

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, JULY 11, 2016 TIME: 6:00PM

## AGENDA

- 6:00PM – NON-PUBLIC SESSION RE: PERSONNEL MATTERS – RSA 91-A:3,II (a) & AN ANTICIPATED “NON-MEETING WITH COUNSEL RE: COLLECTIVE BARGAINING NEGOTIATIONS - RSA 91-A:2,I (b)

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PRESENTATION

1. Senior Services Update – Brinn Chute, Senior Services Coordinator

### V. ACCEPTANCE OF MINUTES – JUNE 6, 2016 AND JUNE 20, 2016

### VI. PUBLIC COMMENT SESSION

### VII. PUBLIC HEARINGS

- A. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF UP TO SIX MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$6,850,000.00) FOR COSTS RELATED TO FISCAL YEAR 2017 CITYWIDE STREET, SIDEWALK AND FACILITY IMPROVEMENTS
- B. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000.00) RELATED TO WATER LINE REPLACEMENTS, WATER SYSTEM PRESSURE AND STORAGE IMPROVEMENTS
- C. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00) FOR COSTS RELATED TO SEWER LINE REPLACEMENTS, PUMPING STATION UPGRADES AND GOOSE BAY DRIVE SEWER LINE

### VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Emergency Management Performance Grant Agreement (***Sample motion – move to accept the Emergency Management Performance Grant Agreement Terms, as presented***)

## IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Annual Omnibus Ordinance Change, Parking and Traffic
- B. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000.00) for Costs related to Fiscal Year 2017 Citywide Street, Sidewalk and Facility Improvements
- C. Adoption of Resolution Authorizing a Bond Issues and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) related to Water Line Replacements, Water System Pressure and Storage Improvements
- D. Adoption of Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Three Million Four Hundred Thousand Dollars (\$3,400,000.00) for Costs related to Sewer Line Replacements, Pumping Station Upgrades and Goose Bay Drive Sewer Line
- E. Third and final reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance - West End Zoning

## X. CONSENT AGENDA

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

- A. Letter from Emily Christian, National Multiple Sclerosis Society, requesting permission to hold the 2016 Bike MS NH Seacoast Escape on Saturday, August 27, 2016 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Jenelle Dolan, March of Dimes, requesting permission to hold the 2017 Seacoast March for Babies in Portsmouth on May 6, 2017 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Abigail Wiggin, Portsmouth Halloween Parade, requesting permission to hold the 22<sup>nd</sup> Annual parade on Monday, October 31, 2016 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Baying - Petition and License for Underground Cable and Conduit Location on Ladd Street ***(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)***

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

- A. Letter from Lafayette Place, Tenants in Common, requesting to initiate the process of transferring ownership of the service road adjacent to facility at 1900 Lafayette Road to the City of Portsmouth ***(Sample motion – move to refer to the Public Works Department for report back)***

## XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

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

1. McIntyre Property
2. Proposed Use of Tax Increment Financing Redevelopment of the McIntyre Area
3. Peirce Island Wastewater Treatment Facility Re: Barging Bid Alternate
4. 165 Deer Street Re: Ratification of Purchase & Sales Agreement

#### Informational items

1. Events Listing
2. Seacoast Public Health Network
3. Report Back Re: Bicycles in City Parks
4. Report Back Re: Veterans of Foreign Wars Location

### B. MAYOR BLALOCK

1. \*Appointments to be Voted:
  - Reappointment of Joseph Almeida to the Historic District Commission
  - Appointment of Jim Lee to the Zoning Board of Adjustment as a regular member
  - Appointment of John Formella to the Zoning Board of Adjustment as an alternate member
2. Resignation of Bob Cook from the Sustainable Practice Blue Ribbon Committee

### C. COUNCILOR PERKINS

1. Housing Committee: Mid-Point Update

### D. COUNCILOR SPEAR

1. \*City Manager's Evaluation

### E. COUNCILOR CYR

1. \*Transportation Services Ordinance

### F. COUNCILOR DENTON

1. \*Great Bog Dog Off-Leash Area (***Sample motion – move to have the City Manager report back on what would be required to make improvements to the Great Bog Dog Off-Leash Area or open a different Dog Off-Leash Area prior to the Peirce Island Dog Off-Leash Area temporarily closing for the Peirce Island Wastewater Treatment Plant upgrades***)

**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 May 19, 2016 meeting of the Planning Board 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.*



# Senior Services Department

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Update: July 2016



## Senior Services To Date:

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- 3.5 years: Hired Senior Services position
- 2 years: Operating Senior Activity Center at Community Campus. Open Mon-Fri 9:00am-3:00pm
- Monthly newsletter focusing on senior activities and resources
- 20 weekly activities; 25 monthly; 40+ in FY16
- Work in partnership with area agencies to collectively impact the aging community
  - For example: Falls Prevention Initiative



## Senior Services Snapshot:

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- 620 “members”
- Average age 74
- 75% female
- SAC Average daily attendance: 27
- Currently offer 8 fitness classes (led by volunteers)
- Onsite & offsite activities



## Senior Services Snapshot cont'd:

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- Volunteer Hours in 2015: 788 (15 volunteers)
- 2,500 newsletter distributed each month including piles, mailing and email
- 35 Free Transportation punch-passes to date
- Thanksgiving Lunch attendance in 2015 (1<sup>st</sup> annual): 150
- Annual Cookout 2015: 105
- Senior Wellness Fair: 400



## Vision:

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- ❑ **Per Senior Subcommittee in 2015:**  
Creation of a vibrant hub for a 50+ activity center focusing on the promotion of healthy aging.



# Multi-Phase Approach:

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- The Blue Ribbon Senior Committee report continues to be used as a guiding document which recommended that the reuse of the Doble property be a 50+ activity center and, as a long term goal, create a multigenerational community center to serve all age groups.
- **Phase 1:** The first priority is to make the space suitable for a modern 50+ activity center, both indoors and out.
- **Phase 2:** Asses the usage and leverage the needs of the community; maximize the space. If there are needs of the community that can be met in the off hours of senior usage then we can maximize the asset for the community.
- **Phase 3:** Long term plans for this facility are to build onto the building with more activity rooms and a gym with an above walking loop.



# Why More Space?

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- 2 rooms is not enough.
  - 1 Drop in Lounge
  - 1 Activity Room
- Use other space in Community Campus to meet growing needs.
  - ✓ Gym for special luncheons, events and weekly walking
  - ✓ Community & Media Room for monthly lunches
  - ✓ Craft Room for classes/lectures
  - ✓ New Heights Game Room for ping pong & pool
  - ✓ Outdoor garden area
  - ✓ Onsite Café
  - ✓ Walking Trails



