

## **CHARTER OF THE TOWN OF DURHAM**

### **Article 1**

#### **INCORPORATION; TOWN FORM OF GOVERNMENT; POWER**

##### **Sec. 1.1. Incorporation.**

The inhabitants of the Town of Durham shall continue to be a body politic and corporate under the name of the "Town of Durham" and as such to enjoy all the rights, immunities, powers and privileges and be subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation. All existing property of the town shall remain vested in it, and all its existing debts and obligations shall remain obligatory upon it under this Charter.

##### **Sec. 1.2. Town Form of Government.**

The administration of the fiscal, prudential, municipal and other affairs of the town, with the governance thereof, shall be vested in a Town Council, shall be directed by a Town Administrator and shall consist of the various departments of the town as established by this Charter and from time to time by the Town Council. Except as expressly authorized by this Charter, no Councilor shall participate in the conduct of the administrative affairs of the town.

##### **Sec. 1.3. Construction.**

- A. The powers of the municipality under this Charter are to be construed liberally in favor of the town, and the specific mention of particular powers is not intended to limit in any way the general powers of the municipality as stated in 1.1.
- B. Any word in this Charter which may be construed to be either masculine or feminine gender shall be considered gender-free.

##### **Sec. 1.4. Intergovernmental Relations.**

Subject only to express limitations in the provisions of the New Hampshire statutes, the town may exercise any of its powers or perform any of its functions under this Charter and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the State of New Hampshire or any political subdivision or agency thereof or the United States of America or any agency thereof.

### **Article 2**

#### **ELECTIONS; ELECTION OFFICIALS; CONDUCT OF ELECTIONS**

##### **Sec. 2.1. Composition of Board of Election Officers.**

*Code of the Town of Durham, NH*  
*The Charter*

The Supervisors of the Checklist, the Moderator and the Town Clerk shall constitute the Board of Election Officers. The Moderator shall be Chairman. The Town Clerk shall serve as the Clerk of the Board.

**Sec. 2.2. Moderator.**

There shall be a Moderator of the town who shall have all the powers and duties granted to him by this Charter and state law. He shall be elected on an at-large basis to a term of two (2) years at the town election. Without limitation to the foregoing, for election purposes, the Moderator shall have the power to appoint all election officials except those which must be elected or otherwise appointed. The Moderator shall determine whether all ballots from all polling places are to be counted in one (1) or more locations. Vacancies in the office of Moderator shall be filled by appointment made by the Supervisors of the Checklist.

**Sec. 2.3. Supervisors of the Checklist.**

- A. There shall be three (3) Supervisors of the Checklist who shall hold office for six (6) years (and until their successors are elected and qualified) on a staggered basis so that one (1) Supervisor is elected at each odd-year town election. The Supervisors of the Checklist, in accordance with state laws governing such responsibilities, shall designate the days, hours and places for the registration of voters.
- B. Vacancies in the Supervisors of the Checklist shall be filled pursuant to RSA 669:64. The person so appointed shall hold office until the vacancy for the unexpired term is filled at the next town election.
- C. The Supervisors shall elect a Chairman for a term of two (2) years.

**Sec. 2.4. Duties and Sessions of Supervisors of the Checklist.**

The Supervisors of the Checklist shall have such powers and duties as are specified under New Hampshire law.

**Sec. 2.5. Conduct of elections.**

- A. The election of officers, whose duty it is to conduct regular elections, shall use a nonpartisan official ballot system as detailed in the election laws of the State of New Hampshire, on the second Tuesday in March, to choose three (3) Councilors and such other officials as are specified in this Charter, each of whom shall be elected by the voters of the entire town.
- B. At all town elections, the polls shall be open not less than ten (10) hours and may be open not earlier than 6:00 a.m. of the day of the election nor later than 8:00 a.m. of the day of the election, nor closed earlier than 7:00 p.m., as the Council shall determine at least thirty (30) days prior to the election.
- C. The election laws of the State of New Hampshire shall govern voter qualifications.

D. The Town Council shall specify the polling places of the town.

**Sec. 2.6. Preparation of ballots.**

The Town Clerk shall prepare separate ballots to be used at all local referenda and at elections at which town officers are chosen. The ballots shall contain in appropriate sections the names of all candidates, listed in alphabetical order, without party designation. Below the list of names of the candidates of each office, there shall be as many blank spaces as there are offices to be filled at the election. No titles, military, professional, or otherwise, shall accompany the name of any candidate on the ballot.

**Sec. 2.7. Preservation of ballots.**

All the ballots cast at each election shall be preserved, maintained and sealed as required by the election laws of the State of New Hampshire.

**Sec. 2.8. Contested elections.**

The election laws of the State of New Hampshire shall govern the resolution of any contested election.

**Sec. 2.9. Display of campaign materials at polling place.**

Persons as candidates for elected office or as representing or working for a candidate for office or promoting a petition, resolution, referendum or measure on the ballot may not solicit votes or display, exhibit or distribute any campaign materials within fifty (50) feet of the polling place building. The Moderator shall exercise his powers under state law relative to the conduct of elections, distribution of campaign materials and electioneering within the polling place.

**Article 3**  
**TOWN COUNCIL**

**Sec. 3.1. Membership; term of office.**

- A. Except as otherwise provided in this Charter, all of the powers of the town shall be vested in a Town Council (hereafter referred to as the "Council") of nine (9) Councilors. The Councilors shall be elected from the town at large for three-year terms of office. Terms will be staggered so that three (3) Councilors shall be elected at each town election.
- B. All members shall take office on the first Monday in March following their election and shall hold office until their successors are duly elected and qualified.

**Sec. 3.2. Organization meeting.**

The Councilors so chosen shall meet in their capacity as the Council on the first Monday of March next following their election for the purpose of taking their respective oaths of office, adopting rules and for the transaction of business required by law or ordinance to be transacted at such meeting.

**Sec. 3.3. Selection of Chairman and Chairman Pro Tem.**

The Council shall, by the affirmative vote of at least five (5) members, at its first regular meeting in March following each election, choose one (1) of its members Chairman for a term of one (1) year. The Council shall choose one (1) of its members Chairman Pro Tem, for a term of one (1) year, who shall act in the absence or disability of the Chairman. In the event of a vacancy occurring in the office of Chairman, the Council shall choose one (1) of its members Chairman at the next regular meeting, to serve for the unexpired term. The Chairman shall be the official head of the town for all ceremonial purposes; he shall preside at all meetings of the Council and may speak and vote at such meetings.

**Sec. 3.4. Qualifications of Councilors.**

- A. Only voters who at all times during their term of office are and remain residents of the town shall be eligible to hold the office of Councilor. To be eligible for election to the office of Councilor, a candidate must be of voting age and must have been a resident of the town for at least ninety (90) days immediately before the election. The Council is the sole judge of qualification for office. The Council shall declare a vacancy in the event that a member is convicted of committing a federal or state crime punishable by imprisonment for more than one (1) year. A majority of the Council may, after investigation and hearing, declare a vacancy if a member is convicted of significant violation of a town ordinance; has missed three (3) regularly scheduled meetings in sequence without leave of the Council; has missed one-third (1/3) of all meetings within a calendar year without leave of the Council; or has interfered with administration, falsified records, misapplied town funds or property or is guilty of public conduct the result of which would bring loss of respect for the Council or the Town of Durham.
- B. No Councilor shall, during his term, be eligible to hold any other town position of remuneration. Notwithstanding the foregoing, a Councilor may be appointed to the position of Acting Town Administrator by a vote of at least seven (7) members of the Council for one (1) period not to exceed six (6) months. During this period, the Acting Administrator shall not act as a Town Councilor; however, his position shall not be considered vacant. He shall be paid the salary established for the acting position.

