



TOWN OF DURHAM

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

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

AGENDA

DURHAM TOWN COUNCIL
MONDAY, FEBRUARY 19, 2024
DURHAM TOWN HALL - COUNCIL CHAMBERS
7:00 PM

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

- I. **Call to Order**
- II. **Town Council grants permission for fewer than a majority of Councilors to participate remotely**
- III. **Roll Call of Members.** Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person
- IV. **Approval of Agenda**
- V. **Special Announcements**
 - A. Adoption of **Resolution #2024-05** Recognizing Michael Everngam for his many years of Dedicated Community Service to the Town of Durham.
 - B. Announcement regarding the Candidate Forum on February 20, 2024.
- 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*)

Shall the Town Council Adopt **Resolution #2024-06** opposing the House Bill 1281 which prohibits a zoning ordinance or regulation from restricting the number of occupants in a residential rental property to less than 2 occupants per bedroom?
- IX. **Committee Appointments**

Shall the Town Council, upon recommendation of the Intedgrated Waste Management Advisory Committee (IWMAC) Chair, appoint Janet Perkins-Howland, 32 Ffrost Drive, to fill a vacancy on the IWMAC?

X. Presentation Items

Presentation by RKG Associates Inc., Boston, MA, on the Draft Durham Housing Needs Analysis.

XI. Unfinished Business

- A. **Public Hearing and Action on Resolution #2024-03** Authorizing the Acceptance and Expenditure of Unanticipated Revenues from the State of New Hampshire Department of Transportation in the amount of \$76,180.91 for Road Improvement/ Maintenance and \$72,364.92 for Bridge Maintenance.
- B. **Public Hearing and Action on Resolution #2024-04** Authorizing the Acceptance and Expenditure of \$286,600 in Unanticipated Revenue From the NH Land and Community Heritage Investment Program (LCHIP) to Support the Rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm and Authorizing the Administrator to Sign Associated Documents.
- C. **Public Hearing and Action on Ordinance #2024-01** Amending Chapter 4 "Administrative Code", Article VI "Procurement" of the Durham Town Code to Increase the Threshold Amounts for Competitive Purchasing, Professional Services; Include an Exception for Work on Historic Properties; and allowing Sale of Surplus Material through Online Marketplaces.
- D. **Discussion and Possible Action on Resolution #2024-07** Amending the Employment Agreement approved on April 3, 2017 between the Town of Durham and Administrator Todd I. Selig by renewing the term of the Agreement for a period of seven (7) years extending from January 1, 2024 to December 31, 2030, updating certain terms within the Employment Agreement, and authorizing the Council Chair to sign said agreement on behalf of the Town Council.

XII. Approval of Minutes - February 5, 2024

XIII. Councilor and Town Administrator Roundtable

XIV. New Business

XV. Nonpublic Session (if required)

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

XVII. Adjourn (NLT 10:30 PM)

(*) *The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes.*

Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder, are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.



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AGENDA ITEM: **# 5A** *TS*

DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: **ADOPTION OF RESOLUTION #2024-05 RECOGNIZING MICHAEL EVERNGAM FOR HIS MANY YEARS OF DEDICATED COMMUNITY SERVICE TO THE TOWN OF DURHAM.**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Michael Everngam has chosen not to run for elected office this March. Michael has been a valuable member of the Town, serving as Moderator for seven years and Assistant Moderator for nine years. Michael also has been a member of the Trustees of the Trust Funds and Cemetery Committee for twelve years. Attached is a resolution recognizing Michael Everngam for his incredible service to the Town of Durham.

A Certificate of Appreciation has been created to be awarded to Michael on Monday evening, February 19, 2024, in addition to the adoption of this Resolution.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby ADOPT Resolution #2024-05 Recognizing Michael Everngam for his Many Years of Dedicated Community Service to the Town of Durham.

RESOLUTION #2024-05 OF DURHAM, NEW HAMPSHIRE

RECOGNIZING MICHAEL EVERNGAM FOR HIS MANY YEARS OF DEDICATED COMMUNITY SERVICE TO THE TOWN OF DURHAM.

WHEREAS the Durham Town Council desires to formally recognize Michael Everngam for the immeasurable contributions he has made to the Durham community over a span of 30 years while serving in the following volunteer capacities:

Moderator	1994 - 2001
Assistant Moderator	2015 - 2024
Trustee of the Trust Funds	2012 - 2024
Cemetery Committee	2012 - 2024
Integrated Waste Management Advisory Committee	2011 - 2014
School Funding Study Committee	2001 - 2003

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the legislative and governing body of the Town of Durham, New Hampshire, does hereby adopt **Resolution #2024-05** recognizing Michael Everngam and expressing its gratitude and appreciation on behalf of the Durham community for his many years of dedicated public service and for the selfless volunteer time and efforts he contributed.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 19th day of February, 2024 by ___ affirmative votes, ___ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



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AGENDA ITEM: **# 5B TS**

DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Sally Needell, Chair

AGENDA ITEM: ANNOUNCEMENT REGARDING THE CANDIDATE FORUM ON
FEBRUARY 20, 2024.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Sally Needell, Chair

AGENDA DESCRIPTION:

For the March 12, 2024 Town Election there are four candidates running for three Council seats (3-year terms). A Candidate Forum has been scheduled for Tuesday, February 20, 2024 at 7:00 p.m. in the Town Council Chambers. Chris Regan has agreed to moderate the forum.

Topics for the candidates to speak on are requested from the public. Any topics of interest can be emailed to Administrative Assistant, Karen Edwards, and she will send them on to Chris Regan.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required.



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AGENDA ITEM: **#8** *TS*

DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Councilor Wayne Burton

AGENDA ITEM: ADOPTION OF RESOLUTION #2024-06 OPPOSING HOUSE BILL 1281 WHICH PROHIBITS A ZONING ORDINANCE OR REGULATION FROM RESTRICTING THE NUMBER OF OCCUPANTS IN A RESIDENTIAL RENTAL PROPERTY TO LESS THAN 2 OCCUPANTS PER BEDROOM.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

State House Bill 1281 has been proposed within the Municipal and County Government Committee regarding the regulation of the number of occupants within a rental property. This bill would significantly hamper the Town of Durham's ability to regulate student rentals. On February 2, 2024, Administrator Selig wrote a letter to the Committee explaining the Town's reasoning for opposing the bill. Subsequently, Councilor Wayne Burton recommended that the Council adopt a formal resolution opposing HB 1281.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby ADOPT Resolution #2024-06 Opposing House Bill 1281 which prohibits a Zoning Ordinance or Regulation from restricting the number of occupants in a residential rental property to less than 2 occupants per bedroom.

RESOLUTION #2024-06 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION OPPOSING HOUSE BILL 1281 WHICH PROHIBITS A ZONING ORDINANCE OR REGULATION FROM RESTRICTING THE NUMBER OF OCCUPANTS IN A RESIDENTIAL RENTAL PROPERTY TO LESS THAN 2 OCCUPANTS PER BEDROOM

WHEREAS, a State House Bill has been proposed within the Municipal and County Government Committee regarding the regulation of the number of occupants within a rental property; and

WHEREAS, the Bill would prohibit a local government's Zoning Ordinance from restricting the number of unrelated occupants in a residential rental property to less than 2 occupants per bedroom; and

WHEREAS, Durham is host to UNH's flagship campus, and therefore, has a significant presence of college students who impact the socio-economic characteristics of our town of 15,410 residents. In comparison, UNH had enrollment of 13,712 students at the Durham campus in the Fall of 2021; and

WHEREAS, managing student housing is a fundamental and overarching issue in the community; and

WHEREAS, the construction of approximately 2,400 new privately-owned off campus apartments in Durham since 2011 has created opportunities for in-commuting students to move into local student housing from surrounding communities in Strafford and Rockingham Counties, freeing up regional apartments for traditional workforce housing; and

WHEREAS, the number of off-campus student-occupied ADUs/other smaller residences in town is approximately 85 units. These 85 units, are generally located within the traditional residential family neighborhoods located in close proximity to the UNH campus and adjacent Durham downtown; and

WHEREAS, what is different about Durham's rental housing market, which is true of most college towns, is local rents are derived on a per-bed basis. This market factor creates an incentive for landlords and property owners to rent to students rather

than conventional renters because their gross monthly rent can be twice as high, driving up rents to the point that most conventional renters cannot compete financially against student renters; and

WHEREAS, family units behave fundamentally differently from non-family congregate living, particularly with student rentals; and

WHEREAS, While most people view college students as having less income or a lower ability to pay, many have their rent paid by their parents or through student loans. Over time, lower rental rates increase to reflect market competition and inflationary influences. This works against workforce housing in Durham and in other nearby communities impacted by college student rental pressures; and

WHEREAS, In response and over many years, Durham has thoughtfully adopted a host of regulations including a noise ordinance, an open container ordinance, a trash ordinance, a disorderly house ordinance, parking ordinances, fire/life safety regulations, and more; but a cornerstone of the Town's ability to manage density within non-family housing units and thereby minimize negative health, safety, and general welfare impacts of such use is through local zoning; and