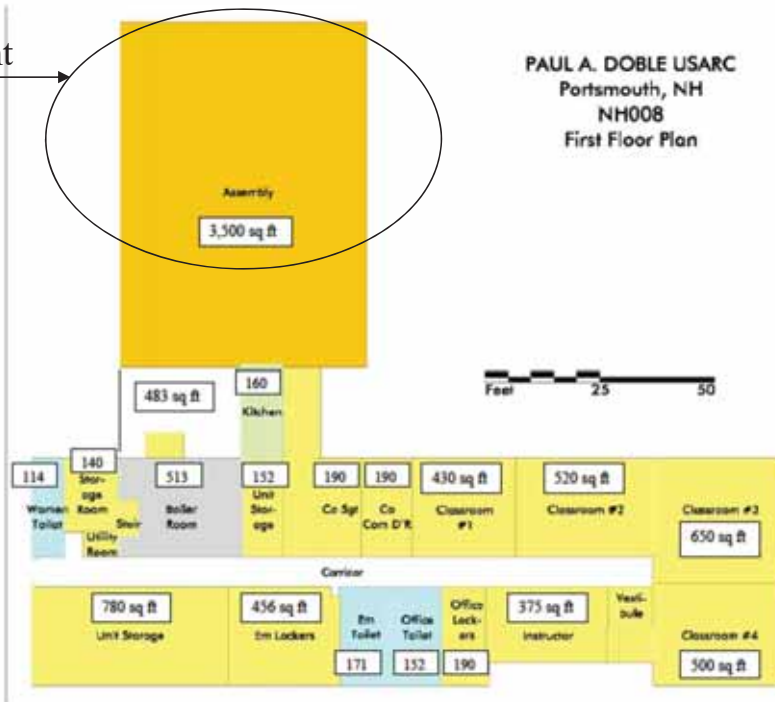
## Usage:

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- Current space 2,400 Sq Ft with shared parking, shared additional space, no dedicated outdoor space
- Doble offers 14,000 Sq Ft with dedicated parking, outdoor space, and room to grow

# Doble Floor Plan:

2,400 Sq Ft (current space can fit in the Assembly hall)





## Future Usage of Doble:

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- Senior Subcommittee's recommended vision for the Doble property:
- Assembly Room (3,500 SqFt):
  - Daily meal, monthly luncheons, event space, dividable to make additional rooms, stage, fitness area.
- Class Rooms 3 & 4 (1,150 SqFt):
  - Keep dividable, create a levenson-esque room with high tech a/v, movies, mediation, ukulele, lectures, yoga



## Future Usage Cont'd:

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- Class Rooms 1 & 2 (950 SqFt):
  - Dividable room; drop in lounge, piano, game area, book clubs
- Other rooms:
  - Staff offices, fitness rooms, art room, swap shop, conference rooms, partner office space
- Kitchen:
  - Meals on Wheels – potential partner for daily congregate meal



# What's in a Name?

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## **Naming of the Center:**

- The senior subcommittee agrees that the future senior/community center will require more thought. As senior centers have modernized so have their names. Suggestions include 50+ Activity Center, Senior Community Center, Active Adult Center, Community Center, Cottage Street Center, Center for the Ages, etc.
- It was suggested that perhaps the naming of the center can be generated through a community conversation or contest.





# Age Friendly Community

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## **Collective Impact:**

- New Hampshire is working towards building communities where the culture, policies and services support our elders and their families by providing choices that advance health and independence. The Portsmouth community is lucky to have a variety of services and activities that are attractive for the aging population.
- However, what the senior center provides is a dedicated space and staff working to provide the best level of service possible for the seniors of this community. The senior services department strives to work collectively with community agencies, businesses and providers to move issues related to seniors and aging forward in a positive direction.



# Conclusion

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- The City's Senior Services is continuing to serve a growing number of seniors in a variety of capacities.
- The Senior Activity Center is the central core to serving seniors and the conduit to connect the dots for an age-friendly community.
- A larger senior center is critical to Portsmouth successfully serving the senior population.
- A senior center is the first priority. However, with the management of the space in off-hours, the building could be used for the community at large. The connection between seniors and the community is a purposeful goal of the senior services.

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, JUNE 6, 2016

PORTSMOUTH, NH  
TIME: 7:00PM

At 6:00 p.m., An Anticipated "Non-Meeting" with Counsel was held regarding Land Acquisition and Collective Bargaining.

### **I. CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:40 p.m.

### **II. ROLL CALL**

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

### **III. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silent prayer.

### **IV. PLEDGE OF ALLEGIANCE**

Councilor Lown led in the Pledge of Allegiance to the Flag.

### **PRESENTATIONS**

1. Portsmouth Symphony – Beethoven Ninth – Dorothy Braker, Cellist  
Dr. Rick Miller, John Page and Priscilla French will be making the Presentation

Dorothy Braker, Cellist performed for the City Council. Dr. Rick Miller made a presentation regarding the Portsmouth Symphony. He spoke to their performance scheduled for March 18, - 19, 2017, of the Beethoven Ninth Symphony at Portsmouth High School Auditorium. He requested that the City consider donating funds for the event.

2. State of the Arts Presentation – Art-Speak – Mike Teixeira, President

Mike Teixeira, President of Art-Speak provided a presentation on the State of the Arts. He addressed the community successes. He reported that there are over 500 artists that work in the City. He spoke to a lack in funding, grants and affordable creative work space. Mr. Teixeira addressed major challenges and the need to work together to channel part of the \$41 million that comes to the community through arts and culture to have some of that go back into the arts and culture.

**Assistant Mayor Splaine moved to authorize the City Manager to extend the Agreement from July 1, 2016 through June 30, 2017. Seconded by Councilor Spear and voted. Councilor Pearson recused from voting on this matter as she is a member of Art-Speak.**

## **V. ACCEPTANCE OF MINUTES – MAY 11, 2016 & MAY 16, 2016**

**Councilor Spear moved to approve and accept the minutes of the May 11, 2016 and May 16, 2016 City Council meetings. Seconded by Councilor Lown and voted.**

## **VI. PUBLIC COMMENT SESSION**

Roy Hessel said there are a large number of ugly and big buildings in the City and that needs to stop. He also addressed the wastewater treatment plant and the lawsuit that was filed because people do not want a toilet in their back yard.

Todd Sweet – spoke on the expansion of Lady Pickwick's and the number of these businesses along State Street. He also spoke to the owner of Lady Pickwick's naming the State Street area as the Bridge District and finds that offensive.

Erik Anderson thanked City Manager Bohenko, City Council and Finance Director Belanger for their work on the budget. He also thanked Finance Director Belanger for providing additional information he was seeking regarding the budget. He spoke to the need to further reduce the budget. He suggested using undesignated fund balance being used to offset the budget. Mr. Anderson also spoke to the number of studies being done in the City and the need to reduce the amount of money being spent on outside legal counsel.

Rick Becksted spoke on the Portsmouth Housing Committee meeting held today and how there was no public comment session as part of the meeting. He said he would like the committee to look at pros and cons regarding the demand on our services and requested we institute impact fees.

Mark Brighton said there was one City Council or that said they would not pass a budget higher than the CPI and he is waiting to see how that Councilor will vote. He also said the wastewater treatment plant at Peirce Island is a disaster waiting to happen.

## **VII. PUBLIC HEARING**

- A. CHAPTER 10 – ZONING ORDINANCE – ARTICLE 4 – ZONING DISTRICTS AND USE REGULATIONS, SECTION 10.410 – ESTABLISHMENT AND PURPOSE OF DISTRICTS, TRANSPORTATION CORRIDOR – TO PROVIDE FOR FUTURE TRANSPORTATION USES AND RELATED FACILITIES

Planning Director Taintor provided a presentation on the ordinance. He spoke to the need to preserve the rail lines whether they are active or inactive for transportation uses now and in the future.

Mayor Blalock read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Blalock declared the public hearing closed.

## VIII. ADOPTION OF PROPOSED BUDGET RESOLUTION

- Resolution No. 7-2016 – Municipal Fees

City Manager Bohenko reported that fees make up 1% of the general fund revenues.

