

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, APRIL 7, 2014 TIME: 6:30 PM

## AGENDA

- 6:00 PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: PERSONNEL MATTERS  
RSA: 91-A:2, I (b-c)
- 6:30 PM – PRESENTATION BY PORTSMOUTH LISTENS STUDY CIRCLES  
RE: TRANSPORTATION DIALOGUE

I. CALL TO ORDER [7:00PM or thereafter]

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. ACCEPTANCE OF MINUTES – *There are no minutes for acceptance*

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. \*Acceptance of Asset Management Planning Grant from the New Hampshire Department of Environmental Services ***(Sample motion – move to accept and expend an Asset Management Planning Grant from the New Hampshire Department of Environmental Services in an amount up to \$15,000)***
- B. \*Acceptance of Community Development Block Grant Funds ***(Sample motion – move to accept and expend a Community Development Block Grant (CDBG) in the amount of \$507,379 from the U.S. Department of Housing and Urban Development)***

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading of Proposed Borrowing Resolution Re: New Franklin School Energy Project. ***(Sample motion – move to pass first reading and authorize the City Manager to bring back for public hearing and second reading the attached borrowing Resolution in an amount of up to Four Hundred Thousand Dollars (\$400,000) for the New Franklin School Boiler Replacement and Other Identified Energy Conservation Measures, at the April 21, 2014 City Council meeting, as presented) Please Note: requires a two-thirds vote for passage.***
- B. Third and Final Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13 ***(Sample motion – move to pass third and final reading of the proposed ordinance, as presented)***

- C. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps reference in Section 10.5A14.10 of Article 5A  
**(Sample Motions:**  
**1) Move to suspend the rules to allow for amendments;**  
**2) Move to adopt amendments;**  
**3) Move to pass third and final reading of the proposed Ordinance, as amended.)**
- D. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning  
**(Sample motion – move to pass third and final reading of the proposed ordinance, as presented)**

**IX. CONSENT AGENDA**

**A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA**

- A. Request for Approval of Pole License to install 2 poles off of Rock Street to provide street lighting to the new Rock Street parking lot. **(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)**
- B. Letter from Ken La Valley, Chair, Portsmouth Chapter of the AFSP Out of the Darkness Walk, requesting permission to conduct the annual Out of the Darkness Community Walk on Saturday, September 27, 2014 10.00 a.m. – 12:00 noon **(Anticipated action – move to refer to the City Manager with power)**
- C. Letter from Ben Anderson, Executive Director Prescott Park Arts Festival, requesting permission to close the Prescott Park North parking lot (corner of State Street and Marcy Street) during the 30<sup>th</sup> Annual WOKQ Chowder Festival being held Saturday, June 7, 2014. **(Anticipated action – move to refer to the City Manager with power)**
- D. Letter from Chris Vlangas, Development Director Northern New England Chapter of the Cystic Fibrosis Foundation, requesting permission to travel through the City of Portsmouth in conjunction with the 2014 Cycle for Life Event being held Saturday, July 19, 2014 and Sunday July 20, 2014. **(Anticipated action – move to refer to the City Manager with power)**
- E. Letter from Ryan Fleming, Events Manager, Redhook Brewery, requesting permission to conduct 17<sup>th</sup> annual Redhook/Runner’s Alley 5k on Pease Tradeport to support the Krempel’s Center for Brain Injury on Sunday, May 25, 2014. **(Anticipated action – move to refer to the City Manager with power)**

- F. Request for License from Susan, Calina and Paul Hood, owners of Studio on 90 Fleet for property located at 90 Fleet Street for a projecting sign on an existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Susan, Calina and Paul Hood, owners of Studio on 90 Fleet for a projecting sign at property located at 90 Fleet Street and, further, authorize the City Manager to execute License Agreements for this request***)

**Planning Director's Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- G. Request for License from Andre Van Oss, owner of Buff & File Nail Bar for property located at 92 Pleasant Street for a projecting sign on a new bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Andre Van Oss, owner of Buff & File Nail Bar for a projecting sign at property located at 92 Pleasant Street and, further, authorize the City Manager to execute License Agreements for this request***)

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- H. Request for License from Richard Cyr, owner of Federal Cigar for property located at 36 Market Street for a projecting sign on an existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Richard Cyr, owner of Federal Cigar for a projecting sign at property located at 36 Market Street and, further, authorize the City Manager to execute License Agreements for this request***)

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Christopher P. Mulligan, Attorney, Bosen & Associates, regarding Request for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (194 Wibird Street/Tax Map 148, Lot 1) ***(Sample motion – move to refer to City staff for review and report back at April 21, 2014 City Council meeting)***
- B. Letter from Sandra Yarne, Tax Day Coordinator, Seacoast Peace Response, requesting permission to utilize a plywood structure in conjunction with annual Penny Poll in Market Square on Tuesday, April 15, 2014.

**XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

**Items Which Require Action Under Other Sections of the Agenda:**

- 1. First Reading of Proposed Resolution and Ordinances:
  - 1.1. Proposed Borrowing Resolution Re: New Franklin School Energy Project ***(Action on this item should take place under Section VIII of the agenda)***
- 2. Third and Final Reading of Proposed Resolution and Ordinances:
  - 2.1. Third and Final Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13 ***(Action on this item should take place under Section VIII of the agenda)***
  - 2.2. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps reference in Section 10.5A14.10 of Article 5A ***(Action on this item should take place under Section VIII of the agenda)***
  - 2.3. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character Based Zoning ***(Action on this item should take place under Section VIII of the agenda)***

**City Manager's Items Which Require Action:**

- 1. Request for First Reading for Proposed Amendment to Chapter 7, Article I of the Ordinances Re: Parking and Traffic Safety Committee

2. Applications for Sidewalk Cafés Providing Alcohol Service – city-owned sidewalks:
  - a) Popovers on the Square
  - b) Ri Ra Portsmouth
  - c) State Street Saloon
  - d) Surf
  - e) The District
3. Applications for Sidewalk Cafes providing Alcohol Service – private sidewalks
  - a) British Beer Company
  - b) The BRGR Bar
4. Utility and Sidewalk Easements at 129 Aldrich Road, 185 Cottage Street and 65-67 Mark Street
5. Establish a Work Session Re: Peirce Island Wastewater Treatment Facility

### **Informational Items**

1. Events Listing
2. Information Memorandum from Robert Sullivan, City Attorney Re: Portwalk
3. Architectural Services Associated with Review of the Portwalk Project
4. Pilot Program Re: Parking Shuttle
5. Proposed Additional Areas to Implement Character-Based Zoning (Form-Based Zoning)
6. Report Back Presentation from Cynthia Scarano, Executive Vice President, Pan Am Railways Re: Sea-3 Project

### **B. MAYOR LISTER**

1. Appointments to be Considered:
  - Barbara McMillan reappointment to the Conservation Commission
  - Kimberly Meuse appointment to the Conservation Commission (alternate)
  - Samuel “Wes” Tator appointment to the Sustainable Practices Blue Ribbon Committee
  - Lawrence Cataldo appointment to the Taxi Commission
  - Stephen Dunfey appointment to the Taxi Commission
2. Appointments to be Voted:
  - Judith Bunnell appointed to the Citizens Advisory Committee
  - Steve Miller reappointment to the Conservation Commission
  - Elissa Hill Stone reappointment to the Conservation Commission
  - Allison Tanner reappointment to the Conservation Commission
  - Amy Schwartz reappointment to the Portsmouth Housing Authority
  - Stephen Philp reappointment to the Peirce Island Committee
  - John Simon reappointment to the Peirce Island Committee
  - Jackie Cali-Pitts reappointment to the Recreation Board
  - Kathryn Lynch appointment to the Recreation Board
3. Resignation:
  - John Palreiro from Taxi Commission

**C. ASSISTANT MAYOR SPLAINE**

1. Sea-3 Propane Proposal Update
2. Creating A Fee Penalty Guideline for Violations of Land Use Board Approvals
3. Status of Abandoned or Derelict Buildings

**D. COUNCILOR KENNEDY**

1. \*Transportation Center
2. \*Establish Transportation Committee (Discussion Purposes Only)

**E. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Minutes of the March 13, 2014 meeting (***Sample motion – move to approve and accept the minutes of the March 13, 2014 Parking & Traffic Safety Committee meeting***)

**F. COUNCILOR MORGAN**

1. \*Master Plan – Update of our Master Plan’s Implementation Plan section, in anticipation of the 2015 Master Plan Review (***Sample motion – move to request the City Manager to coordinate with staff the update of the Implementation Plan in our current Master Plan, to be made available to the public and City Council by end of May 2014***)
2. \*Portwalk – Request for Work Session to review:
  - a) enforcement
  - b) penalties
  - c) process and path forward: how we got here and what is the plan/process to prevent this from happening again
3. \*Civility by City Officials

**G. COUNCILOR THORSEN**

1. Legal Analysis regarding Financial Disclosures received from NHMA and suggested amendment language to Administrative Code

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. ADJOURNMENT [AT 10:00PM OR EARLIER]**