WHEREAS, on March 11, 1986 the Town of Durham voted for an amendment to the Zoning Ordinance which specified that "No more than 3 unrelated adults may occupy a household in an RA, RB or RC zone;" and

WHEREAS, since that initial amendment, there has been an additional change in the Zoning to restrict no more than 3 unrelated adults in the R, RA, RB, RC, CB, PO, CH, C and CC Zones; and

WHEREAS, Durham's "no more than 3-unrelated" zoning provision is an important component of local efforts to preserve traditional neighborhoods close to campus. It is constitutional, consistent with the Federal Fair Housing Act, and keeps off campus non-family housing density manageable; and

WHEREAS on October 19, 2010 Justice Kenneth C. Brown ruled for the Town on a charge against the three-unrelated rule in Paul Mackin v Town of Durham Zoning Board of Adjustment stating that "The New Hampshire Supreme Court has addressed the issue of whether the 'three unrelated' rule was constitutional in Town of Durham v White Enterprises Inc., 115 N.H. 645(1975). The Court in White Enterprises noted that while the State has an interest in keeping families together, the same policy concerns do not apply when unrelated people wish to cohabitate. Id. At 649;" and

WHEREAS, Judge Brown also stated in this same case that “The petitioner’s assertion that the Fair Housing Act may have altered these holdings is misguided. The Fair Housing Act prohibits housing discrimination based on familial status.”; and

WHEREAS, on February 2, 2024, Administrator Selig wrote a letter to the Municipal and County Government Committee outlining the Town’s objection to HB1281;

NOW, THEREFORE, BE IT RESOLVED, that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby approve **Resolution #2024-06** opposing HB1281.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 19th day of February, 2024 by _____ affirmative votes, _____ negative votes, and _____ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector

HB 1281 - AS INTRODUCED

2024 SESSION

24-2029
10/08

HOUSE BILL **1281**

AN ACT relative to zoning restrictions on residential rental property.

SPONSORS: Rep. Pauer, Hills. 36; Rep. Aylward, Merr. 5; Rep. T. Lekas, Hills. 38; Rep. Santonastaso, Ches. 18; Rep. Wallace, Rock. 8; Rep. Read, Rock. 10; Rep. Damon, Sull. 8; Rep. Wheeler, Hills. 33; Rep. Baroody, Hills. 39; Rep. A. Murray, Hills. 20; Sen. Murphy, Dist 16; Sen. Watters, Dist 4

COMMITTEE: Municipal and County Government

ANALYSIS

This bill prohibits a zoning ordinance or regulation from restricting the number of occupants in a residential rental property to less than 2 occupants per bedroom.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to zoning restrictions on residential rental property.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Zoning; Authority; Rental Occupancy. Amend RSA 674:16 by inserting after
2 paragraph V the following new paragraph:

3 VI. In its exercise of the powers granted under this subdivision, the local legislative body of
4 a city, town, village district, or county in which there are located unincorporated towns or
5 unorganized places shall not adopt nor shall the city, town, village district, or county in which there
6 are located unincorporated towns or unorganized places enforce any code, ordinance, by-law, or
7 regulation related to the occupancy of residential rental property that restricts the number of
8 occupants to less than 2 occupants per bedroom based upon the existence of unrelated or non-
9 familial relationships between the occupants of such rental property. A local legislative body of a
10 city, town, village district, or county in which there are located unincorporated towns or unorganized
11 places shall not adopt nor shall a city, town, village district, or county in which there are located
12 unincorporated towns or unorganized places enforce any code, ordinance, by-law or regulation
13 related to the occupancy of residential rental property that requires the existence of familial
14 relationships between the occupants of such rental property.

15 2 Effective Date. This act shall take effect 60 days after its passage.



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February 2, 2024
Transmitted via email.

Chairman Len Turcotte
Vice Chairman Diane Pauer
Clerk John MacDonald
Municipal and County Government Committee, LOB 301-303
NH House of Representatives
State House - State of New Hampshire
Concord, New Hampshire 03301

Re: Testimony Against HB 1281 from the Town of Durham, NH

Dear Chairman Turcotte, Vice Chairman Pauer, Clerk MacDonald, and Honorable Members of the House Municipal and County Government Committee,

I am writing today to share our significant concerns about **HB 1281, a proposal that would prohibit the adoption or enforcement of any code, ordinance, by-law, or regulation related to the occupancy of residential rental property that restricts the number of occupants to less than 2 occupants per bedroom based upon the existence of unrelated or non-familiar relationships between the occupants of such rental property.** If enacted, this proposal would strike down duly adopted local ordinances related to the occupancy of rental property such as Durham's "no more than 3-unrelated" zoning provision dating in its original form to adoption by ballot vote at Durham's Town Meeting on March 11, 1986.

The Town of Durham had no knowledge of HB 1281. We were not contacted by the sponsors, consulted on its implications, nor did Town officials know of the hearing that took place before your committee on January 24, 2024. Had we known, we would have sent a representative from Durham to provide information. We appreciate the ability to provide written testimony against HB 1281 at this time.

Durham is host to the University of New Hampshire (UNH)'s flagship campus, and therefore, has a significant presence of college students who impact the socio-economic characteristics of the town. Durham's population stood at 15,410 in 2021 according to the American Community Survey (ACS) 2021 5-year estimates. In comparison, UNH had enrollment of 13,712 students according to UNH's Institutional Research Office (11,428 undergraduate and 2,284 graduate) at the Durham campus in the Fall of 2021. UNH students are an integral part of Durham's population and our town.

Managing student housing is a fundamental and overarching issue in our community. The use is akin to holding a tiger by the tail; it provides many benefits but can, if not managed carefully, cause extraordinary problems. Evaluating its impacts is an ongoing matter of discussion here, frequently deliberated by the Town Council, the Planning Board, the Housing Task Force, the former Economic Development Committee, the Conservation Commission, the Energy Committee, the Historic District Commission, the Durham Landlords Association, and the staff, from various perspectives.

On an ongoing basis, we delve into the nuanced details related to student housing to maintain Durham as a beautiful, diverse, well-run community, while also respecting the rights, concerns, and health/safety of inexperienced college student first time renters. The Town approaches the issue in good faith and with much analysis and input from UNH, landlords, and residents (particularly those who live in neighborhoods near and/or hosting student housing). HB 1281 would severely undermine that process.

As home to the UNH main campus, Durham has disproportionate shares of non-family households (45.8%) and renter households (40.5%), much higher than the region and the state.

The most notable population gains since 2011 in Durham have occurred in the 18-24 age cohort, which has increased by 19.7% over the past decade. According to UNH officials, the addition of approx. 2,400 +/- new privately-owned off campus student apartments has created opportunities for in-commuting students to move into local student housing in Durham from surrounding communities such as Rochester, Dover, Newmarket, Madbury, Lee, Somersworth, and Portsmouth, freeing up those regional apartments for traditional workforce or family housing. As an example, so many UNH students moved from Newmarket to Durham during this timeframe that Wildcat Transit no longer runs a shuttle bus between the two communities as there is no longer a demand.

Durham's rental market caters primarily to student households, which have a much higher ability to pay for housing because they rent by the bed, rather than by the unit, which drives up gross potential rent for local landlords, particularly those who own/manage non-owner occupied, traditional family homes and commercial apartments within the downtown core in close proximity to the UNH campus. This has made it difficult for the construction of workforce housing in Durham that is affordable for homeowners making 100% of the Area Median Income (AMI) or for renters making 60% of the AMI.

Durham's housing market largely consists of older single-family homes built before 2000. However, since 2010, residential development interest has been shifting towards commercial student housing, as the town has seen more of these projects developed – once again, approximately 2,400 +/- additional beds over this timeframe.

Host communities are in the best position to manage student housing. Similarly, communities like Manchester, Nashua, Portsmouth, Salem, Rochester, or Concord that host manufacturing facilities, warehouses, malls, hotels, office buildings, gaming, or that are working to adapt to and accommodate influxes of immigrant or homeless populations, are in the best position to manage those unique circumstances. Unlike workforce housing where there is a recognized state-wide need and challenges to its development, student housing does not need an assist, let alone through a mandate from the state.

Durham's large and active rental housing market has monthly gross rents similar to the State of NH median of roughly \$1,200 per month. As noted above, what is different about Durham's rental housing market, which is true of most college towns, is local rents are derived on a per-bed basis. **In other words, landlords rent their apartments based on the number of beds and not by the unit size or number of bedrooms. That means that a conventional two-bedroom apartment, which might rent to two people for \$2,000/month in another town, could be rented to four college students at a rate of \$1,000 per bed or \$4,000 per month for the combined occupants. This market factor creates an incentive for landlords and property owners to rent to students rather than conventional renters because their gross monthly rent can be twice as much.** As a result, this can drive up rents to the point that most conventional renters cannot compete financially against student renters.

While most people view college students as having less income or a lower ability to pay, many have their rent paid by their parents or through student loans. This means they have a much greater ability to pay rent than other people in the rental market. Over time, lower rental rates increase to reflect market competition and inflationary influences. This works against workforce housing, against families, and against non-student young professionals being able to afford to live in Durham or in other nearby communities impacted by college student rental pressures.

