



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, SEPTEMBER 8, 2025
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

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

- I. Call to Order**
- II. Roll Call of Members.** Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person. Town Council grants permission for fewer than a majority of Councilors to participate remotely.
- III. Moment of Silence for Dr. Eric J. Lund**
- IV. Approval of Agenda**
- V. Appointment of New Council Member to Fill Vacancy from September 2025 – March 2026. Swearing in of new Council Member.**
- VI. Election of New Chair Pro Tem**
- VII. Appointment of New Representatives to the Historic District/Heritage Commission and Cemetery Committee; and a New Alternate Representative to the Planning Board.**
- VIII. Special Announcements –** Durham Fire Department Annual 9/11 Commemoration event and UNH 9/11 National Day of Service & Remembrance with a campus-wide blood and food drive
- IX. Public Comments (*) – Please state your name and address before speaking (No more than 40 minutes total)**

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

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

- A. Shall The Town Council schedule Special Meeting Dates on November 10, 2025 and December 8, 2025 for the Purpose of Deliberating the Proposed FY 2026 Operating, Capital, and Special Fund Budgets and the 2026-2035 Capital Improvement Plan, and schedule a Public Hearing on the Proposed FY 2026 Budget and 2026-2035 Capital Improvement Plan for Monday, November 17, 2025?
- B. Shall the Town Council Adopt Resolution #2025-17 amending Resolution #2023-07 by updating the completion date of a FY22 Legislative Pre-Disaster Mitigation (LPDM) grant from the New Hampshire Department of Safety, Division of Homeland Security and Emergency Management, for the Durham Emergency Generator Project, in the amount of \$427,612.49 with a required 25% Match of \$142,537.51 – for a total project cost of \$570,150.00 - and authorize the Administrator to sign and submit grant paperwork and all Documents related to the Grant on Behalf of the Town of Durham?
- C. Shall the Town Council Authorize the Administrator to sign the Amicus Brief supporting the Plaintiffs in the case New Hampshire Indonesian Community Support, et al. v. Donald J. Trump, et al., stating Durham’s opposition to the executive order that would deny birthright citizenship to certain U.S.-born children and supporting the existing constitutional and federal statutory definition of citizenship?
- D. Shall the Town Council Schedule a Public Hearing for Monday, October 6, 2025 on Resolution #2025-18 Authorizing the Acceptance and Expenditure of Funding from the National Oceanic and Atmospheric Administration (NOAA) Community-Based Restoration Program, for the Mill Pond Dam Removal and Oyster River Restoration Project, In the amount of up to \$3,247,201, and Authorize the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham?

XII. Committee Appointments

Shall the Town Council, upon Recommendation of the Planning Board Chair, appoint Julian Smith, 3 Chesley Drive, to an unexpired alternate membership on the Planning Board with a term expiration of April 2027?

XIII. Presentation Items

- A. Presentation by Sheryl Bass, Library Director, on the Durham Public Library programs and events.
- B. Receive annual report on the Planning Board activities and projects – Paul Rassmussen, Chair.

XIV. Unfinished Business

- A. **Public Hearing and Possible Adoption of Resolution #2025-16** Authorizing the Acceptance and Expenditure of a FY 2026 New Hampshire Office of Highway Safety Grant In the Amount of \$16,795.75, From the New Hampshire Department of Safety, Office of Highway Safety for Traffic Enforcement Efforts and Traffic Speed Monitoring Equipment and Authorizing the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham.
- B. **Discussion of Ordinance #2025-08** Amending Chapter 175, “Zoning,” Article XII, “Base Zoning Districts,” Section 175-42, “Central Business District, and Article XII.1, “Use and Dimensional Standards,” Section 175-54, “Table of Dimensions,” of the Town Code to eliminate the three-story height limit for portions of CB-1 Zoning District and to change the standard for commercial in five story buildings in CB-1 District from requiring two floors to requiring only one floor.

XV. Approval of Minutes – July 7, 2025 & August 4, 2025

XVI. New Business

- A. Presentation by Sally Tobias, Chair of the Housing Task Force, on the Task Force’s accomplishments and how it has addressed the charge, and discussion on whether there is other work for the Task Force and whether the Task Force should continue on in any manner.
- B. Shall the Town Council cancel the Council meeting of September 15, 2025?

XVII. Councilor and Town Administrator Roundtable

XVIII. Nonpublic Session (if required)

XIX. 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: **#5** *TS*

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Charter

AGENDA ITEM: SHALL THE TOWN COUNCIL APPOINT CARDEN WELSH, 3 FAIRCHILD DRIVE, TO FILL THE UNEXPIRED COUNCIL MEMBER TERM OF ERIC LUND UNTIL THE MARCH 2026 TOWN ELECTION?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Due to the unexpected death of Council member Eric Lund, the Council will now have to appoint someone to fill his position until the next town election in March 2026.

Sec. 3.5. "Vacancies" of the Durham Town Charter states that *"Vacancies occurring in the office of Councilor at any time shall be filled, until the next regular election, by the Council at its next regular meeting, by affirmative vote."*

Durham resident and former Town Councilor Carden Welsh has graciously agreed to fill the vacant position. Carden previously served as a Town Councilor from 2013-2024. If the Council votes to appoint Mr. Welsh to Councilor Lund's vacancy, Town Clerk Rachel Deane will swear him in at which time he will take his place at the table.

LEGAL AUTHORITY:

Durham Town Charter:

Sec. 3.5. Vacancies.

"Vacancies occurring in the office of Councilor at any time shall be filled, until the next regular election, by the Council at its next regular meeting, by affirmative vote."

Sec. 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 for elected positions or the remainder of a person's term if an appointed position."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Town Council does hereby appoint Carden Welsh, 3 Fairchild Drive, to fill the unexpired Council Member Term of Eric Lund until the March 2026 Town Election.



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AGENDA ITEM: **#7** *TS*

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Charter

AGENDA ITEM: **APPOINTMENT OF NEW REPRESENTATIVES TO THE HISTORIC DISTRICT/HERITAGE COMMISSION AND CEMETERY COMMITTEE; AND A NEW ALTERNATE REPRESENTATIVE TO THE PLANNING BOARD.**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

Due to the unexpected death of Council member Eric Lund, vacancies for Council Representatives now exist on the Historic District/Heritage Commission, Cemetery Committee and Planning Board. Each position will need to be covered until March of 2026.

<u>COMMITTEE</u>	<u>COUNCIL REPRESENTATION</u>	<u>TERM EXPIRES</u>	<u>MEETING NIGHTS & TIMES</u>
Cemetery Committee	1 rep.	03/26	As needed
Historic Dist./Heritage Commission	1 rep.	03/26	1 st Thursday of each mo./7:00 PM
Planning Board	1 alt. rep.	03/26	2 nd and 4 th Wednesday of each mo./7:00 PM

LEGAL AUTHORITY:

Section 11.1, subparagraphs A-E of the Durham Town Charter.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby appoint _____ to fill the representative vacancy on the Historic District/Heritage Commission.

MOTION #2:

The Durham Town Council does hereby appoint _____ to fill the representative vacancy on the Cemetery Committee.

MOTION #3:

The Durham Town Council does hereby appoint _____ to fill the alternate representative vacancy on the Planning Board.



*You are cordially invited to the
24th Anniversary Commemoration
in Remembrance of
September 11th
on*

Thursday, September 11th, 2025

**8:15 am College Road will be closed*

**8:30 am Ceremony will begin*

**9:30 Re-opening of College Road*

*Durham Fire Department
51 College Road
Durham, New Hampshire*



UNH BLOOD & FOOD DRIVE 9/11 NATIONAL DAY OF SERVICE & REMEMBRANCE

Thursday, Sept. 11 | MUB GSR | 10AM - 3PM

linktr.ee/unh911day



More information including volunteer registration and donation appointments

BLOOD DRIVE

Help save lives and address
NH's urgent blood shortage.
Every donation supports local
hospitals & emergency
services.



**American
Red Cross**



University of
New Hampshire
Red Cross Club &
Student Nursing
Organization (SNO)

FOOD DRIVE

Help alleviate food insecurity
in the UNH community by
donating food & toiletries to
Cats' Cupboard anytime during
the event.



KINDNESS CARD STATION

Stop by and write a thank-
you card to show
appreciation for our local first
responders and firefighters



**McGregor
Memorial
EMS**

Durham · Lee · Madbury · UNH



**University of
New Hampshire
Library**

UNH Remembers September 11, 2001

Exhibit | Dimond Library, Main Floor | Aug 11 – Sept 30

Featuring items from the UNH Library's collections reflecting the history and impact of 9/11, including photographs from Special Collections & Archives. Visitors can contribute food & toiletries to a donation box for Cats' Cupboard, as well as pledge an act of kindness in honor of 9/11 Day at the interactive Kindness Wall. *Thank you to the UNH Library for helping make this exhibit possible.*



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AGENDA ITEM: **#11A**

DATE: **September 8, 2025**

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL SCHEDULE SPECIAL MEETING DATES ON NOVEMBER 10, 2025 AND DECEMBER 8, 2025 FOR THE PURPOSE OF DELIBERATING THE PROPOSED FY 2026 OPERATING, CAPITAL, AND SPECIAL FUND BUDGETS AND THE 2026-2035 CAPITAL IMPROVEMENT PLAN, AND SCHEDULE A PUBLIC HEARING ON THE PROPOSED FY 2026 BUDGET AND 2026-2035 CAPITAL IMPROVEMENT PLAN FOR MONDAY, NOVEMBER 17, 2025?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

The proposed FY 2026 Operating Budgets and 2026-2035 Capital Improvement Plan are in the development phase and will be ready for presentation to the Town Council for the meeting on Monday, November 3, 2025, with a proposed Public Hearing on November 17, 2025.

Historically, the Town Council has held meetings on Monday evenings as needed throughout the months of November and December, excluding holidays, until the budget and CIP have been adopted.

LEGAL AUTHORITY:

Section 5.3 "Budget hearings" of the Durham Town Charter:

"The Town Council shall hold in convenient places as many public hearings on the budget as it deems necessary, but at least one (1) public hearing on the budget shall be held at least fourteen (14) days before its final adoption by the Council at such time and place, convenient to the public, as the Council shall direct. Notice of such public hearing, together with a copy of the budget as submitted, shall be posted in two (2) public places and published once at least one (1) week in advance by the Town Clerk."

Section 5.4 "Final date for budget adoption" of the Durham Town Charter:

"The budget shall be adopted not later than the last workday of the preceding fiscal year....Failure by the Council to adopt a budget by the deadline established in this

section will establish the budget as recommended by the Administrator as the adopted budget.”

Section 5.8 “Capital Improvement Plan” of the Durham Town Charter:

- “A. The Town Administrator, after consultation with the Planning Board, shall prepare and submit to the Council a capital improvements plan at least one (1) month prior to the final date for submission of the budget. The capital improvements program shall include:
1. A clear summary of its contents.
 2. A list of all capital improvements, including major replacements, which are proposed to be undertaken during the next six (6) fiscal years, including but not limited to equipment, sewer and water mains or facilities, roads, sidewalks, bicycle paths or lanes, public open spaces and recreation facilities, new police and/or fire stations and other new public facilities and major items of equipment, with appropriate supporting information as to the necessity for such improvements.
 3. Cost estimates methods of financing and a recommended time schedule for each such improvement.
 4. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.
- B. The capital improvements plan shall be based on a period of not less than six (6) years and shall include reference to or be influenced by, where appropriate, the Town Master/Comprehensive Plan.
- C. The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby set Monday, November 10, 2025 and Monday, December 8, 2025, as Budget Work Sessions in addition to its regular meeting dates, to deliberate, discuss, and take action on the proposed FY 2026 Operating, Capital, and Special Fund Budgets and 2026-2035 Capital Improvement Plan.

MOTION #2:

The Durham Town Council does hereby schedule a Public Hearing for the proposed FY 2026 Operating, Capital, and Special Fund Budgets and the 2026-2035 Capital Improvement Plan for Monday, November 17, 2025, in accordance with Section 5.3 “Budget Hearings” of the Durham Town Charter.



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AGENDA ITEM: **#11B** *TS*

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL ADOPT RESOLUTION #2025-17 AMENDING RESOLUTION #2023-07 BY UPDATING THE COMPLETION DATE ON A FY22 LEGISLATIVE PRE-DISASTER MITIGATION (LPDM) GRANT FROM THE NEW HAMPSHIRE DEPARTMENT OF SAFETY, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT, FOR THE DURHAM EMERGENCY GENERATOR PROJECT, IN THE AMOUNT OF \$427,612.49 WITH A REQUIRED 25% MATCH OF \$142,537.51 – FOR A TOTAL PROJECT COST OF \$570,150.00 - AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK AND ALL DOCUMENTS RELATED TO THE GRANT ON BEHALF OF THE TOWN OF DURHAM?

CC PREPARED BY: Karen Edwards, Administrator

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Durham Public Works submitted a FY22 Congressional Directed Spending Request (CDR) application titled, "Town of Durham Emergency Generators Project", to Senator Shaheen's office as part of their project solicitation in April 2021.

The application included a request to fund the installation of backup emergency generators at the Town's Lee Well and Spruce Hole Well as well as new appropriately sized generators at the Public Works Facility and the Durham Police Station. Although not included within the existing grant, the Town and University will also evaluate and consider emergency power generation requirements at the Lamprey River raw water pump station. Improvements at this station would potentially be funded using existing and/or future capital funds. Details about each location can be found below.

Lee Well Generator – This project will provide emergency backup power to the Lee Well, which serves as a primary water drinking supply for the Town of Durham and UNH and also serves customers in the Town of Lee. The pumping station houses all of the Town’s chemical treatment, instrumentation, pumps and motors for the Lee Well and currently has an antiquated emergency backup power system requiring manual start and 100% continuous operator presence during any power failure. The proposed new system would include an auto-start and auto-transfer switch during any power loss, which is now standard practice in the water profession.

Spruce Hole Well Emergency Generator – This project will provide emergency power to the Spruce Hole Well, which is intended to serve as a seasonal drinking water supply to accommodate peak demand for the Town of Durham and the University of New Hampshire. The pumping station houses all of the Town’s chemical treatment instrumentation, pumps and motors for the Spruce Hole well and currently has no emergency backup power. The proposed new system would include an auto-start and auto-transfer switch during any power loss which is now standard practice in the water profession making the Spruce Hole site reliable and dependable during any power outage allowing the continued provision of both potable water and fire protection.

Police Station and Public Works Emergency Generators - During emergency events both the Police and Public Works facilities operate as emergency operations and logistics planning facilities housing personnel and equipment involved in emergency responses. Each facility currently has an insufficient emergency generator system, which is undersized and/or inadequately configured resulting in poor performance and powering approximately 20% of each building. The replacement of both generators will allow for full facility backup powered lighting, heat, equipment, fuel, security, IT and life safety systems. This is critical in providing reliable emergency response to the community and our mutual aid partners.

In the Spring of 2022, the Town and DPW were notified by Senator Shaheen’s office that the Town was slated to receive Congressional Directed Spending funds for this critical project. This program is administered through HSEM and FEMA Region 1 as a Pre-Disaster Mitigation Grant Program which required a separate application and completion of a Benefit-Cost Analysis.

There were many additional steps required including sending HSEM/FEMA a letter documenting available match, showing proof that the Town owned the parcel in Lee on which the Lee Well is located, and completing many Requests for Information (RFIs) that were received from FEMA requiring follow-up. Updating the Town’s Multi-Hazard Mitigation Plan was also required, a step made more challenging due to delays in Federal funds supporting that separate grant-funded project. The Town finally received the grant agreement package in early March 2023 to move forward with receiving the funding.

On Monday, April 3, 2023, the Town Council reviewed and discussed the attached proposed resolution and scheduled a Public Hearing on the resolution for Monday,

April 17, 2023. A Public Hearing notice was published in the *Foster's/Seacoast Online* on Thursday, April 6, 2023. The notice was posted on the outside bulletin board at the Town Hall, as well as at the Durham Public Library and the Department of Public Works.

