing a face shield and wore it properly, the Police Dept. wasn't planning to cite anyone. But he said face shields were left out of the ordinance because there wasn't a lot of literature on their effectiveness.

He said a 2/3 vote was required to approve this ordinance because it was an emergency ordinance. He also said it would only be in force for 60 days, which was good because the Council would have to revisit it and modify it if needed. He said he recommended passage of the Ordinance, as the Town Administrator as well as being a part of the Emergency Management team. He said Code Officer Audrey Cline also recommended its passage.

Councilor Lawson asked whether if the ordinance passed and there were problems with it prior to 60 days, it could be rescinded and modified. Administrator Selig said yes.

Chief Kelley said there had been in-depth discussions about enforcement of the ordinance, and said it wasn't a goal to summons anyone to court. He said with the

ordinance, staff would be able to have a conversation with someone who wasn't wearing a mask, offer a mask to the person, and hopefully that would be the end of things. He noted that there were 4-5 vacancies in the department, and 2 new officers would be getting training shortly, so they were short-handed. He said it would be a lower priority to respond to calls, but said they were poised to enforce the ordinance. He said he'd directed staff that if someone was belligerent, the officer shouldn't engage, for a number of reasons. He spoke further on this.

Chair Marple said she hoped students were getting the same messages at home. She also said there was a learning curve, noting her own experience with this, including as someone who'd had the virus. She said she hoped that once the students returned, they would get used to wearing a face covering, and it would become less and less of an issue. She read a statement she'd written.

Councilor Needell asked Administrator Selig to address exceptions to having to wear face coverings downtown. Administrator Selig said children 10 years or younger and someone with a disability or a medical issue would be exempt under the ordinance.

Councilor Needell asked if it would be easier to leave out the 6 ft distancing requirement, and require people to always wear a mask downtown. She also asked if under penalties, they should include notifying UNH. Chief Kelley said they would notify UNH, with a copy of the violation. Councilor Needell asked if that should perhaps be noted under the penalties.

Councilor Lawson called a point of order, and noted that this wasn't a public hearing, but people were providing comments in the Zoom chat area. He asked that the Chat function be disabled. Administrator Selig said he'd contacted DCAT about this. Chair Marple noted that at a normal meeting, they wouldn't be allowing people to chat in the audience. Councilor Lawson said the comments would be disregarded if needed.

Administrator Selig said he didn't recommend addressing in the ordinance how UNH students would be treated, and said they needed to treat everyone the same. He explained that UNH would be notified about arrests and would then take action. He spoke further on this, and said students should be aware that there would be consequences on campus for not following the ordinance off campus.

Police Chief Kelley said that regarding an off-campus violation, UNH had a three-strike rule. He said a summons received downtown would be considered one strike, and then UNH would take disciplinary action.

Councilor Lawson said he thought the ordinance's focus was education and compliance, and said he hoped there would be few/no summons issued. He said he supported the fine

levels in the ordinance, and said he didn't want to make this issue less important than those addressed by other ordinances concerning behavior, which were regularly enforced.

Councilor Waters said he respected Chief Kelley's reticence about police officers confronting students. He noted Paul Rasmussen's email about being careful about this and asked Chief Kelley to comment on this issue. Chief Kelley said there would be a warning, with the request to put on a mask, and said he was pretty sure most students would do that during daylight hours. But he said when the bars let out, he didn't want his officers to have to get involved in a fight/pursuit if someone wasn't wearing a mask, and said they would use judgment on this.

Councilor Waters asked if a fine being issued was an arrest. Chief Kelley said it went on the arrest record and UNH was notified, but said it wasn't an arrest, and was like a speeding ticket. Councilor Waters asked if the subsequent meeting of the student with UNH was more important than the fine, and Chief Kelley said yes.

Councilor Howland said he was glad the ordinance was coming forward. He said masks would be mandatory at school and said with this proposed ordinance, there would be consistency across the Town on this issue. He also said he was glad Durham had an experienced police force that was used to dealing with students. He said he was glad there was some flexibility concerning the ordinance, and said they might have a much better idea in the coming weeks about changes that might need to be made to it.