**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. 3.6. Salaries and compensation.**

Councilors shall receive as compensation the sum of one thousand five hundred dollars (\$1,500.) per year. The Chairman shall receive an additional five hundred dollars (\$500.) per year. Councilors shall receive reimbursement for reasonable mileage and expenses incurred in the performance of town business outside the town limits of Durham according to rules of the Council.

**Sec. 3.7. Exercise of powers; meetings; rules of procedure.**

- A. Exercise of powers. Except as otherwise prohibited by law or this Charter, the powers of the Council may be exercised in a manner determined by it.
- B. A quorum of the Council for the transaction of any business shall be two-thirds (2/3) of the members currently in office. However, a smaller number may adjourn the meeting to another time or date.
- C. Meetings. All meetings of the Council shall be public as required by the state's Right-to-Know Law (RSA 91-A). Regular meetings shall be held on such day or days of each month at such time as the Council shall by ordinance or resolution direct. Agendas shall be prepared and posted at least forty-eight (48) hours in advance of each regular meeting. Special meetings may be called by the Chairman. Special meetings also may be called at the written request of the Town Administrator or at least six (6) Councilors, and upon such request the Chairman of the Council shall call such special meeting. Written notice of said meeting shall be delivered to each Councilor at least twenty-four (24) hours prior to the call of the meeting. The method of delivery of notice for special meetings shall be by established Council rule. At any meeting, the affirmative vote of the majority of the full Council shall be necessary to adopt any appropriation order.
- D. Rules of procedure. The Council shall establish rules for its proceedings not inconsistent with this Charter. Every matter coming before the Council for action shall be put to a vote, and all members shall vote "aye" or "nay" or abstain and give a reason for abstaining. The results of such voting shall be duly recorded. All votes shall be recorded by roll call except votes on procedural matters.

**Sec. 3.8. Ordinances.**

- A. An ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the Town Clerk shall distribute a copy to each Councilor and to the Town Administrator, shall file a reasonable number of copies in the office of the Town Clerk and shall post a copy in such other public places as the Council may designate.
- B. Every proposed ordinance, except land use ordinances, of the Council shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one (1) subject, which shall be clearly expressed in its title. Each ordinance shall be identified by a

*Code of the Town of Durham, NH*  
*The Charter*

number and a short title. The enacting clause shall be "The Town of Durham ordains...." Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance, sections or subsections to be repealed or amended and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

- C. After passage of the ordinance's first reading, it shall be published at least once, together with a notice of the time and place when and where it will be given a public hearing and be considered for final passage. The first such publication shall precede the date of said hearing by at least five (5) days. "Publication," for purposes of this section, shall mean the publication of a notice in any newspaper distributed in the Town of Durham, stating the number and title of the ordinance and either the text of the ordinance in full or, if the full text is not published, then a brief explanation of the purpose of the ordinance and information as to where and when any interested person may obtain a copy of the complete ordinance.
- D. Every ordinance, including zoning ordinances, shall take effect upon passage and publication as ordinances required by law or at a later date as specified in the ordinance. No ordinance shall be introduced and adopted during the same meeting.
- E. All ordinances, including any amendments thereto, shall be recorded in full, uniformly and permanently, by the Town Clerk, and each ordinance so recorded shall be authenticated by affixing the signatures of the Council Chairman and the Town Clerk and the Town Seal and kept on file in the office of the Town Clerk. The Town Clerk shall be responsible for the systematic indexing, printing, publication and maintenance of the ordinances of the town. Copies of all ordinances shall be available to the public, and the Town Clerk may charge a fee to defray the printing costs.

**Sec. 3.9. Emergency ordinances.**

Notwithstanding other provisions of this Charter, to meet a public emergency affecting life, health, property or the public peace, the Council may adopt one (1) or more emergency ordinances, but such ordinances may not levy taxes; grant, renew or extend a franchise; regulate the rate charged by a public utility for its services; or authorize the borrowing of money except as provided in 23 of this Charter. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but a two-thirds affirmative vote of those present and voting shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption. Every emergency ordinance, except one made pursuant to 3.10 of this Charter, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be

repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

**Sec. 3.10. Emergency appropriations.**

To meet a public emergency affecting life, health, property or the public peace or to satisfy a court judgment or casualty loss, the Council may make emergency appropriations as part of an emergency ordinance. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may, by such emergency ordinance, authorize, in accordance with all provisions of state law, the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals thereof occurring in any fiscal year shall be paid not later than the last day of the fiscal year next succeeding the year in which the emergency appropriation was made.

**Sec. 3.11. Codification of ordinances.**

The Town Council, not later than eighteen (18) months after taking office under this Charter and at least every tenth year thereafter, shall have prepared a revision or codification of the ordinances of the town which are appropriate for continuation as local laws of the town.

**Sec. 3.12. Existing ordinances.**

All bylaws, ordinances, rules, restrictions and regulations of the Town of Durham which are in effect as of the date of adoption of this Charter and not inconsistent with this Charter shall remain in effect after the adoption of this Charter until they expire by their terms or are repealed, modified or amended by the Council.

**Sec. 3.13. Powers and duties.**

Except as herein otherwise provided, the Town Council shall have all the powers conferred upon and discharge all the duties imposed upon Town Councils, Town Meetings, Boards of Mayor and Alderman and Selectmen of towns by law. Except as otherwise provided in this Charter, all officers and members of all boards commissions and committees, and vacancies thereto, shall be appointed by the Council.

**Sec. 3.14. Delegation of powers.**

The Council may delegate to one (1) or more town agencies the powers vested in the Council by this Charter and state and federal law to grant and issue licenses and permits and may regulate the granting and issuing of licenses and permits by any such town agency and may, in its discretion, rescind any such delegation without prejudice to any prior action which has been taken.

**Sec. 3.15. Inquiries and investigations.**

The Council, by majority vote, may require any appointed town official, department head or employee, official appointed or confirmed by the Council or member of an appointed town board or commission to appear before it and give such information as it may require in relation to this office, its function and performance. The Council shall give at least forty-eight (48) hours' written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section. The Council may make investigation into the affairs of the town and into the conduct of any town agency or department and for this purpose may administer oaths and require the production of evidence.

**Sec. 3.16. Board procedures.**

Except as expressly prohibited by state law, the Council shall establish rules of attendance and forfeiture of office for all town-appointed boards and commissions.

**Article 4**  
**ADMINISTRATION OF GOVERNMENT**

**Sec. 4.1. Town Administrator.**

The chief administrative officer of the town shall be the Town Administrator (hereinafter called the "Administrator") who shall be a full-time regular employee of the Town. The Council shall appoint a person especially qualified by experience and training, who receives the votes of at least five (5) members of the Council, to be Administrator. The Administrator shall serve at the pleasure of the Council, which shall fix the Administrator's salary and terms of employment.

**Sec. 4.2. Qualifications.**

The Administrator shall be chosen solely on the basis of executive and administrative qualifications and need not be a resident of the town or the state at the time of appointment. The Council may reimburse the Administrator for reasonable relocation costs in connection with his establishing residence in the town.

**Sec. 4.3. Reprimand or removal from office.**

The Administrator may be reprimanded or removed for cause by the affirmative vote of at least six (6) members of the Council as herein provided. At least thirty (30) days before the proposed reprimand or removal of the Administrator, the Council shall adopt a resolution stating its intention to reprimand or remove him, the reasons therefor and an effective date. A copy of the resolution shall be served forthwith on the Administrator, who may, within ten (10) days, demand a public hearing, in which event the Administrator shall not be reprimanded or removed until such public hearing has been held. Upon or after passage of a resolution of intent to remove, the Council may suspend the Administrator from duty, but his pay shall continue until removal. In

case of such suspension, the Council shall, by the affirmative vote of the Council, appoint an Acting Administrator to serve at the pleasure of the Council for not more than ninety (90) days. The action of the Council in removing the Administrator shall be final.