According to our 2023 estimates, 3,883 occupants are living in major off-campus student-occupied housing in Durham (excluding boarding houses and fraternity/sorority housing, which are considered group quarters). This means that the remaining 171 students live off-campus in ADUs or smaller residences such as single-family homes or townhomes. Assuming an average of two students per unit (lower for ADU's and higher for single-family houses), the number of off-campus student-occupied ADUs/other smaller residences in town is approximately 85 units. These 85 units, are generally located within the traditional residential family neighborhoods located in close proximity to the UNH campus and adjacent Durham's downtown.

We have found through many years of direct experience that while college students are by and large wonderful people and represent our hopes for the future, they are at the same time young, inexperienced, desirous of experiencing life to the fullest away from their parents/guardians and household rules, and they generally operate on a very different daily life schedule that is incompatible with the schedules of working adults, families, young professionals, and retired persons.

In part because the on-campus residence halls at UNH are well managed and alcohol is not permitted there, the student population migrates off campus to gather, recreate, socialize, and party. This means that in practice, a three-bedroom apartment will end up with the three occupants plus their three friends or significant others on a regular basis for a total of 6 people. A four-bedroom apartment off campus in a residential neighborhood will host 8. And so on.

Family units behave fundamentally differently from non-family congregate living, particularly with student rentals. Eight 18-24 year old college students socializing and consuming alcohol quickly escalates on a Thursday, Friday, Saturday, or Sunday from 9 PM – 3 AM or over the course of a weekend on sunny fall or spring days. Social media posts attract additional groups of college students who talk loudly as they walk through neighborhoods heading to and from a gathering, often at 1 AM. Trash accumulates on lawns and on sidewalks, front lawns become muddy parking areas, noise complaints are lodged by neighbors with the Durham police

department (versus the UNH Police Department as erroneously stated during the public hearing), etc.

Over several years, the quality of the physical structures utilized for student housing can deteriorate if not actively managed by the commercial operators, and the non-student neighbors in the vicinity demand action from the municipality and/or tire and ultimately choose to sell their homes in frustration, which then are sold to landlords who rent to more students due to the economics outlined above, further exacerbating the situation. The cost of additional local police and code/fire enforcement personnel to manage the impact increases local budgets and drives up local tax rates, making our community less affordable for workforce units.

In response and over many years, Durham has thoughtfully adopted a host of regulations including a noise ordinance, an open container ordinance, a trash ordinance, a disorderly house ordinance, parking ordinances, fire/life safety regulations, and more, but a cornerstone of our ability to manage density within non-family housing units and thereby minimize negative health, safety, and general welfare impacts of such use is through local zoning.

Durham's "three unrelated" zoning provision is constitutional, is consistent with the Federal Fair Housing Act, and does not discriminate against students. Further, the Federal Fair Housing Act was not meant to protect a group of unrelated people, but rather to uphold the State's interest in protecting families from housing discrimination.

In Paul Mackin v. Town of Durham Zoning Board of Adjustment (Case No. 219-2010-CV-00318) dating to October 19, 2010, Presiding Justice Kenneth C. Brown opined and ruled as follows:

"The petitioner claims that the "three unrelated" rule is unconstitutional on its face and as applied, violating RSA 354-A:14, which prohibits housing discrimination in New Hampshire. The NH Supreme Court has addressed the issue of whether the "three unrelated" rule was constitutional in Town of Durham v. White Enterprises, Inc., 115 N.H. 645 (1975). The Court in White Enterprises noted that while the State has an interest in keeping families together, the same police concerns do not apply when unrelated people wish to cohabit. Id. at 649.

If an unrelated household group exceeds the designated density requirement it is by voluntary action of the group. The blood related family by its natural growth may become in excess of the density limit. The State has no particular interest in keeping together a certain group of unrelated persons. The State has a clear interest, however, in preserving the integrity of the biological or legal family. The promotion of this legitimate government purpose justifies the exclusion of a blood related family from the density requirements of the ordinance which applies to an unrelated household. Hence this classification is not invidious or arbitrary and is constitutional.

Id. The Court's holding in White Enterprises is consistent with the United States Supreme Court's holdings in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), and Moore v. City of East Cleveland, 431. U.S. 49 (1977).

The petitioner's assertion that the Fair Housing Act may have altered these holdings is misguided. The Fair Housing Act prohibits housing discrimination based on familial status. The Fair Housing Act prohibits housing discrimination based on familial status. "Familial status" is defined as

one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

... It is clear from the definition that the Act was not meant to protect a group of unrelated people, but rather to uphold the State's interest in protecting families from housing discrimination. The Fair Housing Act is not applicable to the matter before the court."

Student housing brings in millions of dollars in tax revenue and supports our local businesses. It would be impossible and imprudent for Durham to try to exclude this use. However, **our collective goal in 2024 as a state is to foster the creation of additional *workforce housing* and more *reasonably-priced* housing of different types in appropriate locations. One community should not be sacrificed for another to find solutions. HB 1281 will do nothing to advance that goal and will harm the quality of life for ordinary citizens who live in our many Durham neighborhoods impacted by student housing.** HB 1281 is a cautionary reminder of the reality that not all bills dealing with housing in this legislative session are good bills. HB 1281 is a bad bill.

The two emails below succinctly summarize concerns from two long-term Durham residents regarding HB 1281:

Hello Todd, **What ever happened to local control?** Has Durham no say in the housing regulations for a university town? Didn't we just celebrate the 50th anniversary of the Onassis defeat? That battle happened just before I came to Durham 49 years ago. ... we appreciate all that you do to make Durham a safe and pleasant place to live. *Bernadette Komonchak, Thompson Lane, Durham, NH*

I will not be back in Durham until Feb 4. For Al [Howland]'s benefit let me tell you of my experience as a 40+ neighborhood resident near UNH. Before our 3 unrelated rule was passed by warrant article it was becoming difficult to live in our family neighborhood because of student behavior in rental properties. Despite the best efforts to enforce nuisance ordinances, we were constantly having to call local authorities because of noise, cars, etc. The [Durham] police can verify the difficulties with enforcement. Even something like young people coming home at 2am and talking in the street will disturb sleeping neighbors. At one time before the 3 unrelated rule, our daughter was at home recovering from major surgery and despite pleas to the absentee landlord across the street, our daughter was awakened night after night by parties or late night car drop offs for the 5-6 renters. **University towns are different than others and I can only plead with the committee to not put this bill forward.** Please Al [Howland] bring my concerns to your Committee. I would be glad to speak to any member in person. *Jay Gooze, Meadow Road, Durham, NH*

We respectfully request that you redirect important efforts toward workforce housing and vote HB 1281 *inexpedient to Legislate.* HB 1281 is poorly conceived, is intended to support two aggrieved Durham landlords, and tries to address a problem that does not exist. It would transition current workforce housing and family residences in our community and potentially in

others to \$1,000 per bed student housing, and would do tremendous harm to the fabric of our traditional neighborhoods and the town as a whole.

Durham, Keene, Hanover, Lebanon, Manchester, Concord, Nashua, Portsmouth, Plymouth, New London, and other communities know their local markets best and they continually wrestle with how to manage zoning uses for optimal results for all stakeholders. Shouldn't we defer to their knowledge and experience?

Do not hesitate to contact me should you have questions in regard to this or any other matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Todd I. Selig". The signature is stylized and somewhat abstract, with a large, sweeping flourish above the name.

Todd I. Selig
Administrator

Enclosure

c: Mayor Jay Ruais, City of Manchester
Mayor Jim Donchess, City of Nashua
Elizabeth Corrow, Keene City Manager
Tom Aspell, Concord City Manager
Alex Torpey, Hanover Town Manager
Shaun Mulholland, Lebanon City Manager
Karen Conard, Portsmouth City Manager
Scott Weden, Plymouth Town Administrator
Kimberly Hallquist, New London Town Administrator
Durham Legislative Delegation
Durham Town Council
Durham Planning Board
Durham Housing Task Force
James Dean, UNH President
Durham Landlords Association



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AGENDA ITEM: **#9** *TS*

DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Janet Perkins-Howland, 32 Frost Drive

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE INTEGRATED WASTE MANAGEMENT ADVISORY COMMITTEE (IWMAC) CHAIR, APPOINT JANET PERKINS-HOWLAND, TO FILL A MEMBER VACANCY ON IWMAC?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's information and consideration is an application for board appointment submitted by Janet Perkins-Howland, requesting appointment for membership of IWMAC. With Ms. Perkins-Howland's appointment, there are no more openings for members on IWMAC as seen on the enclosed list of members.

Ms. Perkins-Howland has attended at least one meeting of the IWMAC and has spoken with Chair, Nell Neal. Attached for the Council's information is Chair Neal's endorsement of Ms. Perkins-Howland's appointment.

Janet Perkins-Howland will attend Monday night's Council meeting relative to her request for appointment.