Councilor Tobias said she was in favor of doing this when she saw Nashua adopt an ordinance. She said Durham had a special circumstance, and said students were highly at risk and it was important to protect them as well as everyone else. She said the health implications would go on for a long time and said it wasn't just the flu. She said there was a lot of misinformation going around about the virus. She also said she was a live free or die-er, but said if her desire to live free involved someone dying, that was where it stopped.

She noted that she'd had questions about people using face shields, and about people having to prove that they had an issue with wearing a mask, but said she was fine with the explanations about how the Town would handle this. She said she wasn't in favor of requiring masks everywhere, but said in downtown areas people should have them on, or at least should carry them with them. She said overall she was in favor of the ordinance as written, and thanked those who'd put this together. She said she'd traveled to the Outer Banks of North Carolina this summer, and found there that if people there didn't wear a mask, they didn't get any service. She said seeing someone there without a mask had been an oddity.

Councilor Burton said he knew Judge Coburn, who was a down to earth judge and had heard the case in Nashua. He said she said it was obvious that the purpose of the

ordinance was clearly to protect the health and safety of residents, and to protect businesses. He said she said to the plaintiff that it seemed common sense that requiring masks would reduce transmission of a highly contagious virus that was spread through the air. He said it wasn't just the issue of the statutory authority to do this ordinance, and said the Town had an obligation to do it. He said he believed a challenge to it in court would fail. He said he was a strong supporter of the ordinance and hoped it worked. Councilor Corrow said he was in favor of the ordinance, and said it was imperative for the health and safety of the students, UNH staff and the citizenry of Durham. He said for those who said the ordinance was an infringement of personal and freedoms, the US surgeon general had said it would increase freedom. He said businesses downtown were hurting, and said people were currently afraid to come downtown unless there was a mask ordinance. He said the ordinance would make people more comfortable coming downtown because they would feel safer.

Councilor Needell said she was curious about where people stood on the statement about being 6 ft away, and whether it should be taken out. She asked if police officers would prefer not to have to scan this in looking at a group of people. Chief Kelley said some good recommendations on this were provided and said it would be easier if officers didn't have to guesstimate on this. But he said they could try this for 30 days and if it didn't work, they would adjust it.

Administrator Selig said that was correct, and said they were trying to craft this to allow someone out taking a walk who came into the core but was far from people to not have to wear a mask. He said if the goal was for everyone have a mask on, they would need to look at the exceptions. He said not having exceptions would make the ordinance easier to enforce, but would take away some of the flexibility in it.

Councilor Lawson said there were times when the downtown was very quiet, and said he would be very comfortable having a mask in his pocket at that time. Administrator Selig provided some further perspective on the thought process in developing the ordinance. He spoke about the working draft and a few changes made to it based on feedback received. He said if there was a problem with it, it would be back for discussion by the Council at the next meeting.

Councilor Waters asked about possibly issuing forehead thermometers, which he said might be more calming than a tape measure. Chief Kelley said he didn't recommend this, and said it was best to leave the medical part to professionals.

Councilor Burton said a lot of this would be adjusted. He said there were a lot of privacy issues around data collection around COVID-19, and asked who would collect the data and if it would be robust enough to be able to make policy changes. He spoke further on this. Chief Kelley said they would keep track of the number of contacts, warnings, and citations, and said they wouldn't include names unless a summons was issued.

Councilor Burton asked whether if a student was inebriated and not wearing a mask, they would be charged for both. Chief Kelley said they would probably go with just one of the charges. Councilor Burton said it was a tough challenge, and said the Police Dept. did a wonderful job in handling those kinds of situations.