**Sec. 4.4. Acting Administrator.**

If the Administrator is determined by a vote of at least six (6) members of the Council to be temporarily incapacitated or unable to act for any cause or the Council may determine that the office has become temporarily vacant, the Council shall, within thirty (30) days from such determination, appoint an Acting Administrator in the same manner as in 4.3 who shall serve for not more than ninety (90) days or such lesser time until the disability shall be relieved. The Acting Administrator shall have all the powers and perform all the duties of the Administrator except to the extent that said powers and duties may be specifically restricted by Council resolution. Said Acting Administrator shall be paid such salary for his services hereunder as may be prescribed by the Town Council. The Acting Administrator may be reappointed for an additional term of ninety (90) days. By a vote of at least six (6) Councilors, the Council may determine from credible medical or other evidence that the Town Administrator is incapacitated and unable to perform any or all duties of his office, and the office may be declared vacant.

**Sec. 4.5. Powers and Duties of Administrator.**

- A. The Administrator shall be the chief administrative officer of the town and supervise and be responsible for the administrative and financial affairs of the town and shall carry out the policies enacted by the Council. He shall be charged with the preservation of the health, safety and welfare of persons and property and shall see to the enforcement of the ordinances of the town, this Charter and the laws of the State of New Hampshire. He shall supervise and direct the administration of all of the town departments and personnel therein. He shall be responsible for:
1. Maintaining accounting control over the finances of the town.
  2. Making financial reports and performing such other related duties as may be required by the Administrative Code.
  3. Assuring the audit and approval of all authorized claims against the town before paying the same.
  4. Keeping the Council informed of the condition of the needs of the town and making such reports and recommendations as he may deem advisable or may be required of him.
  5. Managing the rental and use of all town facilities under his control.
  6. Managing the maintenance and repair of all town property under his control.
  7. Keeping a full and complete inventory of all property of the town, both real and personal.
  8. Convening the Chairmen of the administrative committees at least annually in February and such other times as may be appropriate to discuss matters of common concern.

- B. He shall perform such other duties as may be prescribed by this Charter or required of him by ordinance or resolution of the Council not inconsistent with this Charter. He shall have and perform such other powers and duties not inconsistent with the provisions of this Charter as now are or hereafter may be conferred by municipal ordinance or conferred upon Mayors of cities and Selectmen of towns by general laws. He shall have the right to take part in the discussion of all matters coming before the Council but not the right to vote.

**Sec. 4.6. Appointment of department heads; suspension; appeal.**

The Administrator shall have the power to appoint and remove, subject to the provisions of this Charter, all town department heads. Such appointments shall be on merit and fitness alone and with the advice and consent of the Council. The Administrator, for just cause, may suspend or dismiss department heads or take other appropriate disciplinary action. Said suspension, dismissal or other disciplinary action shall be effected only upon the Administrator's presentation to the department head of a written specification of the reasons therefor at least ten (10) days before said action is taken. Said department head involved may, within five (5) days, demand a hearing before the Council, in which event the department head shall not be removed until such hearing has been held. The Administrator may, however, suspend said department head from duty during said period, with or without pay. Such hearing shall be either private or public, as allowed under RSA 91-A, at the aggrieved party's request. The Council, by two-thirds vote, may override the Administrator's decision.

**Sec. 4.7. Non-interference with Town Administration.**

- A. Except as expressly provided elsewhere in this Charter, neither the Council nor any of its members shall direct or request the appointment of any person to office or employment or direct the removal, suspension, discipline, adjustment in pay, benefits or working conditions of any employee by the Administrator of any of the town department heads.
- B. No Councilor shall give orders to or interfere with the performance of the duties of any of the administrative officers or employees, either publicly or privately. Nothing contained in this section shall prohibit the Council from meeting with the Administrator to discuss the operation or conduct of any department head or employee and to recommend an investigation and report by the Administrator of any complaint. Any violation of the provisions of this section by a Councilor shall constitute grounds for forfeiture of office under the provisions of 3.4.

**Sec. 4.8. Departments.**

- A. The following Departments are hereby established, the heads of which shall be appointed by the Town Administrator pursuant to 4.6: Police, Public Works, Business Management, Planning and Community Development, Zoning and Code Enforcement, and Fire Department.

*Code of the Town of Durham, NH*  
*The Charter*

- B. The administrative service of the town shall, by ordinance, be divided into such other departments or other agencies as are necessary for the proper and efficient management of the affairs of the town. Said ordinance shall define the function and duties of each town department or agency and shall be known as the "Administrative Code." The Town Council may, by amendment to the Administrative Code Ordinance, create, consolidate or abolish departments or agencies and define or alter their functions and duties. The head of each department or agency established by the Administrative Code shall have and exercise supervision and control of his department or agency and the employees therein, subject to the authority of the Administrator, and shall have the power to prescribe rules and regulations not inconsistent with general law, this Charter, the Administrative Code and the rules and regulations of the Personnel Plan, provided that the Administrator alone shall establish a progressive disciplinary code for all departments and agencies. A copy of all departmental rules and regulations promulgated under this section shall be on file in the office of the Town Clerk. Unless otherwise provided in this Charter, each officer, department head, board or other agency shall recommend to the Administrator for hire his or their deputies, clerks, assistants and subordinates, who shall be deemed hired unless expressly rejected for hire by the Administrator within five (5) days of the Administrator's receipt of the recommendation for hire. Unless otherwise provided in this Charter, each officer or department head shall have the power to dismiss, suspend or demote his deputies, clerks, assistants and subordinates serving under his supervision or control, subject to appeal to the Town Administrator.

**Sec. 4.9. Town attorney.**

The Town Council shall engage as needed such attorneys as are deemed in the best interest of the town to provide legal advice to the Council, Administrator, town departments, boards and other agencies and represent the town in any legal proceedings, criminal prosecutions and traffic violations. Such attorneys shall, on Council direction, perform any other duties prescribed by this Charter or by ordinance.

**Sec. 4.10. Fiscal Affairs: Treasurer; Investment Advisor; Finance Management; Audit.**

- A. A Town Treasurer shall be elected at a Town election by the voters of the Town by ballot pursuant to the applicable provisions of state law. The Town Treasurer shall have the powers and duties prescribed by this Charter and state law; provided, however, that in making investments of town funds, he shall follow the written investment policy as adopted or modified by the Town Council, acting with the advice of the investment advisor.
- B. The Town Council may, after inviting requests for proposals and appropriate verification of qualifications, experience and integrity, retain the services of an investment advisor to advise the Council on adoption of a written investment policy and to make periodic recommendations to the Council on its modification. Said policy shall contain investment goals, strategies, permissible investments under state law, criteria for depository institutions and such other matters as are deemed appropriate and necessary to maintain the security of, liquidity of and return on invested town funds.