On Monday, April 17, 2023, the Town Council voted 8-0 to approve Resolution #2023-07 with a completion date of September 18, 2025. On August 14, 2025, Administrator Selig received an email from NH DOS stating that FEMA had approved the NH Department of Safety, Division of Homeland Security and Emergency Management's request on behalf of the Town of Durham to extend the 2022 Legislative Pre-Disaster Mitigation program period of performance completion date to September 18, 2026.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

\$427,612.49 in FY22 Legislative Pre-Disaster Mitigation Grant (LPDM) grant monies to be received from the New Hampshire Homeland Security and Emergency Management (HSEM).

Breakdown of required match of \$142,537.51

ACCOUNT	TITLE	BUDGETED	EXPENSED/ ENCUMBERED TO DATE	REQUESTED	REMAINING
07-2129-221-36-000	Town Water System Improvements 2021	\$25,000	\$6409.18	\$18,537.51	\$53.31
07-2294-801-36-000	Facility Infrastructure Preventative Maintenance 2022	\$25,000	\$17,306	\$7,694	\$0
07-2377-801-36-000	Facility Infrastructure Preventative Maintenance 2023	\$25,000	\$6405	\$10,000	\$8,595
07-2328-221-36-000	Shared Water System Improvements Town/UNH 2023	\$70,000**	\$0	\$35,435** UNH Share = \$70,871	\$34,565
TOTAL				\$142,537.51	\$43,213.31

SUGGESTED ACTION OR RECOMMENDATIONS:

The grant agreement requires the following exact language when documenting meeting minutes for accepting the grant.

“The Durham Town Council, in a majority vote, accepted the terms of the Legislative Pre-Disaster Mitigation (LPDM) amendment, as presented, to reflect the change of Period of Performance dates from September 18, 2025 to September 18, 2026. Durham Administrator Todd Selig is authorized to sign all documents related to the grant.”

MOTION:

The Durham Town Council does hereby ADOPT Resolution #2025-17 Amending Resolution #2023-07 by updating the Completion Date of a FY22 Legislative Pre-Disaster Mitigation (LPDM) grant from the New Hampshire Department of Safety, Division of Homeland Security and Emergency Management, for the Durham Emergency Generator Project, in the Amount of \$427,612.49 with a 25% Local Match of \$142,537.51, – for a Total Project Cost of \$570,150.00 - and Authorizing the Administrator to sign and submit Grant paperwork and all documents related to the grant on behalf of the Town of Durham.

RESOLUTION #2025-17 OF DURHAM, NEW HAMPSHIRE

AMENDING RESOLUTION #2023-07 BY UPDATING THE COMPLETION DATE OF A FY22 LEGISLATIVE PRE-DISASTER MITIGATION (LPDM) GRANT FROM THE NEW HAMPSHIRE DEPARTMENT OF SAFETY, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT, FOR THE DURHAM EMERGENCY GENERATOR PROJECT, IN THE AMOUNT OF \$427,612.49 WITH A REQUIRED 25% MATCH OF \$142,537.51 – FOR A TOTAL PROJECT COST OF \$570,150.00 - AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK AND ALL DOCUMENTS RELATED TO THE GRANT ON BEHALF OF THE TOWN OF DURHAM.

WHEREAS, the Town of Durham submitted an FY22 Congressional Directed Spending Request (CDR) application titled, Town of Durham Emergency Generators Project, to Senator Shaheen's office as part of their project solicitation in April 2021; and

WHEREAS, in May 2022, the Town was notified that it was selected for funding in the amount of \$427,612.49, with a required 25% match of \$142,537.51, from the FY22 LPDM grant program for the Durham Emergency Generators Project; and

WHEREAS, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds 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; and

WHEREAS, 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, April 17, 2023, a duly posted and published Public Hearing was held by the Durham Town Council on the \$427,612.49 LPDM monies in accordance with RSA 31:95-b;

WHEREAS, on Monday, April 17, 2023, the Town Council approved Resolution #2023-07 by a vote of 8-0.

WHEREAS, on Thursday, August 14, 2025, Administrator Selig received an email from NH DOS stating that FEMA had approved the NH Department of Safety, Division of Homeland Security and Emergency Management's request on behalf of the Town of Durham to extend the 2022 Legislative Pre-Disaster Mitigation program period of performance from 9/18/25 to **9/18/26**.

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 #2025-17** amending Resolution #2023-07 by updating the completion date on a FY22 Legislative Pre-Disaster Mitigation (LPDM) grant from the New Hampshire Department of Safety, Division of Homeland Security and Emergency Management, for the Durham Emergency Generator Project, in the Amount of \$427,612.49 with a Required 25% Match of \$142,537.51 - for a total project cost of \$570,150.00 - and Authorize the Administrator to sign and submit Grant paperwork and all documents related to the Grant on behalf of the Town of Durham.

PASSED AND ADOPTED this 8th day of September, 2025, by a majority vote of the Durham Town Council with _____ affirmative votes, _____ negative votes, and _____ abstentions.

Joe Friedman, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



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RESOLUTION #2023-07 OF DURHAM, NEW HAMPSHIRE

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF A FY22 LEGISLATIVE PRE-DISASTER MITIGATION (LPDM) GRANT FROM THE NEW HAMPSHIRE DEPARTMENT OF SAFETY, DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT, FOR THE DURHAM EMERGENCY GENERATOR PROJECT, IN THE AMOUNT OF \$427,612.49 WITH A REQUIRED 25% MATCH OF \$142,537.51 – FOR A TOTAL PROJECT COST OF \$570,150.00 - AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK AND ALL DOCUMENTS RELATED TO THE GRANT ON BEHALF OF THE TOWN OF DURHAM.

WHEREAS, the Town of Durham submitted an FY22 Congressional Directed Spending Request (CDR) application titled, Town of Durham Emergency Generators Project, to Senator Shaheen's office as part of their project solicitation in April 2021; and

WHEREAS, in May 2022, the Town was notified that it was selected for funding in the amount of \$427,612.49, with a required 25% match of \$142,537.51, from the FY22 LPDM grant program for the Durham Emergency Generators Project; and

WHEREAS, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds 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; and

WHEREAS, 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, April 17, 2023, a duly posted and published Public Hearing was held by the Durham Town Council on the \$427,612.49 LPDM monies in accordance with RSA 31:95-b;

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 #2023-07 authorizing the Acceptance and Expenditure of a FY22 Legislative Pre-Disaster Mitigation (LPDM) grant from the New Hampshire Department of Safety, Division of Homeland Security and Emergency Management, for the Durham Emergency Generator Project, In the Amount of \$427,612.49 with a Required 25% Match of \$142,537.51 - for a total project cost of \$570,150.00 - and Authorize the Administrator to sign and submit Grant paperwork and all documents related to the Grant on behalf of the Town of Durham.

PASSED AND ADOPTED this 17th day of April, 2023, by a majority vote of the Durham Town Council with 8 affirmative votes, 0 negative votes, and 0 abstentions.


Sally Needell, Chair
Durham Town Council

ATTEST:


Rachel Deane, Town Clerk-Tax Collector



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AGENDA ITEM: **#11C** *TS*
DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Councilor Curtis Register

AGENDA ITEM: SHALL THE TOWN COUNCIL AUTHORIZE THE ADMINISTRATOR TO SIGN THE AMICUS BRIEF SUPPORTING THE PLAINTIFFS IN THE CASE NEW HAMPSHIRE INDONESIAN COMMUNITY SUPPORT, ET AL. V. DONALD J. TRUMP, ET AL., STATING DURHAM'S OPPOSITION TO THE EXECUTIVE ORDER THAT WOULD DENY BIRTHRIGHT CITIZENSHIP TO CERTAIN U.S.-BORN CHILDREN AND SUPPORTING THE EXISTING CONSTITUTIONAL AND FEDERAL STATUTORY DEFINITION OF CITIZENSHIP?

CC PREPARED BY: Todd Selig, Administrator

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Background

The Durham Town Council has been approached via correspondence from Portsmouth Attorney Alan Cronheim and follow-up discussions with Councilor Curtis Register to consider joining an amicus ("friend of the court") brief in the federal court case New Hampshire Indonesian Community Support, et al. v. Donald J. Trump, et al. This case, pending in the United States District Court for the District of New Hampshire, challenges the constitutionality of President Trump's Executive Order No. 14160 ("Protecting the Meaning and Value of American Citizenship"), which seeks to deny birthright citizenship to children born in the United States under certain circumstances related to the immigration status of their parents. Specifically, it excludes children whose mothers were unlawfully present or on temporary visas at the time of birth, and whose fathers were not U.S. citizens or lawful permanent residents.

The plaintiffs are several nonprofit organizations, including New Hampshire Indonesian Community Support. Their members are families who could be affected by the order. The lawsuit argues that the executive order violates the Fourteenth Amendment to the U.S. Constitution and federal law, both of which state that any person born in the United States and subject to its jurisdiction is a citizen. This principle is supported by longstanding Supreme Court precedent, including the 1898 decision in *United States v. Wong Kim Ark*. The District Court has issued a preliminary injunction stopping the executive order from taking effect while the case is litigated.

The amicus brief we are asked to join by Attorney Cronheim and Councilor Register has been filed by dozens of local governments and officials from across the country. The brief

explains that local governments could face new legal and administrative burdens if the order is allowed. For example, proving citizenship for local services, such as registering to vote or issuing birth certificates, would become much more complicated. This could create added bureaucracy and complexities for Town election officials. Families could lose access to benefits such as health care or nutrition assistance for eligible children. The brief also summarizes the general arguments that the executive order contradicts the Constitution, federal law, and established precedent, and that it would have immediate negative impacts on local governments and their residents.

The proposal is for Durham to join other municipalities in supporting the plaintiffs through the amicus brief. This action does not make Durham a party to the case, yet it would publicly state the Town's position.

At their August 22, 2025 meeting, the Human Rights Commission voted to support the signing of the amicus brief.

The Council's decision should weigh whether joining the brief would help protect our residents' rights, reduce administrative burden for local election and other officials, and align with longstanding legal precedent and statutory requirements.

Recommendation

Admin. Selig recommends that the Council authorize joining the amicus brief in support of plaintiffs in this litigation, recognizing the legal, practical, and community impacts as outlined. Mr. Selig sees little downside to Durham and views the action as being consistent with the Town Council core values of Honesty, Integrity, and Justice as listed in the 2025-26 Town Council Goals. In addition, the Madbury Church has been supporting the efforts of the local NH Indonesian Community for the last twenty years with some members living within the Oyster River Cooperative School District, who are part of the collective Durham community.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

Legal counsel concludes that the legal arguments that are being made in the brief are strong, and there is no legal downside to joining the brief. The political downside, of course, is potentially being on the receiving end of the White House's ire. Whether that is something which should keep the town from joining the brief is not for legal counsel to advise upon.

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby authorize the Administrator to sign the amicus brief supporting the plaintiffs in the case New Hampshire Indonesian Community Support, et al. v. Donald J. Trump, et al., stating Durham's opposition to the executive order that would deny birthright citizenship to certain U.S.-born children and supporting the existing constitutional and federal statutory definition of citizenship.

From: [Todd Selig](#)
To: [Karen Edwards](#)
Subject: FW: Birthright Citizenship Documents
Date: Tuesday, August 5, 2025 11:35:49 AM

From: Curtis Register <cregister@ci.durham.nh.us>
Date: Thursday, July 3, 2025 at 5:20 PM
To: Alan Cronheim <acronheim33@gmail.com>, Durham Town Council
<council@ci.durham.nh.us>
Subject: Re: Birthright Citizenship Documents

Good afternoon Alan,

Thank you for emailing the Council and good talking to you on the phone.

To restate what I understood from the call:

The Plaintiff, New Hampshire Indonesian Community Support, which is headquartered in Dover, NH is suing the Trump Administration over its efforts to unilaterally dissolve birthright citizenship from our 14th Amendment.

Due to the recent Supreme Court ruling in US vs CASA Inc on 27 Jun, limited the power of judicial review and terminating the ability to do nationwide injunctions now means each district must dispute unconstitutional laws.

In response you have sent multiple New Hampshire municipalities this case in the hopes that they will see the unconstitutionality of the Trump Administrations attempts to remove birthright citizenship and in conjunction with the new voting laws that have taken effect in New Hampshire that requires proof of citizenship to register to vote; this has the potential to add overbearing causative research requirements on Town Clerks and Election personnel to verify identifies of residents as their citizenship would have the potential to be nullified.

The question posed to the Council:

Will Durham sign on, with other municipalities, to an amicus or "friend of the court" brief that would show support to the plaintiff disputing the attempt remove 14th Amendment Birthright Citizenship unilaterally?

I am very sympathetic to this cause and have no issue introducing the idea at Councilor Roundtable on Monday 7 July. A vote to support or not would not be possible until at the earliest Aug 4th for our next Town Council Meeting.

Thank you very much for reaching out with this and wish you a very Happy Independence from Tyrannical Government's Day.

Respectfully,

Curtis

From: Alan Cronheim <acronheim33@gmail.com>
Sent: Thursday, July 3, 2025 1:49 PM
To: Durham Town Council <council@ci.durham.nh.us>
Subject: Fwd: Birthright Citizenship Documents

Some people who received this message don't often get email from acronheim33@gmail.com. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Gail-

I am forwarding info on the birthright citizenship case now pending in the United States District Court for the District of New Hampshire. Included is an overview of the case, the initial complaint filed in January and Judge Laplante's preliminary injunction order issued in February granting the plaintiff's request for preliminary relief. The Government has appealed the order granting the plaintiffs preliminary relief to the First Circuit. The case will continue to be litigated in the District Court in Concord until a final order is issued.

We are hoping that Durham and other NH municipalities will sign onto an amicus brief supporting the plaintiff's position that the Trump Executive Order denying citizenship to U.S. born children is unconstitutional.

Thanks for your help.

Alan Cronheim



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COURT CASES

New Hampshire Indonesian Community Support, et al. v. Donald J. Trump, et al.

Immigrants' Rights

Filed: January 20, 2025

Status: Pending

Court: United States District Court for the District of New Hampshire

Latest Update: Jan 20, 2025



Summary

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On January 20, 2025, immigrants' rights advocates sued the Trump administration over its executive order that seeks to strip certain babies born in the United States of their U.S. citizenship.

The case was filed by the American Civil Liberties Union, ACLU of New Hampshire, ACLU of Maine, ACLU of Massachusetts, Asian Law Caucus, State Democracy Defenders Fund, and Legal Defense Fund on behalf of organizations with members whose babies born on U.S. soil will be denied citizenship under the order, including New Hampshire Indonesian Community Support, League of United Latin American Citizens (LULAC), and Make the Road New York. The lawsuit charges the Trump administration with flouting the Constitution's dictates, congressional intent, and long-standing Supreme Court precedent.

Denying citizenship to U.S.-born children is not only unconstitutional — it's also a reckless and ruthless repudiation of American values. Birthright citizenship is part of what makes the United States the strong and dynamic nation that it is. As this lawsuit explains, this executive order seeks to repeat one of the gravest errors in American history, by creating a permanent subclass of people born in the U.S. who are denied full rights as Americans.

Birthright citizenship is the principle that every baby born in the United States is a U.S. citizen. The Constitution's 14th Amendment guarantees the citizenship of all children born in the United States (with the extremely narrow exception of children of foreign diplomats) regardless of race, color, or

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wherein they reside.” The 14th Amendment was ratified in 1868, overturning the Dred Scott decision that denied Black Americans the rights and protections of U.S. citizenship. In 1898, the U.S. Supreme Court confirmed in *United States v. Wong Kim Ark* that children born in the United States to immigrant parents were entitled to U.S. citizenship, and the principle has remained an undisturbed constitutional bedrock for over a century.

In other words, birthright citizenship is guaranteed in our Constitution and is absolutely central to what America stands for. Denying citizenship to babies born on U.S. soil is illegal, profoundly cruel, and contrary to our values as a country.

Many expectant couples across the United States now fear what will happen to their newborns. One such couple impacted by this lawsuit are members of New Hampshire Indonesian Community Support. They arrived in 2023, applied for asylum, and their application awaits review. The mom-to-be is in her third trimester. Under this executive order, their baby would be considered an undocumented noncitizen and could be denied basic health care and nutrition, putting the newborn at grave risk at such a vulnerable stage of life.