Councilor Lown said the Fee Committee listens to the department heads on these matters and the goal is to try and have fair fees that do not become a tax.

Councilor Dwyer said Portsmouth charges a lot of fees and there is a booklet outlining the various fees.

**Councilor Spear moved to adopt Resolution #7-2016 – Municipal Fees. Seconded by Councilor Lown and voted.**

- Resolution No. 8-2016 – General Fund Expenditures

City Manager Bohenko reported that additional monies were taken from the undesignated fund balance to lower the tax rate by an additional six cents which represents 1.5% over last fiscal year. He also stated that the budget is in line with the request of the Joint Budget Committee.

**Councilor Spear moved to adopt Resolution #8-2016 – General Fund Expenditures. Seconded by Councilor Pearson.**

**Councilor Spear moved to amend the motion to add \$50,000.00 to the Non-Operating Contingency Line Item for the purposes of hiring an independent consultant to work with the Fire Department Efficiencies Study Group. Seconded by Councilor Lown.**

Councilor Spear said that this is an opportunity to follow the good example of the Police Commission to have some fresh eyes to look at efficiencies and the creation of new ideas. He said the City Council could set aside the \$50,000.00 and discuss whether we do the study this year.

City Manager Bohenko said that the funds would be added to the Non-Operating Budget through the Contingency line item.

Assistant Mayor Splaine said he is opposed to having another study. He said if we want a study about efficiencies we have ways to do this on a volunteer basis and then we do not spend \$50,000.00.

Councilor Lown said he supports the motion to just set aside the funds. He said Assistant Mayor Splaine is saying that we do not need outside help and he does not feel that any real change can be made from within.

Councilor Dwyer said the value of an outside look is that it engages the people that work day to day and bring forward innovations. She said the review would engage outside public, commissioners and firefighters.

Councilor Denton said he would like to have an opinion from the Fire Commission when the Council goes to vote on a study.

Councilor Perkins said she supports the motion because this is an ongoing issue and could benefit from a third party.

Fire Chief Achilles spoke regarding the Committee review from a couple of years ago. He said if you are not satisfied with the self assessment and do have a third party come in it would not be of value for the Fire Department. He said the self assessment was valuable and if there are any specific questions please bring those forward. He further stated they have looked at multiple ways that improvements have been made.

Assistant Mayor Splaine said it is convenient to say we are not voting on a study but this is how things get started.

Mayor Blalock said he would not support the amendment and is not in favor of another study. He said he is pleased with the way the Fire Department operates.

Councilor Dwyer said when the idea for a study came up before Fire Chief Achilles and the Fire Department supported it and when the funds were not approved by the City Council they did the self assessment and took on doing a part of the study.

**On a roll call vote 4-5, motion to add \$50,000.00 to the Non-Operating Contingency Line Item for the purposes of hiring an independent consultant to work with the Fire Department Efficiencies Study Group failed to pass. Councilors Perkins, Dwyer, Lown and Spear voted in favor. Assistant Mayor Splaine, Councilors Pearson, Cyr, Denton and Mayor Blalock voted opposed.**

**Councilor Lown moved to amend by reducing \$26,171.15 from the Police Department Budget. Seconded by Councilor Spear.**

Councilor Lown said the \$26,171.15 is 5% of the department's overtime line item. He said we have no control over the overtime costs and they are driven by contractual issues.

Councilor Dwyer said she would not support the retirement costs.

**On a roll call vote 2-7, motion to reduce \$26,171.15 from the Police Department Budget failed to pass. Councilors Lown and Spear voted in favor. Assistant Mayor Splaine, Councilors Perkins, Dwyer, Pearson, Cyr, Denton and Mayor Blalock voted opposed.**

**Councilor Lown moved to amend by reducing \$32,800.00 from the Fire Department Budget. Seconded by Councilor Spear.**

**On a roll call vote 2-7, motion to reduce \$32,800.00 from the Fire Department Budget failed to pass. Councilors Lown and Spear voted in favor. Assistant Mayor Splaine, Councilors Perkins, Dwyer, Pearson, Cyr, Denton and Mayor Blalock voted opposed.**

Councilor Denton said for the record he takes ownership of the budget.

**Main motion passed. The FY17 Budget as adopted is \$104,947,043.00**

<b>Department</b>	<b>Appropriation</b>
General Government	\$18,068,670.00
Police	\$9,936,918.00
Fire	\$8,230,100.00
School	\$44,684,084.00
Collective Bargaining	\$432,502.00
Transfer to Indoor Pool	\$150,000.00
Non-Operating	\$23,444,769.00
<b>Total</b>	<b>\$104,947,043.00</b>

- Resolution No. 9-2016 – Sewer Fund Expenditures

**Councilor Spear moved to adopt Resolution #9-2016 – Sewer Fund Expenditures. Seconded by Councilor Lown and voted.**

- *Appropriated sum of \$10,298,740.00 to defray expenses for the operation of the sewer system.*
- *Cash requirements of \$16,170,454.00 to defray expenses for the operations of the sewer system.*
- *Sewer user rate effective July 1, 2016 is \$12.24 per unit and \$13.47 per 10 units of consumption per month, and \$13.47 per unit for all units used thereafter to yield a portion of revenue to meet the cash requirements for the operation of the City of Portsmouth's sewer system.*

- Resolution No. 10-2016 – Water Fund Expenditures

**Councilor Spear moved to adopt Resolution #10-2016 – Water Fund Expenditures. Seconded by Councilor Cyr and voted.**

- *Appropriated sum of \$8,095,161.00 to defray expenses for the operations of the water system.*
- *Cash requirements of \$9,845,288.00 to defray expenses for the operations of the water system.*
- *Water user rate effective July 1, 2016 is \$4.15 per unit for the first 10 units of water consumed per month, and \$5.00 per unit for all units consumed thereafter to yield a portion of revenue to meet the cash requirements for the operation of the City of Portsmouth's water system.*
- *Water Irrigation user rate effective July 1, 2016, is \$5.00 per unit for the first 10 units of water consumed per month, \$9.70 for consumption over 10 and up to 20 units consumed, and \$12.05 per unit for all units consumed thereafter to yield a portion of revenue to meet the cash requirements for the operation of the City of Portsmouth's water system.*

- Resolution No.11-2016 – Special Revenues, Debt Service Fund and Committed Fund Balances for Necessary Expenditures

**Councilor Spear moved to adopt Resolution #11-2016 – Special Revenues, Debt Service Fund and Committed Fund Balances for Necessary Expenditures. Seconded by Councilor Dwyer and voted.**

- ***Appropriated any sums received from Special Revenue Sources, to a maximum of \$18,000,000.00 for purposes for which such sums may be lawfully expended.***
- Resolution No.12-2016 – Investment Policy

**Councilor Spear moved to adopt Resolution #12-2016 – Investment Policy. Seconded by Councilor Lown and voted.**

#### **IX. APPROVAL OF GRANTS/DONATIONS**

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

#### **X. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. Second reading of proposed Ordinance to amend Chapter 10 – Zoning Ordinance – Article 4 – Zoning Districts and Use Regulations, Section 10.410 – Establishment and Purpose of Districts, Transportation Corridor – To provide for future transportation uses and related facilities as well as recreational trail use

**Councilor Lown moved to pass second reading and schedule a third and final reading on the proposed Ordinance at the June 20, 2016 City Council meeting. Seconded by Councilor Spear.**

Assistant Mayor Splaine asked if voting for this protects the interest of having rail service back to the seacoast. City Manager Bohenko said it does keep it open but the legislation subcommittee might want to look at this on a state level.