- C. With the exception of those duties charged to the Town Tax Collector pursuant to the state law, the Town Administrator shall be responsible for the collection, accounting, deposit and periodic reporting of all town revenues and expenditures in a secure and business-like manner in accordance with generally accepted accounting practices through the Department of Business Management.
- D. The Town Council, after inviting requests for proposals and appropriate verification of qualifications, experience and integrity, shall select a certified public accountant or firm of the same who shall perform an annual audit of all town financial transactions after the close of each fiscal year. Said audit shall include all revenues, expenditures and accounts maintained by any officer, elected or appointed, agency, board, commission or recipient of town funds; may include a compliance audit to ensure conformity with any state or federal laws and regulations and town work programs and policies; and shall include a management letter setting forth recommendations for changes and improvements in finance management systems as are deemed necessary. For purposes of cost and efficiency, an auditor may be retained for a period of years, but requests for proposals shall be sought at least once every five (5) years, and a new auditor shall be selected at least every ten (10) years. Nothing contained herein shall prohibit the Town Council from ordering an entire audit, partial audits or interim audits more frequently than once per year as it may deem prudent. Summaries of annual audits, when available in a timely manner, shall be printed in the Annual Town Report, and complete copies shall be available for public inspection and copying in the Town Office during normal business hours. If a summary of an annual audit is not available for printing in the Town Report, said summary shall be made available at the Town Report Meeting or as soon thereafter as practicable.

**Sec. 4.11. Town Clerk/Tax Collector.**

A Town Clerk/Tax Collector shall be elected at a Town election by the voters of the Town by ballot pursuant to the applicable provisions of state law. The Town Clerk/Tax Collector shall have the powers and duties prescribed by state law pertaining to Town Clerks and Town Tax Collectors.

**Article 5**  
**FINANCE**

**Sec. 5.1. Fiscal year.**

The fiscal and budget year of the town shall begin on the first day of January and end on the 31st day of December, unless other dates shall be fixed by action of the Town Council.

**Sec. 5.2. Budget procedure.**

At such time as may be requested by the Administrator or specified by the Administrative Code, each officer or director of a department shall submit an itemized estimate of the expenditures for

the next fiscal year for the departments or activities under his control to the Administrator. The Administrator shall, based on these estimates and other data, prepare a recommended budget which he shall, together with these department estimates, submit to the Council no later than the last workday prior to November 1 of the current year. The Council shall review the budget for the following fiscal year and make such modifications and amendments as it desires.

**Sec. 5.3. Budget hearings.**

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.

**Sec. 5.4. Final date for budget adoption.**

The budget shall be adopted not later than the last workday of the preceding fiscal year, unless another date shall be fixed by ordinance. 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.

**Sec. 5.5. Appropriations after adoption of budget.**

No appropriation shall be made for any purpose not included in the annual budget as adopted unless approved by a two-thirds majority of the Council after a public hearing. The Council shall, by resolution, designate the source of any money so appropriated. This provision shall not apply, however, to emergency appropriations adopted pursuant to 3.10 of this Charter.

**Sec. 5.6. Quarterly budget reports; reductions.**

At the beginning of each quarterly period during the fiscal year, and more often if required by the Council, the Administrator or his designee shall submit to the Council data showing the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses; and if it shall appear that the income is less than anticipated, the Administrator, with Council approval, may reduce the appropriation for any item or items in the budget, except amounts required for debt, interest charges and other fixed costs, to such a degree as may be necessary to keep expenditures within the cash income. At any time, the Administrator may provide for monthly or quarterly allotments of appropriations to departments, funds or agencies under such rules as he shall prescribe.

**Sec. 5.7. Transfers.**

After the budget has been adopted, no money shall be drawn from the treasury of the town nor shall any obligation for the expenditure of money be incurred except pursuant to a budget appropriation, unless there shall be a specific additional appropriation therefor. The head of any department, with the approval of the Administrator, may transfer any unspent balance or any portion thereof from one fund or agency within his department to another fund or agency within his department. The Administrator, with the approval of the Council, may transfer any unspent balance or any portion thereof from one department to another.

**Sec. 5.8. Capital Improvement Plan.**

- 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.
- D. The Town Council and Town Planning Board shall meet annually in preparation for and review of the capital improvements plan in a manner determined from time to time by the Town Council.
- E. A summary of the updated capital improvements plan with estimated costs shall be included in the Town Report, and the current year's costs shall be included in the town budget.

**Sec. 5.9. Lapse of appropriations.**

Every appropriation, except an appropriation for a capital expenditure or dedicated funds, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An

appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned.

**Sec. 5.10. Depository.**

The Council shall approve to the Treasurer the depository or depositories for town funds and shall provide for the timely deposit of all town moneys. The Council may require such security for town deposits as it deems necessary, except that personal surety bonds shall not be deemed proper security.

**Sec. 5.11. Bonding of officials.**

Any town officer elected or appointed by authority of this Charter shall be bonded in an amount as required by state law or dictated by prudent fiscal practice for the faithful performance of the duties of his office. The Administrator and all officers receiving or disbursing town funds shall be so bonded. All official bonds shall be corporate surety bonds, and the premiums thereon shall be paid by the town. Such bonds shall be filed with the Town Clerk.

**Sec. 5.12. Borrowing procedure.**

- A. Subject to the applicable provisions of state law and the rules and regulations provided by ordinance in the Administrative Code, the Council, by resolution, may authorize the borrowing of money for any purpose within the scope of the powers vested in the town and the issuance of bonds of the town or other evidence of indebtedness therefor any may pledge the full faith, credit and resources of the town for the payment of the obligation created hereby, provided that no bonds shall be issued by the Council in excess of five hundred thousand dollars (\$500,000.00) per issue except by a two-thirds vote of the Council, and not exceeding one million dollars (\$1,000,000.00) except by a two-thirds vote of the Council and a two-thirds vote at a regular town election or special ballot called by the Council. Notification and posting of such bond issues in excess of one million dollars (\$1,000,000.00) shall be in the same manner as if it were a bond issue of a town pursuant to RSA 33, as amended, with voting by ballot at a regular or special election. In addition to any other public hearings required by this Charter or state law, the Council shall hold a public hearing on such bond issue in excess of five hundred thousand dollars (\$500,000.00) preceding its vote on the issue.
- B. Borrowing for a term exceeding one (1) year shall be authorized by the Council only after a duly advertised public hearing.
- C. For the purpose of borrowing funds under state law, the Town Council shall have all the powers and duties of the governing body; the Town of Durham shall be vested with the powers and duties of a city; and, for purposes of borrowing, the Chairman of the Council shall be vested with the powers and duties of a Mayor, as are used in state law.

**Sec. 5.13. Purchasing procedure.**

The Administrative Code shall establish purchasing and contract procedure, including the assignment of all responsibility for purchasing to the Administrator or his designee and the combination purchasing of similar articles by different departments. The Council shall establish dollar limits for purchases and contracts which must be by competitive bid and shall establish the bidding procedures. No competitive bids shall be required when purchasing through the State of New Hampshire or at State of New Hampshire bid prices. Requirements for bids may be waived in specific instances by a two-thirds vote of the Council. The Council shall establish dollar amounts for purchases and contracts over which no purchases shall be made or contracts entered into without the affirmative vote of a majority of the Council. If the Council has voted to make a purchase or enter into a contract, the Administrator shall carry out the vote of the Council and enter into such transaction on behalf of the town.

**Sec. 5.14. Special assessments.**

When it appears, either by resident petition or Council deliberation, that a capital public improvement project should be defrayed in part or whole by special assessment, the Council shall have the authority, subject to state law, to undertake such project. The Council shall hold a public hearing on the project prior to enacting any special assessment resolution. Such resolution shall state the estimated cost of the project(s), the proportion to be borne by special assessment and the proportion to be borne by town revenues. The resolution shall designate the areas of the town or the premises on which the special assessment shall be levied and the conditions of payment of the levy. All of the procedures utilized in executing any project involving special assessment shall conform to the requirements of 5.13 of this Article and such special conditions as may be required by affirmative majority vote of the Council.