LEGAL AUTHORITY:

Section 11.5 Vacancies in Elected or Appointed Office

Unless otherwise specified in this Charter, in the event of a vacancy in an elected or appointed office, board, commission or committee of the town, the Town Council shall fill that vacancy by appointment, such appointment to continue until the next town election.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the IWMAC Chair, appoint Janet Perkins, 32 Frost Drive, to fill a member vacancy on the Integrated Waste Management Advisory Committee (IWMAC).



Town of Durham
8 Newmarket Road
Durham, NH
03824-2898
Tel: 603/868-
5571 Fax
603/868-1858

kedwards@ci.durham.nh.us

Application for Board Appointment

Type of Appointment and Position Desired (Please select only one):

New appointment/regular member New appointment/alternate member
Reappointment/regular member Reappointment/alternate member

NOTE: New applicants are asked to attend AT LEAST ONE meeting, as well as to meet separately with the Chair(s) of the committee(s) to which they are applying, prior to submitting an application for appointment.

Applicant has:

ATTENDED A MEETING
SPOKEN WITH CHAIR/V CHAIR
BEEN RECOMMENDED FOR MEMBERSHIP

Name:

Date:

Janet Perkins - Howland 2/7/24

Address:

32 Frost Dr

E-Mail Address:

jperkinshowland@mgb.org

Telephone:

(603)234-5905

Board/Commission/Committee to which you are interested in being appointed. (Please list in order of preference, if interested in more than one appointment).

1.
2.
3.

Integrated Waste mgmt Adv. Comm.

Are you willing to attend ongoing educational sessions offered by the New Hampshire Municipal Association, Strafford Regional Planning Commission, et al, and otherwise develop skills and knowledge relevant to your work on the board/committee? YES NO

(Over)

Please provide a brief explanation for your interest in appointment to a particular board, commission or committee:

I have been impressed with this committee esp. their educational outreach & would like to continue this work

Please provide brief background information about yourself:

Durham resident x 26 years, on Human Rights Commission esp vis a vis composting.

Please provide below the names and telephone numbers of up to three personal references:

Name: Telephone: Jessica Bacon (603) 781-2594

Name: Telephone: Emily Knight (603) 534-885

Name: Telephone: David Coppola (603) 781-3583

IF family members are OK, I can use
***** Al Howland

Thank you for your interest in serving the Town. Please return this application, along with a resume, if available, to: Town Administrator, 8 Newmarket Road, Durham, NH 03824, or email Karen Edwards at kedwards@ci.durham.nh.us.

(603) 397-7617

I will email my resume to Karen Edwards (unless it's already on file for me on HRC) &

From: [Nell Neal](#)
To: [Karen Edwards](#)
Subject: IWMAC
Date: Tuesday, February 13, 2024 5:37:54 PM

Dear Durham Town Council,

Janet Perkins has applied to become a member of The Integrated Waste Management Advisory Committee and it would be our pleasure to welcome her as a member. She has the interest and knowledge about composting, in particular, to make her a valuable contributing member of the committee.

Thank you,
Nell W. Neal
Chair

Nell Neil, Chair	11 Riverview Rd.	603-866-2153	Nellneal2@comcast.net	N/A	N/A	Council
Julie Kelley	5 Garden Ln.	603-767-9796	Ricjulkelley@comcast.net	N/A	N/A	Council
Naomi Kornhauser	27 Edgewood Road	603-868-6698	naomi.kornhauser@comcast.net	N/A	N/A	Council
Sally Needell	36 Bagdad Rd.	603-868-1552	Sallyneedell@gmail.com	N/A	N/A	Council
Mike Pazdon	163 Dame Road	603-770-9414	mpazdon@comcast.net	N/A	N/A	Council
Janet Perkins-Howland	32 Ffrost Drive	603-234-5905	jperkinshowland@mgb.org	N/A	N/A	Council
Susan Richman, Alt.	16 Cowell Drive	603-868-2758	susan7richman@gmail.com	N/A	N/A	Council
Carden Welsh, Cncl Rep.	3 Fairchild Dr.	Private	cardentc2@gmail.com	1 Yr	3/24	Council
Heather Grant, PB Rep.	7 Emerson Road	603-285-2913	hcgrant51@gmail.com	1 Yr	4/24	Planning Board



TOWN OF DURHAM

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

AGENDA ITEM: **#10** TS
DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Michael Behrendt, Town Planner

AGENDA ITEM: PRESENTATION BY RKG ASSOCIATES INC., BOSTON, MA, ON THE DRAFT DURHAM HOUSING NEEDS ANALYSIS.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: RKG Associates, Inc.

AGENDA DESCRIPTION:

On February 21, 2023, the Town was notified that it had been awarded an InvestNH Municipal Planning & Zoning grant in the amount of \$25,000 for hiring a consultant to perform a Housing Needs Analysis document. The Town Council approved Resolution #2023-04 on March 20, 2023 to accept the grant monies. The Housing Task Force subsequently hired RKG Associates, Inc. from Boston, MA to perform the Housing Needs Analysis. A Draft document was provided to the Town on January 5, 2024 and can be accessed by clicking [here](#). RKG Associates Inc. will be presenting their findings outlined in the document for the Council at Monday night's meeting.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from RKG Associates Inc. and hold question and answer session if desired.



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Durham, NH 03824
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Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#11A TS**

DATE: **February 19, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Gail Jablonski, Business Manager

AGENDA ITEM: PUBLIC HEARING AND ACTION ON RESOLUTION #2024-03
AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF
UNANTICIPATED REVENUES FROM THE STATE OF NEW
HAMPSHIRE DEPARTMENT OF TRANSPORTATION IN THE AMOUNT
OF \$76,180.91 FOR ROAD IMPROVEMENT/ MAINTENANCE AND
\$72,364.92 FOR BRIDGE MAINTENANCE.

CC PREPARED BY: Gail Jablonski, Business Manager

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

AGENDA DESCRIPTION:

In July of 2023, House Bill 2 was passed providing \$20 million in one-time property tax relief through additional direct payments to cities and towns for immediate infrastructure improvements. HB 2 directs the State of NH Department of Transportation to divide and distribute \$10 million between all NH municipalities based on the distribution methods of Block Grant Apportionment A for maintenance, construction and reconstruction of Class IV and V Highways. The remaining \$10 million is to be divided between all municipalities that have municipally owned bridges per state definitions.

This funding does have restricted uses and is meant to supplement (not supplant) local budgets. The "supplement not supplant" provision requires that these funds must add to (supplement) and not replace (supplant) local budgeted funds when providing services that repair, maintain, and construct municipal bridges, repair and maintain class IV and V roads or acquire the equipment necessary to maintain Class IV and V roads.

The Town of Durham will be receiving a one-time payment of \$76,180.91 for maintenance, construction and reconstruction of Class IV and V highways. These funds are allocated based 50% on the community's population in proportion to the entire state's population and 50% on the amount of Class IV and V road mileage in proportion to the total statewide Class IV and V mileage.

The Town of Durham will be receiving \$72,364.92 in Bridge Aid. These funds are allocated based 50% on a municipality's deck area proportional to the total deck area for Improvements to municipally owned bridges within the state and 50% on the municipality's total share of the State's population.

The Public Works Department will be proposing projects in 2024 that will use these supplemental funds.

On February 5, 2024, the Town Council scheduled a Public Hearing on the attached draft resolution for Monday, February 19, 2024. A notice of Public Hearing regarding this resolution was published in the *Foster's/Seacoast News* on Thursday, February 8, 2024, and was posted at the Town Hall, the Town website, Durham Public Library, and Public Works Department.

LEGAL AUTHORITY:

RSA 31:95-b III(a) states that "*For unanticipated moneys in the amount of \$10,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.*"

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

The State of New Hampshire unanticipated revenue is valued at \$76,180.91 for road maintenance and \$72,364.92 for bridge maintenance.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby OPEN the Public Hearing on Resolution #2024-03 Authorizing the Acceptance and Expenditure of Unanticipated Revenues from the State of New Hampshire Department of Transportation in the amount of \$76,180.91 for Road Improvement/ Maintenance and \$72,364.92 for Bridge Maintenance.

MOTION #2:

The Durham Town Council does hereby CLOSE the Public Hearing on Resolution #2024-03 Authorizing the Acceptance and Expenditure of Unanticipated Revenues from the State of New Hampshire Department of Transportation in the amount of \$76,180.91 for Road Improvement/ Maintenance and \$72,364.92 for Bridge Maintenance.

MOTION #3:

The Durham Town Council does hereby ADOPT Resolution #2024-03 Authorizing the Acceptance and Expenditure of Unanticipated Revenues from the State of New Hampshire Department of Transportation in the amount of \$76,180.91 for Road Improvement/ Maintenance and \$72,364.92 for Bridge Maintenance.