**Motion passed.**

#### **XI. CONSENT AGENDA**

- A. Letter from Robert L. Sutherland, Jr., St. John's Lodge, requesting permission to hold the St. John's March on Sunday, June 26<sup>th</sup> at 9:00 a.m. ***(Sample motion – move to refer to the City Manager with power)***
- B. Letter from Mike Young, Portsmouth Babe Ruth Baseball, requesting permission to place 10 outfield signs on the outer perimeter fencing facing inwards towards Leary Field ***(Sample motion – move to refer to the City Manager with power)***



- C. Police Department Donation to the Explorer Cadets from Melissa Thuet - \$75.00  
***(Sample motion – move to approve and accept the donation to the Portsmouth Police Department)***

**Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Cyr and voted.**

## **XII. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from JerriAnne Boggis, Portsmouth Black Heritage Trail, requesting permission to hold the Annual Juneteenth Celebration on Saturday, June 18, 2016 from 11:00 a.m. to 3:00 p.m. at the African Burying Ground

**Councilor Cyr moved to refer to the City Manager with power. Seconded by Councilor Dwyer and voted.**

- B. Letter from Police Commissioner Brenna Cavanaugh, Chair requesting approval to transfer vehicle to SERT

**Councilor Spear moved to approve transfer of vehicle to the Seacoast Emergency Response Team. Seconded by Councilor Cyr and voted.**

- C. Semi-Annual Report of the Police Commission

**Assistant Mayor Splaine moved to accept the Semi-Annual Report of Police Commission. Seconded by Councilor Dwyer and voted.**

## **XIII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

- 1. Approval of Employment Agreement for Chief David Mara

City Manager Bohenko said that this is a request for a one year Employment Agreement with Chief David Mara from July 12, 2016 – July 12, 2017.

**Assistant Mayor Splaine moved to approve the Employment Agreement between Chief David Mara and the Portsmouth Police Commission for a term commencing on July 12, 2016 and extending through July 12, 2017. Seconded by Councilor Spear.**

Councilor Denton said he would like the Chief to consider staying longer and go full time.

Councilor Lown said he supports the agreement and feels the Chief is doing a good job and would like to see the search for a permanent Chief to start early next year.

Councilor Dwyer echoed the comments of Councilor Lown. She said she would like an update of the search for a new Chief.

Assistant Mayor Splaine said he would not have put a demand on the search for a new Chief.

**Motion passed.**

2. Easements for Approved Development Projects
  - 173-175 Market Street

**Councilor Spear moved to accept an easement for a sewer line as shown on the site plan approved by the Planning Board on October 15, 2015;**

- 1163 Sagamore Avenue

**to accept the public pedestrian easement and to grant the drainage easement as shown on the Easement Plan approved by the Planning Board on October 15, 2015, and to accept an easement for access to read, maintain and replace water meters throughout the Grantor's property;**

- 2219 and 2319 Lafayette Road

**to accept the access easement dated November 19, 2015. Seconded by Councilor Perkins and voted.**

3. Establish a Work Session Re: McIntyre Property

City Manager Bohenko said he would like to have a Work Session at 6:00 p.m. prior to the June 20, 2016 City Council meeting.

**Councilor Spear moved to establish a Work Session at 6:00 p.m. before the Monday, June 20, 2016 City Council meeting to discuss the McIntyre Property and proposed options. Seconded by Councilor Cyr and voted.**

City Manager's Informational Items

2. *Report Back Re: Cigarette Litter and Collection*

City Manager Bohenko reported on the cigarette litter collections to be used to limit the amount of litter downtown. He said the City will work with downtown businesses on getting these put into use.

3. *Food Waste Drop Off for Composting*

City Manager said in our continued effort to preserve our resources and reduce pollution, the Department of Public Works is exploring a drop off collection of food waste for composting. He said food waste is a large fraction of our waste stream and the City would like to offer residents a way to sustainably manage this material. He said the City will offer a drop off location at the Department of Public Works Recycling Center where residents can bring their food waste during normal operational hours for composting through Mr. Fox.

Councilor Cyr said he is glad to see us doing this and asked for a time line of when this would start. City Manager Bohenko said we would start immediately and a press release would be going out.

Councilor Denton spoke regarding the Sustainability Committee Report.

Mayor Blalock said many businesses downtown participate in the program with Mr. Fox and pay a tipping fee.

## **B. MAYOR BLALOCK**

1. Appointments to be Voted:
  - Reappointment of Reagan Ruedig to the Historic District Commission
  - Reappointment of Jonathan Wyckoff to the Historic District Commission
  - Reappointment of John Mayer as an Alternate to the Historic District Commission

**Councilor Spear moved to reappoint Reagan Ruedig, Jonathan Wyckoff and John Mayer as an alternate to the Historic District Commission until June 1, 2019. Seconded by Councilor Cyr and voted.**

2. Proposed Stewardship Committee for African Burying Ground

### Members:

- Janet Prince, Community Volunteers Representative
- Valerie Cunningham, Portsmouth Black Heritage Trail/Portsmouth Historical Society Representative
- Towny Manfull, Seacoast African American Cultural Center Representative

Mayor Blalock announced that Janet Prince will serve as the Community Volunteer Representative; Valerie Cunningham as the Portsmouth Black Heritage Trail/Portsmouth Historical Society Representative; and Towny Manfull as the Seacoast African American Cultural Center Representative.

## **C. ASSISTANT MAYOR SPLAINE & COUNCILOR DENTON**

- Water Country Traffic Analysis
- Water Country Traffic Re: Banfield Road

Councilor Denton said the neighborhood reached out to him as the Ward 3 Liaison for an additional study of the traffic created by Water Country.

**Councilor Denton moved to have the Mayor send a letter accompanying a copy of the report to the NH DOT requesting that they review the finds and provide any input. Seconded by Assistant Mayor Splaine.**

Councilor Denton said we would try to get the traffic onto a state road and putting perhaps a new traffic signal in place.

Councilor Spear said he hesitates because there are residents on Route 1 as well. He said we have a Committee that is good at looking at items holistically and would like to have this worked through the Parking and Traffic Safety Committee prior to sending a letter to the Department of Transportation.

Transportation Engineer Eby said a copy of the study was provided to the DOT and they're currently reviewing it at this time.

**Motion passed.**

**Councilor Denton moved the City to collect this summer the additional seasonal-peak traffic volumes along Banfield Road and observe the actual delays for traffic to verify the assumptions made in the study and further voted for the City to purchase the two separate cameras recommended by the City's Parking and Transportation Engineer to take needed counts including, but not limited to, the Water Country / Constitution exist and on Banfield Road. Seconded by Assistant Mayor Splaine.**

Councilor Spear asked Transportation Engineer Eby if we should do this right away or work with Parking and Traffic Safety Committee. Transportation Engineer Eby said this is something that would be of use to the city and we could do further traffic counts on Banfield Road.

Councilor Lown said the study that was completed is only one month old and a traffic count was done in March and the numbers would tell us what we need to know. He said half of the vehicles take a left and the other half takes a right. He said that this is not a simple solution and we do not want to make another neighborhood upset.