**Sec. 5.15. Trust Funds.**

- A. Trustees of the trust funds. There shall be three (3) Trustees of the trust funds, who shall hold office for three (3) years and until their successors are elected and qualified, on a staggered basis so that one (1) Trustee is elected at each town election. They shall have all the powers and duties granted to Trustees of trust funds by this Charter and state law.
- B. Investments. Trust funds, except where otherwise provided by the instrument creating such trust, shall be kept separate and apart from all other funds and shall be invested by the Trustees in legal investments, having been advised by the investment advisor.
- C. Vacancy. In the event of a vacancy in office, the Council shall fill such vacancy by appointment, such appointment to be effective until a successor to fill the unexpired term is elected at the next town election and is then qualified to serve.

**Article 6**  
**PERSONNEL POLICIES**

**Sec. 6.1. Appointments.**

Appointments and promotions to all positions in the service of the town, other than those covered by an employee representative contract, shall be made solely on the basis of merit and only after consideration of the applicant's ability in accordance with procedures set forth in the Personnel Plan.

**Sec. 6.2. Personnel Plan.**

There shall be a set of rules and regulations providing for the establishment of a system of personnel administration, known as the "Personnel Plan." The plan shall include provisions with regard to classification, compensation, selection, training, promotion, grievances, discipline, vacations, retirement and any other matters necessary to the maintenance of efficient service and proper working conditions. The Personnel Plan shall continue in force, subject to amendments submitted from time to time by the Administrator, which shall become effective one (1) month after the submission, unless vetoed by the Council within that period. The Personnel Plan shall not apply to any elected officials, board and commission members and other officers appointed by the Council. Each employee shall be provided with a written job description prepared by the Administrator and subject to Council review.

**Sec. 6.3. Compensation.**

- A. The compensation of all elected and appointed officials and department heads shall be established and modified by express resolution of the Council.
- B. The rate of compensation of Council members may be changed by an ordinance approved by a majority of the Council. However, the compensation paid any member of the Council may not be increased during his current term of office. No vote on this matter may be taken within ninety (90) days of the town election.
- C. The compensation of all town employees not fixed by other provisions of this Charter or collective bargaining shall be fixed in the Personnel Plan by a schedule of pay which shall include a minimum and maximum and such intermediate rates as may be deemed desirable for each class of position provided for in said plan.
- D. In adopting the town budget, the Council shall not increase or decrease any individual compensation item but shall act solely with respect to total salaries in the various departments of the town.

**Sec. 6.4. Certification of payroll.**

No compensation shall be paid without certification by the Administrator, or such others as he may direct, that the recipients are employed by the town and that their rates of compensation comply with approved pay schedules.

**Article 7**  
**CONDUCT OF OFFICIALS**

**Sec. 7.1. Conditions for holding office.**

- A. Any person while in town office convicted of a Class A felony in New Hampshire or its equivalent under the law of any other state or federal law shall forfeit such office.
- B. No full-time or regular employee of the town shall be eligible to serve as a Councilor.
- C. Any person elected to a town office or trusteeship while presently holding another such town office, board membership, commission membership or trusteeship shall immediately forfeit the office he held prior to such election.
- D. The Zoning Board of Adjustment shall not have any members who also serve on the Planning Board, Conservation Commission or Historic District Commission.

*(This section was amended per passage of Article 2 on the March 10, 2009 Town Election ballot)*

**Sec. 7.2. Conflicts of interest.**

- A. Any elected or appointed officer or employee of the town who has a financial interest, direct or indirect, in any planned or existing contract, job, work or service to be performed for the town or voluntary sale to the town of any land, materials, supplies, equipment or other property shall make full disclosure of such interest to the Council and Administrator prior to the town's deliberating on any such matter or transaction.
- B. The person so financially interested in such matters or transactions shall not vote or advise on or otherwise participate in the town's and Council's consideration of such matter or transaction.

**Sec. 7.3. Disqualification from decision-making process.**

- A. No elected or appointed officer or employee of the town shall take part in a decision concerning the business of the town in which he or a member of his family, directly or indirectly, has a financial interest, aside from his salary as such officer or employee, greater than any other citizen or taxpayer.
- B. For the purposes of this section, the word "family" shall mean an individual's spouse, his or her spouse's lineal ascendants and lineal descendants and his or her spouse's siblings and their offspring.

**Sec. 7.4. Private use of town property and personnel.**

No elected or appointed officer or employee shall devote any town property or labor to private use except as may be provided by authority of the Council.

**Sec. 7.5. Acceptance of gifts and gratuities.**

No elected or appointed officer or employee of the town shall solicit or accept any gift or gratuity which could in any manner be construed to affect or influence the performance of his official duties.

**Sec. 7.6. Disposition of fees.**

No elected or appointed officer or employee of the town shall collect any fees, salaries or other payments in connection with his official duties for his own use, except as provided for by ordinance or state law.

**Sec. 7.7. Misuse of information.**

No elected or appointed officer or employee of the town shall utilize or dispense information gained through said office or employment for his or another's personal profit.

**Article 8**

**CITIZEN CONCERNS; INITIATIVE PETITION; REFERENDUM; RECALL**

**Sec. 8.1. Citizen concerns.**

- A. Individual citizen concerns shall be directed to the Administrator to be relayed to the appropriate department(s) or individual(s) for consideration. Acknowledgment of the concern(s) may be made to the citizen directly or in writing.
- B. Any citizen wishing to appear before a regularly scheduled Council meeting may present a brief statement of concern to the Council in accord with the rules of the Council.
- C. A citizen requiring more than five (5) minutes to present a concern may request, in writing, to be put on the agenda of a regular Council meeting by filing with the Administrator an outline of the topic to be presented. The citizen shall be notified of the date, time and place of the meeting in which he will be heard if the request is deemed a matter in which the Council is empowered to act. Otherwise, the Administrator shall respond to the citizen with reasons why the request was not granted.

**Sec. 8.2. Initiative petitions.**

- A. The Council shall hold a public hearing and act, by taking a vote, on the merits of every initiative petition which concerns a matter in which the town is empowered to act. The petition shall be addressed to the Council, shall contain a request for passage or repeal of a particular measure set forth in the petition and shall be signed by not fewer than fifty (50) registered voters.

The initiative petition shall include the personal signature and legible name and address of each petitioner and shall be filed with the Town Clerk as one (1) instrument of endorsement. The Town Clerk shall verify the number of registered voters signing the petition and shall attach thereto a certificate showing the result of such examination. Within seven (7) days, the Town Clerk shall transmit the petition and certificate to the Town Council and shall send a copy of the certificate to the first signer of the petition.

The petition shall be considered valid following certification unless written objection regarding the number of signatures certified is made by a voter no more than seven (7) days after the certificate has been issued. The validity of any such objection shall be determined by the Council.

- B. The Council shall hold a public hearing within thirty (30) days of the date of certification of any measure proposed in any petition signed by fifty (50) registered voters, unless a question of its legality is raised by a member of the Council. If a question of legality is raised by any Councilor, the measure shall be referred to a town attorney for review. If the measure proposed may be lawfully passed by the Council, the public hearing shall be scheduled within thirty (30) days of the date of the attorney's opinion. If the measure may not be lawfully passed by the Council, it shall be returned to the petitioners with an explanation.

The Town Clerk shall mail notice of the hearing to ten (10) petitioners whose names appear first on each petition at least seven (7) days prior to the hearing. Notice by publication of a summary of contents of the petition at least seven (7) days prior to all such hearings shall also be made and shall be at public expense.