RESOLUTION #2024-03 OF DURHAM, NEW HAMPSHIRE

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF UNANTICIPATED REVENUES FROM THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION IN THE AMOUNT OF \$76,180.91 FOR ROAD IMPROVEMENT/MAINTENANCE AND \$72,364.92 FOR BRIDGE MAINTENANCE

WHEREAS, in June 2023 the New Hampshire House passed HB 2 making an appropriation to the Department of Transportation for maintenance, construction and reconstruction of Class IV and V Highways and the repair and maintenance of municipally-owned bridges; and

WHEREAS, HB 2 allocates \$10 million to New Hampshire Cities and Towns for roadway maintenance/repairs and \$10 million for bridge maintenance; and

WHEREAS, the Town of Durham has been allocated \$76,180.91 for roadway maintenance and \$72,364.92 for bridge maintenance; and

WHEREAS, the Department of Public Works will be recommending the use of these funds in the 2024 Capital Improvements program; and

WHEREAS, Council approval is required for the acceptance of these funds; and

WHEREAS, RSA 31:95-b III(a) states that *“For unanticipated moneys in the amount of \$10,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.”* and

WHEREAS, in accordance with RSA 31:95-b a duly posted Public Hearing was held by the Durham Town Council on Monday, February 19, 2024, for acceptance of unanticipated highway block grant funding totaling \$76,180.91 for road improvements and \$72,364.92 for bridge maintenance from the State of New Hampshire Department of Transportation,

NOW, THEREFORE, BE IT RESOLVED, that the Durham Town Council, the legislative and governing body of the Town of Durham, New Hampshire does hereby adopt **Resolution #2024-03** authorizing the acceptance and expenditure of highway block grant funding totaling \$76,180.91 from the State of New Hampshire Department of Transportation to be used for road improvements and maintenance and \$72,364.92 for bridge maintenance.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 19th day of February, 2024 by ___ 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: **#11B** TS

DATE: **February 19, 2024**

COUNCIL COMMUNICATION

INITIATED BY: Carolyn Singer, Historic District/Heritage Commission

AGENDA ITEM: PUBLIC HEARING AND ACTION ON RESOLUTION #2024-04 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF \$286,600 IN UNANTICIPATED REVENUE FROM THE NH LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM (LCHIP) TO SUPPORT THE REHABILITATION OF THE 1804 BICKFORD-CHESLEY HOUSE AT WAGON HILL FARM AND AUTHORIZING THE ADMINISTRATOR TO SIGN ASSOCIATED DOCUMENTS.

CC PREPARED BY: Gail Jablonski, Business Manager

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

In the fall of 2023, Historic District Commission member Carolyn Singer, working with town staff, authored a grant application to the New Hampshire Land and Community Heritage Investment Program (LCHIP) for a grant to support the rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm.

The Bickford-Chesley House, an 1804 Federal-style farmhouse with mid-19th century updates, is a well-preserved example of local architecture and construction. The house retains a high degree of integrity with few changes since the 19th century. It has significance for Federal and Greek Revival style design and timber frame construction, which is an important example of local building practices. On land originally occupied by the Abenaki, it was one of the first farms in the area to be settled by Europeans, and it remained in consistent agricultural use for nearly 300 years.

The Town has been awarded a grant in the amount of \$286,600. The scope of work to be completed on the Main House and the Main House and Original Ell is as follows.

LCHIP-FUNDED SCOPE OF WORK:

- Main House

Moisture Mitigation

- Install perimeter drainage system
- Install gutters on north and south elevations and rear porch eaves
- Purchase and install sump pump
- Purchase and install dehumidifier

Interior – First Floor

- Complete rehabilitation substantially as described in the report entitled “*Bickford-Chesley House, Durham, NH Addendum*” prepared by Bedard Preservation & Restoration in May, 2023 and provided to LCHIP as an attachment to Recipient’s 2023 grant application (“Addendum”).

Interior – Second Floor

- Ceilings - treatment substantially as described in the Addendum.
- Flooring - temporarily remove floorboards, clean out bays. Floorboards are to be documented, labeled, and returned to their original location after work is complete.
- Rewire the second floor.
- Reinsulate the second floor.

- Main House and Original Ell

Foundation

- Reconstruct and/or repair brick and stone foundation, repoint.
- Reset granite pieces as needed.
- Replace perimeter sills, center floor girt, and rotten joists. Add support columns as needed.
- Level gravel floor in basement, pour concrete.
- Two chimneys: repair bases and fireboxes, repoint.

Exterior

- Clapboards: repair where possible, replace when deteriorated beyond the point of repair. Prime and paint.
- Porch: repair framing, floor, posts, trim, ceiling, and steps where possible, replace when deteriorated beyond the point of repair. Prime and paint.

Re: Resolution #2024-04 to Authorize Acceptance, and Expenditure of LCHIP Grant of \$286,600 for WHF

- Excluded: The installation of 27 new windows/sashes described in Recipient’s 2023 grant application are specifically excluded from the LCHIP-funded scope of work.

On February 5, 2024, the Town Council scheduled a Public Hearing on the attached draft resolution for Monday, February 19, 2024. A notice of Public Hearing regarding this resolution was published in the *Foster’s/Seacoast News* on Thursday, February 8, 2024, and was posted at the Town Hall, the Town website, Durham Public Library, and Public Works Department.

LEGAL AUTHORITY:

New Hampshire Revised Statutes Annotated (RSA) 31:95-b authorizes the Town Council to apply for, accept and expend, without further action by the town or village district meeting, unanticipated money from the state, federal or other governmental unit or a private source which becomes available during the fiscal year if they first adopt an article authorizing this authority indefinitely until specific rescission of such authority. On July 12, 1999, the Town Council adopted Resolution #99-19 granting this authority to the Town Council.

RSA 31:95-b III (b) states that for unanticipated moneys in an amount less than \$10,000, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular board of selectmen meeting.”

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

NH LCHIP - \$286,600

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1 :

The Durham Town Council does hereby OPEN the Public Hearing on Resolution #2024-04 Authorizing the Acceptance and Expenditure of \$286,600 in Unanticipated Revenue From the NH Land and Community Heritage Investment Program (LCHIP) to Support the Rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm and Authorizing the Administrator to Sign Associated Documents.

Re: Resolution #2024-04 to Authorize Acceptance, and Expenditure of LCHIP Grant of \$286,600 for WHF

MOTION #2 :

The Durham Town Council does hereby CLOSE the Public Hearing on Resolution #2024-04 Authorizing the Acceptance and Expenditure of \$286,600 in Unanticipated Revenue From the NH Land and Community Heritage Investment Program (LCHIP) to Support the Rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm and Authorizing the Administrator to Sign Associated Documents.

MOTION #3 :

The Durham Town Council does hereby ADOPT Resolution #2024-04 Authorizing the Acceptance and Expenditure of \$286,600 in Unanticipated Revenue From the NH Land and Community Heritage Investment Program (LCHIP) to Support the Rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm and Authorizing the Administrator to Sign Associated Documents.

RESOLUTION #2024-04 OF DURHAM, NEW HAMPSHIRE

RESOLUTION #2024-04 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF \$286,600 IN UNANTICIPATED REVENUE FROM THE NH LAND AND COMMUNITY HERITAGE INVESTMENT PROGRAM (LCHIP) TO SUPPORT THE REHABILITATION OF THE 1804 BICKFORD-CHESLEY HOUSE AT WAGON HILL FARM AND AUTHORIZING THE ADMINISTRATOR TO SIGN ASSOCIATED DOCUMENTS

WHEREAS, the Town of Durham submitted an application, to the NH Land and Community Heritage Investment Program (LCHIP) for funds to support the rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm; and

WHEREAS, on December 11, 2023, the Town of Durham was informed that it had been awarded \$286,600 from LCHIP; and

WHEREAS, the Town has determined these allocated funds will be used for the purpose of rehabilitation of the Bickford-Chesley House at Wagon Hill Farm; and

WHEREAS, on July 12, 1999, the Durham Town Council approved Resolution #99-19 adopting the provisions of RSA 31:95-b authorizing the Town Council to apply for, accept, and expend unanticipated funds from a federal, state, or other governmental unit or a private source which becomes available during the Fiscal Year; and

WHEREAS, Council approval is required for the acceptance and expenditure of these funds; and

WHEREAS, RSA 31:95-b III(a) requires that a Public Hearing be held on unanticipated funds in excess of \$10,000; and

WHEREAS, on Monday, February 19, 2024, a duly posted and published Public Hearing was held by the Durham Town Council;

NOW, THEREFORE, BE IT RESOLVED, that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt **Resolution #2024-04** authorizing the acceptance and expenditure of

\$286,600 in unanticipated revenue from the NH Land and Community Heritage Investment Program (LCHIP) to support the rehabilitation of the 1804 Bickford-Chesley House at Wagon Hill Farm and authorizing the Administrator to sign associated documents.

PASSED AND ADOPTED this 19th day of February, 2024 by a majority vote of the Durham Town Council with ___ affirmative votes, ___ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



TOWN OF DURHAM

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AGENDA ITEM: **#11C TS**

DATE: **February 19, 2024**

COUNCIL COMMUNICATION

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

AGENDA ITEM: PUBLIC HEARING AND ACTION ON ORDINANCE #2024-01 AMENDING CHAPTER 4 “ADMINISTRATIVE CODE”, ARTICLE VI “PROCUREMENT” OF THE DURHAM TOWN CODE TO INCREASE THE THRESHOLD AMOUNTS FOR COMPETITIVE PURCHASING, PROFESSIONAL SERVICES; INCLUDE AN EXCEPTION FOR WORK ON HISTORIC PROPERTIES; AND ALLOWING SALE OF SURPLUS MATERIAL THROUGH ONLINE MARKETPLACES.