Councilor Dwyer asked if we would be repeating to allow for enforcement actions and try some different ways to control traffic. Traffic Engineer Eby said we need to go out and take summer time counts. Mayor Blalock asked if the cameras would be used in a new study. Traffic Engineer Eby said they would be used for peak counts and as current data. Councilor Perkins said she would be supportive of the camera but do we need to do anything as a City Council. Councilor Denton said in master planning we can determine what we want to use Route 1 for. Mayor Blalock said putting additional traffic onto Route 1 would be difficult. City Manager Bohenko said funding for the cameras would come from the contingency fund.

Councilor Dwyer said by having our own cameras we can look at things under unique times and circumstances. She said we need to know how things look on different days and a full picture of the situation.

Councilor Cyr said we can analyze the data and we owe it to the residents to do this.

**Motion passed.**

**D. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the May 5, 2016 meeting

Councilor Lown reviewed the action sheet with the City Council. He informed the City Council that an ordinance would be coming regarding parking mopeds on sidewalks.

**Councilor Dwyer moved to approve and accept the Action Sheet and Minutes of the Parking & Traffic Safety Committee May 5, 2016 meeting. Seconded by Councilor Cyr and voted.**

**E. COUNCILOR PEARSON**

1. Build Dio Presentation for June 20, 2016 City Council meeting

Councilor Pearson said Brian Kelly would like to make a presentation before the City Council at the June 20, 2016 meeting.

**Councilor Pearson moved to schedule a Presentation by Brian Kelly regarding Build Dio at the June 20, 2016 City Council meeting. Seconded by Assistant Mayor Splaine.**

Councilor Dwyer said that Art-Speak should look at this first and talk through what the process should be and then have the Presentation to the City Council. Councilor Pearson said that members of Art-Speak have been in conversations with Brian Kelly and the location and fundraising would be key to have this put in place.

**Councilor Dwyer moved to amend the motion to have Art-Speak review the request and identify things that the City would need to think about and have that part of the Presentation on June 20, 2016. Seconded by Assistant Mayor Splaine and voted.**

**Main motion passed, as amended.**

**XIV. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Dwyer provided the Councilors with a postcard with a list of upcoming public forums on Prescott Park. She said there will be three sessions:

- Sunday, June 12<sup>th</sup> at 12:30 p.m. & 2:30 p.m. at Prescott Park behind the stage
- Wednesday, June 22<sup>nd</sup> at 6:30 p.m. at City Hall in the Eileen Dondero Foley Council Chambers
- Saturday, June 25<sup>th</sup> at 11:00 a.m. to 1:00 p.m. at Prescott Park behind the Players' Ring Theater

Councilor Spear spoke about the urban project on Islington Street and said it was great. Councilor Spear also suggested when the Council starts their Non-Meetings that they gather in Conference Room A to save time. Assistant Mayor Splaine spoke opposed and said we should continue to gather in the Chambers with the vote to enter Non-Meeting televised for the public.

Councilor Spear advised the City Council that they all will be receiving information relative to the City Manager's evaluation and asked that everyone complete the information provided.

**XV. ADJOURNMENT**

**At 10:05 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Lown and voted.**

The City Council recessed back into Non-Meeting with Counsel regarding Property Negotiations in accordance with RSA 91-A:2, I (b).

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, JUNE 20, 2016

PORTSMOUTH, NH  
TIME: 7:00PM

At 6:00 p.m., a Work Session was held regarding the McIntyre Federal Building Property.

### **I. CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:00 p.m.

### **II. ROLL CALL**

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Cyr and Denton

Absent: Councilor Spear

### **III. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silent prayer.

### **IV. PLEDGE OF ALLEGIANCE**

Police Captain Warchol led in the Pledge of Allegiance to the Flag.

### **PRESENTATIONS**

1. Presentation to former Police Commissioners John Golumb and Gerald Howe

Mayor Blalock and the City Council presented former Police Commissioners John Golumb and Gerald Howe with a City of Portsmouth Chair in recognition of their years of service to the City.

Police Captain Warchol presented John Golumb and Gerald Howe with a gift from the Police Department for their years of service to the City of Portsmouth and the Police Department.

John Golumb and Gerald Howe accepted the gifts with thanks and appreciation.

2. Presentation Re: Build Dio

Brian Kelly provided a Presentation on Ronnie James Dio and presented a petition with 4,889 signatures requesting the City build a statue in recognition of Ronnie Dio. He requested that this matter be referred to Art-Speak for a report back. He said fundraising is important to this project but they are confident that the funds would be raised.

Councilor Pearson said a report back from Art-Speak will be determined on the fundraising for the project. She further stated Art-Speak will be working in conjunction with the City on this matter.

3. Presentation Re: Historic District Commission Design Guidelines – Joe Almeida, Chair and Nick Cracknell, Principal Planner

Joe Almeida and Nick Cracknell provided a Presentation on the Historic District Commission Design Guidelines.

Mr. Almeida referenced the tool kit for the design guidelines which include a 3D mapping model. He said the 3D mapping has been used for a year now and also addressed the historic survey update that was done. He spoke to future goals for the Historic District Commission. He thanked the City Council for supporting this process and the Historic District Commission is ready to adopt the guidelines.

Councilor Dwyer asked if there has been public input on the guidelines. Mr. Almeida said there has been a great deal of input received on the guidelines.

Principal Planner Cracknell said the staff took comments made from the input sessions to add items to the guidelines.

Councilor Dwyer said the words “this is my opinion” from an HDC member undermines the Commission. Mr. Almeida said the HDC strives for the guidelines to be references and this should minimize the thoughts of people.

Councilor Denton said he would like to see solar arrays on historic buildings. Mr. Almeida said in the guidelines there is a section on renewable energy and several solar array projects have been approved by the Commission.

Councilor Perkins spoke on the Master Plan and asked to speak on why the Historic District Commission has guidelines. Mr. Almeida spoke to what the process was to get to the point of creating guidelines.

Mayor Blalock advised the City Council that a vote was not taken regarding referring Build Dio to Art-Speak for report back.

**Assistant Mayor Splaine moved to refer Build Dio to Art-Speak for report back. Seconded by Councilor Cyr and voted. Councilor Pearson recused herself from the vote.**

**V. ACCEPTANCE OF MINUTES – MAY 18, 2016**

**Councilor Lown moved to approve and accept the minutes of the May 18, 2016 City Council meeting. Seconded by Councilor Dwyer. Councilor Denton moved to amend page 4, second paragraph, second sentence to add the word “could” between the words “they have”. Seconded by Assistant Mayor Splaine and voted. Main motion passed as amended.**



## VI. PUBLIC COMMENT SESSION

Kathleen Cavaloro thanked the City Council for referring Build Dio to Art-Speak.

Trevor Bartlett said the City should embrace the request for a statue for Ronnie James Dio.

Roy Helsel asked what tax revenue the City will benefit from if we take option 3 for the McIntyre Federal Building. He asked what benefit the taxpayers would gain from building a new Federal Building.

Mark Adams thanked the City Council for moving forward with Build Dio. He said we have statues in our parks that are for people and this should be a project that the Council supports.

Jeffrey Cooper spoke on public art and said he would like to see more in the City. He supports public art but has a problem with the process that is being followed. He said we should look at sites and make a presentation and have an RFP. The petition submitted by Brian Kelly only includes 200 signatures that are from Portsmouth residents with the remaining from outside the City and that should not be the gauge used to say Portsmouth residents want to Build Dio.

James Boucher said he supports a Ronnie James Dio statue and a Jim Gallant statue as well.