Hearings on two (2) or more petitions filed under this section and addressing different substantive issues may be held at the same place and time. No hearing shall be held upon more than one (1) petition containing the same project matter in any given twelve-month period.

- C. Following the public hearing, the Council may: (1) Pass said measure without alteration or with amendment; or (2) Deny said measure with stated reasons.

**Sec. 8.3. Referendum petitions.**

- A. Referendum petitions must be filed with the Town Clerk within thirty (30) days after action by the Council on any measure or any part thereof sought to be reconsidered. Referendum

*Code of the Town of Durham, NH*  
*The Charter*

petitions must be signed by at least seven hundred fifty (750) voters of the town. The procedures of 8.2.A shall apply to referendum petitions.

- B. When a referendum petition is filed with the Town Clerk, the measure or part thereof sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:
  - 1. There is a final determination of insufficiency of the petition; or
  - 2. The filers of the petition withdraw it.
- C. When a referendum petition has been finally determined sufficient, the Council shall submit the referred measure or part thereof protested to the voters of the town at a special election to be held on a date fixed by the Council. Such special election shall be held not less than thirty (30) nor more than ninety (90) days after the date of the certificate heretofore mentioned, provided that if any election is to occur within one hundred twenty (120) days after the date of said certificate, the Council may, at its discretion, omit the calling of a special election and submit the referred measure or part thereof to the voters at such approaching election.
- D. The ballot used when voting upon a proposed measure under this section shall state the nature of the referred measure or part thereof protested in terms sufficient to show its substance.

**Sec. 8.4. Submission of proposed measure to voters.**

The Council, of its own motion, may submit any measure, or proposition for repeal or amendment of a measure, to the voters at any regular or special town election.

**Sec. 8.5. Measures with conflicting provisions.**

If two (2) or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

**Sec. 8.6. Recall of officeholders.**

Any individual elected official who has completed at least six (6) months of his term of office and has more than six (6) months of his term remaining may be recalled therefrom by the voters as follows:

- A. One hundred (100) or more voters may file a request for a recall petition with the Town Clerk. This request shall include the name of the officer and the grounds for which the recall is sought, together with the signature and a legible name and address of each voter.
- B. The Town Clerk shall verify the names of the voters and promptly issue blank petitions for recall. Each petition shall be addressed to the Council, shall be dated and shall include the grounds for recall as stated in the request, the name of the voter to whom it is issued, the signature of the Town Clerk and the Town Seal. The recall petitions bearing the signatures and legible names and addresses of at least five hundred (500) voters shall be returned to the

*Code of the Town of Durham, NH*  
*The Charter*

Town Clerk within twenty (20) days. The Town Clerk shall promptly certify the number of voters who signed the petitions.

- C. If the petitions are certified to be sufficient by the Town Clerk, he shall submit them to the Council, together with his certification. The Council shall forthwith give written notice of the petition and certification to the officer whose recall is sought. If this officer does not resign within five (5) days after delivery of this notice, the Council shall order a recall election to be held not less than thirty (30) days nor more than sixty (60) days after the date the Town Clerk certified the petitions. If, however, any other town election is scheduled within ninety (90) days of the date of the certification, the Council shall hold the recall election on the same date as the other town election. The filing of candidates and the conduct of the election shall be in accordance with the provisions of this Charter and the election laws of the State of New Hampshire.
- D. The proposition on the ballot shall be "For the recall of (name of officer)" or "Against the recall of (name of officer)."
- E. If the incumbent is not recalled, he shall continue in office for the remainder of his unexpired term and may not again during that term be subject to recall. If he is recalled, he shall be deemed removed from office on the day after the recall election, and the vacancy shall be filled as provided by this Charter.
- F. A separate recall petition, requiring one hundred (100) signatures to initiate the five hundred (500) signatures to be certified, shall be required for each elected official who is the subject of a recall, and each said official's recall shall be voted on as a separate question at the recall election.

**Sec. 8.7. Budget process.**

Notwithstanding any other provisions of this Charter, this Article shall not apply to Article V of this Charter or any actions taken pursuant thereto.

**Article 9**  
**TOWN REPORT**

**Sec. 9.1. Town Report.**

Each year, the Town Administrator shall prepare a Town Report which shall include: (1) a statement of the past year's financial activities and a comparative statement of the previous and present budget; and (2) a review of all major Council actions, including a summary of ordinances enacted; and (3) Town vital statistics. There shall be a section which presents any actions which are in progress or pending before town boards or departments and the Town Council. The effective date of the Report shall be the end of the fiscal year, and the Report shall be available to the voters of the town not later than February 15 of each year. *(This section was amended per passage of Article 2 on the March 10, 2009 Town Election ballot)*

**Sec. 9.2. Informational Town Meeting.** *(This section was removed from the Charter per passage of Article 2 on the March 9, 2004 Town Election ballot).*

## **Article 10 GENERAL PROVISIONS**

### **Sec. 10.1. Certificate of election and appointment.**

Except as otherwise provided by law, before performing any act under this election or appointment, each person elected shall take and subscribe to an oath to qualify him to enter upon the duties of office. A record of the taking of such oath shall be made by the Town Clerk. Any oath required by this section may be administered by any officer authorized by law to administer oaths.

### **Sec. 10.2. Term commencement; notice of election or appointment.**

Unless otherwise set forth in this Charter, all elected officials in the town shall take or continue in office on the first Monday in March following their election and shall hold office until their successors are elected and qualified. If, however, a timely request for a recount is made, the candidate affected shall not take office until such time as the recount is completed.

### **Sec. 10.3. Vacancies.**

In addition to other provisions of this Charter, a vacancy shall be deemed to exist in any department, office or board whenever an officer, member or employee dies, resigns, is removed for just cause, is permanently physically or mentally incapacitated to the degree that he is unable to perform his duties, is judicially declared to be mentally incompetent or, for board members where residence in the town is required, he moves from the town. Unless otherwise provided in this Charter, vacancies occurring under this section shall be declared to exist by the Council for board members, the Administrator for department heads and by the department heads for departmental personnel.

### **Sec. 10.4. Public records and meetings.**

All records of the town and all meetings of the Council, boards, committees, commissions, authorities or other municipal bodies shall be open to the public, and their minutes and other records shall be available to the public in accordance with the provisions of the Right-to-Know Law, as amended.

**Sec. 10.5. Agreements with other municipalities.**

The Council is authorized, as provided by New Hampshire law, to enter into agreements and regional compacts with neighboring cities and towns, state agencies or private nonprofit corporations for the purpose of resolving their common problems for the mutual advantage and benefit of the town and its neighboring cities and towns.

**Sec. 10.6. Specific provisions to prevail.**

To the extent that any specific provision contained in this Charter conflicts with any provision expressed in general terms, the specific provision shall prevail.

**Sec. 10.7. Severability.**

The sections of this Charter and the parts hereof are separable. If any portion or section of this Charter or the application thereof to any person or circumstance shall be held invalid by a court of competent jurisdiction, the remainder of the Charter shall not be affected thereby. If a clause, portion of or section of this Charter is so held invalid, then the applicable provisions of State law, if any, shall govern.

**Sec. 10.8. Authentication of Charter; copies to be kept on file.**

Upon adoption, the Official Charter, duly authenticated by affixing the signatures of all members of the Charter Commission and the Board of Selectmen and the Town Clerk and affixing the Town Seal, shall be filed with the Town Clerk and remain in the Town Clerk's office as the Official Charter of the Town of Durham. At its first meeting, the Town Council shall affirm the validity of the Town Charter. All amendments to this Charter shall be authenticated by the Town Council and be filed with and remain a part of the Official Charter. The Town Clerk shall be responsible for the proper maintenance of the Charter, under the direction of the legal officer. Copies of the Charter shall be available to the public, and the Town Clerk may charge a fee to defray the printing costs.