**KELLI L. BARNABY, CMC/CNHMC  
CITY CLERK**

*\*Indicates Verbal Report*

## **INFORMATIONAL ITEMS**


1. Notification that the Conservation Commission Minutes of the July 10, 2013 meeting are available on the City's website for your review
2. Notification that the Historic District Commission Minutes of the August 21, 2013, September 4, 2013 and September 11, 2013 meetings are available on the City's website for your review
3. Notification that the Planning Board Minutes of the October 17, 2013, October 24, 2013 and October 31, 2013 meetings are available on the City's website for your review
4. Notification that the Site Review Technical Advisory Committee Minutes of the March 4, 2014, meeting are available on the City's website for your review
5. Notification that the Zoning Board of Adjustment Minutes of the April 18, 2013 meeting are available on the City's website for your review

*NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.*



**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** April 3, 2014  
**To:** Honorable Mayor Robert J. Lister and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on April 7, 2014 City Council Agenda

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**6:00 p.m. – Non-meeting with counsel.**

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

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***Presentation:***

6:30 p.m.

1. **Presentation by Portsmouth Listens Study Circles Re: Transportation Dialogue.** At 6:30 p.m. on Monday evening, the City Council will receive a report from Portsmouth Listens Study Circles regarding the transportation dialogue.

***Items Which Require Action Under Other Sections of the Agenda:***

1. **First Reading of Proposed Resolution and Ordinances.**
  - 1.1 **Proposed Borrowing Re: New Franklin School Energy Project.** As a result of the March 17th City Council meeting, I am bringing back for first reading the attached proposed Resolution authorizing the borrowing of up to Four Hundred Thousand Dollars (\$400,000) for the New Franklin School Boiler Replacement and Other Identified Energy Conservation Measures. Attached is a letter from Superintendent of Schools Edward McDonough requesting approval for the borrowing of up to \$400,000 for the New Franklin School Energy Project. As you are aware, borrowing resolutions require a first reading, public hearing and adoption. Please note that this project has been approved by the School Board.



Business Administrator Stephen Bartlett will be in attendance on Monday evening to answer any questions you might have regarding this matter.

*I recommend that the City Council move to pass first reading and authorize the City Manager to bring back for public hearing and second reading the attached borrowing Resolution in an amount of up to Four Hundred Thousand Dollars (\$400,000) for the New Franklin School Boiler Replacement and Other Identified Energy Conservation Measures, at the April 21, 2014 City Council meeting, as presented. (Resolutions require two-thirds vote for passage.) Action on this item should take place under Section VIII of the Agenda.*

2. **Third and Final Reading of Proposed Resolution and Ordinances.**

2.1 **Third and Final Reading of an Ordinance Amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13.** At the March 17th City Council meeting, the Council held a public hearing and second reading on the proposed amendment to the Zoning Ordinance to delete Section 10.535.13 – “Increased Building Height by Conditional Use Permit (Central Business A and B Districts).”

The provision that is being proposed for elimination was enacted by the City Council on September 16, 2013. On that date, the Council amended the Zoning Ordinance by (1) reducing the maximum height allowable by right to the lower of 45 feet or 3½ stories, and (2) inserting the new Section 10.535.13 that allows buildings to reach the previously permitted heights of 60 feet in CBB and 50 feet in CBA by obtaining a Conditional Use Permit from the Historic District Commission.

If this proposed amendment is enacted, the maximum allowed building height in both Central Business districts will be reduced to the lesser of 45 feet or 3½ stories. Any building taller than either of these limits will require a variance from the Zoning Board of Adjustment.

The Planning Board held a public hearing on the proposed Zoning Ordinance amendment on February 20, 2014. As a result of that hearing, the Planning Board voted 7-2 to recommend that the criteria for a Conditional Use Permit be retained but that the criteria for approval be modified to require that a proposed development address a total of four elements, two relating to building design and two relating to site planning. The wording recommended by the Planning Board is as follows (new text is indicated by underlining):

*10.535.13 Increased Building Height by Conditional Use Permit*

*Within the CBA and CBB districts, the Historic District Commission may grant a conditional use permit to allow an increase in building height above the maximum structure height specified in Section 10.531, up to a maximum of 50 feet in the CBA district or 60 feet in the CBB district, only if both the following conditions are met for the building and site design:*

*(a) The proposed building design positively contributes to the surrounding context and the overall historic character of the district and includes at least 2 of the following elements:*