Such children would also be unable to obtain required identification and, as they grow up, be denied the right to vote, serve on juries, hold certain jobs, and otherwise be a full member of American society, even though they were born in the United States and have never lived anywhere else. As the lawsuit further explains, the order will also stigmatize and send a message of exclusion not only to children directly

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nent underclass of those who have never been to another country and may be rendered stateless.

The complaint can be found online [here](#). On January 21, 2025, Plaintiffs [filed their motion for preliminary injunction](#). On February 10, 2025, the Court [issued a preliminary injunction](#) "with respect to the plaintiffs, and with respect to any individual or entity in any matter or instance within the jurisdiction of this court, during the pendency of this litigation." A more substantive opinion [was issued the next day](#).

The Government appealed the preliminary injunction order to the First Circuit, and Plaintiffs [filed their brief](#) on May 30, 2025.

Case Number: 1:25-cv-38

Documents

Jan 20, 2025

1.20.25 Complaint

Jan 20, 2025

1.21.25 Motion for Preliminary Injunction

Jan 20, 2025

2.10.25 Preliminary Injunction Order

Jan 20, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

NEW HAMPSHIRE INDONESIAN
COMMUNITY SUPPORT; LEAGUE OF
UNITED LATIN AMERICAN CITIZENS; and
MAKE THE ROAD NEW YORK,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States, in his official capacity; U.S.
DEPARTMENT OF HOMELAND
SECURITY; SECRETARY OF HOMELAND
SECURITY, in their official capacity; U.S.
DEPARTMENT OF STATE; SECRETARY
OF STATE, in their official capacity; U.S.
DEPARTMENT OF AGRICULTURE;
SECRETARY OF AGRICULTURE, in their
official capacity; CENTERS FOR MEDICARE
AND MEDICAID SERVICES;
ADMINISTRATOR OF THE CENTERS FOR
MEDICARE AND MEDICAID SERVICES, in
their official capacity,

Defendants.

Case No. 1:25-cv-38

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Birthright citizenship embodies America's most fundamental promise: that all children born on our soil begin life as full and equal members of our national community, regardless of their parents' origins, status, or circumstances. This principle has enabled generations of children to pursue their dreams and build a stronger America.

2. The framers of the Fourteenth Amendment specifically enshrined this principle in our Constitution's text to ensure that no one—not even the President—could deny children born

in America their rightful place as citizens. They did so with full knowledge and intent that this would protect the children of immigrants, including those facing discrimination and exclusion.

3. The Citizenship Clause of the Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV, § 1.

4. In *United States v. Wong Kim Ark*, the Supreme Court confirmed that children born in the United States of noncitizen parents are citizens under the Fourteenth Amendment’s Citizenship Clause. 169 U.S. 649 (1898). Following *Wong Kim Ark*, Congress codified birthright citizenship in a statute whose language mirrors the Fourteenth Amendment. See 8 U.S.C. § 1401(a).

5. In the over 125 years since the Supreme Court emphatically rejected the last effort to undercut birthright citizenship in *Wong Kim Ark*, this principle has remained undisturbed constitutional bedrock. Even through countless subsequent immigration debates, and periods of intense anti-immigrant sentiment, this core constitutional guarantee has protected generations of Americans and prevented the emergence of a hereditary underclass excluded from full participation in American life.

6. For families across America today, birthright citizenship represents the promise that their children can achieve their full potential as Americans. It means children born here can dream of becoming doctors, lawyers, teachers, entrepreneurs, or even president—dreams that would be foreclosed if their citizenship were stripped away based on their parents’ status.

7. Now, flouting the Constitution’s dictates, statutory commands, and longstanding Supreme Court precedent, Defendant President Donald Trump has issued an Executive Order entitled “Protecting the Meaning and Value of American Citizenship” (“the Order”), which

attempts to upend one of the most fundamental American constitutional values by denying citizenship to children born on American soil to a mother who is “unlawfully present” or temporarily present, and a father who is not a U.S. citizen or lawful permanent resident.

8. For Plaintiffs—organizations with members impacted by the Order—and for families across the country, this Order seeks to strip from their children the “priceless treasure” of citizenship, *Fedorenko v. United States*, 449 U.S. 490, 507 (1981), threatening them with a lifetime of exclusion from society and fear of deportation from the only country they have ever known. But that is illegal. The Constitution and Congress—not President Trump—dictate who is entitled to full membership in American society.

9. The Order straightforwardly violates the Citizenship Clause, as well as the birthright citizenship statute, and should be enjoined.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

11. Venue is proper in the District of New Hampshire because Plaintiff New Hampshire Indonesian Community Support (“NHICS”) resides in the District. 28 U.S.C. § 1391(e)(1).

PARTIES

12. Plaintiff New Hampshire Indonesian Community Support is a nonprofit, membership-based community organization in New Hampshire. It is headquartered in Dover, New Hampshire.

13. NHICS’s mission is to help foster a well-informed, well-connected, and stronger immigrant community in New Hampshire and to build a community that contributes to society.

14. NHICS has approximately 2,000 members located across New Hampshire.
15. NHICS has members whose children will be denied citizenship under the Order.
16. Plaintiff League of United Latin American Citizens (“LULAC”) is a nationwide, non-profit, non-partisan, membership-based organization founded in 1929.
17. LULAC’s mission is to improve the lives of Latino families throughout the United States and to protect their civil rights in all aspects.
18. LULAC has over 325,000 members nationwide.
19. LULAC has members whose children will be denied citizenship under the Order.
20. Plaintiff Make the Road New York (“MRNY”) is a nonprofit, membership-based community organization with five offices in the New York area.
21. MRNY’s mission is to build the power of immigrant and working class communities to achieve dignity and justice.
22. MRNY has over 28,000 members residing in New York State.
23. MRNY has members whose children will be denied citizenship under the Order.
24. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued and will oversee the implementation of the Order challenged in this lawsuit.
25. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet-level department of the United States federal government. Its components include U.S. Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”). ICE’s responsibilities include enforcing federal immigration law within the interior of the United States, including by carrying out deportations. CBP’s responsibilities include inspecting and

admitting people at international points of entry, including airports and land borders, and engaging in immigration enforcement near the border.

26. Defendant Secretary of Homeland Security has responsibility for overseeing enforcement and implementation of the Order by all DHS staff. They are sued in their official capacity.

27. Defendant U.S. Department of State (“DOS”) is a cabinet-level department of the United States federal government. DOS is responsible for the issuance of passports to United States citizens.

28. Defendant Secretary of State has responsibility for overseeing enforcement and implementation of the Order by all DOS staff. They are sued in their official capacity.

29. Defendant U.S. Department of Agriculture (“USDA”) is a cabinet-level department of the United States. USDA administers the Supplemental Nutrition Assistance Program (“SNAP”).

30. Defendant Secretary of Agriculture has responsibility for overseeing enforcement and implementation of the Order by all USDA staff. They are sued in their official capacity.

31. Defendant Centers for Medicare and Medicaid Services (“CMS”) is an agency of the United States. CMS provides health coverage to people in the United States through Medicaid.

32. Defendant Administrator of the Centers for Medicare and Medicaid Services has responsibility for overseeing enforcement and implementation of the Order by all CMS staff. They are sued in their official capacity.

STATEMENT OF FACTS

A. Legal Background

33. “Jus soli” is “the ancient and fundamental” principle of “citizenship by birth within the territory” of the United States. *Wong Kim Ark*, 169 U.S. at 693. This principle has its roots in English common law, *see Calvin v. Smith*, 77 Eng. Rep. 377 (K.B. 1608), and applied in the colonial era and early years of the American republic, *see Wong Kim Ark*, 169 U.S. at 658; *Inglis v. Trustees of Sailor’s Snug Harbor*, 28 U.S. 99, 164 (1830).

34. However, in the infamous case of *Dred Scott v. Sandford*, the Supreme Court held that, despite their birth in the United States, the descendants of enslaved people were “not included, and were not intended to be included, under the word ‘citizens’ in the Constitution.” 60 U.S. 393, 404-05 (1857).

35. After the Civil War, Congress repudiated *Dred Scott* and constitutionalized the birthright citizenship rule in the Fourteenth Amendment’s Citizenship Clause, which provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV, § 1. *See Wong Kim Ark*, 169 U.S. at 692-93. In so doing, the Framers strove to transform American citizenship from a race-based, two-tiered system, to one that was equally open to all regardless of their parents’ heritage.

36. The Citizenship Clause was enacted with full knowledge among both proponents and opponents that it would guarantee the citizenship of children of noncitizens.

37. Accordingly, when the question of the citizenship of the child of two Chinese nationals—who at that time were barred under the Chinese Exclusion Acts from becoming U.S. citizens themselves—came before the Supreme Court in *Wong Kim Ark*, it rightly concluded that because the plaintiff had been born in the United States, he was a citizen, regardless of his

parents' circumstances. 169 U.S. at 693. In *Wong Kim Ark*, the Supreme Court conclusively determined that all children born in the United States are citizens, subject only to very limited exceptions.

38. The only exception relevant today is the children of foreign diplomats, who, under *Wong Kim Ark*, are not “subject to the jurisdiction” of the United States. *Id.* at 683.

39. Another exception *Wong Kim Ark* noted were children born to foreign armies living in U.S. territory that those armies had conquered. *Id.* at 682-83. There is no such U.S. territory today.

40. Finally, *Wong Kim Ark* noted an exception for children born to Native Americans living within tribal territory. *Id.* at 681. Because tribes were considered quasi-sovereign entities, children born to Native Americans in their territory were deemed similar to “the children of subjects of any foreign government born within the domain of that government.” *Id.* (quoting *Elk v. Wilkins*, 112 U.S. 101, 102 (1884)). Congress later declared all Native Americans born in the United States to be U.S. citizens. Indian Citizenship Act, Pub. L. No. 68-175, 43 Stat. 253 (1924).

41. Beyond these exceptions, the Fourteenth Amendment’s guarantee of birthright citizenship applies to “the children born within the territory of the United States of all other persons.” *Wong Kim Ark*, 169 U.S. at 693.

42. In 1940, Congress enacted a statute that mirrors the Citizenship Clause. The birthright citizenship statute provides that “a person born in the United States, and subject to the jurisdiction thereof” is a citizen of the United States. 8 U.S.C. § 1401(a); *see also id.* §§ 1402, 1406(b), 1407(b). This language “[wa]s taken . . . from the fourteenth amendment to the Constitution.” *To Revise and Codify the Nationality Laws of United States into a Comprehensive*

Nationality Code: Hearings Before the Comm. on Immig. and Naturalization on H.R. 6127

Superseded by H.R. 9980, 76th Cong., 1st Sess., at 38 (1940). In 1952, the birthright citizenship statute was reenacted as part of a broader set of reforms to the naturalization laws.

43. In passing and reenacting this statute, Congress codified the long-settled interpretation of the Fourteenth Amendment, whereby all children born in the United States were citizens, subject only to the narrow exceptions identified in *Wong Kim Ark*.

B. The Executive Order

44. On January 20, 2025, President Trump issued the Order.

45. The Order purports to declare that a child born in the United States is not a citizen if, at the time of birth, their mother is either “unlawfully present in the United States” or their “mother’s presence in the United States was lawful but temporary,” and their father was not a U.S. citizen or lawful permanent resident.

46. The Order directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to implement its terms. It also directs all other agency heads to issue guidance regarding implementation of the Order. Such agencies include USDA and CMS.

47. The Order specifies that it will apply to persons born after 30 days from its issuance.

48. Neither the Constitution nor any federal statute confers any authority on the President to redefine American citizenship.

49. By attempting to limit the right to birthright citizenship, the Order exceeds the President’s authority and runs afoul of the Constitution and federal statute.

C. Plaintiffs and Their Members

50. Plaintiffs NHICS, MRNY, and LULAC are membership-based organizations. Each organization has members who are living in the United States and currently expecting children who, once they are born, will be denied citizenship under the Executive Order.

51. NHICS's members include noncitizens who have a variety of immigration statuses. Specifically, NHICS's members include citizens, lawful permanent residents, asylees, applicants for immigration relief including asylum, student visa holders, recipients of Deferred Action for Childhood Arrivals ("DACA"), and undocumented noncitizens. Some of these members are currently expecting children who may be deemed to be covered by the Order.

52. For example, "Gail" and "Thomas" are NHICS members whose child, when born, would be denied U.S. citizenship under the Order.

53. Gail came to the United States on a tourist visa in 2023 and has a pending application for asylum but no other current immigration status. She is pregnant and has a due date in late February.

54. Thomas is Gail's husband. He came to the United States in 2023 on a tourist visa and has a pending application for asylum but no other current immigration status. He is the father of Gail's expected child.

55. Many of MRNY's members are neither U.S. citizens nor lawful permanent residents. Some of these members are currently expecting children who may be deemed to be covered by the order.

56. For example, "Faith" is a member of MRNY and a noncitizen. Faith is pregnant, and is due in March 2025. She has lived in the United States for over twenty years. She is a DACA recipient but has no other immigration status, and her partner, who is the father of her expected child, is not a Lawful Permanent Resident nor a U.S. citizen.

57. “Gordon” is a member of MRNY and a noncitizen. He and his partner are expecting a child due in March 2025. He and his partner have both applied for asylum, but neither has any other immigration status.

58. “Johnathan” is a member of MRNY and a noncitizen. He and his partner are expecting a child in April 2025. He has lived in the United States for over thirty years, but neither he nor his partner has any immigration status.

59. LULAC’s members include noncitizens who have a variety of immigration statuses. Specifically, LULAC’s members include lawful permanent residents, student visa holders, asylees, refugees, parolees, noncitizens with Temporary Protected Status (“TPS”), DACA recipients, applicants for immigration relief including asylum, and undocumented noncitizens. Some of these members are currently expecting children who may be deemed to be covered by the order.

60. For example, “Carmen” is a member of LULAC and a noncitizen. Carmen is expecting a child. Carmen has lived in the United States for over 15 years and has a pending application for a U visa, which provides a path to permanent immigration status to victims of certain crimes, but Carmen has no other immigration status. The father of Carmen’s expected child also has no immigration status.

D. Impact of the Order on Plaintiffs, their Members, and Other Families.

61. Denying citizenship to the children of Plaintiffs' members, as well as other children being born every day throughout the country, would have devastating impacts on these families and on the United States as a whole.

62. Stripping children of the "priceless treasure" of citizenship, *Fedorenko*, 449 U.S. at 507, is a grave injury. It denies them the full membership in U.S. society to which they are entitled.

63. Allowing the Order to stand would "promot[e] the creation and perpetuation of a subclass" of children who were born in the United States but lack fundamental legal recognition and face stigma as a result of their novel and uncertain status. *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

64. By attacking the principle that all children born in this country are citizens, the Order will invite persistent questioning of the citizenship of children of immigrants—particularly children of color.

65. The Order's denial of these children's citizenship will also have numerous other consequences.

66. Among other things, as they become adults, these children will, if stripped of their citizenship, be denied the right to vote in federal elections, *see* U.S. Const. art. 1, § 2; serve on federal juries, *see* 28 U.S.C. § 1865(b); serve in many elected offices, *see* U.S. Const. art. 2, § 1, cl. 5; *id.* art. 1, §§ 2, cl. 2, 3, cl. 3; and work in various federal jobs, *see, e.g.*, 35 U.S.C. § 3; 47 U.S.C. § 154(b)(1); 49 U.S.C. §§ 106, 114(b), 44935(e)(2)(A)(ii).

67. Once deemed to be noncitizens, the children of Plaintiffs' members and other similarly situated children will be subject to immigration enforcement by DHS, CBP, and ICE. This may include arrest, detention, and deportation to countries they have never even visited.

68. Improperly threatening children with arrest, detention, and deportation, and forcing them to grow up in fear of immigration enforcement, imposes harms on those children and their parents.

69. That fear is multiplied for parents who face further concern that their baby's removal would be to a country where their lives or freedom would be in danger.

70. United States passports are issued to United States citizens. *See* 22 U.S.C. § 212; 22 C.F.R. § 51.2(a). United States passports may be used for international travel, and as identification for many other purposes.

71. Children of Plaintiffs' members and other noncitizen families will be ineligible for passports under the Order.

72. Without passports, these children may not be able to travel outside the country to visit family. This threatens to undermine family ties and prevent noncitizens from traveling abroad to, for example, visit ailing relatives or celebrate a wedding.