**Sec. 10.9. Charter amendments.**

Amendments to this Charter may be initiated either by the Council or by initiative petition, public hearing and voter election pursuant to New Hampshire RSA 49-B:5.

**Sec. 10.10. Violations and penalties.**

All willful violations of provisions of this Charter, unless otherwise provided, are hereby declared to be misdemeanors, and all such violations and all violations of town ordinances for which no other punishment is provided shall be punishable by a fine in accordance with state statutes.

**Sec. 10.11. Rules and Regulations.**

*Code of the Town of Durham, NH*  
*The Charter*

A copy of all rules and regulations adopted by any town agency, board, commission or individual shall be filed in the office of the Town Clerk and made available for review by any person who requests such information.

**Sec. 10.12. Reorganization Plans.**

Except for those agencies established by this Charter or as otherwise prohibited by state law, the Council may reorganize, consolidate or abolish any existing town agency in whole or in part, establish new town agencies and prescribe the functions of any town agencies, provided that such action shall not eliminate the statutory duties of town officials.

**Sec. 10.13. Proposed Reorganization Plans by the Administrator.**

The Administrator may prepare and submit to the Council for its approval proposed reorganization plans which may, subject to applicable law and this Charter, reorganize, consolidate or abolish any town agency in whole or in part or establish new town agencies as he deems necessary or expedient. Such reorganization plans shall be accompanied by explanatory messages when submitted.

**Sec. 10.14. Indemnification of Town Officers, Board Members, and employees.**

The town shall undertake to indemnify and save harmless all its officers, officials, volunteers, boards, commissions and employees from personal loss and expense, including reasonable legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of negligent acts or omissions if the indemnified person was acting in the scope of his office or employment and in good faith in accord with the provisions of state law.

**Sec. 10.15. Prohibition.**

- A. No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any town position or appointed town administrative office because of age, race, sex, political or religious opinions or affiliations.
- B. No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment.
- C. No person who seeks appointment or promotion with respect to any town position or appointed town administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.
- D. No person who runs for town office shall orally, by letter or otherwise solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose whatever from any person holding any compensated appointed town position.

**Sec. 10.16. Procedures.**

- A. Meetings. All properly constituted authorities, boards, commissions, committees or other municipal bodies (hereafter called "committees") of the town, whether elected or appointed or otherwise constituted, shall meet regularly at such times and public places within the town as they may prescribe. Except in emergencies, special meetings of these committees shall be held on the call of the respective Chairman or by one-third (1/3) of the members thereof by written notice delivered to the residence or place of business of each member at least forty-eight (48) hours in advance of the time set. A copy of said notice shall also be posted on the town bulletin board(s). Except in cases of emergency otherwise authorized by the general laws, all meetings of these committees shall be open and public; however, these committees may meet in a closed or executive session as permitted by the Right-to-Know Law.
- B. Committee organization. Each committee shall determine its own rules and order of business, unless otherwise provided by the Charter or by law. The agenda and minutes shall be kept as required by the Right-to-Know Law. A Chairman and Secretary shall be elected annually in accord with the committee's rules of procedure.
- C. Quorum. A majority of the members of a committee shall constitute a quorum, but a smaller number may adjourn from time to time until a quorum is achieved. No other action taken by a number of members smaller than the quorum shall be valid or binding.
- D. Council. The provisions of this 10.16 shall not apply to the Council to the extent that they are inconsistent with other provisions of this Charter.

**Sec. 10.17. Land Use Ordinances.**

All land use regulations and ordinances must be adopted pursuant to state law.

**Sec. 10.18. Municipal Budget Law Repealed.**

By adoption of this Charter, the voters and the Town of Durham expressly repeal and rescind the previous adoption of the provisions of the Municipal Budget Act.

**Article 11**

**ADMINISTRATIVE AND JUDICIAL BOARDS**

**Sec. 11.1. Administrative Committees.**

- A. Planning Board. There shall be a Planning Board consisting of seven (7) members and not more than five (5) alternate members as provided by state statutes. Six (6) of these members and the alternate members shall be appointed by the Town Council for terms of three (3) years, such terms to be staggered. Two (2) Town Council members shall be appointed annually at the Council's first meeting to serve, respectively, as primary and alternate ex officio members. These representatives shall have all the rights of membership including the

*Code of the Town of Durham, NH*  
*The Charter*

right to hold office. The Council shall fill any vacancy for the period of the unexpired term. The Planning Board shall have all the powers granted to Planning Boards by state law.

- B. Conservation Commission. There shall be a Conservation Commission consisting of seven (7) members and up to three (3) alternate members. The five (5) members and the alternate members appointed by the Town Council shall be appointed for terms of three (3) years, such terms to be staggered. The Planning Board and the Town Council shall each appoint a representative to the Conservation Commission annually at their first meeting. These representatives shall have all the rights of membership, including the right to hold office. The Town Council shall fill any vacancy for the period of the unexpired term. The Conservation Commission shall have all the powers granted to Conservation Commissions by state law.
- C. Parks and Recreation Committee. There shall be a Parks and Recreation Committee consisting of seven (7) members and one (1) alternate member. The six appointed by the Town Council shall have terms of three (3) years, such terms to be staggered. The alternate shall be appointed by the Town Council for a term of three (3) years. A representative from the Town Council shall be appointed annually at its first meeting. The representative shall have all the rights of membership, including the right to hold office. The Council shall fill any vacancy for the period of the unexpired term. The Parks and Recreation Committee shall have all the powers granted to Parks and Recreation Committees by state law.
- D. Historic District Commission. There shall be an Historic District Commission consisting of seven (7) members. The five (5) appointed by the Town Council shall have terms of three (3) years, such terms to be staggered. The Town Council and the Planning Board shall each appoint a representative at their first meetings. These representatives shall have all the rights of membership, including the right to hold office. The Council shall fill any vacancy for the period of the expired term. The Historic District Commission shall have all the powers granted to Historic District Commissions by state law.
- E. Cemetery Committee. The Town Council shall select annually from its membership three (3) persons to meet with the Trustees of the trust funds as overseers of the Town Cemeteries.
- F. Board of Library Trustees. There shall be a Board of Library Trustees consisting of seven (7) members and not more than three (3) alternate members. All members shall be elected by official ballot at the annual Town election as required by state law and shall have terms of three (3) years, such terms to be staggered. Alternate members shall be appointed by the Town Council and shall have terms of one (1) year. The Board of Library Trustees shall have all of the powers and duties established in state statutes, which shall be as follows:
  - 1. To adopt bylaws, rules and regulations for the conduct of its own business and to choose its own officers.
  - 2. To establish policies designed to effectuate the operation of a public library.
  - 3. To appoint the librarian and staff librarians.
  - 4. To prepare an annual budget for the library in consultation with the librarian which shall provide for the expenditure of such public funds as may be appropriated by the Town.