- The use of high-quality building materials in the building design including, but not limited to: slate or copper roofing; copper gutters and downspouts; restoration brick; granite sills, lintels, foundations, stoops and steps; and wood storefront windows along the façade elevation;*
- Significant scaling elements in the building design such as increased setbacks, stepbacks, reduced footprint(s) and building volume(s), varied building heights, pitched roof forms, projections, banding, and other massing techniques;*
- A significant restoration or reconstruction of a “focal” or “contributing” building; or*
- Underground or structured parking (except within 24 feet of a public street on the street-level floor) in lieu of surface parking.*

*(b) The proposed site plan includes at least 2 of the following elements:*

- New publicly accessible open space area such as a greenway, pedestrian alleys, plazas, pocket parks, playgrounds or other significant public open space areas;*
- A significant contribution to the redesign or improvement of an existing public open space located on a surrounding property;*
- Permanent protection of a significant view corridor to a historic building or riverfront area; or*
- A significant contribution to the restoration of an existing public historic resource located on a surrounding property.*

However, the City Council voted not to accept the Planning Board’s recommendation and instead voted to pass second reading and to schedule third and final reading on the original proposed ordinance (i.e., to delete Section 10.535.13).

*Motion to pass third and final reading of the proposed Ordinance, as presented. Action on this item should take place under Section VIII of the Agenda.*



2.2 **Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps Referenced in Section 10:5A14.10 of Article 5A.** At the March 17th City Council meeting, the Council held a public hearing and second reading on a proposed amendment to the Zoning Ordinance to implement Character-Based Zoning (aka Form-Based Zoning) in the downtown area. As you know, the Planning Department and the City’s consultants, Town Planning and Urban Design Collaborative (TPUDC), worked throughout 2013 to develop new “form-based” zoning standards for the historic core of the downtown. These new standards are designed to promote a scale and style of new developments that is more consistent with the downtown’s historic character than has resulted under the existing zoning regulations.

The proposed ordinance will add a new Article 5A – Character Districts to the Zoning Ordinance. The development standards in Article 5A are based on the historic design character of downtown Portsmouth and seek to encourage new buildings that fit in well with the surrounding context. The goal of this effort is to ensure that redevelopment and infill projects respect and reinforce the historic character of the downtown.

The Planning Board originally considered these proposed amendments in a public hearing on October 24, 2013, and a special meeting on October 31, 2013, and voted unanimously to recommend that the City Council adopt the new Article 5A, along with several amendments to other sections of the Ordinance. On October 21, 2013, the City Council scheduled first reading on the proposed zoning amendments for November 18, 2013. However, at the November 18th meeting, the Council voted to postpone the ordinance until January 2014, in order to provide for additional review and input.

To provide residents with an opportunity to ask questions about the proposed Character-Based Zoning and to make suggestions for changes, the Planning Department held a public informational drop-in session and forum on January 29, 2014. Both the afternoon drop-in session and the evening forum were well attended and generated much discussion and input.

Based on comments from residents and further internal review, the Planning Department prepared a revised draft of the proposed Character-Based Zoning ordinance. This draft was posted on the Planning Department’s website (<http://planportsmouth.com/formbasedzoning.html>) and reviewed in a public hearing at the Planning Board’s February 20th meeting. As a result of the public hearing, the Planning Board voted to make several additional revisions to the proposed ordinance, and voted unanimously to recommend that the City Council enact the proposed ordinance as amended.

The City Council held a first reading on the proposed Character-Based Zoning on March 3, 2014, and a public hearing and second reading on March 17, 2014. At the second reading, it was recommended that Sections 10.5A21.21 and 10.5A21.22 of the proposed Ordinance be amended to clarify the intent, and the Planning Department has drafted these amendments as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded** and underlined; remaining language unchanged from existing):

(1) Amend Section 10.5A21.21 as follows:

10.5A21.21 Specific Building Height Requirement Areas

As designated on Map 10/5A21B, assignments for specific building heights require a building to have no more than the designated maximum number of stories or the maximum height in feet **and no less than the designated minimum number of stories.**

(2) Amend Section 10.5A21.22 as follows:

10.5A21.22 Specific Shopfront, Officefront, Step and Frontage Buildout and Special Use Requirement Areas

As designated on Map 10.5A21C:

(a) Assignments for shopfront, officefront or step frontage require that a building be provided with a shopfront, officefront or step frontage at the sidewalk level along the entire length of its private frontage.

~~(b) Designations for frontage building percentage require that a building occupy no more than 50% of the frontage of the lot, wood siding shall be used for the exterior of the building and special uses apply to some properties along the waterfront area.~~

**(b) For designated properties along the waterfront, buildings shall occupy no more than 50% of the frontage of the lot, and shall have a wood-sided appearance.**

~~(c) Special uses apply to some~~ **designated** properties along the waterfront area.

