

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, DECEMBER 21, 2015 TIME: 7:00PM

## AGENDA

- I. CALL TO ORDER (7:00PM)
- II. ROLL CALL
  
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PRESENTATION

- 1. Portsmouth Middle School Musical Performance
- 2. Presentation to Mayor and Outgoing City Councilors
- 3. Recognition of African Burying Ground Committee Members & Fundraising Volunteers
- 4. Community Advisory Board Haven Well Contamination Report

### PROCLAMATION

- 1. Pro Portsmouth 30<sup>th</sup> Anniversary

### V. ACCEPTANCE OF MINUTES – DECEMBER 7, 2015

### VI. PUBLIC COMMENT SESSION

### VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.201 –  
TRANSPORTATION SERVICES BY THE ADDITION OF THE FOLLOWING:  
TRANSPORTATION SERVICES MEANS THE PROVISION OF TRANSPORTATION  
BY A DRIVER TO A RIDER, BEGINNING WHEN A DRIVER ACCEPTS A RIDE  
REQUESTED BY A RIDER, CONTINUING WHILE THE DRIVER TRANSPORTS A  
REQUESTING RIDER, AND ENDING WHEN THE LAST REQUESTING RIDER  
DEPARTS FROM THE VEHICLE
- B. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.204 –  
BACKGROUND CHECK BY THE DELETION OF THE WORDS “OR MISDEMEANOR”  
IN ITEM C AND THE DELETION OF ITEM D IN ITS ENTIRETY
- C. ORDINANCE AMEDNING CHAPTER 7, ARTICLE II, SECTION 7.211 – SIGNAGE BY  
THE ADDITION OF THE WORD “WHICH” IN ITEM A AND THE DELETION OF “FULL  
TEXT OF” IN ITEM B REPLACED WITH “FARE INFORMATION REQUIRED BY”

## VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation Prescott Park Arts Festival Re: City's 3D Computer Model - \$1,000.00 (**Sample motion – move to accept and approve the donation of \$1,000.00 from the Prescott Park Arts Festival for the expansion of the City's 3D computer model**)
- B. Grant Agreement with the New Hampshire Public Utilities Commission - \$450,000.00 (**Sample motion – move to refer to the City Manager with power**)

## IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 7, Article II, Section 7.201 – Transportation Services by the addition of the following: Transportation Services means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle
- B. Second reading of Ordinance amending Chapter 7, Article II, Section 7.204 – Background Check by the deletion of the words “or misdemeanor” in Item C and the deletion of Item D in its entirety
- C. Second reading of Ordinance amending Chapter 7, Article II, Section 7.211 – Signage by the addition of the word “which” in Item A and the deletion of “full text of” in Item B replaced with “fare information required by”
- D. Third and Final Reading amending Zoning Ordinance so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB)
- E. Third and Final Reading amending Zoning Ordinance - Chapter 10, Section 10.1530 – Term of General Applicability, amend the definitions of “hotel” and “motels as follows – shall not include casino gambling, keno or games of chance

## X. CONSENT AGENDA

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

- A. Letter from Kelly Bosco, Alzheimer's Association, requesting permission to hold the 2016 Seacoast Walk to End Alzheimer's on Sunday, September 25, 2016 (**Anticipated action – move to refer to the City Manager with power**)
- B. Requests for License to Install Projecting Signs:
  - NBT Bank N.A., owner of NBT Bank, for property located at 100 Market Street
  - William Bixby, owner of Ganesh Imports, for property located at 57 Market Street(**Anticipated action – 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**)

**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***
- C. Letter from Todd Hanson, St. Paddy's 5 Miler, requesting permission to hold the 6<sup>th</sup> Annual Road Race on Sunday, April 3, 2016 at the Pease Tradeport (***Anticipated action – move to refer to the City Manager with power***)
- D. Request for Approval of Conduit License Agreement #1501 for the installation of 35 feet of 1-4" conduit and underground fiber cable on Borthwick Avenue (***Anticipated action – move to approve the aforementioned Conduit 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 and further that all stipulations be met as outlined in the memorandum to the City Manager dated December 16, 2015***)

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

- A. Letter from Attorney Doug Macdonald regarding Restoration of Separate Lots located at 268 & 276 Dennett Street (***Sample motion – move to refer to the Planning Board for report back***)
- B. Letter from Frank S. Warchol, Deputy Police Chief (Acting); regarding proposed amendments to the Transportation Services Ordinance (***Sample motion – move to accept and place on file***)
- C. Memorandum from Peter Bresciano, Chair of Transportation Service Commission regarding proposed amendments to the Transportation Services Ordinance (***Sample motion – move to accept and place on file***)

