

**TOWN OF DERRY**  
**Town Council Emergency Meeting**  
Derry Municipal Center  
Cable 17 Studio

**September 10, 2010**  
Friday 4:00 p.m.

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**Derry Town Council Emergency Meeting**

The Derry Town Council has called an Emergency meeting to act on an issue effecting the Charter Commission amendments appearing on the ballot in this upcoming election to be held on September 14, 2010.

Present: Brenda Keith-Town Attorney, Bud Fitch-Deputy Atty General, Gary Stenhouse-Town Administrator.

Roll Call: Councilors: Milz, Wetherbee, Coyle, Fairbanks, Chirichiello, and Chairman Benson (Olbricht present - 4:30 pm)

**EMERGENCY PREAMBLE**

**WHEREAS:** The Town Clerk of Derry received a letter on September 7, 2010 signed by the Office of the Attorney General, the Office of the Secretary of State and the Office of the Department of Revenue Administration objecting to many of the substantive proposed Derry Town Charter amendments that are set to be submitted by ballot to the voters on Tuesday, September 14, 2010; and,

**WHEREAS:** The Council has no scheduled meeting between now and next Tuesday, and action of the Council is needed to decide whether to order the ballots rescinded; and,

**BE IT ORDAINED** that an emergency exists for the passage of a vote to authorize the Town to remove the charter question ballots from the election scheduled for Tuesday, September 14, 2010.

**THEREFORE, BE IT RESOLVED**, the Derry Town Council declares an emergency exists under Section 10.6 (A) of the Derry Town Charter, and because the matter must be acted upon for the immediate preservation of the peace, health, safety or convenience of the town, the Derry Town Council hereby authorizes this emergency meeting to make its necessary decisions this today, Friday, September 10, 2010.

**Moved by Councilor Wetherbee, seconded by Councilor Milz, Vote: 4-2-0 (Coyle, Fairbanks)**

**Discussion**

Councilor Coyle, stated pursuant to section 5.9 of Derry Town Charter regarding the noticing of the meeting which requires a 48 hour notice in advance of the meeting. He objects to this meeting and feels that a Special Meeting with 48 hours notice could be held to consider the action that is going to be taken today. There is no reason that the action cannot be taken in 48 hours. Therefore he believes there is no Emergency as defined in Article 10.8 C. and thus this meeting should not be held. Town Legal Counsel Brenda Keith disagreed with Councilor Coyle's assertion and advised that this meeting could be held as advertised.

Deputy Attorney Orville (Bud) Fitch II – Acknowledged that the Attorney General's Office has not served the people of Derry, the Charter Commission and the Town Council in the manner that they should have. Either all or most of the reason we are here today is due to failures that have happened in our office. He is not in a position to answer questions on how this came to be. He has seen the receipt that was provided by the Town Administrator and the signature looks like that of someone in our office. He is committed along with Attorney General Delaney who he represents today to process this. Working with the other State offices he noted the proposed

amendments contain a number of problematic changes. Two of them rise to the level that the proposed revisions are inconsistent with the general laws of the State. If things had taken a normal course they would have filed their objection in a timely manner then it would be up to the Town Council and they would have a course to object in Superior Court. He feels these objections are one to be sustained. His recommendation is that the Town Council not ask the voters of Derry to vote on a question where the Attorney General's opinion is that the voters could be adopting provisions that can be challenged in Superior Court and are contrary to state statute. The Attorney General's Office stands prepared to do whatever they can to fix this. This has never happened before. His suggestion is for the Town and State to collaborate and go forward with re-establishing the Charter Commission by going to Superior Court and asking it under their "Equity power" to re-establish the Charter Commission to continue the work that would have been done under normal circumstances. There is no statute explicitly granting the Superior Court Authority to do this. One alternative is waiting until the next municipal election and forming a new Charter Commission and starting over. The final option is to wait until January and have a Representative or Senator file for "Special Legislation" authorizing the Charter Commission to reconvene.

Councilor Wetherbee asked if it was Attorney Fitch's opinion that the Town Council has the authority to pull this from the ballot.

Attorney Fitch replied that again the statute doesn't contemplate this situation. However if anybody has the authority the Town Council does because they have the ultimate authority in the existing process that put the ballot before the voters.

Councilor Coyle asked that if the ballot were to go forward would the Attorney General file an objection in Superior Court.

Deputy Attorney General Fitch replied actions by the office are made by the Attorney General and that decision has not been made in this case. He is not certain. The Attorney General's office is not the only ones that are likely to take this to Superior Court. A citizen could come forward and say it can't be done because the Charter is contrary to the laws of the state.

Councilor Coyle asked if he believed certain sections of the Charter would be struck down. He also asked if the vote took place and passed couldn't the Town Council make the changes and submit them to the voters in March?

Deputy Attorney General Fitch answered yes it would only be in regards to the law and Charter objections.

There was discussion on the RSA's, objected sections of the Revised Town Charter, the handling of the process within the State.

Councilor Coyle wanted it stated in the record that the Attorney General's Office failed as did the Department of Revenue and Secretary of State's offices. They have failed the Charter Commission, and this Town Council and have offered no real solutions that are not going to cost significant amounts of money. One way or another the Town will have to go to court and he asks that the Attorney General's office initiate this action. He would prefer that this is voted on Tuesday and if they want to take us to court okay. The statute says that if the AG or other two officers do not object within thirty days then the revisions are deemed approved. Once it's deemed approved, submitted to the Town Council and the Town Council submits the question to the voters it's done. Their failure does not count as an emergency on our part. He believes it's wrong to pull this from the voters.

Other Town Councilors gave their opinion on the action that should come by this vote and felt Council had both a legal and ethical obligation to keep this off the ballot simply because some of the changes are contrary to State Law as had been detailed to the town in writing from the Attorney General, Secretary of State and Department of Revenue Administration. There was

more explanation and the procedures to follow in the near future from Attorney Keith and Deputy Attorney General Fitch.

**The Derry Town Council moves that based on the opinion of the Deputy Attorney General and correspondence from his office the Charter Revision should not be presented to the voters on Tuesday, September 14, 2010 due to certain provisions that are in conflict with state statues as more fully set forth in the letter received on September 7, 2010 to the Derry Town Clerk. Motion by: Councilor Wetherbee, seconded by Councilor Milz. Vote: 6-1-0 (Coyle)**

There was a question on what to do with the absentee ballots that were already sent out.

Deputy General Attorney Fitch stated the moderator should place the ballots separately and treat as a voided ballot and preserve them for 22 months. He apologized for this inconvenience due to his office's part in this situation.

**Adjournment 4:55 pm**

Reviewed by Gary Stenhouse Town Administrator  
Recording Clerk, Denise Neale, Town Clerk

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Town Clerk

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Date