73. Likewise, many families rely on passports as one of the only available forms of government identification for their children, which can be vital for both practical purposes, and to prove the child's identity and relationship to their parents in cases of contact with law enforcement or other government agencies.

74. The Order may also render children legally or effectively stateless. A U.S.-born child deemed to be a noncitizen may likewise not be recognized as a citizen under the laws of

their parents' country or countries of origin. Even if legally possible, practical barriers may prevent these children from being recognized as citizens of any other country.

75. For example, Gordon and his partner are citizens of Venezuela, which does not offer consular services in the United States. His child, once born, may be rendered effectively stateless.

76. Stateless people often lack access to education, employment, health care, and other rights, and face travel restrictions, social exclusion, and heightened vulnerability to violence and other harms.

77. Denying these children's citizenship may also render them ineligible for critical early-life nutritional resources and medical care. *See* 8 U.S.C. § 1611.

78. For example, U.S. citizen children are eligible for SNAP. SNAP provides access to critically important groceries for low-income households.

79. Because they would be deemed noncitizens under the Order, children of Plaintiffs' members risk being deemed ineligible for access to nutrition under SNAP. *See* 7 U.S.C. § 2015(f); 7 C.F.R. § 273.4.

80. For example, Gail and Thomas's household would likely financially qualify for SNAP. As a U.S. citizen, their child, once born, would be eligible for SNAP. But because of the Order, their child will likely be ineligible.

81. Ensuring access to nutritious food during early childhood is vital for children's physical and mental development, laying a foundation for future well-being.

82. Likewise, Carmen's household financially qualifies for federal health insurance under the Medicaid program, which provides medical insurance for low-income people. But under the Order, her child, once born, will likely be ineligible.

83. Access to medical care plays a critical role in improving life outcomes for children and leads to improved cognitive and physical growth.

84. Without it, children are at greater risk of avoidable hospitalizations and long-term health disparities.

85. Moreover, the denial of medical coverage may require members to forego necessities such as food and shelter in order to pay for medical expenses.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Fourteenth Amendment to the United States Constitution (All Defendants)

86. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

87. The Citizenship Clause of the Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV, § 1.

88. The Citizenship Clause enshrined in the Constitution the fundamental common law rule of birth by citizenship, whereby all people born in the United States are citizens. The term “subject to the jurisdiction” excludes only a few inapplicable categories—today, just the children of foreign diplomats. All other children born in the United States are citizens, no matter the immigration status of their parents.

89. The Executive Order violates the Fourteenth Amendment’s Citizenship Clause because it denies citizenship to the children of noncitizens who are born in the United States and subject to the jurisdiction of the United States.

SECOND CLAIM FOR RELIEF
8 U.S.C. § 1401 *et seq.*
(All Defendants)

90. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

91. 8 U.S.C. § 1401(a) provides that “a person born in the United States, and subject to the jurisdiction thereof” is a citizen of the United States. *See also id.* §§ 1402, 1406(b), 1407(b).

92. This language mirrors the Fourteenth Amendment’s Citizenship Clause. In this statute, Congress codified the Fourteenth Amendment’s existing interpretation, which established citizenship for children regardless of the immigration status of their parents.

93. The Executive Order violates 8 U.S.C. § 1401 *et seq.* because it denies citizenship to the children of noncitizens who are born in the United States and subject to the jurisdiction of the United States.

THIRD CLAIM FOR RELIEF
Administrative Procedure Act
(All Defendants except Defendant Trump)

94. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

95. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, are contrary to constitutional right, power, privilege, or immunity, including rights protected by the Fourteenth Amendment to the U.S. Constitution, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

FOURTH CLAIM FOR RELIEF
Administrative Procedure Act
(All Defendants except Defendant Trump)

96. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

97. The actions of Defendants that are required or permitted by the Executive Order, as set forth above, violate 8 U.S.C. § 1401 *et seq.* and are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court grant the following relief:

- a. Declare that the Executive Order is unconstitutional and unlawful in its entirety;
- b. Preliminarily and permanently enjoin Defendants from enforcing the Executive Order;
- c. Require Defendants to pay reasonable attorneys' fees and costs;
- d. Grant any other and further relief that this Court may deem just and proper.

Dated: January 20, 2025

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**Application for admission pro hac vice*
forthcoming

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

New Hampshire Indonesian
Community Support, et al.

v.

Civil No. 25-cv-38-JL-TSM
Opinion No. 2025 DNH 014 P

Donald J. Trump, President of the
United States, in his official capacity, et al.

PRELIMINARY INJUNCTION ORDER

Plaintiff nonprofit groups—New Hampshire Indonesian Community Support, League of United Latin American Citizens, and Make the Road New York—ask this court to enjoin the enforcement of an executive order that would exclude certain groups of individuals from receiving birthright citizenship. They sue the President, the Secretary and Department of Homeland Security, the Secretary and Department of State, the Secretary and Department of Agriculture, and the Administrator of and Centers for Medicare and Medicaid Services (the persons in their official capacities).¹ The plaintiffs allege that a recent executive order involving birthright citizenship violates the Fourteenth Amendment of the United States Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. *See* U.S. Const. amend. XIV, § 1; Immigration and Nationality Act, 8 U.S.C. § 1401; Administrative Procedure Act, 5 U.S.C. § 706(B).²

¹ *See* Compl. (doc. no. 1).

² *Id.* at ¶¶ 86-97.

After reviewing the parties' submissions and holding oral argument, the court grants the preliminary injunction. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

Applicable legal standard. “A preliminary injunction is an extraordinary equitable remedy that is never awarded as of right.” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quotations omitted)).

“When a party seeks a preliminary injunction, the district court considers four long-established elements: (1) the probability of the movant’s success on the merits of their claim(s); (2) the prospect of irreparable harm absent the injunction; (3) the balance of the relevant equities (focusing upon the hardship to the movant if an injunction does not issue as contrasted with the hardship to the nonmovant if it does); and (4) the effect of the court’s action on the public interest.”

Santiago v. Mun. of Utuado, 114 F.4th 25, 34–35 (1st Cir. 2024) (quoting *Rosario-Urdaz v. Rivera-Hernandez*, 350 F.3d 219, 221 (1st Cir. 2003) (quotations omitted)). “The movant’s likelihood of success on the merits weighs most heavily in the preliminary injunction calculus.” *Ryan v. U.S. Immigr. & Customs Enf’t*, 974 F.3d 9, 18 (1st Cir. 2020). The third and fourth factors “merge when the [g]overnment is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Executive Order. On January 20th, 2025, the President issued Executive Order No. 14160, titled “Protecting the Meaning and Value of American Citizenship.”³ It provides that the Fourteenth Amendment of the Constitution “has never been interpreted to extend citizenship universally to everyone born within the United States” and that it “has always excluded from birthright citizenship persons who were born in the United States but not ‘subject to the jurisdiction thereof.’”⁴

It then orders that “no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship, to persons” in two circumstances:

“(1) when that person’s mother was unlawfully present in the United States and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (2) when that person’s mother’s presence in the United States was lawful but temporary, and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth.”⁵

By its terms, the Executive Order takes effect on February 19th, 2025.⁶

Procedural history. The plaintiff organizations include pregnant members who will give birth after the Executive Order becomes operative.⁷ For various reasons, the

³ Protecting the Meaning and Value of American Citizenship, Executive Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* In similar suits in other federal district courts, at least two other courts have preliminarily enjoined the order nationwide. See *State v. Trump*, No. C25-0127-JCC, 2025 WL 415165, at *7 (W.D. Wash. Feb. 6, 2025); *CASA, Inc. v. Trump*, No. CV DLB-25-201, 2025 WL 408636, at *17 (D. Md. Feb. 2, 2025).

⁷ See Decl. of Rev. Sandra Pontoh, Director of the New Hampshire Indonesian Community Support (doc. no. 24-2) at ¶¶ 8-10; Decl. of Juan Proaño, Chief Executive Officer of League of

plaintiffs' members' children born on or after that date risk deprivation of birthright citizenship under the Executive Order.⁸ The parties jointly submitted a briefing and hearing schedule at the outset of the litigation and requested oral argument only, as opposed to an evidentiary hearing. Counsel for both parties confirmed at oral argument that their disputes in the litigation are legal rather than factual.

The plaintiffs allege that the Executive Order violates the Fourteenth Amendment and § 1401 of the INA because it “denies citizenship to children of noncitizens who are born in the United States and subject to the jurisdiction of the United States.”⁹ They also claim that the Executive Order violates the APA.¹⁰

The defendants disagree. They do not challenge the plaintiffs' standing to sue, but argue that they lack a cause of action.¹¹ They also argue that the plaintiffs are unlikely to succeed on the merits primarily because the phrase “subject to the jurisdiction of the United States” in the Fourteenth Amendment does not refer to the groups affected by the Executive Order, the plaintiffs have misinterpreted Supreme Court precedent regarding the phrase, and the defendants have offered a better interpretation of the phrase.¹² In addition, the defendants contend that illegal immigration to the United States justifies invoking the exception to birthright citizenship for “children born of alien enemies in

United Latin American Citizens (doc. no. 24-3) at ¶¶ 11-14; Decl. of Sienna Fontaine, General Counsel, Make the Road New York (doc. no. 24-4) at ¶¶ 10-20.

⁸ *Id.* The court uses the term “deprivation” here in the sense that, currently and for many generations leading up to the issuance of the Executive Order, the United States government has conferred birthright citizenship on children born under the same circumstances.

⁹ See Compl. (doc. no. 1) at ¶¶ 86-93.

¹⁰ *Id.* at ¶¶ 94-97.

¹¹ See Defs.' Obj. to Mot. for Prelim. Inj. (doc. no. 58-1) at 15.

¹² See generally *id.*

hostile occupation.”¹³ *See United States v. Wong Kim Ark*, 169 U.S. 649, 682 (1898).

The defendants finally assert that because § 1401 has the same scope as the same phrase in the Fourteenth Amendment, the plaintiffs’ argument based on § 1401 should also fail.¹⁴

As to irreparable harm, the defendants argue that the plaintiffs’ claimed harm would be hypothetical and speculative.¹⁵

Analysis. The court grants the motion because the plaintiffs have satisfied the requirements for preliminary injunctive relief.

First, the plaintiffs have a cause of action to seek injunctive relief to redress certain governmental actions that contravene the Constitution or a federal statute. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (“decid[ing] whether the President was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the Nation’s steel mills”); *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (adjudicating a “claim that [an] Executive Order is in conflict with the [National Labor Relations Act]”).¹⁶ “The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of

¹³ *Id.* at 29.

¹⁴ *Id.* at 36-37.

¹⁵ *Id.* at 38-39.

¹⁶ Again, the defendants do not challenge the plaintiffs’ standing. Much of the defendants’ argument about § 1401 refers to challenging the statute under the APA. Because the court does not assess the APA claims for the purpose of this motion, it does not address the defendants’ arguments.

judicial review of illegal executive action, tracing back to England.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

1. Likelihood of success on the merits

The plaintiffs have demonstrated a likelihood of success on the merits of their constitutional claim and at least one statutory claim. The Fourteenth Amendment and § 1401 both state that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV, § 1; 8 U.S.C. § 1401. As the statute tracks the Fourteenth Amendment, the court views the claims as parallel, and the parties agreed as much at oral argument.

The court need not presume the Executive Order’s constitutionality. “A legislative enactment carries with it a presumption of constitutionality.” *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 20 (1st Cir. 2024) (citations and quotations omitted). The defense has not argued, or cited binding or persuasive authority, that executive orders enjoy a similar presumption, and the court does not know of any.

As to plaintiffs’ constitutional claim, the Executive Order contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it. The Supreme Court in *United States v. Wong Kim Ark* enumerated specific exceptions to the constitutional grant of birthright citizenship: “children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes.” *Wong Kim*

Ark, 169 U.S. at 693.¹⁷ The categories of people affected by the Executive Order do not fit into those exceptions.

The Executive Order adds two other groups of people excluded from birthright citizenship, groups not listed in the Fourteenth Amendment or recognized in *Wong Kim Ark*. As the defendants offer no First Circuit Court of Appeals or Supreme Court authority to support their reasoning, the plaintiffs have a high likelihood of success on the merits. There is no reason to delve into the amendment's enactment history (or as explained below, § 1401's legislative history) or employ other tools of interpretation to discern that "subject to the jurisdiction thereof" refers to all babies born on U.S. soil, aside from the enumerated exceptions because the amendment and statute do so *unambiguously*. Finally, the defendants have not established, and court does not find or rule, that the plaintiffs' members' children born on or after February 19 subject to this Executive Order are "enemies within and during a hostile occupation." *Id.*

The Executive Order also likely violates § 1401, which codified the pertinent language from the Fourteenth Amendment. A court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment" because "only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). Congress passed § 1401 fifty years after *Wong Kim Ark*. See 8 U.S.C. § 1401 (original version at ch. 1, § 301, 66 Stat. 235 (1952)). The court interprets the statute to incorporate the public meaning of

¹⁷ A "person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe" is now a United States citizen at birth. 8 § U.S.C. 1401(b).

the reasoning and holding in *Wong Kim Ark*, which provided the public meaning of the same language in the Fourteenth Amendment.

“Where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.”

Morissette v. United States, 342 U.S. 246, 263 (1952). In other words, “[w]here Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it.” *George v. McDonough*, 596 U.S. 740, 746 (2022) (cleaned up).

The plaintiffs advocate for the most natural reading of the phrase “subject to the jurisdiction thereof” employed by the Fourteenth Amendment and § 1401. “[I]t’s a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary ... meaning ... at the time Congress enacted the statute.” *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citations and quotations omitted). The amendment and statute are unambiguous, and the plaintiffs argue for the ordinary meaning of the phrase as understood by reasonable American English speakers at the time of enactment.

The defendants advance nonfrivolous arguments in support of a different meaning, primarily focusing on the concepts of “allegiance” and “domicile,” the scope of the government’s regulatory “jurisdiction,” the status of Native Americans under the Fourteenth Amendment, and the precedent of *Elk v. Wilkins*, 112 U.S. 94 (1884), but in the face of an unambiguous constitutional amendment and unambiguous statute, they do

not persuade.¹⁸ “As our Court of Appeals has stated, ‘genuine ambiguity requires more than a possible alternative construction.’” *United States v. Potter*, 610 F. Supp. 3d 402, 415 (D.N.H. 2022), *aff’d*, 78 F.4th 486 (1st Cir. 2023) (quoting *United States v. Jimenez*, 507 F.3d 13, 21 (1st Cir. 2007)).

Nothing in the text, precedent, history, or tradition of the Fourteenth Amendment or § 1401 persuasively suggests any other interpretation than the unambiguous ordinary meaning of “subject to the jurisdiction” of the United States advanced by the plaintiffs.

“In any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.”

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–54 (1992) (internal citations and quotations omitted). The plaintiffs have demonstrated a likelihood of success on the merits.

2. Irreparable harm

“‘Irreparable injury’ in the preliminary injunction context means an injury that cannot adequately be compensated for either by a later-issued permanent injunction, after

¹⁸ The defendants also argue that courts should determine the Executive Order’s constitutionality in individual, as-applied challenges, rather than the facial challenge here. “A facial challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which [an act] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). The plaintiffs have demonstrated a likelihood of success, whether the Executive Order is analyzed on its face or as applied to the plaintiffs as alleged in their complaint.

a full adjudication on the merits, or by a later-issued damages remedy.” *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). The court has little difficulty concluding that the denial of citizenship status to newborns, even temporarily, constitutes irreparable harm. The denial of citizenship to the plaintiffs’ members’ children would render the children either undocumented noncitizens or stateless entirely.¹⁹ Their families would have more trouble obtaining early-life benefits especially critical for newborns, such as healthcare and food assistance.²⁰ The children would risk deportation to countries they have never visited.²¹ Although the defendants argue that the harm would be hypothetical and speculative, the court disagrees.