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

**A. CITY MANAGER**

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

*(There are no action items under this section of the agenda)*

**Informational items**

1. Events Listing
2. 65 Mendum Avenue – Zoning Board of Adjustment Reversal of City Council Approval to "Unmerge" Lots

## **B. MAYOR LISTER**

1. Appointments to be Voted:
  - Appointment of Dexter Legg to the Planning Board effective January 1, 2016
  - Appointment of Jim Lee as an alternate to the Zoning Board of Adjustment
  - Appointment of Jeremiah Johnson as a regular member to the Zoning Board of Adjustment
2. \*Report Back Re: Corey MacDonald Severance Agreement

## **C. ASSISTANT MAYOR SPLAINE**

1. Process for Creating A “ Board of Ethics”
2. Transportation Service Commission – Informational Item

## **D. COUNCILORS SHAHEEN, LOWN, SPEAR**

1. Update on McIntyre Federal Building

## **E. COUNCILOR DWYER**

1. Working Group Report for Prescott Park

## **F. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the December 3, 2015 meeting (***Sample motion – move to approve and accept the Action Sheet and Minutes of the December 3, 2015 Parking & Traffic Safety Committee meeting***)

## **XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

## **XIV. ADJOURNMENT**

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

*\*Indicates Verbal Report*

## **INFORMATIONAL ITEMS**

1. Notification that the minutes of the November 4, 2015 and November 18, 2015 meetings of the Historic District Commission are now available on the City’s website
2. Notification that the minutes of the December 1, 2015 Site Review Technical Advisory Committee meeting are now available on the City’s website


**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:** December 17, 2015

**To:** Honorable Mayor Robert J. Lister and City Council Members

**From:** John P. Bohenko, City Manager 

**Re:** City Manager's Comments on December 21, 2015 City Council Agenda

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***Presentation:***

1. **Portsmouth Middle School Musical Performance.** The Portsmouth Middle School band and vocalists will perform at Monday evening's meeting.
2. **Presentation to Mayor and Outgoing City Councilors.** On Monday evening, Mayor Robert J. Lister; Councilor Stefany Shaheen; Councilor Esther Kennedy; Councilor Zelita Morgan; and Councilor Jack Thorsen will be presented with chairs for their years of service to the City and its residents as members of the City Council.
3. **Recognition of African Burying Ground Committee Members and Fundraising Volunteers.** Mayor Robert Lister will recognize the African Burying Ground Committee Members and Fundraising Volunteers on Monday evening for their commitment and accomplishments in 2015 regarding the completion of the African Burying Ground and Memorial Park.
4. **Community Advisory Board Haven Well Contamination Report.** On Monday evening, Rich DiPentima, Chair of the Community Advisory Board Haven Well Contamination will give a report to the City Council regarding this matter. [Attached is the report.](#)

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

1. **Acceptance of Donation from Prescott Park Arts Festival Re: City's 3D Computer Model.** The City has received a check in the amount of \$1,000 from the Prescott Park Arts Festival to go towards the expansion of the City's 3D computer model to include Prescott Park.

As you will recall, on December 7, 2015 the City Council voted to authorize the City Manager to enter into a grant agreement and accept and expend funds from the New Hampshire Division of Historical Resources for the purpose of performing a detailed review of Historic properties and their vulnerability to climate change. The grant will also fund the development of a mitigation plan which will include adaptive strategies for the protection of City Resources.

Part of the City's match on that project will be the expansion of the 3D computer model to include the area between the Memorial Bridge and the Mechanic Street/Gate Street, which includes Prescott Park. The cost of the 3D model expansion for this area is \$4,305. The Prescott Park Arts Festival has contributed \$1,000 towards this modeling effort in recognition of the benefit they will derive from the model as they move forward with the planning for potential stage and support structure improvements.

*I recommend the City Council move to accept and approve the donation of \$1,000 from the Prescott Park Arts Festival the expansion of the City's 3D computer model. Action on this matter should take place under Section VIII of the Agenda.*

2. **Grant Agreement with the New Hampshire Public Utilities Commission.** The City has been notified that we are eligible to receive up to \$450,000 from the New Hampshire Public Utilities Commission. The funding would be to install and operate two solar photovoltaic systems comprised of:

- 1) 265 kilowatt roof mounted solar system at Portsmouth High School and,
- 2) 330 kilowatt ground mounted system at the Madbury Water Treatment Plant in Madbury, NH

This funding will pay for a portion of the project. The balance of the funding to install the systems described will require approximately an additional \$1,292,392 which will be repaid through a power purchase agreement that is being drafted by SunRaise Investment and coordinated by the City's approved energy performance contractor Energy Efficient Investments Incorporated, or EEI. A power purchase agreement is a contract the City enters into with an energy contractor, where the City agrees to purchase the power generated by the solar panels at an agreed upon rate. The contract being considered would require the solar panels to be installed and made operational by the solar provider and the City would agree to pay only for the power it used at a negotiated rate. Currently, we are looking at a rate that would always remain (5) five percent below the rate we pay to our electrical provider. Additionally, the City would not be required to perform any maintenance or repairs on the system. After a period of (6) six years, the City can either A) Purchase the system at Fair Market Value or B) continue to purchase the energy through the existing PPA.

