

**PETITION**

**Under Town Council Road Ordinance**  
**Adopted on February 17, 2009 (effective date: March 19, 2009)**

**Petitions under this ordinance shall be filed within twelve months of its effective date; provided, however, that for roads now receiving winter maintenance, the petition must be submitted within six months after the effective date in order that snow plowing be provided for the 2009-2010 winter season.**

Petitioner:

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone and Email address (if available)

\_\_\_\_\_  
Signature

The Petitioner and the following undersigned owners of lots having frontage on \_\_\_\_\_ (insert name of road or right-of-way), Petition the Town Council for the layout or reclassification of the petitioned road as described herein under the following procedure.

**Type of Procedure (please check one) -**

\_\_\_\_\_ Pursuant to RSA 674:40, III

\_\_\_\_\_ Layout or reclassification pursuant to RSA 231:8.

The type of procedure is subject to and governed by the Road Ordinance. The Petitioner(s) should review the ordinance to determine which procedure is applicable.



Printed Name of Property Owner	Signature and Date	Property Address having frontage on Petitioned Road or Right-of-Way

Please use additional page if necessary

**Cost:** The cost of notice and the expense of title research required to ascertain parties to be notified shall be borne by the petitioners and shall be paid prior to any final action of the Town Council.

# Road Ordinance

## RESOLUTION

Effective March 19, 2009

WHEREAS, the Town Council has received the report of a citizens' committee regarding the status of certain private roads in the Town of Derry; and

WHEREAS, the Town Council is desirous of determining whether any of such roads should be either laid out as public highways or determined to be a public road pursuant to the provisions of RSA 674:40, III; and

WHEREAS, the Town Council wishes to establish a uniform procedure for determining the status for such roads consistent with state law.

NOW, THEREOFRE, the Town Council does hereby resolve and the Town of Derry ordains that the following ordinance concerning the private roads in the Town of Derry be, and is hereby, adopted:

### I.

#### Definitions

- A. Private Roads** – Roads which have heretofore been designated as private roads by the Town of Derry Governing Body, the Public Works Department or designated as such on a recorded plan, with the exception of those roads giving access to or within a subdivision or condominium development which were approved by the Planning Board as private roads; roads giving access to or contained within mobile home parks, whether or not such mobile home parks were approved by the Planning Board or pre-existing the adoption of site plan or subdivision regulations by the Town; and private roads that service five homes or fewer and do not outlet to another Town road, except the road which provides access thereto and frontage therefore.
- B. Class V Roads** – Those roads within the Town of Derry as defined in RSA 229:5, VI which have been maintained by the Town for the five years previous to the adoption of this ordinance.
- C. Class VI Roads** – Those roads within the Town of Derry as defined in RSA 229:5, VII.

### II.

#### Procedure

Those roads that are eligible for participation under this ordinance shall be private roads as defined in Article I of this ordinance or roads classified as Class VI highways. In order to implement the procedures hereof, the Town Council has adopted this ordinance to provide a temporary means of petitioning the Town Council to either change

the classification of a Class VI highway by laying it out as a Class V road or accepting a private road as a public highway pursuant to the provisions of RSA 674:40, III.

This ordinance is intended to provide for expedited review of petitions meeting the requirements hereof. It is not intended to limit the right of a citizen to petition for layout or reclassification of a new highway pursuant to RSA 231:8, et seq. or to limit the right of petition under the Derry Town Charter.

**A. Petition.**

1. **Filing.** Petitions under this ordinance shall be filed within twelve months of its effective date; provided, however, that for roads now receiving winter maintenance, the petition must be submitted within six months after the effective date in order that snow plowing be provided for the 2009-2010 winter season.
2. **Contents of the Petition.** Petitions under this section shall be signed by all of the owners of property which have frontage on the Class VI highway or private road which is the subject of the petition. The Town Council shall not consider a petition unless all of such signatures appear, notwithstanding that the portion of the road to which the petition applies does not involve the frontage of an affected property owner. Such petition shall specify that relief is sought under the provisions of RSA 674:40, III or for reclassification under RSA 231:8, et seq. The petition shall state the grounds for the relief sought and contain an adequate description of the location of the road or the right-of-way in question, sufficient to enable the Town Council to determine the location and course thereof, for the purpose of creating a permanent record of such right-of-way. If the right-of-way has been previously shown on a recorded plan or drawing, the description contained thereon shall be sufficient.