3. Equities and public interest

These final merged factors—*see Nken*, 556 U.S. at 435, *supra*—weigh in favor of granting the requested injunction. A preliminary injunction’s “purpose ‘is merely to preserve the relative positions of the parties until a trial on the merits can be held.’” *Starbucks*, 602 U.S. at 346 (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, (1981)). A continuation of the status quo during the pendency of this litigation will only shortly prolong the longstanding practice and policy of the United States government, while imposition of the Executive Order would impact the plaintiffs and similarly

¹⁹ See Pontoh Decl. (doc. no. 24-2) at ¶¶ 12-13; Proaño Decl. (doc. no. 24-3) at ¶¶ 14-15; Fontaine Decl. (doc. no. 24-4) at ¶ 27.

²⁰ See Pontoh Decl. (doc. no. 24-2) at ¶¶ 14-16; Proaño Decl. (doc. no. 24-3) at ¶¶ 17-19; Fontaine Decl. (doc. no. 24-4) at ¶¶ 24-26.

²¹ See Pontoh Decl. (doc. no. 24-2) at ¶¶ 12; Proaño Decl. (doc. no. 24-3) at ¶ 15; Fontaine Decl. (doc. no. 24-4) at ¶ 28.

situated individuals and families in numerous ways, some of which—in the context of balancing equities and the public interest—are unnecessarily destabilizing and disruptive.

The defendants have “no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution.” *Tirrell v. Edelblut*, No. 24-CV-251-LM-TSM, 2024 WL 3898544, at *6 (D.N.H. Aug. 22, 2024) (McCafferty, C.J.) (quotations omitted) (quoting *Siembra Finca Carmen, LLC v. Sec’y of Dep’t of Agric. of P.R.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)).

“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” *Youngstown*, 343 U.S. at 637-38 (Jackson, J., concurring). The ultimate lawfulness of the Executive Order will surely be determined by the Supreme Court. This is as it should be. As the Executive Order appears to this court to violate both constitutional and statutory law, the defendants have no interest in executing it during the resolution of the litigation.

Conclusion. The motion is granted. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

SO ORDERED.


Joseph N. Laplante
United States District Judge

Dated: February 11, 2025

cc: Counsel of Record



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

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Public Works Department

AGENDA ITEM: SHALL THE TOWN COUNCIL SCHEDULE A PUBLIC HEARING FOR MONDAY, OCTOBER 6, 2025 ON RESOLUTION #2025-18 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF FUNDING FROM THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) COMMUNITY-BASED RESTORATION PROGRAM, FOR THE MILL POND DAM REMOVAL AND OYSTER RIVER RESTORATION PROJECT IN THE AMOUNT OF UP TO \$3,247,201, AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK ON BEHALF OF THE TOWN OF DURHAM?

CC PREPARED BY: April Talon, Town Engineer
Richard Reine, Director of Public Works

PRESENTED BY: April Talon, Town Engineer
Richard Reine, Director of Public Works

AGENDA DESCRIPTION:

The purpose of this Council Communication is to request that the Council schedule a public hearing for Monday, October 6, 2025 on a Resolution authorizing the acceptance and expenditure of funding from the National Oceanic and Atmospheric Administration (NOAA) Community-Based Restoration Program, for the Mill Pond Dam Removal and River Restoration Project, in the amount of up to \$3,247,201, and authorize the Administrator to sign and submit grant paperwork on behalf of the Town of Durham. More information about the Mill Pond Dam removal and upstream fish passage project can be found below, including the total funding requested from NOAA, goals of the project, funding amounts, and timeline.

Following the March 7, 2022 referendum vote in which there were 1706 votes in favor of dam removal and 596 votes against representing 74% in support of dam removal, Durham Public Works began investigating potential grant programs with the overall goal of securing funding to pay for a majority of the project costs.

In November 2022, Durham Public Works and the Town's consultant VHB Engineers, submitted an extensive \$3,537,201 grant application package titled, "Restoration of the Oyster River Herring Run through Removal of the Mill Pond Head-of-Tide Dam and Installation of Fish Passage on the Oyster Reservoir Dam, Durham, NH," to NOAA as part of their funding opportunity titled Restoring Fish Passage through Barrier Removal under the Infrastructure and Jobs Act (IIJA).

Major goals of the project include 1) Advance restoration efforts for diadromous fish populations by eliminating a barrier to upstream fish passage, 2) Improve the Oyster River's declining water quality and strengthen the Oyster River's natural ecosystem, 3) Increase the Oyster River's flood resilience and reduce Durham's vulnerability to the growing risk of coastal storms, 4) Increase public safety by eliminating unsafe dam infrastructure.

A head-of-tide dam, the Mill Pond Dam is the lowest barrier in the Oyster River watershed, located approximately 2.9 miles from the river's discharge into the Great Bay. Historically, the river herring returns to the Oyster River have been one of the highest yearly returns among all coastal rivers monitored by New Hampshire Fish and Game Department (NHFGD). However, the numbers of returning river herring have been declining since 1990 and are now less than 5% percent of those seen at the peak from 1990–1992. This decline is largely attributed to a decrease in water quality and water levels along the river and throughout Mill Pond, as well as impediments to downstream migration. Removing the Mill Pond Dam and installing a new fish ladder at the Oyster Reservoir Dam, the next upstream barrier, would substantially contribute to the restoration of this important fish run. Other sea-run species that could benefit from unobstructed passage include the Oyster River's declining American eel population and brook trout. Rainbow smelt, as head-of tidespawners, would also likely reap significant benefits from dam removal.

In the spring of 2023, the Town was formally notified that NOAA accepted the Town's full proposal for \$3,537,201. This grant program does not require a local match commitment. The Town Council previously accepted the first grant installment of \$290,000 for this project from NOAA via Resolution 2023-23 at the October 16, 2023 Town Council meeting. The Town has received the second grant installment of \$1,924,701 from NOAA and the remaining grant installment of \$1,322,500 is currently under a federal review process. NOAA grants management does not have a timeline of when this funding will be released.

Data collection, final design, environmental permitting, and Section 106 consultation efforts began in May 2022 and are expected to be completed by the end of 2025. The Implementation Start Date (i.e., removal of the dam and restoration of the river channel) would be fall 2025/spring 2026 (likely spring 2026), subject to available funding. Installation of the fishway at the Oyster Reservoir Dam is expected to occur in a future year subject to additional local or grant funding availability.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

The Town accepted the first partial grant installment of \$290,000 for this project via Resolution 2023-23 at the October 16, 2023 Town Council meeting.

The Town has received the second partial grant installment of \$1,924,701 from NOAA.

The remaining grant installment of \$1,322,500 is currently under a federal review process and NOAA grants management does not have a timeline of when the funding will be released.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby schedule a public hearing for Monday, October 6, 2025 on Resolution #2025-18 Authorizing the Acceptance and Expenditure of Funding from the National Oceanic and Atmospheric Administration Community-Based Restoration Program, for the Mill Pond Dam Removal and River Restoration Project, In the Amount of up to \$3,247,201, and Authorize the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham?

RESOLUTION #2025-18 OF DURHAM, NEW HAMPSHIRE

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF FUNDING FROM THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) COMMUNITY-BASED RESTORATION PROGRAM, FOR THE MILL POND DAM REMOVAL AND OYSTER RIVER RESTORATION PROJECT, IN THE AMOUNT OF UP TO \$3,247,201, AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK ON BEHALF OF THE TOWN OF DURHAM

WHEREAS, on March 7, 2022, there was a referendum vote with 1706 votes in favor of dam removal and 596 votes against dam removal, representing 74% in support of dam removal; and

WHEREAS, the Town of Durham submitted an extensive \$3,537,201 grant application package titled, "Restoration of the Oyster River Herring Run through Removal of the Mill Pond Head-of-Tide Dam and Installation of Fish Passage on the Oyster Reservoir Dam, Durham, NH," to NOAA as part of their funding opportunity titled Restoring Fish Passage through Barrier Removal under the Infrastructure and Jobs Act (IIJA); and

WHEREAS, in the Spring of 2023, the Town was formally notified that NOAA accepted the Town's full project proposal in the amount of \$3,537,201; and

WHEREAS, the Town accepted the first partial grant installment of \$290,000 for this project via Resolution #2023-23 at the October 16, 2023 Town Council meeting; and

WHEREAS, the Town has received the second partial grant installment of \$1,924,701 from NOAA; and

WHEREAS, the remaining grant installment of \$1,322,500 is currently under a federal review process and NOAA grants management does not have a timeline of when the funding will be released; and

WHEREAS, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds 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; and

WHEREAS, 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, October 6, 2025, a duly posted and published Public Hearing was held by the Durham Town Council on the \$3,247,201 NOAA monies in accordance with RSA 31:95-b;

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 #2025-18** authorizing the acceptance and expenditure of funding from the National Oceanic and Atmospheric Administration (NOAA) Community-Based Restoration Program, for the Mill Pond Dam Removal and Oyster River Restoration Project, in the amount of \$3,247,201, and authorize the Administrator to sign and submit grant paperwork on behalf of the Town of Durham.

PASSED AND ADOPTED this 6th day of October, 2025, by a majority vote of the Durham Town Council with _____ affirmative votes, _____ negative votes , and _____ abstentions.

Joe Friedman, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector



TOWN OF DURHAM
8 NEWMARKET ROAD
DURHAM, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

RESOLUTION #2023-23 OF DURHAM, NEW HAMPSHIRE

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF FUNDING FROM THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) COMMUNITY-BASED RESTORATION PROGRAM, FOR THE DESIGN OF A FISH PASSAGE AT THE OYSTER RESERVOIR DAM (LOCATED AT THE UNH/DURHAM WATER TREATMENT PLANT), IN THE AMOUNT OF \$290,000, AND AUTHORIZE THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK ON BEHALF OF THE TOWN OF DURHAM

WHEREAS, the Town of Durham submitted an extensive \$3,537,201 grant application package titled, "Restoration of the Oyster River Herring Run through Removal of the Mill Pond Head-of-Tide Dam and Installation of Fish Passage on the Oyster Reservoir Dam, Durham, NH," to NOAA as part of their funding opportunity titled Restoring Fish Passage through Barrier Removal under the Infrastructure and Jobs Act (IIJA); and

WHEREAS, in the Spring of 2023, the Town was formally notified that NOAA accepted the Town's full project proposal; and

WHEREAS, NOAA has indicated that the remaining construction funding of approximately \$3.2M for FY24 (Mill Pond Dam Removal and River Restoration) and FY25 (Oyster Reservoir Dam fish passage) will be released when the final designs and cost estimates have been further developed; and

WHEREAS, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds 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; and

WHEREAS, 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, October 16, 2023, a duly posted and published Public Hearing was held by the Durham Town Council on the \$290,000 NOAA monies in accordance with RSA 31:95-b;

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 #2023-23** authorizing the acceptance and expenditure of funding from the National Oceanic and Atmospheric Administration (NOAA) Community-Based Restoration Program, for the design of a fish passage at the Oyster Reservoir Dam (located at the UNH/Durham Water Treatment Plant), in the amount of \$290,000, and authorize the Administrator to sign and submit grant paperwork on behalf of the Town of Durham.

PASSED AND ADOPTED this 16th day of October, 2023, by a majority vote of the Durham Town Council with 8 affirmative votes, 0 negative votes, and 0 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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Fax: 603-868-1858

www.ci.durham.nh.us

AGENDA ITEM: **#12**

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Julian Smith

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE PLANNING BOARD CHAIR, APPOINT JULIAN SMITH, 3 CHESLEY DRIVE, TO FILL AN UNEXPIRED ALTERNATE MEMBERSHIP POSITION ON THE PLANNING BOARD WITH A TERM EXPIRATION OF APRIL 2027?

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 Julian Smith, requesting appointment as an alternate member to the Planning Board. There will be two alternate vacancies for the Planning Board after this appointment.

Mr. Smith has attended one meeting of the Planning Board and has spoken with Chair, Paul Rasmussen. Attached for the Council's information is Chair Rasmussen's endorsement of Mr. Smith's appointment.

Mr. Smith has been invited to attend Monday night's meeting.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the Planning Board Chair, appoint Julian Smith, 3 Chesley Drive, to fill an unexpired Alternate Membership position on the Planning Board with a term expiration of April 2027.



Town of Durham

8 Newmarket Road
Durham, NH 03824-2898
Tel: 603/868-5571
Fax 603/868-1858
kedwards@ci.durham.nh.us

RECEIVED
Town of Durham
AUG 19 2025

Administration Office

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: JULIAN SMITH

Date: 8/19/25

Address: 3 CHESLEY DRIVE, DURHAM

E-Mail Address: WHALEROCK@SMITH-FAMILY.COM

Telephone: 912 771 9119

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. PLANNING BOARD
- 2.
- 3.

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 ATTENDED MY FIRST PLANNING BOARD MEETING IN 1965 AND SERVED ON THE BOARD FOR ABOUT TEN YEARS BETWEEN 2002 AND 2015

Please provide brief background information about yourself: A FORMER TOWN COUNCILOR, I AM A RETIRED PROFESSOR WHO HAS OWNED PROPERTY IN DURHAM SINCE 1965 AND ENJOYED A FIRST OR SECOND HOME IN DURHAM FROM 1965 TO 2015 - I NOW LIVE IN

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

Name: TODD SELIG Telephone: 603 868 5571

Name: JOSHUA MEYROWITZ Telephone: 603 868 5090

Name: DOUG BENCKS Telephone: ~~508 868 6559~~
603 868 6559

♦♦♦♦♦♦♦♦♦♦

* 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.

* I COULD PROVIDE A RESUME IF NECESSARY

From: [Paul Rasmussen](#)
To: [Karen Edwards](#)
Subject: Planning Board alternate member candidate Julian Smith
Date: Wednesday, August 27, 2025 8:51:27 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Town Council members,

I recommend Julian Smith as an alternate member of the Planning Board.

Paul Rasmussen
Planning Board Chair



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
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Fax: 603-868-1858
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AGENDA ITEM: **#8A** *TS*

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Sheryl Bass, Library Director

AGENDA ITEM: PRESENTATION BY SHERYL BASS, LIBRARY DIRECTOR, ON
THE DURHAM PUBLIC LIBRARY PROGRAMS AND EVENTS.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Sheryl Bass, Library Director

AGENDA DESCRIPTION:

Library Director Sheryl Bass will present an overview of the Durham Public Library's achievements under its completed strategic plan, highlighting the successes and the ways the library continues to serve as a vital community hub. She will also share how the library functions today to meet the needs of the community and answer any questions councilors may have about the library's funding, operations, and priorities.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from Sheryl Bass, and hold question and answer session if desired.



TOWN OF DURHAM

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AGENDA ITEM: **#8B**

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: RECEIVE ANNUAL REPORT FROM THE PLANNING BOARD – PAUL RASMUSSEN, CHAIR

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Paul Rasmussen, Chair, Planning Board

AGENDA DESCRIPTION:

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

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

Paul Rasmussen has been invited to attend Monday night's Town Council meeting to provide a brief update to Council members regarding the Planning Board's current activities.

LEGAL AUTHORITY:

Section 11.1 (I) of the Durham Town Charter.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from Planning Board Chair, Paul Rasmussen, and hold question and answer session if desired.

Planning Board Annual Report
August 2025
Paul Rasmussen, Chair

Member List: Paul Rasmussen-Chair, Sally Tobias-Vice Chair, Peyton McManus-Secretary, Richard Kelley, Rob Sullivan, Gary Whittingham, Heather Grant (Council), Eric Lund (Council Alternate), Alternates: Munish Nanda, Peter Howd

2025 Accomplishments

The last report was in December of 2024, so this represents approximately 7 months of work.

Applications consisted of

- 1 lot-line adjustment/subdivision
- 3 conditional use applications for erosion control and wetland buffer management in backyards
- 2 site plan modifications
- 4 conceptual reviews
- 2 new site plans (Dunkin Donuts move to 3 Dover Rd approved and Riverwoods expansion in progress)

Minor zoning/site plan regulation changes were made to the

- Aquifer Overlay District
- Invasive Species List
- Front setbacks in Office Research district
- Historic Overlay District

Major zoning changes were made to

- Zoning Definitions chapter
- Splitting the Central Business zone into CB-1 and CB-2

Other work consisted of efforts to adapt to the changing rules coming down from the state regarding student rentals and the preparation of a new Planned Unit Development(PUD)ordinance to accommodate prospective development of The Edge. The Planning Board has a draft PUD, but we are awaiting an official designation by UNH of the developer for the project so that we can receive their collective input prior to a public hearing.