Cliff Lazenby said the weapon used in the Orlando shooting was a Sig Sauer which is marketed and designed here at the Tradeport. He asked that the City Council denounce assault weapons and call for Sig Sauer to stop selling these weapons to people other than the military.

Jonathan Blakeslee spoke in support of a crosswalk at Albany and Islington Streets. He said a crosswalk will slow the traffic down in this dangerous area.

Merle White, Anchor Taxi, said taxies have been deregulated to a point where it is a joke. He said the taxi business has become a disaster. He requested that the original ordinance be put back in place.

## VII. APPROVAL OF GRANTS/DONATIONS

1. Acceptance of Community Development Block Grant Funds

**Councilor Perkins moved to accept and expend a Community Development Block Grant (CDBG) in the amount of \$510,896 from the U.S. Department of Housing and Urban Development. Seconded by Councilor Pearson and voted.**

**Assistant Mayor Splaine moved to suspend the rules in order to take up Item X. C. – Letter from Jonathan Blakeslee, White Heron Tea, LLC, regarding Petition for a Permanent Crosswalk at Albany Street and Islington Street. Seconded by Councilor Perkins and voted.**

- X. C. Letter from Jonathan Blakeslee, White Heron Tea, LLC, regarding Petition for a Permanent Crosswalk at Albany Street and Islington Street

**Councilor Dwyer moved to refer to the Parking & Traffic Safety Committee for report back. Seconded by Assistant Mayor Splaine.**

Councilor Dwyer said she wants to make sure that the request goes to the proper location faster and have someone to help and work through requests. She said those requests that would be referred to another board/commission should be sent to that board or commission before coming to the City Council in order to save time.

City Manager Bohenko said this particular request was addressed to the Mayor and City Council but when we see these kinds of requests we begin working on them.

**Motion passed.**

2. Acceptance of Gift – Edward T. Mahoney’s Red Sox Collection

**Councilor Lown moved to approve and accept the gift. Seconded by Assistant Mayor Splaine and voted.**

## **VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance – West End Zoning as follows: ***(Tabled from May 16, 2016 City Council Meeting)***
- (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 5/2/2016
  - (2) Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled “Conforming Amendments to Zoning Ordinance” date 5/2/2016
  - (3) Amend the Zoning Map as set forth in the following maps dated May 2, 2016:
    - (A) Map 10.5A21A – Character Districts and Civic Districts;
    - (B) Map 10.5A21B – Building Height Standards;
    - (C) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses
  - (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled “Proposed Additional West End Zoning Changes” dated 5/2/2016 and as shown on the map titled “Addition West End Zoning Changes – Second Reading – May 2, 2016

**Councilor Cyr moved to remove the ordinance from the table. Seconded by Councilor Pearson and voted.**

**Councilor Cyr moved to pass second reading and hold third and final reading at the July 11, 2016 City Council meeting. Seconded by Councilor Perkins.**

**Councilor Dwyer moved to amend Map 10.5A21B – Building Height Standards (draft dated May 2, 2016) as shown in Exhibit 1, pulling the southeast boundary of the West End Incentive District Back to 200 feet from the boundaries of Map 154, Lots 1, 1A and 2 abutting parcels on Aldrich Road, and 100 feet from the boundary of Map 146 Lot 27 abutting parcels on Aldrich Road and Chevrolet Avenue. Seconded by Councilor Perkins and voted.**

Planning Director Taintor said this relates to 3 lots on Islington Street to reduce the building height.

**Councilor Dwyer moved to amend Map 10.5A21B – Building Height Standards (draft dated May 2, 2016) as shown in Exhibit 2, changing the height requirement area for three parcels on the southeast side of Islington Street (Map 155 Lots 2, 3 and 13) from 2-4 stories/50' (brown) to 2-3 stories (short 4<sup>th</sup>) 45' (orange). Seconded by Councilor Pearson and voted.**

Planning Director Taintor said C1- C4 deals with minimum upper story height.

**Councilor Cyr moved to amend in Figure 10.5A31.10A (page 5A-8), delete the row titled “Minimum upper story height”; amend in Figure 10.5A41.10B (page 5A-12), delete the row titled “Minimum upper story height”; amend in Figure 10.5A41.10C (page 5A-16), change the words “minimum upper story height” to “minimum second story height”; and amend in Figure 10.5A41.10D (page 5A-20), change the words “Minimum upper story height” to “Minimum second story height”. Seconded by Councilor Dwyer and voted.**

Planning Director Taintor reported that this amendment deals with maximum building foot print and the staff does not support the amendment.

**Councilor Denton moved to amend in Figure 10.5A41.10D (page 5A-20), in the row titled “Maximum building footprint” replace “20,000 sf” with “15,000 sf”. Seconded by Assistant Mayor Splaine.**

Planning Director Taintor said the number that would be put in does not reflect the amount of flexibility in the downtown.

Councilor Denton spoke to how he likes the Popover’s Building but would not want to see a building go higher.

Councilor Perkins said she would oppose the amendment and go with the staff recommendation.

Councilor Dwyer said she would also oppose the amendment.

Assistant Mayor Splaine said he feels the slightly smaller size is more suitable to the downtown. He said we want to improve the look of the downtown. He also expressed concern with housing and feels it can exist downtown but it needs to be affordable housing.

Councilor Dwyer said that this is the zoning for the Franklin Block lot and that would need some substantially sized building so she will oppose the motion to amend.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he is opposed to the motion to amend.

Assistant Mayor Splaine returned the gavel to Mayor Blalock

Councilor Pearson said we need to address affordable housing through density.

**On a roll call vote 2-6 motion failed to pass. Assistant Mayor Splaine and Councilor Denton voted in favor. Councilors Perkins, Dwyer, Lown, Pearson, Cyr and Mayor Blalock voted opposed.**

Planning Director Taintor said this is regarding building footprint for building with ground floor or underground parking. He further stated that the Planning Board would need to grant an additional use permit and there would be more control and oversight.

**Councilor Denton moved to amend proposed Section 10.5A43.43 as follows: (a) Revise the introductory sentence to read as follows: For a building that contains ground floor parking, a parking garage or underground parking levels, and that is not subject to Section 10.5A43.42, the Planning Board may grant a conditional use permit to allow a building footprint of up to 30,000 sq. ft. in the CD4 or CD4-W districts, and up to 40,000 sq. ft. in the CD5 district, if all of the following criteria are met: (b) In subparagraph (d), last sentence, insert the words “by the Planning Board” after the words “shall be determined”, so that the sentence reads as follows:**

**The size, location and type of the community space shall be determined by the Planning Board based on the size and location of the development, and the proposed and adjacent uses.**

**Seconded by Councilor Perkins.**

**Councilor Denton moved to further amend 40,000 sq. ft becomes 30,000 sq. ft in the CD5 district. Seconded by Assistant Mayor Splaine. On a roll call vote 4-4 motion failed to pass. Assistant Mayor Splaine, Councilors Pearson, Cyr and Denton voted in favor. Councilors Perkins, Dwyer, Lown and Mayor Blalock voted opposed.**

**Main motion passed as amended.**

**Councilor Dwyer moved to amend in Section 10.5A30 (page 5A-14), delete Section 10.5A32; amend in Figure 10.5A41.10B (page 5A-13), (a) Under “Building Types”, in the row for Apartment building, change “not permitted” to “permitted” (b) Under “Building & Lot Use”, deleted “Residential uses are not permitted on the ground floor (see Section 10.5A32) except for rowhouse units.”; amend in Figure 10.5A43.60 (Page 5A-30), add “CD4-W” to the list of permitted districts for Apartment Building. Seconded by Councilor Perkins and voted.**

**Councilor Dwyer moved to amend in Section 10.5A43.22 (page 5A-26), insert the words “in the Historic District,” at the beginning of the sentence. Seconded by Councilor Lown and voted.**

Planning Director Taintor said this amendment is on community designated spaces.