*I recommend the City Council move to refer this matter to the City Manager with power. Action on this matter should take place under Section VIII of the Agenda.*

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

### **1. Public Hearing/Second Reading of Proposed Ordinances.**

- 1.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 7, Article II, Section 7.201: Transportation Services Ordinance.** As a result of the December 7<sup>th</sup> City Council meeting, [attached under Section VII of the Agenda, I am bringing back for public hearing and second reading a proposed Ordinance amending Chapter 7, Article II – Taxicabs, Section 7.201: Transportation Services](#) as follows:

#### Section 7.201: **TRANSPORTATION SERVICES**

This ordinance serves to regulate transportation services within the City of Portsmouth, whether described as taxi cab service, ride sharing services or any other conduct in which a motor vehicle is used for the transportation of passengers for hire, the destination and route of which are under the direction and control of the passenger and which transportation has its point of origin within the City.

**Transportation Services means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle.**

The definition of Transportation Services shall not include limousine services, which provide designated luxury or specialty vehicles by prior appointment for discrete functions or transportation to locations outside the City or the reverse.

*Action is required by City Council regarding this matter. (If City Council chooses to take up third and final reading, suspension of the rules will be required.)*

*Action on this matter should take place under Section IX of the Agenda.*

- 1.2 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 7, Article II – Transportation Services, Section 7.204 – Background Check.** As a result of the December 7<sup>th</sup> City Council meeting, [attached under Section VII of the Agenda, I am bringing back for public hearing and second reading a proposed Ordinance amending Chapter 7, Article II – Transportation Services, Section 7.204 – Background Check](#) as follows:

#### Section 7.204: **BACKGROUND CHECK**

Every Transportation Service Provider shall provide the City Clerk with certification of the Chief of the Portsmouth Police Department that all operators of vehicles used under the authority of or in any way in conjunction with the

Transportation Services Provider have passed a background check confirming, at a minimum, compliance with the following criteria:

- A. The individual does not have three (3) or more convictions for moving violations, in this or any other state, in the three (3) full years prior to the date of the certification.
- B. The privilege of the individual to operate a motor vehicle has been revoked and/or suspended at any time, in this or any other state, in the three (3) full years prior to the date of the certification, for any reason related to the operation of a motor vehicle.
- C. The individual has not been convicted of a felony ~~or misdemeanor~~, in this or any other state, in the seven (7) full years prior to the date of the certification.
- ~~D. The individual has not been convicted of a felony involving a controlled substance or violence, in this or any other state, in the fifteen (15) full years prior to the date of the certification.~~

*Action is required by City Council regarding this matter. (If City Council chooses to take up third and final reading, suspension of the rules will be required.)*

*Action on this matter should take place under Section IX of the Agenda.*

- 1.3 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 7, Article II – Transportation Services, Section 7.211: Signage.** As a result of the December 7<sup>th</sup> City Council meeting, [attached under Section VII of the Agenda, I am bringing back for public hearing and second reading a proposed Ordinance amending Chapter 7, Article II – Transportation Services, Section 7.211: signage as follows:](#)

Section 7.209: **FARE REGULATION**

There shall be no regulation of fares. However, prior to the initiation of any Transportation Service being provided to any individual, the operator of the Transportation Service vehicle shall tell the passenger engaging such services, verbally or electronically, the amount which will be paid by the passenger to the operator for the Transportation Service.

Any disputes which may arise with regard to the fare for any Transportation Service may be brought to the Transportation Service Commission for resolution. Any determination made by the Transportation Service Commission shall be final and binding on all parties.



Section 7.211: **SIGNAGE**

All vehicles engaged in the provision of Transportation Services shall at all times display prominently:

- A. A Placard approved in size, form and content by the City Clerk identifying the Transportation Service Provider **which** shall be plainly visible from the exterior of the vehicle.
- B. A notice providing passengers with the **full text of fare information required by** Section 7.209 of this ordinance.