Other Committees

The Energy Committee, Conservation Commission, and Housing Task Force have forwarded desired changes to the zoning ordinance and site plan regulations. These involve electric vehicle charging stations, the wetland and shoreland overlays, infill housing options. I would like to recognize the time and effort of these other groups and

the aid they provide the Planning Board. The Planning Board will consider these drafts during the upcoming year.

Master Plan Vision

In 2025 and beyond, Durham is a balanced community that has successfully maintained traditional neighborhoods, natural resources, rural character, and time-honored heritage, while fostering a vibrant downtown, achieving energy sustainability, and managing necessary change. Durham has effectively balanced economic growth, which has been essential in supporting our schools, resources, and town services, and stabilized property taxes. Durham has encouraged mixed residential and commercial development in and near the downtown including retail establishments, offices, services, eateries, and other businesses that serve local needs and interests while attracting visitors from neighboring vicinities. In designated areas beyond downtown, balanced development was accomplished by prudently integrating our community's range of values. Through forward-thinking engagement on the part of our citizens and town government, in tandem with continued pursuit of a productive partnership with UNH, our vision for Durham was realized.

Master Plan Vision Review

I've provided Durham's Vision Statement. It is an appropriate time to evaluate our efforts over the last 10 years. We definitely maintained those things we didn't wish to lose, but there hasn't been much fostering of the downtown or managing necessary change. We haven't balanced economic growth, but we have seen a couple of empty commercial and industrial locations come back to life.

Durham has seen housing values more than double during these 10 years, triple the inflation rise of 35% (CPI: July 2015-July 2025). Durham isn't unique, most of New Hampshire saw similar increase. The state's demographics now rely upon immigration and domestic migration to sustain and grow our population. We attracted large numbers of students, which changed our demographics and the local economy swung to meet that change. To change the direction of the local economy Durham needs to change the demographics by attracting a good number of families. There is a cap on the number of students that can move into town, but the number of potential families is much greater, provided we can add the housing.

This is where the entire Master Plan enters the discussion. The Master Plan holds the recommendations for attaining the Vision. The Master Plan calls for compatible infill in the developed areas. The Master Plan calls for housing projects that target median incomes. The Master Plan calls for greater protections of our natural resources. The Master Plan calls for a review of conservation subdivision chapter.

Durham's current challenge is that the above recommendations are not 100% consistent with maintaining traditional neighborhoods AND rural character, while also protecting natural resources. Some small trade-offs are required. We need to look at newer neighborhood styles than Durham has utilized in the past in order to protect our rural character and natural resources. Neighborhoods that use smart-growth concepts and missing-middle housing that provide protection of natural resources and the over-clearing of land.

Goals for 2026

Planned Unit Development ordinance to support development of The Edge.
Establish a new Conservation Subdivision chapter that encourages denser pocket neighborhoods while establishing more open space. Update Conservation Subdivision procedures.
Examination of ideas for infill housing in the residential areas. The Housing Task Force has prepared adjustments to the Tables of Dimensions and Uses that require evaluation by the Planning Board.
Evaluation of the Central Business districts uses and dimensional standards.
New Waterfront and Shoreline Protection Overlay District chapter.
New Electric Vehicle charging station regulations
Update zone boundaries to better meet Durham's goals of protecting gateways and providing infill opportunities.



TOWN OF DURHAM

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AGENDA ITEM: **#14A**

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Police Department

AGENDA ITEM: PUBLIC HEARING AND POSSIBLE ADOPTION OF RESOLUTION #2025-16 AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF A FY 2026 NEW HAMPSHIRE OFFICE OF HIGHWAY SAFETY GRANT IN THE AMOUNT OF \$16,795.75, FROM THE NEW HAMPSHIRE DEPARTMENT OF SAFETY, OFFICE OF HIGHWAY SAFETY FOR TRAFFIC ENFORCEMENT EFFORTS AND TRAFFIC SPEED MONITORING EQUIPMENT AND AUTHORIZING THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK ON BEHALF OF THE TOWN OF DURHAM

CC PREPARED BY: John Lavoie, Captain

PRESENTED BY: John Lavoie, Captain
Rene Kelley, Chief of Police

AGENDA DESCRIPTION:

On May 21, 2025, Durham Police was notified that the Town was selected for FY 2026 New Hampshire Department of Safety – Office of Highway Safety grant funding in the amount of \$16,795.75 from the program towards enforcement of traffic laws and speed monitoring equipment to further highway safety. This grant program does require a match commitment for equipment, which can be satisfied with cash match in the amount of \$2,365.25. A match in-kind for enforcement efforts is completed through receipts showing the purchase of a new patrol car, which is used for enforcement purposes.

The following is the current approved Scope of Work:

The Town of Durham will perform the following tasks as described in the proposal titled *Durham PD Highway Safety Grant*:

Objective 1: Speed Enforcement. Speed is a leading primary cause of fatal and serious injury crashes in the State of New Hampshire. To have the greatest impact, among other areas of enforcement, local law enforcement should utilize Speed Enforcement funding in focused efforts to enforce speed limits in areas where state and local data identifies the locations, days and times that speed violations and crashes are occurring. In four hour increments, officers will conduct speed enforcement supported by documented stops/contacts with motorists and the issuance of tickets and written warnings.

Objective 2: Driving Under the Influence (DUI) Enforcement. Impaired Driving is a leading primary cause of fatal and serious injury crashes in the State of New Hampshire. In order to have the greatest impact, local law enforcement should utilize Impaired Driving Enforcement funding in focused efforts aimed at removing the impaired driver from New Hampshire's roadways, in areas where state and local data identifies the locations, days and times that DUI related crashes and arrests are occurring. Saturation patrols in duration of no less than four (4) hours, and no more than six (6) hours will be conducted enforcing motor vehicle and traffic safety laws.

Objective 3: Distracted Driving Enforcement. Distracted Driving enforcement patrols should focus on enforcing New Hampshire's Hands-Free Electronic Device Law. Patrols should remain vigilant for any other moving violations, such as lane usage, following too closely, move over, reckless driving, which may be the result of other forms of driver distraction and potentially negligent behavior.

Objective 4: Pedestrian Bicycle Enforcement. Pedestrian/Bicycle enforcement patrols should be aimed at enforcing the state's pedestrian/bicycle laws; however, adherence to all traffic laws shall be enforced.

Objective 5: Seatbelt mobilization. This Seatbelt Mobilization coincides with the National "Click It or Ticket" campaign. In NH the purpose of this seatbelt mobilization is to enforce the Child Restraint Law for anyone under 18 years of age, as well as to educate unbelted occupants 18 years and older regarding the importance of wearing seatbelts. May 11, 2026 – May 31, 2026.

Objective 6: Impaired driving mobilization. Participation in two mobilizations. First Mobilization: Wednesday December 10, 2025 – Thursday January 01, 2026. Second Mobilization: Wednesday August 19, 2026 – Tuesday September 1, 2026.

Objective 7: Distracted Driving Mobilization. Participation in a mobilization between April 6, 2026, and April 13, 2026.

Objective 8. Purchase a moveable speed sign, which is solar powered (battery backup), and is capable of recording speed and vehicle count data.

Objective 9: Purchase a Kustom Signals handled LiDAR (Light Detection And Ranging) device for speed monitoring and enforcement by officers in their patrol cars.

At the meeting of August 4, 2025 the Town Council scheduled a Public Hearing on this item for the meeting of Monday, September 8, 2025. A Public Hearing notice was published in *Foster's/Seacoast Online* on Thursday, August 21, 2025. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

Funding Source	Amount	Cash/In-Kind	Federal/Non Federal	Pending/Committed
NH Office of Highway Safety Grant	\$16,795.75	Cash	Non Federal	Committed
Durham Police Department budget	\$2,365.25	Cash	Non Federal	Committed

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby OPEN the Public Hearing on Resolution #2025-16 Authorizing the Acceptance and Expenditure of a FY 2026 New Hampshire Office of Highway Safety Grant in the Amount of \$16,795.75 From the New Hampshire Department of Safety – Office of Highway Safety for the enforcement of Traffic Laws and Traffic Safety Equipment and Authorizing the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham.

MOTION #2:

The Durham Town Council does hereby CLOSE the Public Hearing on Resolution #2025-16 Authorizing the Acceptance and Expenditure of a FY 2026 New Hampshire Office of Highway Safety Grant in the Amount of \$16,795.75 From the New Hampshire Department of Safety - Office of Highway Safety for the enforcement of Traffic Laws and Traffic Safety Equipment and Authorizing the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham.

MOTION #3:

The Durham Town Council does hereby ADOPT Resolution #2025-16 Authorizing the Acceptance and Expenditure of a FY 2026 New Hampshire Office of Highway Safety Grant in the Amount of \$16,795.75 From the New Hampshire Department of Safety - Office of Highway Safety for the enforcement of Traffic Laws and Traffic Safety Equipment and Authorizing the Administrator to Sign and Submit Grant Paperwork on Behalf of the Town of Durham.

RESOLUTION #2025-16 OF DURHAM, NEW HAMPSHIRE

AUTHORIZING THE ACCEPTANCE AND EXPENDITURE OF A FY 2026 NEW HAMPSHIRE DEPARTMENT OF SAFETY – OFFICE OF HIGHWAY SAFETY GRANT IN THE AMOUNT OF \$16,795.75 FROM THE NEW HAMPSHIRE DEPARTMENT OF SAFETY – OFFICE OF HIGHWAY SAFETY FOR THE ENFORCEMENT OF TRAFFIC SAFETY LAWS AND THE PURCHASE OF TRAFFIC SAFETY EQUIPMENT AND AUTHORIZING THE ADMINISTRATOR TO SIGN AND SUBMIT GRANT PAPERWORK ON BEHALF OF THE TOWN OF DURHAM

WHEREAS, the Town of Durham submitted a grant application titled, “Durham PD Highway Safety Grant,” to the New Hampshire Department of Safety – Office of Highway Safety as part of their project solicitation on May 20, 2025; and

WHEREAS, the Town was notified that they were selected to receive a FY 2026 New Hampshire Department of Safety – Office of Highway Safety Grant for this project in the amount of \$16,795.75; and

WHEREAS, New Hampshire Revised Statutes Annotated (RSA) 31:95-b permits municipalities to authorize acceptance and expenditure of funds 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; and

WHEREAS, 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 September 8, 2025, a duly posted and published Public Hearing was held by the Durham Town Council on the \$16,795.75 Office of Highway Safety Grant monies in accordance with RSA 31:95-b;

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 #2025-16** authorizing the acceptance and expenditure of a FY 2026 Office of Highway Safety Grant in the amount of \$16,795.75 and authorizing the Administrator to sign and submit appropriate paperwork on behalf of the Town of Durham.

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

Joe Friedman, Chair
Durham Town Council

ATTEST:

Rachael Deane, Town Clerk-Tax Collector



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
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AGENDA ITEM: **#14B** *TS*
DATE: **September 8, 2025**

COUNCIL COMMUNICATION

INITIATED BY: Zoning Amendment initiated by Town Council. Proposed by the Durham Housing Task Force.

AGENDA ITEM: DISCUSSION OF ORDINANCE #2025-08 AMENDING CHAPTER 175, "ZONING," ARTICLE XII, "BASE ZONING DISTRICTS," SECTION 175-42, "CENTRAL BUSINESS DISTRICT, AND ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," SECTION 175-54, "TABLE OF DIMENSIONS," OF THE TOWN CODE TO ELIMINATE THE THREE-STORY HEIGHT LIMIT FOR PORTIONS OF CB-1 ZONING DISTRICT AND TO CHANGE THE STANDARD FOR COMMERCIAL IN FIVE STORY BUILDINGS IN CB-1 DISTRICT FROM REQUIRING TWO FLOORS TO REQUIRING ONLY ONE FLOOR.

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Michael Behrendt, Town Planner

AGENDA DESCRIPTION:

Background. The Town Council initiated this amendment on March 17. The Planning Board held a public hearing on the proposal on May 28 and voted unanimously (7-0) to support it. The amendment comes back to the Town Council now for prospective first reading, public hearing, and final disposition.

This amendment was one of four initiatives prepared by the Durham Housing Task Force along with allowing multi-unit residential in the PO, CH, and C districts (also before the Town Council this evening), creating separate Central Business-1 and Central Business-2 Districts (already adopted), and making RSA 79E easier to use (the new resolution has been adopted).

Three-story height limit and second floor of commercial. This amendment was proposed for the purpose of expanding commercial and housing opportunities in the Central Business District (now applicable only to the Central Business-1 District). When the Town Council initiated the change pertaining to the three-story limit it also included a provision to require only one floor of commercial in a five-story building in the district where two floors of commercial are now required.

In 2012 the Town received a citizen's petition to change the Zoning Ordinance limiting the building height along a section of Main Street to three stories (This has been the only citizen's petition regarding zoning that has been submitted over at least the past 12 years). The Town

Council adopted the amendment. Shortly afterward, the Town Council initiated a similar amendment to limit the building height along a section of Madbury Road to three stories. That amendment was also adopted. (*See two maps at the end showing the new CB1 and CB2 districts and the lots subject to the three-story height limit.*)

In the rest of the Central Business-1 District one can build to four stories by right and, by conditional use, to five stories with some required setbacks of the fifth story. If the three-story limitation is removed then this same standard for the rest of the Central Business-1 District would apply for these sections of Main Street and Madbury Road. A four-story building must include commercial on the first floor and may include residential for the upper three stories. A five-story building must include commercial on the first floor and commercial on one other floor, but this amendment herein also would remove the requirement for a second floor of commercial.

Fifth story by conditional use. A fifth story in the Central Business-1 District is allowed by conditional use. The conditional use requirement implies that a fifth story may be appropriate in some sections of CB-1 and not in others (It also recognizes that one particular design may be appropriate and another may not be). The Planning Board stated that it would be more efficient to determine where a fifth story is appropriate and to allow it there by right. In other sections of the CB-1 it could be allowed still by conditional use or simply not allowed (with a map akin to the existing three-story limit map). The board does not recommend that any action be taken on this proposal now. Rather, the board recommends that a subcommittee be appointed in the near future (by the Town Council or the Planning Board), consisting of council and board members, to examine the CB-1 District and develop a recommendation for this change.

At the meeting of June 16, 2025 the Town Council scheduled a Public Hearing on this item for the meeting of Monday, July 7, 2025. A Public Hearing notice was published in *Foster's/Seacoast Online* on Thursday, June 26, 2025. The notice was also posted at the Town Hall and on the Town Website, as well as at the Durham Public Library and Department of Public Works.

The August 4, 2025 Council packet includes images of streetscapes taken from Google Maps showing those sections of downtown streets that are presently limited to three stories. The images will help convey a sense of which sites would be most ripe for redevelopment or additional development, in general and if the three-story limit is removed.

On July 7, 2025, the Town Council held a Public Hearing and then voted to continue the Public Hearing until the August 4, 2025 meeting. At the August 4, 2025 meeting the Town Council closed the Public Hearing after hearing all comments. ***Councilor Needell subsequently made a motion to not adopt the Ordinance. Councilor Burton seconded the motion.*** It was then decided to table the discussion on the motion until the next meeting. Therefore, the procedure at the September 8 meeting should begin by taking the motion from the table, then discussing Councilor Needell's original motion to not adopt the Ordinance, and then voting on that motion.

LEGAL AUTHORITY:

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

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

It is expected that this change will result in more development in the Central Business-1 District including the creation of new taxable value.