CC PREPARED BY: Gail Jablonski, Business Manager

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

AGENDA DESCRIPTION:

Administrator Selig asked Business Manager Gail Jablonski to review the Town of Durham’s current purchasing policy contained within the Administrator Code to determine if current purchasing authorization levels and required procedures should be amended since they have not been adjusted for annual inflation since 2020.

Upon reviewing the Consumer Price Index (CIP) from 2020 to 2023, Ms. Jablonski found that the rate of inflation during that time period has been approximately 19%. She also reviewed the purchasing history of the town over the last several years and believes that increasing the authorization limits will allow town departments greater flexibility.

Attached for the Council’s review and consideration is a proposed ordinance recommending an increase in threshold numbers for competitive purchasing, professional services, and sale of surplus material within the Procurement Policy within the Administrative Code. In addition, an exception related to Historic

Properties was added to Section 4-23. (Exceptions, Waivers, Standardization and Emergencies) and the use of online marketplaces was added to Section 4-24. (Sale of Surplus Material).

On February 5, 2024, the Town Council scheduled a Public Hearing on the attached draft ordinance for Monday, February 19, 2024. A notice of Public Hearing regarding this resolution was published in the *Foster's/Seacoast News* on Thursday, February 8, 2024, and was posted at the Town Hall, the Town website, Durham Public Library, and Public Works Department

LEGAL AUTHORITY:

Durham Town Charter, Section 3.8 "Ordinances"

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

Included within the proposed ordinance.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby OPEN the Public Hearing on Ordinance #2024-01 Amending Chapter 4 "Administrative Code", Article VI "Procurement" of the Durham Town Code to Increase the Threshold Amounts for Competitive Purchasing, Professional Services; Include an Exception for Work on Historic Properties; and allowing Sale of Surplus Material through Online Marketplaces.

MOTION #2:

The Durham Town Council does hereby CLOSE the Public Hearing on Ordinance #2024-01 Amending Chapter 4 "Administrative Code", Article VI "Procurement" of the Durham Town Code to Increase the Threshold Amounts for Competitive Purchasing, Professional Services; Include an Exception for Work on Historic Properties; and allowing Sale of Surplus Material through Online Marketplaces.

MOTION #3:

The Durham Town Council does hereby ADOPT Ordinance #2024-01 Amending Chapter 4 "Administrative Code", Article VI "Procurement" of the Durham Town Code to Increase the Threshold Amounts for Competitive Purchasing, Professional Services; Include an Exception for Work on Historic Properties; and allowing Sale of Surplus Material through Online Marketplaces.

ORDINANCE #2024-01 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 4 “ADMINISTRATIVE CODE”, ARTICLE VI “PROCUREMENT” OF THE DURHAM TOWN CODE TO INCREASE THE THRESHOLD AMOUNTS FOR COMPETITIVE PURCHASING, PROFESSIONAL SERVICES; INCLUDING AN EXCEPTION FOR WORK ON HISTORIC PROPERTIES; AND ALLOWING SALE OF SURPLUS PROPERTY THROUGH ONLINE MARKETPLACES

WHEREAS, the current purchasing authorization levels and required procedures have not been adjusted for annual inflation since 2020; and

WHEREAS, town staff has reviewed the CPI from 2020 to 2023 and found that the rate of inflation during that time period has been approximately 19%; and

WHEREAS, town staff has reviewed the purchasing history of the town over the last several years and feel that increasing the authorization limits will allow town departments greater flexibility; and

WHEREAS, at its meeting on February 5, 2024, the Town Council moved this ordinance on First Reading and scheduled a Public Hearing for its meeting on Monday, February 19, 2024. A Public Hearing notice was published in the *Foster's/Seacoast Online* on Thursday, February 8, 2024. The notice was also posted on the outside bulletin board at the Town Hall, as well as at the Durham Public Library and Department of Public Works;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby adopt **Ordinance #2024-01** and does hereby amend Chapter 4 “Administrative Code”, Article VI “Procurement” of the Durham Town Code to increase the threshold amounts for competitive purchasing, professional services; include an exception for work on historic properties; and allow sale of surplus property through online marketplaces.

Wording to be deleted is annotated with **strikeout** type. New wording is annotated with underscoring.

Article VI
PROCUREMENT

4-20. Competitive Purchasing

Except as hereinafter provided, every Town purchase or contract greater than ~~twenty-five thousand (\$25,000)~~ thirty thousand (\$30,000) dollars in amount shall be made only after the receipt by Town of publicly invited sealed competitive bids on uniform specifications. After recommendation from the department making the purchase, the Town Administrator shall award the contract to the lowest responsible bidder; quality, delivery, financial responsibility and guarantees of the bidders being equal. The Town Administrator may, in his/her discretion, reject any bid deemed insufficient or inadequate, or may reject all bids.

Except as hereafter provided, every Town purchase or contract of greater than ~~ten thousand (\$10,000)~~ twelve thousand (\$12,000) dollars but no more than ~~twenty-five thousand (\$25,000)~~ thirty thousand (\$30,000) dollars shall be made only after receipt by the Town of three (3) or more (if reasonably obtainable) competitive informal written quotations or phone quotations which are adequately documented.

Every purchase of ~~ten thousand (\$10,000)~~ twelve thousand (\$12,000) dollars or less shall be handled by the Town on as competitive a basis as is deemed reasonable and prudent.

Anything above to the contrary notwithstanding, all purchases or contracts in excess of ~~fifty-five thousand (\$55,000)~~ sixty-five thousand (\$65,000) dollars shall require Town Council approval by affirmative vote.

Purchases made through existing State of New Hampshire or other State/government contracts, Strafford County or Oyster River School District contracts shall be deemed to meet the requirements of the above paragraphs. Nothing herein shall be construed to prevent joint bidding and contracting by the Town and other public jurisdictions, and in fact, such is encouraged. Likewise, where reasonable and practical, joint purchasing among Departments is encouraged.

4-21. Professional Services

Professional services contracts (architecture, engineering, construction management, risk management, financial and auditing and other professional services or consulting work) of ~~thirty thousand (\$30,000)~~ thirty-five thousand (\$35,000) dollars or more may be entered into after receiving proposals from various interested firms, evaluating those proposals and anticipated quality of service to be rendered, and Town Administrator recommendation to and approval by the Town Council. Such services of

less than ~~thirty thousand (\$30,000)~~ thirty-five thousand (\$35,000) dollars may be procured in a manner deemed reasonable and prudent by the Town Administrator.

4-22. Change Orders

Contract Change Orders are hereby authorized to be made where necessary by the Town Administrator but shall not exceed ten (10%) percent of the amount of the original contract unless specific Town Council approval is obtained.

4-23. Exceptions, Waivers, Standardization and Emergencies

Valid exceptions not subject to the above biddings requirements are utility purchases, legal services, medical, health and social services for Town employees, the purchase of insurance, financing of TANS, leases or similar financing mechanisms, maintenance contracts with manufacturers of equipment purchased or with suppliers of data processing software or where the Town decides to contract with non-profit organizations for the provision of health, welfare, social or recreational services for the Town and/or to the general public, professional services or work on structures listed or eligible to be listed on the National or State Historic register required or intended to meet US Secretary of the Interior's Standards for the Treatment of Historic Properties, or where the Town decides to contract with governmental agencies for the provision of governmental services.

Sealed, publicly invited competitive bids will not be required for purchases in any situation where a contractor or supplier has defaulted upon his or her obligations to the Town and there is present a security guaranteeing to the Town the performance of said obligation at no additional cost to the Town, over and above the original obligation. In such a case, the Town Administrator, with the approval of the Town Council, may renegotiate and award the contract to whomsoever he/she sees fit providing that said renegotiation and award does not exceed the amount contracted for in the original obligation.

The Town Council, on recommendation from the Town Administrator, may waive any of the above purchasing requirements in cases where it is deemed inadvisable to solicit bids because of a single source of supply or because of the need of standardization of the materials, supplies, equipment or services or for other stated reasons which the Town Council deems to be in the interest of the Town.

Where it is deemed appropriate to standardize on the procurement of materials, supplies, equipment or services, the Town Council shall so indicate by Resolution. The Town Business office shall maintain an up-to-date listing of such standardized items or services. The procurement of such standardized items or services will be exempt from the foregoing bidding requirements. Nevertheless, Town Departments will, when

reasonably possible, attempt to obtain competitive quotes from different suppliers, if any, for the standardized item or service.

In case of an accident or emergency, the Town Administrator may award contracts and make purchases for the purpose of repairing damages caused by the accident or meeting the public emergency without meeting the purchasing requirements of the above sections. In such cases the Town Administrator shall promptly file with the Town Council a report, which certifies the emergency nature of the incident and itemizes the purchases and their costs.