In order to make this amendment the City Council needs to suspend the rules and adopt this amendment by two-thirds vote.



The revised proposed ordinance incorporating the changes recommended by the Planning Board (but not including the amendments proposed this evening) is attached (dated April 7, 2014). Also attached is a memorandum from the Planning Director summarizing the substantive changes from the previous version.

*Action required by the City Council:*

1) *Suspend the rules to allow for the following amendments:*

(1) *Amend Section 10.5A21.21 as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded** and underlined; remaining language unchanged from existing):*

10.5A21.21 Specific Building Height Requirement Areas

As designated on Map 10/5A21B, assignments for specific building heights require a building to have no more than the designated maximum number of stories or the maximum height in feet **and no less than the designated minimum number of stories.**

(2) *Amend Section 10.5A21.22 as follows:*

10.5A21.22 Specific Shopfront, Officefront, Step and Frontage Buildout and Special Use Requirement Areas

As designated on Map 10.5A21C:

(a) Assignments for shopfront, officefront or step frontage require that a building be provided with a shopfront, officefront or step frontage at the sidewalk level along the entire length of its private frontage.

~~(b) Designations for frontage building percentage require that a building occupy no more than 50% of the frontage of the lot, wood siding shall be used for the exterior of the building and special uses apply to some properties along the waterfront area.~~

**(b) For designated properties along the waterfront, buildings shall occupy no more than 50% of the frontage of the lot, and shall have a wood-sided appearance.**

(c) Special uses apply to some **designated** properties along the waterfront area.

2) *Motion to adopt the aforementioned amendments.*

3) *Move to pass third and final reading of the proposed Ordinance, as amended.*

*Action on this item should take place under Section VIII of the Agenda.*

2.3 **Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments.** At its meeting on March 17<sup>th</sup>, the City Council held a public hearing and second reading passed on the attached ordinance which includes a set of proposed amendments to the Zoning Ordinance that will be required if the Council votes to adopt the proposed Article 5A – Character Districts. These “conforming amendments” to other sections of the Zoning Ordinance would make the following changes:

- Add references to the new Character Districts in the listing of Zoning Districts (Sec. 10.410), the description of the Downtown Overlay District (Sec. 10.641.10) and the listing of Sign Districts (Sec. 10.1230);
- Incorporate into the Zoning Map, by reference, the Regulating Plan maps, along with two other maps that describe areas subject to special zoning regulations;
- Add a cross-reference in Article 15 to definitions in the new Article 5A.

The proposed “conforming amendments” also include several substantive changes to the off-street parking provisions of the Downtown Overlay District: parking setbacks from certain streets are reduced from 30 feet to 24 feet, the list of such streets is expanded, and the setback requirement is changed to apply only to above-ground parking areas (i.e., off-street parking in basement levels would not have to be set back from the street).

The Planning Board originally considered these proposed amendments in a public hearing on October 24, 2013, and a special meeting on October 31, 2013, and voted unanimously to recommend that these amendments be enacted. Following the public informational forum on January 29, 2014, the Planning Department drafted several additional amendments, and the Planning Board held another public hearing on the amended proposed ordinance on February 20, 2014. After closing the public hearing, the Planning Board voted unanimously to recommend that the revised amendments be enacted.

*I recommend the City Council move to pass third and final reading of the proposed Ordinance, as presented. Action on this item should take place under Section VIII of the Agenda.*



## ***Acceptance of Grants and Donations:***

1. **Acceptance of Asset Management Planning Grant from the New Hampshire Department of Environmental Services.** The City of Portsmouth Water Division has been awarded a grant from the New Hampshire Department of Environmental Services. The grant is a 50% match from the State up to \$15,000. The Water Division will use these funds to update the City's Water Division fixed assets inventory, analyze and rank the assets for their reasonable useful life, and to update its replacement and funding plan. This project is planned for action during FY 14 and is funded from Water Revenues.

*I recommend the City Council move to accept and expend an Asset Management Planning Grant from the New Hampshire Department of Environmental Services in an amount up to \$15,000. Action on this item should take place under Section VII of the Agenda.*

2. **Acceptance of Community Development Block Grant Funds.** The U.S. Department of Housing and Urban Development has informed the City that a Community Development Block Grant (CDBG) in the amount of \$507,379 will be made available to Portsmouth for FY 2014-2015. This amount represents a decrease of \$6,933 or 1.4% from last year. The Community Development Department, working in conjunction with the City's Citizens Advisory Committee, has held a series hearings and meetings over the last several months to solicit input and prioritize projects with regard to the expenditure of these funds. A public hearing will be held on a draft Annual Action Plan and Budget on April 17, 2014 at 6:30 p.m. in Conference Room A.