**B. Type of Proceeding.**

1. **Layout.** A petition for the layout or reclassification of a Class VI highway shall be governed by the provisions of RSA 231:8, et seq. Where such Class VI highway does not conform to construction standards and requirements currently in effect in the Town, the petition may be accepted pursuant to the provisions of RSA 231:28, in cases where additional right-of-way or easements for drainage and utilities shall be required in the opinion of the Town Council. The Town Council shall give notice as specified in RSA 231:9 and 10 and Section IV hereof; shall make examination of the proposed route of the highway; shall hold a public hearing in accordance with RSA 231:11; and assess damages, if any, in accordance with RSA 231:15. The procedure shall otherwise be governed by the provisions of RSA 231:8, et seq., subject to the qualifications stated in the following section "Standards for Granting Petitions".

2. **RSA 674:40, III.** This procedure shall be used in cases where the road in question is not a Class VI highway and where, based on the evidence, the Town Council determines that there is sufficient evidence that the road has been dedicated to the public use.
  
3. **Action on Petition.** Upon receipt of a petition, the Town Council shall refer the petition to the Town Clerk and the Town Tax Assessor to determine that all required signatures have been affixed to the petition. The Town Clerk shall, within fourteen days, report to the Town Council as to whether the required signatures have been so affixed. If the petition is deemed in order, the Town Council, at the next regular meeting, shall refer the petition to the Planning Board. If referred to the Planning Board, the Board shall schedule a public hearing on the petition at the next occurring Planning Board meeting at which there is adequate time to provide notice to interested parties. After such public hearing, the Planning Board shall report to the Town Council its approval or disapproval of the petition. At its next regular meeting of the Town Council, for which there is sufficient time to provide notice to interested parties, the Town Council shall hold a public hearing on the petition and shall determine whether to grant the petition. The Town Council may, in its discretion, defer action on the petition if it deems it necessary to obtain a report from the Public Works, Police or Fire Departments as to the advisability or costs incident to granting the petition. In the case of acceptance pursuant to RSA 674:40, III, if the Planning Board disapproves, the affirmative vote of 2/3 of those Town Council members present and voting shall be required to approve the petition. If the Planning Board approves, then a majority of those Town Councilors present and voting shall be required to approve the petition.

### III

#### **Standards for Granting Petitions**

- A. **Burden of Proof.** The burden of proof in any proceeding under this ordinance shall be borne by the petitioner, who shall be required to present credible evidence that the private road that is the subject of the petition should be considered; provided, however, that the Department of Public Works shall research town records and present any and all relevant evidence as to the history of the road to the Town Council and, except for attorney client privileged information, to the petitioner prior to any hearing or decision.
  
- B. **Occasion for Layout.** In cases where the request is filed for reclassification by layout pursuant to RSA 231:8, the Town Council shall determine whether there is an occasion for layout of the class VI highway under consideration. In doing so they

shall determine that there is a public need for the road; that there is no undue burden imposed upon the Town and that the rights of individuals whose lands may be affected are considered.

**C. Prior Dedication Pursuant to RSA 674:40, III.** In cases where the request is filed for acceptance of an existing private road under RSA 674:40, III, the Town Council shall determine whether there is adequate evidence that there was a prior intention to dedicate the right-of-way to public use in accordance with the following standards.

**D. Factors to be Considered by the Town Council in RSA 674:40, III Petitions.**

The following factors may be considered by the Council in evaluating petitions under this ordinance:

**1. Right-of-Way.** There must be an existing and unobstructed right-of-way of sufficient width to permit safe and unimpeded passage of the public and public safety equipment. This right-of-way must either have been dedicated to the Town on a plan or all owners shall agree to conduct and pay for a survey sufficient to permit a deeding of the right-of-way to the Town.