SUGGESTED ACTION OR RECOMMENDATIONS:

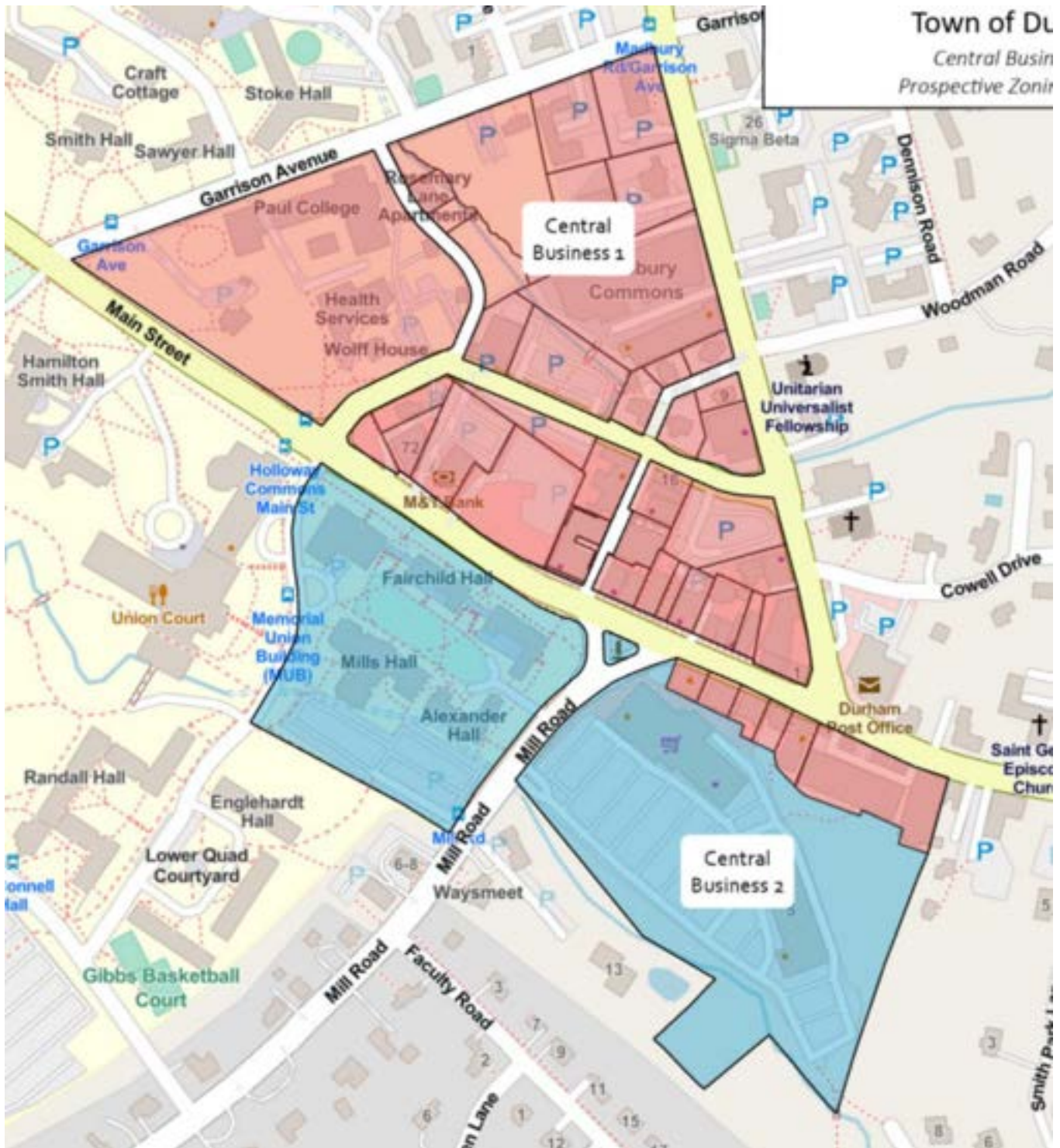
MOTION #1:

The Durham Town Council does hereby TAKE FROM THE TABLE Ordinance #2025-08 Amending Chapter 175, "Zoning," Article XII, "Base Zoning Districts," Section 175-42, "Central Business District, and Article XII.1, "Use and Dimensional Standards," Section 175-54, "Table of Dimensions," of the Town Code to eliminate the three-story height limit for portions of CB-1 Zoning District and to change the standard for commercial in five story buildings in CB-1 District from requiring two floors to requiring only one floor.

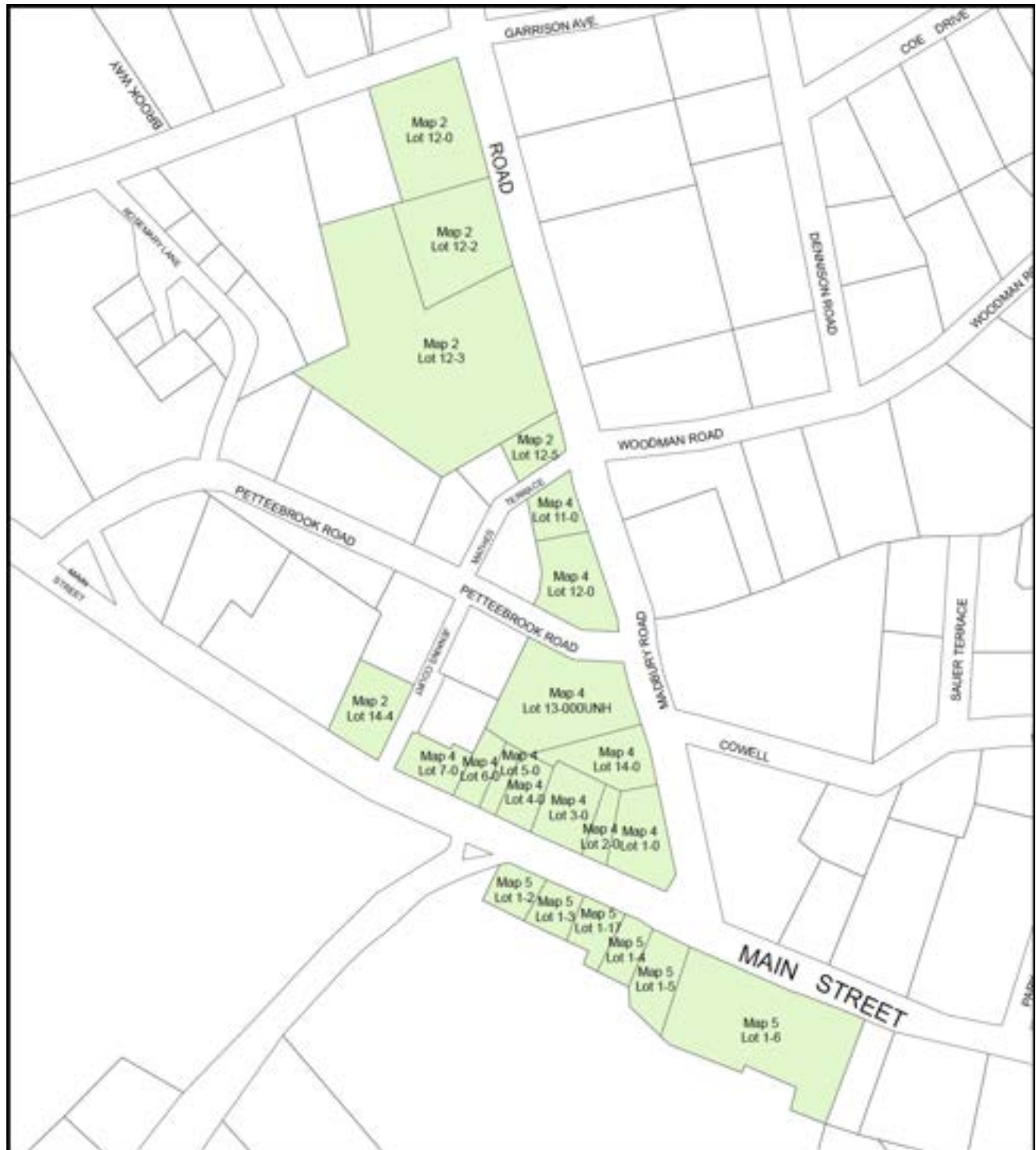
MOTION #2: *(Already made and seconded at the August 4 meeting)*

The Durham Town Council does hereby NOT ADOPT Ordinance #2025-08 Amending Chapter 175, "Zoning," Article XII, "Base Zoning Districts," Section 175-42, "Central Business District, and Article XII.1, "Use and Dimensional Standards," Section 175-54, "Table of Dimensions," of the Town Code to eliminate the three-story height limit for portions of CB-1 Zoning District and to change the standard for commercial in five story buildings in CB-1 District from requiring two floors to requiring only one floor.

New (recently adopted) Central Business-1 and Central Business-2 Districts



Lots in the Central Business-1 District (formerly the Central Business District) that are presently limited to three stories



ORDINANCE #2025-08 OF DURHAM, NEW HAMPSHIRE

AMENDING CHAPTER 175, "ZONING," ARTICLE XII, "BASE ZONING DISTRICTS," SECTION 175-42, "CENTRAL BUSINESS DISTRICT, AND ARTICLE XII.1, "USE AND DIMENSIONAL STANDARDS," SECTION 175-54, "TABLE OF DIMENSIONS," OF THE TOWN CODE TO ELIMINATE THE THREE-STORY HEIGHT LIMIT FOR PORTIONS OF CB-1 ZONING DISTRICT AND TO CHANGE THE STANDARD FOR COMMERCIAL IN FIVE STORY BUILDINGS IN CB-1 DISTRICT FROM REQUIRING TWO FLOORS TO REQUIRING ONLY ONE FLOOR.

WHEREAS, activity within the downtown has decreased in recent years and a boost to the level of activity is important and whereas a sizable portion of the Central Business-1 District is now limited to three stories in height; and

WHEREAS, removing the three-story height limit is expected to provide an incentive to developers to build downtown; and

WHEREAS, requiring two floors of commercial in a five-story building may be a disincentive to development, having a mix of commercial and residential above the first floor can cause conflicts, and the most important place for commercial in a downtown is on the first floor; and

WHEREAS, it is desirable to support the downtown by having more residents living in close proximity to the downtown; and

WHEREAS, there is a recognized housing crisis in New Hampshire and in the Seacoast Region and Durham acknowledges the need to accommodate more housing opportunities; and

WHEREAS, the Durham Downtown Zoning Subcommittee and the Durham Housing Task Force developed this proposed zoning amendment for the purpose of strengthening the downtown and enhancing housing opportunities; and

WHEREAS, the chair of the Housing Task Force presented this zoning amendment along with three other initiatives to the Town Council on March 3 and March 17, 2025; and

WHEREAS, the Town Council voted to initiate this zoning amendment on March 17, 2025; and

WHEREAS, the Planning Board held a public hearing on this amendment on May 14, 2025 and voted unanimously on May 28, 2025 to support the amendment; and

WHEREAS, the Town Council held duly noticed public hearings on this amendment on July 7, 2025 and August 4, 2025;

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire does hereby adopt **Ordinance #2025-08** Amending Chapter 175, "Zoning," Article XII, "Base Zoning Districts," Section 175-42, "Central Business District, and Article XII.1, "Use and Dimensional Standards," Section 175-54, "Table of Dimensions," to eliminate the three-story height limit for CB-1 Zoning District and to change the standard for commercial in five story buildings in CB-1 District from requiring two floors to requiring only one floor.

Proposed additions to existing text are shown like this.

~~*Proposed deletions of existing text are shown like this.*~~

❖ **175-42. Central Business-1 District (CB-1) and Central Business-2 District (CB-2)**

A. Central Business-1 District (CB-1) and Central Business-2 District (CB-2). Central Business-1 District and Central Business-2 District are two separate zoning districts. However, all of the provisions in this ordinance referred to as "Central Business District(s)" apply to both Central Business-1 District and Central Business-2 District except where otherwise stated.

B. Purpose of the Central Business District. The purpose of the Central Business District is to maintain the mixed-use, pedestrian-oriented character of the downtown area while accommodating new development, redevelopment, and enlargement of existing buildings in a manner that maintains and enhances the small town character of the downtown. Downtown Durham should be an attractive and vibrant community and commercial center where desirable residential, retail, office, and other nonresidential growth can occur in a clean, safe, pedestrian-friendly environment. The Central Business District is intended to accommodate a range of uses in a manner that encourages fuller utilization of the limited area of Downtown through denser building construction and modified parking requirements.

C. Development Standards in the Central Business District In addition to the dimensional standards, development in the Central Business District shall conform to the following additional requirements:

1. Building Setback – Along the westerly side of Madbury Road from Main Street to Pettee Brook Lane, the front wall of the principal building shall be located no closer than 15 feet to, and no farther than 20 feet from, the front property line. Along the westerly side of Madbury Road from Pettee Brook Lane to Garrison Avenue, the front wall of the principal building shall be located no closer than 20 feet to, and no farther than 30 feet from, the front property line. For corner lots, this requirement

shall apply to all frontages abutting a public street. Up to 50 percent of the front façade may be recessed beyond the maximum setback distance if the space between the front wall and the front property line is used as pedestrian area in accordance with paragraph 4. below. The expansion or modification of an existing building shall be exempt from this requirement if the Planning Board finds that conformance with this requirement would not be consistent with the character of the existing building.

2. Pedestrian Area – The area directly in front of the front wall of the building and extending to the front property line shall be maintained as a pedestrian area and shall be improved with appropriate amenities to link the building with the sidewalk and to encourage pedestrian and/or customer use of this space. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
3. Front Entrance – The front wall of the principal building shall contain a front door providing access to the building for tenants, customers, or other users of the building, unless the Planning Board determines that placement of the front door on another façade is a practical approach and the design of the front façade will engage the street in an effective and attractive manner. If the front wall of the building is located behind the front property line, a paved sidewalk or other appropriate pedestrian way shall be provided from the sidewalk to the front door. This provision shall not be interpreted to prevent the creation of other entrances to the building. For corner lots, this provision shall apply only to the frontage on the street with a greater amount of pedestrian traffic.
4. Storage and Service Areas – All storage and service areas and facilities including dumpsters shall be located to the side or rear of the principal building and shall not be visible from a public street. Dumpsters and storage areas shall be screened or landscaped in accordance with the provisions of Article XXII and Chapter 118, Article 3, Section 118-18 of the Solid Waste Ordinance.
5. Minimum Building Height – All new principal buildings or additions to existing principal buildings that increase the building footprint by more than 20 percent, shall have a minimum of 2 usable stories or a height equivalent of 2 stories above adjacent grade at the front wall of the building.
6. Maximum number of stories – The maximum number of permitted stories is 4 ~~except as restricted in sections 8 and 9 below~~. However, *in CB-1* the maximum number of permitted stories ~~in the remainder of the district outside of the area covered in sections 8 and 9 below~~, may be increased to 5 stories subject to all of the following provisions:
 - a. Adding a story is permitted by conditional use.
 - b. The provisions regarding percentage of office/retail use apply.
 - c. The additional fifth story must be set back from the first floor as follows:

- i. by at least 10 feet where any side of the building faces a public street; *and*
- ii. by at least 20 feet where any side of the building faces Main Street. ~~;~~ *and*
- ~~iii. —by at least 25 feet where any side of the building faces an adjacent lot (not separated by a street) situated in the section of the Central Business District that is restricted to 3 stories (Section 175-42 B. 8. and 9., or as those subsections may be renumbered in the future).~~

The setback in i. and ii., above, also applies where ~~they~~ *there* may be any intervening street or road that has never been built but which appears on an approved plat or other Town plan.

- d. The Planning Board must determine that the additional story will not have an adverse impact upon the streetscape, giving particular consideration to scale and mass (See Architectural Regulations for guidance).
 - e. Building height. When an additional story is incorporated under this section the maximum building height is 60 feet.
7. Required office/retail uses for a mixed-use with residential building
- a. One-story building: A mixed-use with residential use is not allowed in a one-story building.
 - b. Two-story building: The entire first floor must be office/retail.
 - c. ~~Three- or four-story~~ *Three-, four- or five-story* building: The entire first floor must be office/retail. Alternatively, office/retail uses may be located ~~anywhere on the first, second, third, and fourth floors~~ *on any floor* provided: 1) the amount of office/retail equals or exceeds the square footage of the first floor and 2) where the building fronts on a public road, the first floor of the portion of the building facing the road must be office/retail to a depth of at least 50 feet.
 - ~~d. —Five-story building: The entire first floor must be office/retail. Also, 1 additional floor (any floor) or an area equal to the square footage of the 1/5 story must be office/retail.~~
 - ~~e.~~ *d.* For a building where there are distinct sections with a different number of stories and for sites where there are multiple buildings, the required minimum overall office/retail gross square footage is determined by the sum of the minimum office/retail area required by each distinct section, or by each separate building, using the required office retail space specified above. For these sites, the disposition of office/retail and residential space on the site is flexible provided the minimum overall amount of office/retail required is included and the Planning Board determines that the configuration of the building and its uses meets the intent of this subsection 7.