*I recommend the City Council move to accept and expend a Community Development Block Grant (CDBG) in the amount of \$507,379 from the U.S. Department of Housing and Urban Development. Action on this item should take place under Section VII of the Agenda.*

## ***Consent Agenda:***

1. **Requests for License to Install Projecting Signs.** Attached under Section IX of the Agenda are requests for three projecting sign licenses (see attached memorandums from Rick Taintor, Planning Director):

- Buff & File Nair Bar, owner Andrew Van Oss, for property located at 92 Pleasant Street.
- Studio on 90 Fleet, owners Susan, Calina & Paul Hood for property located at 90 Fleet Street.
- Federal Cigar, owner Richard Cyr, for property located at 36 Market Street.

*I would recommend the City Council move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director and, further, authorize the City Manager to execute the License Agreements for these requests. Action on this matter should take place under Section X of the Agenda.*

## ***City Manager's Items Which Require Action:***

1. **Request for First Reading for Proposed Amendment to Chapter 7, Article I of the Ordinances Re: Parking and Traffic Safety Committee.** Attached is a proposed Ordinance amending Chapter 7, Article I, Section 7.103 Parking and Traffic Safety Committee.

As you are aware, the Parking and Traffic Safety Committee recommended this proposed Ordinance amendment in their minutes of February 13, 2014, which the City Council accepted at their meeting of March 3, 2014. This amendment to the Ordinance adds one (1) alternate Committee Member appointed by the Mayor and City Council.

*I would recommend the City Council move to schedule first reading of the proposed Ordinance amendment, as presented, at the April 21, 2014 City Council meeting. Action on this matter should take place under Section IX of the Agenda.*

2. **Applications for Sidewalk Cafés providing Alcohol Service – City-owned Sidewalks.** As you are aware, in 2012, the City Council adopted City Council Policy 2012-02 titled “Policy Regarding Use of City Property for Sidewalk Café’s providing Alcohol Service”, a copy of which is attached. That policy allows Restaurants to apply for an Annual Service Agreement to occupy a defined portion of City sidewalk space for the purpose of creating a sidewalk café with the ability to serve alcohol. The policy outlines the criteria for both the application and the operations of the sidewalk café’s and calls for a 6 month term, typically running from mid April through mid October. The policy limits the number of sidewalk café’s on City owned sidewalks to six (6).

Last year five Area Service Agreements were issued for public Sidewalk occupancy. The establishments that were issued Agreements were:

<b>Establishment</b>	<b>Location</b>	<b>Area</b>	<b>Fee</b>
State Street Saloon	268 State Street	340	\$3,400
Ri Ra Portsmouth	22 Market Square	447	\$4,470
Popovers	8 Congress Street	570	\$5,700
District	103 Congress Street	467	\$4,670
Surf	99 Bow Street	324	\$3,240

This year, those same five have submitted applications for the 2014 season. City staff representatives from Police, Fire, Public Works, Building Inspection, Health, and Code Enforcement have reviewed these applications and the applications complete and recommend issuance of the Area Service Agreements in accordance with City Council Policy 2012-02.



The Council will recall that the fee for the use of the public “Area” subject to the Area Service Agreement is \$10.00 per square foot, with a minimum season’s fee of \$2,000 and no proration of the fee. The Agreements may be suspended at the sole discretion of the City on an administrative basis and revoked in their entirety by vote of the City Council. Hours of operation are until 10:30 p.m. Monday through Saturday and until 10:00 p.m. on Sunday, with no smoking allowed in the “Area” at any time. Use of the “Area” may be precluded, modified or made subject to special conditions to accommodate municipal events. The sidewalk café Area will be separated from the public pedestrian space by black decorative metal fence.

- a) **Application for Sidewalk Café providing Alcohol Service from Popovers on the Square.** I am bringing forward for City Council action the attached Area Service Agreement for Popovers on the Square for the 2014 season. City staff has reviewed Popovers’ application and are recommending its approval as presented. Please note that the “Area” to be used by Popovers, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(10) 4-top tables  
1 outside container full enclosed for garbage and recycling  
38 chairs  
Area: 570 square feet  
Area Service Fee: \$5,700

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.*

- b) **Application for Sidewalk Café providing Alcohol Service from Ri Ra.** I am bringing forward for City Council action the attached Area Service Agreement for Ri Ra for the 2014 season. City staff has reviewed Ri Ra’s application and are recommending its approval as presented. Please note that the “Area” to be used by Ri Ra, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(5) 4-top tables  
(4) 2-top tables  
28 chairs  
Area: 447 square feet  
Area Service Fee: \$4,470