Councilor Lawson MOVED that the Durham Town Council does hereby ADOPT as amended Emergency Ordinance #2020-11 requiring the wearing of face coverings under certain conditions within the Town of Durham, which will automatically stand repealed as of Friday, October 2, 2020. A 2/3 affirmative roll call vote is required for the motion. Councilor Corrow SECONDED the motion and it PASSED unanimously 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

- B. **FIRST READING ON ORDINANCE #2020-12** creating a new Chapter, Chapter 71, titled “Horses on Town Trails” within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham

Administrator Selig said this issue came up at Land Stewardship Committee and Conservation Commission meetings. He said there had been some people with horses riding on Town trails that were marked out and designed as pedestrian trails. He said this posed a number of issues, including the fact that the bridges on the trails weren’t rated for horses. He said the Police Dept. worked with Land Stewardship Coordinator Ellen Snyder to develop language for the ordinance.

Councilor Lawson said he hoped they moved this to First Reading. He said he and many others in the community had worked on these trails and bridges, and said this took an extreme amount of work. He said the value of this work was diminished by permitting this use of the trails, and he encouraged that the ordinance be moved to first reading.

Councilor Tobias agreed, noting the discussion on this issue by the Land Stewardship Committee, and also noting that there were safety issues involved. She said her dog freaked out if he saw a horse. She said horse riders had a lot of other choices, and said this issue had to be clarified.

Councilor Burton said there was a time several years ago when someone was riding a horse at Wagon Hill, and said he thought it was found at the time that it would be

contrary to Town ordinances to ride a horse on public land. He said clearly this use didn't belong at Wagon Hill or on Town trails.

Councilor Needell MOVED that the Durham Town Council does hereby move on First Reading as presented Ordinance #2020-12 creating a New Chapter, Chapter 71, titled "Horses on Town Trails" within the Durham Town Code prohibiting horses from traversing trails designed for pedestrian activity within the Town of Durham, and schedules a Public Hearing for Monday, September 14, 2020. Councilor Tobias SECONDED the motion and it PASSED unanimously 8-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>Yes</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

C. Discussion regarding the use of fireworks within the Town of Durham

Chair Marple said she was approached awhile back by a resident she knew who'd expressed concern about private use of fireworks in Durham. She said at the time, she said the Council could discuss this issue. She noted that there were towns that banned fireworks. She read a letter she'd written into the public record, which spoke about how after getting comments from residents about fireworks and PTSD, and the harm they did to animals, she realized she couldn't vote to permit private fireworks. She said that was how she felt about this issue now.

Councilor Needell said she wasn't in favor of having private fireworks. She also said it would be good to know what information was asked for in a permit application, and what restrictions needed to be in place if fireworks were going to be allowed in Town.

Councilor Lawson asked for clarification on whether they were illegal if someone didn't have a permit.

Fire Chief Dave Emmanuel said the RSA defined fireworks in a few classes. He said the regulations on "permissible fireworks" were very lax, and said if someone was 21 or older, they could possess permissible fireworks, unless the person lived in a community that prohibited this possession. He said if the person wasn't the landowner, the landowner needed to provide permission on this.

He said permissible fireworks and commercially licensed fireworks were different categories, and he noted that the Fire Dept. ran into this issue a few years ago. He said the commercial permit had been complicated, and they tried to make it simpler and to

make it in line with other permits. He reviewed the current permitting process for private fireworks in Durham.

Councilor Lawson asked whether if someone didn't have a permit, the police could write a summons for this. Kelley said yes, and said the permit was required. Councilor Lawson said it seemed that there were a lot of people in Durham who were shooting off fireworks all year long, and it didn't matter that it was illegal to do this. There was discussion that fireworks were set off at various times of the year in Durham.

Councilor Tobias said she had been assuming that this wasn't something that was allowed in Durham. She noted that in a lot of the places she'd lived, people set off fireworks, and some also shot guns at midnight, even in a suburban area. She said large presentations put on commercially were exciting, and permissible fireworks were fun but caused the most damage and chance of injury. She said she would like to see a conversation on this issue, and said she was up in the air on it.

Councilor Howland said the biggest issue was that people would set off the fireworks regardless, and said at least with a permit there would be safety measures involved which could be discussed with the Fire Dept. He said he hoped that with an educational element they could make things safer.

Chair Marple asked if there was the political will to ban fireworks in Durham.