**2. Prior Use by the Public.** In cases where the right-of-way which is subject to the petition is alleged to have been in use by the public for twenty years prior to 1968, the Town Council may vote to accept the right-of-way without evidence of prior dedication on a plan or deeds from the respective owners of land abutting the right-of-way, provided that other conditions herein are met. Evidence of prior use must be more than anecdotal evidence and must be corroborated by historical records. This may include records of previous actions by the Selectmen or Town Council regarding the status of the road, the issuance of deeds reflecting the road as a boundary, or other legally cognizable evidence that tends to support that the road in question was regularly in uninterrupted use by the public (exclusive of use by abutters to the road and their invitees) for twenty years prior to 1968. Such evidence may be considered with the other factors enumerated herein in determining such dedication or public use.

**3. Presence of Municipal Utilities within the Right-of-Way.** The presence of municipal sewer and water within the right-of-way, where the Town does not have an easement for the location of such utilities may be considered.

**4. Prior Maintenance of the Road.** Sufficient evidence that the Town has maintained the road historically. For purposes of this section such maintenance may include evidence that the Town has placed surfacing materials on the roads, such as millings or tar, heavier grading of the road so as to improve its traveled surface; installation of drainage and/or maintenance of drainage swales.

**5. Adequacy of Right-of-Way.** The existing right-of-way should not cross any wetlands unless there is a pre-existing permit for such crossing, culvert or any other structure in wetlands. The existing right-of-way is sufficient to allow for drainage which does not present a danger to the public, such as repeated washouts or unnecessary expense to the Town to make improvements such as would allow for continuous safe passage by the public.

**6. Prior State Aid.** The listing of the road on the Town's report to the New Hampshire Department of Transportation for the determination of state road assistance.

#### **IV. Notices**

Notice of any layout or reclassification pursuant to RSA 231:8 or road acceptance pursuant to RSA 674:40, III shall be given by Certified U.S. Mail at least ten days prior to any final vote by the Town Council under this ordinance. Notice of any Planning Board proceedings shall be given in the manner prescribed for Planning Board action on plans pursuant to RSA 674:4, I(d). Such notices shall be delivered to the owners of record of all parcels directly abutting the road which is the subject of the petition, or owners whose property is crossed by any such road, or tenants of such property where the Town has written or record notice of such tenancy, and mortgagees of record of such parcels. The cost of notice and the expense of title research required to ascertain parties to be notified shall be borne by the petitioners and shall be paid prior to any final action of the Town Council.

#### **V. Improvements to Reclassified Roads or Roads Accepted Pursuant to RSA 674:40, III**

Nothing herein shall require the Town to make improvements on any roads reclassified or accepted pursuant to this ordinance, except for those immediate repairs required to make the road passable and safe for the general public and public safety vehicles. Further improvements to such roads shall be within the sole discretion of the Town Council, as part of the Town's normal road maintenance plan.

#### **VI. Official Map**

The Town of Derry does not, at this time, have a Street Map pursuant to RSA 674:9 or an Official Map pursuant to RSA 674:10. The Planning Board is directed to prepare a proposal to the Town Council for the adoption of a Street Map or an Official Map, including the costs thereof and for a procedural schedule in which to submit the official map by the Town Council.

**VII.**  
**Effective Date**

The effective date of this ordinance shall be 30 days after adoption.

**VIII.**

**Interpretation and Severability.**

This ordinance shall be interpreted in accordance with the New Hampshire Revised Statutes Annotated sections to which it refers. To the extent that any provision hereof conflicts with such statutes in a way that affects the validity of the ordinance, the provisions of the relevant statute shall prevail. To the extent that the statute may be silent, the provisions of this ordinance shall be deemed to supplement the provisions of the statute with regard to its subject matter. If any provision hereof shall be deemed to be illegal or unconstitutional, this ordinance may be interpreted without regard to the offending provision and the remainder of the ordinance shall remain in effect.