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with Ri Ra for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.*

- c) **Application for Sidewalk Café providing Alcohol Service from State Street Saloon.** I am bringing forward for City Council action the attached Area Service Agreement for State Street Saloon for the 2014 season. City staff has reviewed State Street Saloon's application and are recommending its approval as presented. Please note that the "Area" to be used by State Street, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(5) 4-top tables  
(20) chairs  
Area: 340 square feet  
Area Service Fee: \$3,400

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.*

- d) **Application for Sidewalk Café providing Alcohol Service from Surf.** I am bringing forward for City Council action the attached Area Service Agreement for Surf for the 2014 season. City staff has reviewed Surf's application and are recommending its approval as presented. Please note that the "Area" to be used by Surf, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(2) 4-top tables  
(2) 2-top tables  
12 chairs  
Area: 324 square feet  
Area Service Fee: \$3,240

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with Surf for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.*

- e) **Application for Sidewalk Café providing Alcohol Service from The District.** I am bringing forward for City Council action the attached Area Service Agreement for The District located at 103 Congress Street for the 2014 season. City staff has reviewed The District's application and are recommending its approval as presented. Please note that the "Area" to be used by District, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(17) 2-top tables  
(34) chairs



Area: 467 square feet  
Area Service Fee: \$4,670

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with The District for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.*

3. **Applications for Sidewalk Cafés providing Alcohol Service private sidewalks.** The City has received two applications for sidewalk cafes that are proposed for private sidewalk that runs along Portwalk Place. While these proposed locations are completely contained on private property, they are adjacent to the sidewalk area that the City has an easement over. The operation of these areas will require review for health and life-safety compliance and it was therefore determined that the City should review and issue a license for the operation; and that the operation occurs on private property and not on City property as the other Sidewalk Café licenses, there is no associated fee with this action.

- a) **Application for Sidewalk Café providing Alcohol Service from British Beer Company.** I am bringing forward for City Council action the attached Area Service Agreement for British Beer Company located at 2 Portwalk Place for the 2014 season. City staff has reviewed British Beer Company's application and are recommending its approval as presented. Please note that the "Area" to be used by British Beer Company, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(3) 4-top tables  
(6) 2-top tables  
24 chairs  
Area: 882 square feet

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with British Beer Company for outdoor Alcohol service for the 2014 season subject to City operating conditions contained in Council Policy No. 2012-02.*

- b) **Application for Sidewalk Café providing Alcohol Service from The BRGR Bar.** I am bringing forward for City Council action the attached Area Service Agreement for The BRGR Bar located at 34 Portwalk Place for the 2014 season. City staff has reviewed The BRGR's application and are recommending its approval as presented. Please note that the "Area" to be used by BRGR, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

(8) 4-top tables  
(4) 2-top tables  
40 chairs

Area: 440 square feet

*I would recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with The BRGR Bar Company for outdoor Alcohol service for the 2014 season subject to City operating conditions contained in Council Policy No. 2012-02.*

4. **Utility and Sidewalk Easements at 129 Aldrich Road, 185 Cottage Street and 65-67 Mark Street.** Attached is a memorandum with exhibits from Suzanne Woodland, Assistant City Attorney, regarding the following easements that relate to three separate City projects:

- Drainage easement – 129 Aldrich Road
- Sidewalk easement – 185 Cottage Street
- Utility easement (sewer and drainage) – 65 Mark Street

The projects were completed by the Department of Public Works in 2013, and all three easements have been executed by the private property owners.

At its meeting on March 20, 2014, the Planning Board voted unanimously to recommend that the City Council approve the acquisition of the easements as proposed.

*Therefore, I recommend the City Council move to authorize the City Manager to accept the easements, as presented.*

5. **Establish a Work Session Re: Peirce Island Wastewater Treatment Facility.** As you are aware, City staff and our consultants are continuing with the design of the upgrades to the Peirce Island Wastewater Treatment Facility. In addition, work has continued on a number of issues associated with our wastewater discharge permit, water quality issues in the Great Bay Estuary and regional wastewater efforts. I am requesting the City Council establish a Work Session on Monday, April 14th at 7:00 p.m., in the Eileen Dondero Foley Council Chambers. The Work Session will be preceded by a non-meeting with counsel at 6:30 p.m., regarding negotiations in accordance with RSA 91-A:2, I (b-c).