4-24. Sale of Surplus Material

The Town Administrator may authorize the sale of materials and equipment which he or she determines to be surplus to the needs of the Town where a single item or lot does not exceed ~~fifteen thousand (\$15,000)~~ **eighteen thousand (\$18,000)** dollars in book value. In cases where such item or lot exceeds ~~fifteen thousand (\$15,000)~~ **eighteen thousand (\$18,000)** dollars in book value, the Town Council shall approve the sale of such materials. All such surplus materials shall be disposed of by public auction, **online marketplaces**, or competitive quotations.

4-25. Assignment of Responsibility

The Responsibility for purchasing and contracting procedures shall rest with the Town Administrator or their designee.

PASSED AND ADOPTED by the Town Council of the Town of Durham this **19th** day of **February, 2024** by ___ affirmative votes, ___ negative votes, and ___ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



TOWN OF DURHAM

8 Newmarket Road

Durham, NH 03824

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www.ci.durham.nh.us

AGENDA ITEM: **#11D TS**

DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Sally Needell, Council Chair
Jim Lawson, Council Chair Pro Tem

AGENDA ITEM: **DISCUSSION AND POSSIBLE ACTION ON RESOLUTION #2024-07 AMENDING THE EMPLOYMENT AGREEMENT APPROVED BY THE TOWN COUNCIL ON APRIL 3, 2017 BETWEEN THE TOWN OF DURHAM AND ADMINISTRATOR TODD I. SELIG, RENEWING THE TERM OF THE AGREEMENT FOR A PERIOD OF SEVEN YEARS EXTENDING FROM JANUARY 1, 2024 TO DECEMBER 31, 2030, UPDATING CERTAIN TERMS WITHIN THE AGREEMENT, AND AUTHORIZING THE COUNCIL CHAIR TO SIGN SAID AGREEMENT OF BEHALF OF THE TOWN.**

CC PREPARED BY: Jim Lawson and Sally Needell

PRESENTED BY: Jim Lawson and Sally Needell

AGENDA DESCRIPTION:

At this time and as discussed at the Town Council, it is desirous to renew Mr. Selig's employment contract for a period of seven (7) years, extending from January 1, 2024 to December 31, 2030. This would be five years longer than his current contract that expires on December 31, 2025.

Mr. Selig outlined potential contract modifications in his January 23, 2024 email to the Town Council. On January 30, 2024, Chair Needell and Chair Pro Tem Lawson met with Mr. Selig to discuss the terms of a possible contract. The Chair and Chair Pro Tem believe the proposed contract is equitable and fair, and would secure Mr. Selig's employment through 2030.

In addition to the agreement extension, several amendments to the contract are also being incorporated, which include the following:

1. A seven-year contract term from 1/1/24 – 12/31/30.
2. Mr. Selig has not had a Town cell phone since prior to the current contract, and the requirement to return the cell phone is deleted.
3. There is no change in Mr. Selig's current base salary of \$173,219. The salary will increase by 2% annually thereafter during the contract term, effective each January 1st. As occurs in Mr. Selig's current contract, on 1/1/25, 1/1/27, and 1/1/29 the base annual salary would be reset at the greater of 2% above the prior year's base annual salary or the average of the base annual salaries of the full-time town/city managers within the following nine NH communities as of January 1st of said year: Bedford, Concord, Derry, Dover, Hanover, Keene, Merrimack, Portsmouth, and Rochester.
4. Mr. Selig participates in a Section 459 deferred compensation plan and the town contributes to this plan. Mr. Selig is now eligible for the "catchup" contributions allowed for participants 50 years of age or greater. The Town's annual contribution to the IRS 457 plan will be \$30,500 and will increase annually based on the maximum allowed contribution limit plus the maximum allowed age 50 catchup contribution – but not to exceed an increase of more than \$3,000 annually.
5. The yearly vehicle allowance is changed from \$7,200 to \$9,500 and will increase \$250 annually.
6. Mr. Selig will continue to receive a 6-week paid sabbatical that will occur in 2025 and 2029.
7. Mr. Selig has been a past Board Member of the New Hampshire Center for Public Policy Studies, and the Town Council recognizes that Mr. Selig is currently a Board member of the Municipal Management Association of NH and the Carolyn and Martin Gross Fellowship, and that the town continues to encourage this type of activity as part of Mr. Selig's professional development.
8. Mr. Selig is required to provide an 8-month notice period to the Town should he desire to terminate his employment. However, the notice period may be now less if mutually agreed by the Town Council, and the town agrees that this will not be unreasonably withheld.

Attached for the Council's review and consideration is Resolution #2024-07 amending Mr. Selig's employment agreement and renewing the term of the agreement for a period of Seven (7) years extending from January 1, 2024 to December 31, 2030.

Also attached is the updated employment agreement reflecting the changes noted in the items summarized above.

LEGAL AUTHORITY:

Durham Town Charter, Section 6.3, Compensation.

A. The compensation of all elected and appointed officials and department heads shall be established and modified by express resolution of the Council.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

See attached proposed amended Employment Agreement between Administrator Selig and the Town of Durham.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby adopt Resolution #2024-07 amending the Employment Agreement approved by the Town Council on April 3, 2017 between the Town of Durham and Administrator Todd I. Selig, renewing the term of the agreement for a period of seven (7) Years extending from January 1, 2024 to December 31, 2030, updating certain terms within the agreement, and authorizing the Council Chair to sign said agreement on behalf of the Town Council.

RESOLUTION #2024-07 OF DURHAM, NEW HAMPSHIRE

AMENDING THE EMPLOYMENT AGREEMENT APPROVED ON APRIL 3, 2017 BETWEEN THE TOWN OF DURHAM AND ADMINISTRATOR TODD I. SELIG BY RENEWING THE TERM OF THE AGREEMENT FOR A PERIOD OF SEVEN (7) YEARS EXTENDING FROM JANUARY 1, 2024 TO DECEMBER 31, 2030, UPDATING CERTAIN TERMS WITHIN THE EMPLOYMENT AGREEMENT, AND AUTHORIZING THE COUNCIL CHAIR TO SIGN SAID AGREEMENT ON BEHALF OF THE TOWN COUNCIL

WHEREAS, the Charter of the Town of Durham, Section 4.1 states that “the Administrator shall serve at the pleasure of the Council, which shall fix the Administrator’s salary and terms of employment”; and

WHEREAS, The Charter of the Town of Durham, Section 6.3 states that “The compensation of all elected and appointed officials and department heads shall be established and modified by express resolution of the Council”; and

WHEREAS, Town desires to retain the services of Todd I. Selig as Durham Administrator for a long period of time and to provide inducement for him to remain in said position; and

WHEREAS, it is the desire of the Town to provide certain benefits, establish certain conditions of employment, and to set working conditions of said employee,

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Durham does hereby adopt Resolution #2024-07 amending the employment agreement approved by the Town Council on April 3, 2017 between the Town of Durham and Administrator Todd I. Selig **as attached herein**, renewing the term of the agreement for a period of seven (7) years extending from January 1, 2024 to December 31, 2030, and authorizing the Council Chair to sign said agreement on behalf of the Town Council.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this **19th** day of **February, 2024** by ____ affirmative votes, ____ negative votes and ____ abstentions.

Sally Needell, Chair
Durham Town Council

ATTEST:

Ratchel Deane, Town Clerk-Tax Collector

Employment Agreement – Town Administrator

AGREEMENT made this ___ day of ~~April~~ February, 201~~7~~24, between The Town of Durham, a municipal Town located in the County of Strafford and the State of New Hampshire, (hereinafter “Town”)

and Todd I. Selig of Durham, New Hampshire (hereinafter “Selig”).

WHEREAS, Selig and the Town desire to set forth in writing their Contract with respect to Selig’s employment by the Town as its Town Administrator;

NOW, THEREFORE, in consideration of their mutual promises set forth herein, the parties hereby agree as follows:

1. **Employment.** The Town hereby employs Selig as its Town Administrator, and Selig hereby accepts such employment, upon the terms and conditions set forth in this Agreement.
2. **Duties and Authority.**
 - A. Selig will hold the position of Town Administrator.
 - B. As Town Administrator, Selig will have the powers granted to that position by the Charter and Administrative Code of the Town and pertinent State statutes including RSA 49-D:2(c) and RSA 37, subject to the control of the Town Council to the extent permitted by the Charter and statute. He shall have general supervision, direction and control over the business and affairs of the Town and its employees. Selig will be primarily responsible in addition to his Statutory and Charter duties, for carrying out all orders and resolutions of the Town Council and such duties as may from time to time be assigned to Selig by the Town Council.
 - C. Selig agrees to devote his full time, attention and best efforts to the performance of his responsibilities as Town Administrator.
 - D. Selig shall not, during the term of this Agreement, directly or indirectly engage in any business, either as an employee, corporation, principal, corporate officer, or in any other capacity, whether or not compensated, without the prior written consent of the Town.
 - E. Notwithstanding anything to the contrary contained in paragraph 2.D above, Selig may engage in teaching in an adjunct position, writing or consulting during his normal time off provided that he first inform the Town Council of his activities and provided, further, that those activities

do not unreasonably interfere with his duties and responsibilities to the Town.