*Action is required by City Council regarding this matter. (If City Council chooses to take up third and final reading, suspension of the rules will be required.)*

*Action on this matter should take place under Section IX of the Agenda.*

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

- 2.1 **Third and Final Reading Amending Zoning Ordinance so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB).** As a result of the December 7<sup>th</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed amendment to the Zoning Ordinance](#) so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB).

[Attached is a letter from Peter G. Weeks, PGW Real Estate Consulting](#), on behalf of 955 Sagamore Realty Trust, dated December 2, 2015, describing the rezoning request and the proposed subdivision of the site.

The Planning Board has reviewed both this rezoning request and an application for subdivision approval to create a new lot corresponding to the area proposed for SRB zoning. On October 15, 2015, the Planning Board voted to recommend as follows:

Vote to recommend that the City Council amend the Zoning Map by rezoning from Waterfront Business (WB) to Single Residence B (SRB) the land shown as Lot 2 on a plan titled “Subdivision Plan – Tax Map 201 – Lot 1 – Applicant: William L. Pingree – Owner: 955 Sagamore Realty Trust – 955 Sagamore Avenue, City of Portsmouth, County of Rockingham, State of New Hampshire,” revised 10/9/15, containing 24,000 s.f.; provided that the rezoning shall take effect no earlier than the date on which the subdivision plat approved by the Planning Board is recorded at the Registry of Deeds.

On November 19, 2015, the Planning Board granted final approval for a revised subdivision plan dated November 6, 2015. At its meeting on November 16, 2015, the City Council voted to amend the area of the proposed rezoning to conform to the lot dimensions and area shown on the November 6 plan, and on December 7, 2015, the Council passed second reading on this rezoning proposal with the stipulation recommended by the Planning

*I recommend the City Council move to pass third and final reading of the proposed Ordinance, as presented:*

*Vote to amend the Zoning Map by rezoning from Waterfront Business (WB) to Single Residence B (SRB) the land shown as Lot 2 on a plan titled "Subdivision Plan – Tax Map 201 – Lot 1 – Applicant: William L. Pingree – Owner: 955 Sagamore Realty Trust – 955 Sagamore Avenue, City of Portsmouth, County of Rockingham, State of New Hampshire," revised 11/6/15, containing 25,698 s.f. This amendment shall take effect on the date on which the subdivision plat approved by the Planning Board is recorded at the Registry of Deeds.*

*Action on this matter should take place under Section IX of the Agenda.*

- 2.2 **Third and Final Reading of proposed Ordinance Amending Chapter 10 – Zoning Ordinance, Section 10.1530, Terms of General Applicability, Definitions of Hotel and Motel.** As a result of the December 7<sup>th</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed Ordinance](#) amending Chapter 10 – Zoning Ordinance, Section 10.1530, Terms of General Applicability, Definitions of Hotel and Motel. At its meeting on September 8, 2015, the City Council considered the [attached letter from Gerald Zelin](#) proposing to amend the Zoning Ordinance to prohibit gambling at hotels and motels, and voted to refer the proposal to the Planning Board for a report back.

The Planning Board considered this matter at its meeting on October 15, 2015, and voted to recommend that the City Council amend the definitions of “hotel” and “motel” in Section 10.1530 of the Zoning Ordinance by inserting the phrase “but shall not include casino gambling, keno or other games of chance” in each definition following the words “recreational facilities,” so that the sentence reads as follows:

Such activities may include, where allowed, such accessory uses as restaurants, bars, taverns, nightclubs, function rooms, places of public assembly or recreational facilities, but shall not include casino gambling, keno or other games of chance.

At the December 7<sup>th</sup> meeting, the City Council voted to amend the proposed ordinance by changing the words “games of chance” to “forms of gambling,” and voted to pass second reading on the ordinance as amended.”

*I recommend the City Council move to pass third reading of the proposed Zoning Ordinance amendment, as presented. Action on this matter should take place under Section IX of the Agenda.*

### **Consent Agenda:**

1. **Request for License to Install Projecting Signs.** Attached under Section X of the Agenda is a request for projecting sign licenses (see attached memorandums from Rick Taintor, Planning Director):

- NBT Bank N.A., owner of NBT Bank for property located at 100 Market Street
- Ganesh Imports, owner William Bixby for property located at 57 Market Street

*I 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 this License Agreements for these requests. Action on this item should take place under Section X of the Agenda.*

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

*There are no items under this Section of the Agenda.*

### **Informational Items:**

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on December 7, 2015. In addition, this can be found on the City’s website.
2. **65 Mendum Avenue – Zoning Board of Adjustment Reversal of City Council Approval to “Unmerge” Lots.** For your information, attached is a memorandum from City Attorney Robert Sullivan, regarding the Zoning Board of Adjustment reversal of City Council approval to “unmerge lots” at 65 Mendum Avenue.