**Councilor Dwyer moved to amend Figure 10.5A46.10 – Community Spaces (pages 5A-34 and 5A-35, as follows: (a) For “Pedestrian Alley”, insert “The minimum width shall be 15 feet.”, (b) For “Pocket Park”, insert “The minimum size shall be 500 sq. ft.”, (c) For “Playground”, insert “The minimum size shall be 500 sq. ft.” Seconded by Councilor Perkins.**

Councilor Dwyer said the playground seems small for children. Planning Director Taintor said it would not be for large play areas but more of pocket parks.

**Motion passed.**

Planning Director Taintor said this is a welcomed change to the definition of “lawn” to “ground cover.”

**Councilor Dwyer moved to amend in Figure 10.5A46.10 (page 5A-35), in the definition of “Square”, change “lawn” to “ground cover”. Seconded by Councilor Perkins and voted.**

There was no motion made for Item J.1.

Planning Director Taintor said this amendment is regarding conversion of a civic use to a new civic use.

**Councilor Lown moved to amend in Section 10.5A52.20 (page 5A-38), strike the words “provided that no exterior changes are made to the existing structure.” Seconded by Councilor Perkins and voted.**

Planning Director Taintor spoke on the term of work force housing restrictions.

**Councilor Denton moved to amend in the Conforming Amendments documents, 5/2/2016 draft, item P (page 8 of 8), insert the words “but no less than 30 years” at the end of the last sentence, so that the sentence reads as follows: All workforce housing units shall include a restrictive covenant that ensures affordability as specified in RSA 674:58,IV, for the maximum allowable term but no less than 30 years. Seconded by Councilor Perkins and voted.**

Planning Director Taintor said this is regarding definition of building foot print.

**Councilor Dwyer moved to amend in the Conforming Amendments document, 5/2/2016 draft, item P (page 8 of 8) insert the word “only” after the word “separated”, so that the sentence reads as follows: The total area, at or above 18 inches in elevation as measured from the outside walls at the grade plane, or a detached building, or of two or more buildings separated only by fire walls, common walls or property lines. Seconded by Councilor Perkins and voted.**

**Councilor Denton moved to replace in Section 10.5A47.22 (page 5A-37), item 2 (b), to replace 10% with 20%. Seconded by Councilor Cyr.**

Councilor Perkins said she would not support the amendment.

**On a roll call vote 2-6, motion failed to pass. Assistant Mayor Splaine and Councilor Denton voted in favor. Councilors Perkins, Dwyer, Lown, Pearson, Cyr and Mayor Blalock voted opposed.**

**Main motion to pass second reading, as amended and hold third and final reading at the July 11, 2016 City Council meeting passed.**

**Councilor Perkins moved to suspend the rules in order to pass third and final reading this evening. Seconded by Councilor Lown.**

Assistant Mayor Splaine said there is no reason why this can't wait until the July 11, 2016 City Council meeting to pass third and final reading.

Councilor Cyr said he feels we need to go through the regular process and act on third reading at the next City Council meeting.

Councilor Dwyer said we may want to look back at the amendments and we did not pass J.1.

Councilor Lown said there has been an enormous amount of work on this ordinance and public input therefore we should pass the ordinance this evening.

Councilor Perkins said that this has been looked at extensively and feels we should move forward and adopt the ordinance.

**On a roll call vote 3-5, motion *failed* to pass. Councilors Perkins, Lown and Mayor Blalock voted in favor. Assistant Mayor Splaine, Councilors Dwyer, Pearson, Cyr and Denton voted opposed.**

- B. Third and Final reading of proposed Ordinance to amend Chapter 10 – Zoning Ordinance – Article 4 – Zoning Districts and Use Regulations, Section 10.410 – Establishment and Purpose of Districts, Transportation Corridor – To provide for future transportation uses and related facilities as well as recreational trail *use*

**Councilor Lown moved to pass third and final reading on the proposed Ordinance, as presented. Seconded by Councilor Perkins and voted. Councilor Cyr did not vote on this matter as he stepped out of the Chambers.**

**Councilor Denton moved to suspend the rules to take up Item X. B. – Letter from Businesses and Cultural Institutions of the Bridge District regarding Podium. Seconded by Assistant Mayor Splaine and voted.**

**X. B. - Letter from Businesses and Cultural Institutions of the Bridge District regarding Podium**

**Councilor Dwyer moved to refer to the City Manager with power for report back. Seconded by Assistant Mayor Splaine.**

Assistant Mayor Splaine said this is unique and exciting idea and would like to have the City Manager report back to the City Council on this matter after reviewing it.

City Manager Bohenko stated that the item could not obstruct the sidewalk and the businesses would help with trying to direct people.

Councilor Dwyer said that this is a great idea and this would be great to connect with the Chamber of Commerce Information.

Councilor Pearson spoke to the Chamber of Commerce front line training and whether they are all talking the same language. She encouraged the individuals to contact the Chamber of Commerce on front line training.

Councilor Lown said this is a great way to hand out information to people.

Councilor Cyr said he is confused with the word Bridge District. He said we have spent a great deal of money on wayfinding and would not want this to cause any issues.

**Motion passed.**

## IX. CONSENT AGENDA

- A. Request to Install Projecting Sign:
- Carolyn Ottney, owner of Ceo's Gelato Bistro, for property located at 43 Pleasant Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and, further, authorize the City Manager to execute this License Agreement***)

**Planning Board conditions:**

1. ***The license shall be approved by the Legal Department as to content and form;***
  2. ***Any removal or relocation of the projecting sign, for any reason shall be done at no cost to the City; and***
  3. ***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 an acceptance by the Department of Public Works***
- B. Letter from Peter Oldak, Jewell Towne Vineyards, requesting permission to have wine sampling at the Portsmouth Farmers' Market starting August 6, 2016. (***Anticipated action – move to refer to the City Manager with power***)

**Councilor Lown moved to adopt the Consent Agenda. Seconded by Councilor Cyr and voted.**

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

- A. Letter from Chris Soucy, requesting change to Peirce Island Boat Launch pass policy

**Councilor Lown moved to refer to the Recreation Board for report back. Seconded by Councilor Cyr.**

Councilor Lown withdrew the motion and Councilor Cyr the second to the motion.

Councilor Dwyer said sending this to the Recreation Board might be too narrow of scope. She said maybe we should refer this to the City Attorney because this may affect many things that we do.

Councilor Lown said the request should go to the Fee Committee.

**Councilor Lown moved to refer the request to the Fee Committee for report back. Seconded by Councilor Cyr and voted.**



## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

1. Proposed Action on International Association of Fire Fighters, Local #1313 Tentative Agreement

City Manager Bohenko said action must be made this evening.

Mayor Blalock said he would appoint a Subcommittee of the City Council with Councilor Lown as Chair, Councilors Dwyer and Spear on issues relating to overtime. He said the Committee would have authority to come back to the City Council with recommendations.