F. It is recognized that Selig must devote a great deal of time outside the normal office hours on business for the Town, and to that end Selig shall be allowed to establish an appropriate work schedule.

3. **Term of Employment.** The term of employment shall be for a period of ~~nine~~ seven (97) years (except as it may be modified as explained herein) commencing on January 01, ~~2017~~2024 and ending December 31, ~~2025~~30.
4. **Compensation.** Selig shall receive compensation during the term of this Agreement as follows: A base annual salary of ~~\$137,500~~ \$173,219 for ~~2017~~24 which shall increase by 2% annually thereafter during the contract term, effective each January 1st. Notwithstanding the above, as of 1/1/~~18~~25, 1/1/~~20~~27, ~~1/1/22~~, and 1/1/~~24~~29, Selig's base annual salary shall be reset at the greater of 2% above his prior year's base annual salary or the average of the actual base annual salaries of the full time town/city managers within the following NH communities as of January 1st of said year: Bedford, Concord, Derry, Dover, Hanover, Keene, Merrimack, Portsmouth, and Rochester.
5. **Medical and Group Insurance.** The Town agrees to provide Selig with all of the benefits offered to non union employees in the Town's Personnel Plan including participation in the Town group medical, hospital and dental plan(s) of the Town, as well as all other insurance plans which the Town offers to its employees on the same terms and conditions as that of the Town's other non-unionized employees. Notwithstanding the above, Selig shall pay twenty percent (20%) of the monthly health and dental premiums. The Town shall pay eighty percent (80%) of the appropriate monthly premiums.
6. **Vacation.** Selig shall be entitled to thirty (30) days of paid vacation during each year of employment; the time for the vacation shall be mutually agreed upon by Selig and the Town Council. If vacation is not taken Selig shall be reimbursed at his base salary rate for time not taken in excess of 240 hours of accrual by December 31st of the succeeding year.

In addition to the vacation listed in the first paragraph, in recognition of Selig's ~~completion of 21 years of~~ long service with the Town of Durham, in ~~2022-25 and 2029, and every six years thereafter~~, Selig shall be afforded a six (6) week paid sabbatical for personal and professional rejuvenation. The sabbatical shall not be used to fulfill the notice requirement outlined in Section 14.C of this contract.

7. Automobile.

A. The Town shall provide to Selig, during the term of his employment, the use of a Town automobile of Selig's choice, for business use, to be selected from the Town's inventory. The Town shall pay all automobile operating expenses incurred by Selig in the performance of Selig's business duties. In the event that Selig utilizes his personal automobile for Town business, he shall be reimbursed for the mileage at the then prevailing Internal Revenue Service reimbursement rate.

B. The Town shall provide to Selig, during the term of his employment, an annual stipend in the amount of ~~\$7,500~~ 9,500.00 in lieu of unlimited personal use of a Town vehicle, which shall increase by \$250 annually.

8. Dues and Subscriptions. The Town shall budget and pay the dues, expenses and subscriptions of Selig for his continuation and participation in local, city, county, state, national, and international associations that he deems prudent and fiscally responsible for his continued effective management of the Town.

9. Professional Development. The Town shall budget and pay for the registration, travel and subsistence expenses of Selig to attend the annual conferences of the New Hampshire Municipal Association and the International City/County Management Association, and such other conferences, short courses, and seminars that Selig deems prudent and fiscally responsible for his professional development and for the continued, effective management of the Town. The Town recognizes that Selig is a Board member of the ~~New Hampshire Center for Public Policy Studies~~ Municipal Management Association of NH and the Carolyn & Martin Gross Fellowship, and the Town encourages such activities and other similar activities as part of Selig's professional development.

In addition, during the term of this contract the Town shall support Selig's attendance with pay at three specialized advanced training courses such as those offered at the Harvard Kennedy School of Government or equivalent experiences that Selig deems prudent and fiscally responsible for his professional development and for the continued, effective management of the Town.

10. Expense Reimbursement. Selig shall be entitled to reimbursement for all reasonable expenses, including travel and entertainment, incurred by him in the performance of his duties. Selig shall maintain records and written receipts and shall submit vouchers for expenses for which reimbursement is made.

11. **General Expenses.** The Town recognizes that certain expenses of a personal nature are or may be incurred by Selig in the performance of his business duties, and the Town agrees that it shall reimburse Selig for all such reasonable expenses upon receipt of expense vouchers, receipts, statements or personal affidavits detailing the expenses related to the performance of Selig's business duties.

Selig shall be responsible for obtaining a mobile data telephone device that meets the specifications of the Town's IT infrastructure such that he is reasonably accessible to the Town during times of emergency. ~~Upon the execution of this Agreement, Selig's Town issued iPhone shall become the personal property of Selig, and~~ Selig shall bear the cost of the device (as well as future devices) and the associated telephone/data plan ~~thereafter~~.

12. **Permanent Disability.** In the event Selig becomes permanently disabled (herein defined as a disability which substantially impairs or limits Selig from performing the essential duties of his position) as determined by a licensed physician mutually agreed upon by the Town and Selig, or if Selig is otherwise unable to perform his duties because of sickness, accident or injury for a period of six (6) months, the Town may terminate this Agreement subject to the provisions of paragraph 14D.

13. **Death.** In the event that Selig dies during the term of this Agreement, this Agreement shall immediately terminate.

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.
15. **Renewal.** The parties contemplate that they will want to renegotiate, extend or modify the length of this Agreement for so long as the relationship is mutually satisfactory. Notwithstanding anything contained herein, the parties may mutually agree to modify any or all provisions of this Agreement at any time for so long as those modifications are in writing and signed by the authorized parties.
16. **Renewal Negotiations.** If either the Town or Selig wishes to renew this Agreement at the conclusion of its original ~~nine~~ seven (97) year term, that party shall notify the other of such intent no later than December 31, ~~2024~~ 2029. In the event that the parties have not successfully concluded their negotiations by March 1, ~~2025~~ 30, subsection 14C shall not apply and Selig shall be free to seek and obtain employment elsewhere at any time, even during the remaining term of this Agreement.
17. **Performance Evaluation.**
- A. Commencing in April of ~~2017~~ 24, and each succeeding April thereafter, the Town Council and Selig shall mutually establish goals and objectives which they deem necessary and appropriate for the proper management of the Town during the succeeding twelve (12) months. Such goals and objectives shall be committed to writing and formally adopted by the Town Council. The funds necessary for the attainment of those goals and objectives shall be included in the annual budget for the same time period.
- B. Commencing in January ~~2018~~ 25, 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.
18. **Indemnification.** The Town agrees to include Selig under its general insurance coverage and further agrees that it shall indemnify and hold Selig

harmless for any liability related to, or arising out of, his position as Town Administrator in accord with the provisions of New Hampshire R.S.A. 31:105.

19. **Residency.** In accordance with the provisions of the Town Charter, Selig agrees to live within the corporate limits of the Town for so long as he serves as its Town Administrator.
20. **Supplemental Retirement Plan.** In addition to the base annual salary paid by the Town to Selig, the Town shall pay ~~\$18,000~~ **\$30,500** annually on Selig's behalf into a Section 457 deferred compensation plan. This payment shall be increased annually to track the Section 457 normal contribution maximum limit plus the allowable maximum age 50 catch-up contribution limit ~~by \$500 annually beginning in 2022~~ so long as the ~~additional contribution is permissible pursuant to Section 457 deferred compensation regulations~~ provided such increase does not exceed \$3,000 in any given year.
21. **Notices.** Any notice provided for in this Agreement shall be given in writing. Notices shall be effective from the date of service, if served personally on the party to whom notice is to be given, or on the second day after mailing, if mailed by first class mail, postage prepaid. Notices shall be properly addressed to the parties at their respective addresses or to such other address as either party may later specify by notice to the other.
22. **Entire Agreement.** This Agreement contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This Agreement may be changed only by an agreement in writing signed by the party against whom any waiver, change, amendment or modification is sought.
23. **Waiver.** The waiver by the Town of a breach of any of the provisions of this Agreement by Selig shall not be construed as a waiver of any subsequent breach by Selig.
24. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire. The Strafford County Superior Court shall be proper venue for any litigation arising out of this Agreement.
25. **Paragraph Headings.** Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement.

26. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and shall in no way be impaired.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ~~3rd~~ day of ~~April~~ February, ~~2017~~24.

THE TOWN OF DURHAM:

TOWN ADMINISTRATOR:

By: _____

~~Katherine Marple~~ Sally Needell, Chairman ~~person~~

Duly Authorized

Todd I. Selig



TOWN OF DURHAM

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

AGENDA ITEM: #12 TS
DATE: February 19, 2024

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL MEETING MINUTES FOR FEBRUARY 5, 2024.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the meeting held on February 5, 2024. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

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

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

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby approve the Town Council meeting minutes for February 5, 2024 (as presented/as amended).