*I recommend the City Council move to establish a Work Session on Monday, April 14, 2014 at 7:00 p.m., regarding the Peirce Island Wastewater Treatment Facility.*

### ***Informational Items:***

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on March 17, 2014. In addition, this can be found on the City's website.



2. **Information Memorandum from Robert Sullivan, City Attorney Re: Portwalk.** At the March 17<sup>th</sup> City Council meeting, Councilor Morgan requested that the informational memorandum from Robert Sullivan, City Attorney, be brought back to this evening's meeting, regarding Portwalk's land use regulatory issues at the Portwalk development site.
3. **Architectural Services Associated with Review of the Portwalk Project.** Attached is a memorandum from David Allen, Deputy City Manager, regarding the aforementioned matter.
4. **Pilot Program Re: Parking Shuttle.** Starting in May, the City will offer visitors another way to access the downtown by running a free shuttle service on Fridays and weekends from the parking lot at the Connect Community Church on Market Street to the bus stop adjacent to the High/Hanover Parking Facility (see attached map).

At the request of Portsmouth's City Council, acting on a recommendation to maximize existing available public parking infrastructure and increase access to public parking by the Blue Ribbon Committee on Transportation Policy, City staff began researching options for providing a shuttle that would facilitate quick and convenient passage from remote parking lots to the heart of Downtown.

As presented in staff's recommendation to the City Council in October 2013, this pilot program is to run during the summer season on weekends beginning May 2nd through August 31st. The anticipated times of operation are Fridays: 4:00 p.m. to 1:00 a.m.; Saturdays: 12 noon to 1:00 a.m. and Sundays: 12 noon to 10:00 p.m. Because this is a pilot program, we will be reviewing hours of operation as needed.

The City is awarding the contract for the parking shuttle service to TransAction Corporate Shuttles, Inc based out of Woburn, MA. TransAction has a history of successful shuttle operations for many regional clients, including New England Baptist Hospital and the Town of Acton, MA.

Waiting times for the shuttle are not to exceed 10 minutes, and the vendor must provide a means to notifying passengers of the time until the next shuttle arrives. To maximize utilization the vendor will include a marketing plan which will augment other City efforts to promote use of remote parking lot. The cost of the contract is \$37,124 plus marketing costs which will be funded through parking revenues.

5. **Proposed Additional Areas to Implement Character-Based Zoning (Form-Based Zoning).** As requested by the City Council, staff considered extending the form-based zoning study to additional areas around the periphery of the downtown. At that time, the Planning Department identified three potential areas for study, shown on the attached map and described as follows:
  1. The "Northern Tier" area between the railroad tracks and North Mill Pond, currently zoned Central Business A, containing about 15 acres and 15 existing parcels;

2. A small area on the opposite side of the Maplewood Avenue bridge, currently zoned Mixed Residence Office, containing about 3 acres and 16 parcels; and
3. A corridor along Islington Street with expanded areas at the north end (Hanover and Hill Streets) and the south end (Brewery Lane, Chevrolet Ave., Plaza 800 and the Button Factory area), with various Business, Mixed Residential and Residential zoning designations. This area encompasses about 73 acres and contains 140 parcels.

The Planning Department requested the City's current consultants for the Character-Based Zoning ordinance, Town Planning and Urban Design Collaborative (TPUDC), to submit a proposal for conducting the planning study and preparing form-based zoning standards for these three areas.

In order to allow for an efficient planning process and comprehensive outcome, TPUDC recommended that the public input process and work product for all three areas be conducted as one project. The project would be similar to the initial study, except that TPUDC would be completely responsible for survey work and would run a longer charrette, reflecting the broader scope of the expanded study. TPUDC has proposed to complete the planning and zoning services for these three areas for a fee of \$97,000 including expenses.

It would be appropriate to embark on a planning study of these additional areas once Character-Based Zoning is enacted in the initial downtown study area. Therefore, if the City Council passes third reading on the proposed zoning ordinance under Section of the Agenda, it is recommended that the City Council appropriate the funds necessary to implement Character-Based Zoning in the three areas identified above. This amount would include a contingency for local expenses and supplemental services that may be necessary. A specific recommendation will be presented at the April 21, 2014 City Council meeting.

6. **Report Back Re: Presentation from Cynthia Scarano, Executive Vice President, Pan Am Railways Re: Sea-3 Project.** I have contacted Cynthia Scarano, Executive Vice President of Pan Am Railways, regarding her attending a City Council meeting to discuss the proposed increase of rail traffic if the Sea-3 project is approved. She has indicated that she is not available for the regular City Council meeting in April, but she is available either on Monday, April 28, 2014, which is a non City Council meeting date or Monday, May 5, 2014, which is a regular City Council meeting.