- ~~f.~~ *e.* Outdoor public use areas. Outdoor space on the subject property that is dedicated in perpetuity to public use may be used to meet the office/retail square footage requirement on a one-to-one basis provided that: a) the Planning Board determines that the design, location, management, and other aspects of the space will add a significant public amenity to the project; and b) the outdoor space may be used to meet a maximum of 50 percent of the overall required office/retail square footage.

~~8. Maximum Height of Mixed-Use Buildings, Section of Main Street—No building in the Central Business District on any lot with frontage along either side of Main Street, from and including Tax Map 109, Lot 104 (A-E) to the easterly boundary of the district, shall exceed 3 stories. This provision specifically includes the following properties: Tax Map 109, Lot 104 (A-E); Tax Map 109, Lot 106; Tax Map 109, Lot 107; Tax Map 109, Lot 108; Tax Map 109, Lot 109; Tax Map 109, Lot 110; Tax Map 108, Lot 18; Tax Map 108, Lot 19; Tax Map 109, Lot 3; Tax Map 109, Lot 2; Tax Map 109, Lot 1; Tax Map 108, Lot 17; Tax Map 108, Lot 16; Tax Map 108, Lot 15; Tax Map 108, Lot 14; and Tax Map 108, Lot 13.~~

~~9. Maximum Height of Mixed-Use Buildings, Madbury Road—No building in the Central Business District on any lot with frontage along Madbury Road shall exceed 3 stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 106, Lot 48; Tax Map 106, Lot 49; Tax Map 106, Lot 44; Tax Map 108, Lot 19; Tax Map 106, Lot 40; Tax Map 106, Lot 39; Tax Map 106, Lot 66; and Tax Map 108, Lot 20.~~

- ~~10.~~ *8.* Number of bedrooms – There shall be a maximum of 2 bedrooms in any dwelling unit within a mixed use with residential building or development.

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

Joe Friedman, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk

175-54. TABLE OF DIMENSIONS.

Table 175-54, Table of Dimensions shows the dimensional requirements that apply to buildings and structures in the various zones.

TABLE 175-54 TABLE OF DIMENSIONS

STANDARD	ZONING DISTRICTS														
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business 1	Central Business 2	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLI.)	Durham Business Park (DBP)	Attainable Housing Overlay District (AHOD)
Minimum Lot Size in Square Feet - Single-Family Residence (that is not part of a Conservation Subdivision) - Multi-unit Housing - Allowed Nonresidential Use - Any Other Allowed Use	20,000	40,000	150,000	150,000	NA	NA	10,000	5,000	5,000	30,000	40,000	40,000	150,000	40,000	NA
	NA	NA	NA	NA	5,000	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000	5,000
	20,000	40,000	150,000	150,000	5,000	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000	5,000
	20,000	40,000	150,000	150,000	5,000	5,000	10,000	5,000	5,000	30,000	80,000	40,000	150,000	40,000	5,000
Minimum Lot Area Per Dwelling Unit³ in Square Feet	20,000	40,000	150,000 ²	150,000 ²	NA	NA	3,000	4,200	4,200	4,200	4,200	40,000	150,000	20,000	4,200 (The density bonus under footnote 3 does not apply in the AHOD)
Minimum Usable Area Per Dwelling Unit in a Conservation Subdivision³ in Square Feet	20,000	40,000	150,000	150,000	1,200	1,200	3,000	4,200	4,200	4,200	4,200	40,000	150,000	NA	NA

STANDARD	ZONING DISTRICTS														
	Residence A (RA)	Residence B (RB)	Residence C (RC)	Rural (R)	Central Business 1	Central Business 2	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe' s Corner (CC)	OR-Route 108 (OR)	Mixed Use and Office Res. (MUDOR)	Office, Research Light Ind. (ORLL)	Durham Business Park (DBP)	Attainable Housing Overlay District (AHOD)
Minimum Lot Frontage in Feet - Minor Street - Collector Street - Arterial Street	100	150	300	300	50	50	100	50	50	100	50 100 200	100 100 200	150	150	50
Minimum Front Setback in Feet - Minor Street ¹ - Collector Street - Arterial Street	30 30 40	30 30 40	30 30 40	30 30 40	None – except per Note 5	None – except per Note 5	30 30 50	15 15 15	15 15 15	30 30 50	50 50 See Note 6	30 30 100	30 30 50	30 30 50	50 50 50
Maximum Front Setback in Feet	NA	NA	NA	NA	See Note 5	See Note 5	NA	NA	25	NA	NA	NA	NA	NA	NA
Minimum Side Setback⁴ in Feet	10	20	50	50	NA	NA	15	5	10	15	25	20	20	20	25
Minimum Rear Setback⁴ in Feet	20	30	50	50	NA	NA	20	15	15	20	25	20	20	20	25
Minimum Shoreland Shore frontage in Feet	200	200	200	200											See underlying zone
Maximum Permitted Building Height in Feet	30	30	30	30	30	30	30	30	30	30	50	40	40	40	NA – See AHOD ordinance
Maximum Permitted Building Height in Feet by Special Exception in the Four Residential Zones and by Conditional Use in Other Zones.	35	35	35	35	60 See Note 7	60 See Note 7	35	35	35	35	75	50	50	50	NA – See AHOD ordinance
Maximum Impervious Surface Ratio	33%	30%	20%	20%	100%	100%	50%	80%	80%	30%	50 %	50%	50%	50%	50%

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

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

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

4. See Article XX for requirements for accessory buildings.

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

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

~~7. No building along the sections of Main Street or Madbury Road delineated in Subsections 175-42(B)(8) and (9) shall exceed 35 feet in height.~~



TOWN OF DURHAM

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AGENDA ITEM: **#15**

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: APPROVE THE TOWN COUNCIL MEETING MINUTES FOR
JULY 7, 2025 AND AUGUST 4, 2025.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the meetings held on July 7, 2025 and August 4, 2025. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

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

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

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby approve the Town Council meeting minutes for July 7, 2025. (as presented /as amended).

MOTION #2:

The Durham Town Council does hereby approve the Town Council meeting minutes for August 4, 2025. (as presented /as amended).



TOWN OF DURHAM

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AGENDA ITEM: **#16A** *TS*

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Housing Task Force

AGENDA ITEM: PRESENTATION BY SALLY TOBIAS, CHAIR OF THE HOUSING TASK FORCE, ON THE TASK FORCE'S ACCOMPLISHMENTS AND HOW IT HAS ADDRESSED THE CHARGE, AND DISCUSSION ON WHETHER THERE IS OTHER WORK FOR THE TASK FORCE AND WHETHER THE TASK FORCE SHOULD CONTINUE ON IN ANY MANNER.

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Sally Tobias, Housing Task Force Chair

AGENDA DESCRIPTION:

The former Durham Economic Development Committee created a housing committee in early 2020 to analyze the housing situation in Durham and to advocate for a supply of housing that meets the needs of the community. The committee's first meeting was on June 8, 2020.

The Economic Development Committee subsequently was sunsetted, and the Town Council re-established the Housing Committee as a Task Force on September 27, 2021. The Task Force was to complete its work and sunset one year later in October 2022. The Task Force gave an update to the Town Council on October 3, 2022 and requested an extension. The council granted a one-year extension to October 3, 2023. At the February 6, 2023 Town Council meeting a vote was approved to extend the Housing Task Force to the end of 2023 and to add five members to the Task Force. At the November 6, 2023 meeting the Council granted a two-year extension for the Task Force until October 2, 2025. The current charge is as follows:

Mission. The mission of the Durham Housing Task Force is to identify, analyze, and advocate for a balanced and diverse supply of housing that meets the economic, social, and physical needs of the Durham community and its residents in order to maintain a vibrant community.

Membership. Members of the committee include:

- One Planning Board member (ex-officio)

- One Town Councilor (ex-officio)
- Eight other members from relevant stakeholder populations, to include a mix of ages, occupations, and interests in Durham's housing future (to the extent possible)

Members of the Housing Task Force (other than the ex-officio Planning Board member) shall be appointed by the Durham Town Council. Members shall be residents of the town of Durham or serve as a representative of an entity with a financial interest in taxable real property located in Durham. Members shall serve continuously until such time as the Task Force is sunsetted by the Durham Town Council.

In addition to the ten voting members, the Task Force shall engage regional housing advocates as non-voting participants from organizations such as Strafford Regional Planning Commission, the Seacoast Workforce Housing Coalition, regional real estate market data analysts, developers, and other subject matter experts as the Task Force sees fit.

Meetings of the Housing Task Force shall be attended by the Town Planner. Meetings of the Housing Task Force may be televised.

Duties. The duties of the Housing Task Force shall be to:

- Assess the availability and cost of housing;
- Track new housing starts including type and number of units;
- Analyze community demographics;
- Conduct a housing needs assessment, including price point, type, and supply;
- Develop long-term strategies regarding housing;
- Contribute to the update of the housing chapter of the Master Plan;
- Advise Town Boards and Committees regarding available housing and potential future housing needs for the Town of Durham;
- Advocate and inform relevant Town boards and committees on housing issues in the community;
- Review regional housing patterns in comparison to Durham;
- Communicate with members of the community about housing in Durham; and
- Publish an annual report on the state of housing in Durham to be included in the Town Report

The Housing Task Force has worked diligently in their role of helping the town assess its current housing stock and suggest changes to be made to increase housing in the future. They believe that they have completed their mission addressed in the charge. Sally Tobias, chair of the Housing Task Force, will be at the meeting to discuss the accomplishments of the Task Force and any desire of the Council to continue the charge of the Housing Task Force going forward.

LEGAL AUTHORITY:

Article 11, Section 11.1(G) of the Town Charter

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action is required. Hold discussion with Sally Tobias regarding the future of the Housing Task Force.



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Durham Housing Task Force Charge

Adopted by the Durham Town Council on November 6, 2023

Discussion about status of charge by Task Force – April 14, 2025

Comments by the Housing Task Force are shown below like this. Numerous documents related to the work of the task force can be seen at its website at:

<https://www.ci.durham.nh.us/bc-housingtaskforce>.

Mission. The mission of the Durham Housing Task Force is to analyze the New Hampshire Seacoast regional housing inventory and to advocate for a balanced housing mix within the Durham community, providing a variety of choices that meet the economic, environmental, social, and physical needs of the community's current and future residents, including those of varying financial resources.

Membership. Members of the committee include:

- One Planning Board member (ex-officio)
- One Town Councilor (ex-officio)
- Eight other members from relevant stakeholder populations, to include a mix of ages, occupations, and interests in Durham's housing future (to the extent possible)

Members of the Housing Task Force (other than the ex-officio Planning Board member) shall be appointed by the Durham Town Council. Members shall be residents of the town of Durham.

Members shall serve continuously until such time as the Task Force is sunsetted by the Durham Town Council or three years, whichever is sooner.

In addition to the ten voting members, the Task Force shall engage regional housing advocates as non-voting participants from organizations such as Strafford Regional Planning Commission, the Seacoast Workforce Housing Coalition, regional real estate market data analysts, developers, and other subject matter experts as the Task Force sees fit.

Meetings of the Housing Task Force shall be attended by the Town Planner. Meetings of the Housing Task Force may be televised.

(over)

Duties. The duties of the Housing Task Force shall be to:

- Assess the type, availability and cost of existing housing in Durham and in the Seacoast region; **This was addressed through preparation of the Durham Housing Needs Assessment completed in May 2024 and review of the Regional Housing Needs Assessment prepared by Strafford Regional Planning Commission in 2023.**
- Assess and advise on whether the Town of Durham is in compliance with NH state statutes in providing a requisite number of workforce housing units and how potential or adopted legislation impacts housing in Durham; **The task force believes that we are in compliance. Al Howland, a member of the task force and state representative, updates the task force about legislation in Concord.**
- Assess available buildable lots in Durham under different Zoning scenarios; **The task force has reviewed available building lots in general with consideration of current zoning and potential changes.**
- Track new housing starts including type and number of units; **Information about subdivisions and multi-unit development is provided by the Town Planner. Information about individual housing permits is available from the Code Administrator.**
- Analyze community demographics and trends; **This was accomplished in the Durham Housing Needs Assessment completed May 2024.**
- Assess the environmental, economic, and tax impacts of recommended zoning changes impacting housing; **The Task Force believes this assessment would be unrealistic to develop. Trying to determine the potential impact of zoning changes would be highly speculative. The task force did look at potential school impacts, including an analysis by Jim Lawson and input from the former school superintendent about the proposed Attainable Housing Overlay District.**
- Understand the predicted impacts of climate change, including those outlined in the Climate Action Chapter of the Master Plan, in order to identify areas where housing development would be ill-advised; **This was considered, at least in terms of the projected rise in tidal areas. That area is quite limited in Durham.**
- Conduct a housing needs assessment, including price point, type, and supply; **This was accomplished in the Durham Housing Needs Assessment completed May 2024.**

- Develop long-term strategies regarding housing;
 - Advocate for housing that is consistent with our existing commitment to the Global Covenant of Mayors for Climate and Energy – “evaluate zoning changes that allow for a broader variety of modestly sized, affordably priced energy efficient housing.”
 - Advocate for housing to accommodate households at all stages of the life cycle.
 - Advocate for housing designed to accommodate underserved households including identifying and incorporating state and federal incentives that enable its development.

The task force prepared several zoning initiatives addressing these concerns: the Attainable Housing Overlay District (adopted), three downtown housing initiatives (two adopted, one being considered now/tabled at the moment), streamlining of RSA 79E (new resolution adopted), and a set of new zoning proposals which will be presented to the Planning Board soon.

- Identify state and federal incentives that enable appropriate development; **The task force evaluated the Housing Champions statute. There would be significant work for Durham to earn the designation but it may be worth looking at again in the coming years. The financial incentives, however, may be zero funded in the this year's and future state budgets.**
- Contribute to the update of the housing chapter of the Master Plan; **The master plan update will probably begin in late 2027. If the task force is in place or a new one is constituted at that time, members could participate in the master plan process.**
- Advise Town boards and committees regarding available housing and potential future housing needs for the Town of Durham; **The chair of the task force met with virtually every Town board and committee giving a presentation on the state of housing in Durham and the region and discussing potential strategies for expanding housing opportunities in town.**
- Inform relevant Town boards and committees on housing issues in the community; **See immediately above.**
- Review regional housing patterns in comparison to Durham and assess the contributions of Durham and other communities to regional housing needs over the past 15 years; **We have access to the Regional Housing Needs Assessment prepared by the Strafford Regional Planning Commission in 2023 and other state housing documents. The task force has been focused on analyzing the situation in**

Durham and addressing housing in Durham. As a result of the 2000+ beds of student housing created in Durham over the past ten years a good deal of housing has been opened in neighboring communities.

- Communicate with members of the community about housing in Durham; **The Task Force conducted an extensive outreach effort, interviewing numerous employers and managers and individuals about the housing situation in Durham. The results are included in two questionnaires on the website. Question and answer sessions were held in several venues outside of Town Hall.**
- Focus on changes that serve to retain and enhance the semi-rural character, ethos, and vibe of Durham as a small quintessentially New England academic community that places a high value on:
 - education,
 - the environment,
 - history,
 - agricultural roots,
 - closeness to nature,
 - the principles of smart growth, and
 - diversity and equity

These values informed all of the work of the task force.

- Publish an annual report on the state of housing in Durham to be included in the Town Report. **A write up was included in the last four annual reports from 2021 to 2025.**



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AGENDA ITEM: **#16B**

DATE: September 8, 2025

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator

AGENDA ITEM: SHALL THE TOWN COUNCIL CANCEL THE TOWN COUNCIL MEETING OF SEPTEMBER 15, 2025?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator

AGENDA DESCRIPTION:

The Council agenda for the September 15 meeting currently does not have any impending business. However, the Council may choose to extend the discussion regarding Ordinance #2025-08 and the discussion with Sally Tobias regarding the Housing Task Force to the 15th's agenda should the September 8 meeting run long.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Durham Town Council does hereby continue certain portions of the September 8 agenda to the September 15 meeting.

OR

MOTION #2

The Durham Town Council does hereby cancel the Town Council meeting for September 15, 2025.