Councilor Burton said he had PTSD, and said he needed to know when the fireworks would happen. He said they should do this through regulation and not through a ban. He said people would still bring them in, and said things were getting out of hand these days.

Chair Marple noted that some of the really loud fireworks were legal. She said if Councilors weren't interested in banning fireworks, she wasn't sure it was worth bringing this ordinance forward since they were already regulated. She said for her, it was the issue of what people were doing to their surroundings, and not what they were doing in their yards.

Councilor Needell said she was very willing to see fireworks banned, but said short of that there should be some regulations, including restrictions to days/times when it was appropriate to use fireworks so it wouldn't be surprising to people when they were set off. She also said for small yards, it would be important to not endanger neighbors, etc.

Chair Marple said there was already a noise ordinance. She said perhaps the Fire Dept. could inform people about this.

Administrator Selig asked if they could perhaps identify zones where the fireworks would be prohibited all together, such as in the more densely populated areas of Town. He also

asked if they could perhaps require that abutters would need to sign off on the fireworks use. He asked if there was flexibility on this under the RSA. Chief Kelley said that was a question for Attorney Spector and Chief Emmanuel agreed.

Chief Emmanuel reviewed the 5 classifications in the RSA for using fireworks in NH, including one where a municipality could permit fireworks but with more restrictions than what was in the RSA. He said he didn't see a downside to including additional restrictions. He said permitting fireworks for certain dates and locations was a good question to follow up on. He asked that the Council be very clear, if they didn't want permissible fireworks in Durham.

Administrator Selig said until now, the Town had been essentially demotivating fireworks permits by charging \$200 for a consumer permit. He said this had been changed to \$20, which was in line with the actual cost involved. He said a line of thinking was that if people were going to set them off anyway, it was good to have a permit system so people could be advised about the parameters involved. He said if fireworks were going to be prohibited, the Town needed to do a better job of informing residents about this.

Councilor Lawson said very few permits were issued, and also noted how often people heard fireworks in the downtown. He said these were not people who had permits, and said they were using fireworks illegally. He said it was important to be realistic that if the Council did away with fireworks, they would still hear them, and people would probably choose to take the risk.

Administrator Selig said the resident who brought this issue forward would say her animals were petrified of the sound of fireworks, yet the permit had been issued to allow them. He said if they were banned, at least the person could call the police to take action on this.

Councilor Howland said homework was needed on possible additional restrictions, such as abutters knowing when fireworks would be set off. He said he wanted people to be steered to the Fire Dept. to get the safety talk when they got a permit.

Councilor Lawson said perhaps they should consider whether fireworks were appropriate in the RA and RB districts.

Administrator Selig said along with the Fire Dept and Police Dept, he would look at whether some nuanced restrictions could be developed, and said they'd come back with a proposal. He said this had been an illuminating discussion. Councilor Tobias said this issue deserved discussion, and said some restrictions should be looked at.

Councilor Lawson noted for the record that behind the Chief was an image of engine #4, and said it was the first fire engine he'd learned how to drive.

D. Other Business

Councilor Needell noted that there was an inconsistency regarding the fine amount in the horse ordinance, which needed to be figured out.

Councilor Burton said his absentee ballot didn't indicate how to fill out the ballot, and said he was concerned about this. There was discussion.

XIII. Nonpublic Session (if required)

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

XV. Adjourn (NLT 10:30 PM)

Councilor Howland MOVED to adjourn the meeting. Councilor Tobias SECONDED the motion and it PASSED unanimously 7-0 by a roll call vote:

<i>Council Marple</i>	<i>Yes</i>
<i>Councilor Lawson</i>	<i>Yes</i>
<i>Councilor Howland</i>	<i>Yes</i>
<i>Councilor Corrow</i>	<i>Yes</i>
<i>Councilor Waters</i>	<i>did not vote</i>
<i>Councilor Tobias</i>	<i>Yes</i>
<i>Councilor Needell</i>	<i>Yes</i>
<i>Councilor Burton</i>	<i>Yes</i>

Adjournment at 10:11 pm

Victoria Parmele, Minutes taker