*Code of the Town of Durham, NH*  
*The Charter*

5. To receive and expend income from all trust funds, donations, and bequests made to the Town for the benefit of the library in accordance with the terms of any such trust fund, donation, or bequest.
  6. To expend all monies received from fines, payments for lost or damaged books, fees for providing nonresident services, and other miscellaneous income.
  7. To prepare and present annual reports to the Town Council describing all phases of the operation of the library and to make an annual report to the New Hampshire State Library as may be required.
  8. To perform all other acts necessary for the management and operation of a public library.
- G. Other administrative committees. Other administrative boards and committees may be established as necessary by the Town Council.
- H. The Town Council is specifically authorized to act in concert with the University of New Hampshire to establish committees of such size and membership as may be in the common interest to establish policy for water service, sewer service, public safety and other matters of mutual concern.
- I. At least annually in April, and more often if town affairs warrant, the Town Council shall meet with the Chairmen of all standing town committees to review significant actions taken by the committees, projects currently under discussion and anticipated activity for the coming year. *(Section 11.1, subsections A, B & F were amended per passage of Articles 3, 4 & 5 on the March 9, 2004 Town Election ballot)*

**Sec. 11.2. Judicial Board.**

Zoning Board of Adjustment. There shall be a Zoning Board of Adjustment appointed by the Council, consisting of five (5) members each serving a three-year term and three (3) alternates each serving a three-year term. Such terms shall be staggered. The Council shall fill any vacancy for the period of the unexpired term. The Zoning Board of Adjustment shall have all the powers granted to such boards under state law.

**Sec 11.3 Appointments to Boards, Commissions and Committees**

The Town Council shall appoint members to boards, commissions and committees by May 1 of each year following the annual Town election upon which newly elected members of the Town Council have taken their oaths of office. *(This section was amended per passage of Article 6 on the March 9, 2004 Town Election ballot)*

**Sec. 11.4. Terms of Office.**

The terms of office of all members of appointed boards shall begin on May 1 and end on April 30. If an appointee receives an appointment subsequent to May 1 of the year in which the term of office originally commenced, the term to which the person was appointed will end on April 30 in

*Code of the Town of Durham, NH*  
*The Charter*

the year that it was scheduled to end. *(This section was amended per passage of Article 7 on the March 9, 2004 Town Election ballot)*

**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. *(This section was amended per passage of Article 8 on the March 9, 2004 Town Election ballot)*

## **CHARTER OF THE TOWN OF DURHAM**

### **Article 1**

#### **INCORPORATION; TOWN FORM OF GOVERNMENT; POWER**

- Sec. 1.1. Incorporation
- Sec. 1.2. Town form of government
- Sec. 1.3. Construction
- Sec. 1.4. Intergovernmental relations

### **Article 2**

#### **ELECTIONS; ELECTION OFFICIALS; CONDUCT OF ELECTIONS**

- Sec. 2.1. Composition of Board of Election Officers
- Sec. 2.2. Moderator
- Sec. 2.3. Supervisors of the Checklist
- Sec. 2.4. Duties and sessions of Supervisors of the Checklist
- Sec. 2.5. Conduct of elections
- Sec. 2.6. Preparation of ballots
- Sec. 2.7. Preservation of ballots
- Sec. 2.8. Contested elections
- Sec. 2.9. Display of campaign materials at polling place

### **Article 3**

#### **TOWN COUNCIL**

- Sec. 3.1. Membership; term of office
- Sec. 3.2. Organization meeting
- Sec. 3.3. Selection of Chairman and Chairman Pro Tem
- Sec. 3.4. Qualifications of Councilors
- Sec. 3.5. Vacancies

*Code of the Town of Durham, NH*  
*The Charter*

- Sec. 3.6. Salaries and compensation
- Sec. 3.7. Exercise of powers; meetings; rules of procedure
- Sec. 3.8. Ordinances
- Sec. 3.9. Emergency ordinances
- Sec. 3.10. Emergency appropriations
- Sec. 3.11. Codification of ordinances
- Sec. 3.12. Existing ordinances
- Sec. 3.13. Powers and duties
- Sec. 3.14. Delegation of powers
- Sec. 3.15. Inquiries and investigations
- Sec. 3.16. Board procedures

**Article 4**

**ADMINISTRATION OF GOVERNMENT**

- Sec. 4.1. Town Administrator
- Sec. 4.2. Qualifications
- Sec. 4.3. Reprimand or removal from office
- Sec. 4.4. Acting Administrator
- Sec. 4.5. Powers and duties of Administrator
- Sec. 4.6. Appointment of department heads; suspension; appeal
- Sec. 4.7. Non-interference with town administration
- Sec. 4.8. Departments
- Sec. 4.9. Town attorney
- Sec. 4.10. Fiscal affairs: treasurer; investment advisor; finance management; audit
- Sec. 4.11. Town Clerk/Tax Collector

**Article 5**

**FINANCE**

- Sec. 5.1. Fiscal year

*Code of the Town of Durham, NH*  
*The Charter*

- Sec. 5.2. Budget procedure
- Sec. 5.3. Budget hearings
- Sec. 5.4. Final date for budget adoption
- Sec. 5.5. Appropriation after adoption of budget
- Sec. 5.6. Quarterly budget reports; reductions
- Sec. 5.7. Transfers
- Sec. 5.8. Capital Improvements plan
- Sec. 5.9. Lapse of appropriations
- Sec. 5.10. Depository
- Sec. 5.11. Bonding of officials
- Sec. 5.12. Borrowing procedure
- Sec. 5.13. Purchasing procedure
- Sec. 5.14. Special assessments
- Sec. 5.15. Trust funds

**Article 6**  
**PERSONNEL POLICIES**

- Sec. 6.1. Appointments
- Sec. 6.2. Personnel Plan
- Sec. 6.3. Compensation
- Sec. 6.4. Certification of payroll

**Article 7**  
**CONDUCT OF OFFICIALS**

- Sec. 7.1. Conditions of holding office
- Sec. 7.2. Conflicts of interest
- Sec. 7.3. Disqualification from decision-making process
- Sec. 7.4. Private use of town property and personnel
- Sec. 7.5. Acceptance of gifts and gratuities

*Code of the Town of Durham, NH*  
*The Charter*

- Sec. 7.6. Disposition of fees
- Sec. 7.7. Misuse of information

**Article 8**

**CITIZEN CONCERNS; INITIATIVE PETITION; REFERENDUM; RECALL**

- Sec. 8.1. Citizen concerns
- Sec. 8.2. Initiative petitions
- Sec. 8.3. Referendum petitions
- Sec. 8.4. Submission of proposed measure to voters
- Sec. 8.5. Measures with conflicting provisions
- Sec. 8.6. Recall of officeholders
- Sec. 8.7. Budget process

**Article 9**

**TOWN REPORT; TOWN MEETING**

- Sec. 9.1. Town Report

**Article 10**

**GENERAL PROVISIONS**

- Sec. 10.1. Certificate of election and appointment
- Sec. 10.2. Term commencement; notice of election or appointment
- Sec. 10.3. Vacancies
- Sec. 10.4. Public records and meetings
- Sec. 10.5. Agreements with other municipalities
- Sec. 10.6. Specific provisions to prevail
- Sec. 10.7. Severability
- Sec. 10.8. Authentication of Charter; copies to be kept on file
- Sec. 10.9. Charter amendments
- Sec. 10.10. Violations and penalties
- Sec. 10.11. Rules and regulations

*Code of the Town of Durham, NH*  
*The Charter*

- Sec. 10.12. Reorganization plans
- Sec. 10.13. Proposed reorganization plans by Administrator
- Sec. 10.14. Indemnification of town officers, board members and employees
- Sec. 10.15. Prohibition
- Sec. 10.16. Procedures
- Sec. 10.17. Land use ordinances
- Sec. 10.18. Municipal Budget Law repealed

**Article 11**  
**ADMINISTRATIVE AND JUDICIAL BOARDS**

- Sec. 11.1. Administrative committees
- Sec. 11.2. Judicial board
- Sec. 11.3. Appointments to Boards, Commissions and Committees
- Sec. 11.4. Terms of Office
- Sec. 11.5. Vacancies in Elected or Appointed Office