**Assistant Mayor Splaine moved to approve and accept the International Association of Fire Fighters, Local #1313 Contract. Seconded by Councilor Pearson.**

Councilor Lown said he would oppose the motion because there has been little change in the overtime matter in the contract. He said shift replacement is a big issue with the overtime in the Fire Department and the contract does not address any of these things.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he supports the contract and wants the fire fighters to have a contract.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said to say no is not the most reasonable thing to do. He said the first responders put their lives on the line all the time. He said that is an investment in our community. He said we need to find ways to cover the shifts.

Councilor Dwyer said what is challenging is why change comes so slowly. She addressed collective bargaining and how that affects changes. She said it is important that employees have contracts. She is looking forward to looking at overtime costs. She said she would support this motion but hopes we can look at overtime costs going forward.

Councilor Perkins said she would support the motion. She said we need to make sure we have the right people in the positions.

**Motion passed. Councilor Lown voted opposed.**

2. Request for Public Hearing Re: Various Bonding Resolutions

City Manager Bohenko said that these are resolutions for projects in the Capital Improvement fund.

**Councilor Lown moved to authorize the City Manager to bring back for public hearing and adoption the various proposed CIP projects to be bonded, as presented, for the July 11, 2016 City Council meeting. Seconded by Councilor Cyr and voted.**

4. Acceptance of Waterline Easement

Planning Director Taintor said we are looking in favor of this easement.

**Councilor Cyr moved to accept the water line easements from Thurken IV, LLC and Sarnia Properties, LLC to serve the minor commercial subdivision off of Route 33. Seconded by Councilor Perkins and voted. Assistant Mayor Splaine did not vote on this matter as he stepped out of the Chambers.**

3. Consideration of Appointments/Reappointments to Rockingham Planning Commission

City Manager Bohenko said that these are appointments to the Rockingham Planning Commission.

**Councilor Pearson moved to reappoint John Ricci and David Moore as representatives of the City on the Rockingham Planning Commission, effective July 1, 2016. Seconded by Councilor Dwyer and voted. Assistant Mayor Splaine did not vote on this matter as he stepped out of the Chambers.**

5. Annual Omnibus Ordinance Change, Parking and Traffic

City Manager Bohenko said that this is the annual Omnibus Ordinance changes to parking and traffic from the Parking & Traffic Safety Committee.

**Councilor Lown moved to authorize the City Manager to bring back for first reading the attached proposed Ordinance, at the July 11, 2016 City Council meeting, as presented. Seconded by Councilor Cyr and voted. Assistant Mayor Splaine did not vote on this matter as he stepped out of the Chambers.**

City Manager's Informational Items

2. *Summary of Legislation*

City Manager Bohenko thanked Assistant City Attorney Ferrini for her hard work on the legislative matters and for preparing the legislation summary which has been provided to the City Council in their packets.

3. *News Release Re: June 22, 2016 Public Input Forum on Prescott Park Master Plan*

Councilor Dwyer said they received great input from the session held on Sunday. She said June 25<sup>th</sup> between 11:00 a.m. – 1:00 p.m. is the next session in the park.

4. *Market Square Day*

City Manager Bohenko spoke to various staff members that participated in Market Square Day and how successful it was for the City and residents.

5. *Proposed National Register (NR) District Nomination – Informational Meeting*

City Manager Bohenko announced that the Informational Meeting will be held on Tuesday, June 28, 2016 at the Seacoast Repertory Theatre on Bow Street.

6. *News Release Re: Standard & Poors Affirms City of Portsmouth's AAA Bond Rating*

City Manager Bohenko reported that Standard & Poors has affirmed the City's long-term bond rating of "AAA", the highest obtainable rating. He said the City issued bonds on June 14, 2016 which were very favorable. He stated due to this outstanding rating, the City reissued bonds that resulted in a savings of \$1.3 million over the remaining ten (10) years. In addition, the City issued bonds at an average interest rate of 1.87% which is the lowest rate the City has ever seen for this type of issue. City Manager Bohenko said the City received a bond premium of \$2.4 million which may be used for other capital projects with an equal or longer useful life of the bond issue.

Councilor Denton said Seacoast Outright with Pride Parade is on the weekend. He said Seacoast Outright would like the lights on the bridge to be rainbow colors.

**B. MAYOR BLALOCK**

1. Appointments to be Considered:
  - Reappointment of Joseph Almeida to the Historic District Commission
  - Appointment of Jim Lee to the Zoning Board of Adjustment as a regular member
  - Appointment of John Formella to the Zoning Board of Adjustment as an alternate member

The City Council considered the reappointment and appointments of individuals listed above which will be voted on at the July 11, 2016 City Council meeting.

2. Acceptance of Resignation – Jennifer Pyke, Portsmouth Housing Authority – resident representative

**Councilor Dwyer moved to accept the resignation with regret and to send a letter of thanks for her years of service. Seconded by Councilor Pearson and voted.**

**C. COUNCILOR LOWN**

1. Parking & Traffic Safety Action Sheet and Minutes of the June 2, 2016 meeting

**Councilor Lown moved to request the City Attorney draft an ordinance allowing mopeds to park on sidewalks if they have a City issued sticker or designated moped license plate, and do not impeded pedestrian traffic, and meet the state's legal description of a moped. Seconded by Assistant Mayor Splaine and voted.**

**Councilor Lown moved that the City formalize the policy of requiring only one motorcycle to purchase a pay and display sticker when parking in a group, and that a separate ordinance be adopted to codify this practice. Seconded by Councilor Cyr and voted.**

**Councilor Dwyer moved to approve and accept the action sheet and minutes of the June 2, 2016 Parking & Traffic Safety Committee meeting. Seconded by Councilor Cyr and voted.**

Councilor Dwyer asked that the Parking & Traffic Safety Committee review the ordinance - No Person in a park shall ride a bicycle. She said that this has become a real issue in Prescott Park.

**Councilor Dwyer moved to refer Chapter 8, Article II, Section 8.204 – Traffic – Item G – Bicycles: No Person in park shall ride a bicycle to the Parking & Traffic Safety Committee for report back. Seconded by Councilor Lown and voted.**

#### **D. COUNCILOR DENTON**

1. Atlantic Heights Dog Park

**Councilor Denton moved to have the City Manager report back on what would be required to reopen the Atlantic Heights Dog Park prior to the Peirce Island Dog Off-Leash Area temporarily closing for the Peirce Island Wastewater Treatment Plant upgrades. Seconded by Assistant Mayor Splaine.**

City Manager Bohenko reported that the land is owned by the State of New Hampshire and the area was closed due to concrete falling from the bridge. He said we would need to install a net under the bridge to prevent the falling concrete from hitting a dog or person. He said the netting would cost upwards of \$100,000.00.

Councilor Denton withdrew his motion and Assistant Mayor Splaine his second to the motion.

#### **XII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Perkins announced that public input session of the Housing Committee will be held tomorrow in the School Board meeting room. She said the Committee is looking at large parcels or areas to create new centers of activities in the City. She also stated she is soliciting different variety of technology options to get information out on the Housing Committee.

Councilor Cyr said we would need to bring information forward on the Transportation Service Ordinance and matters regarding the new law. He said once the law is signed by the Governor it goes into effect immediately.

Assistant Mayor Splaine said we need to level the playing field between taxis and mobile application users or application driven companies.

**XIII. ADJOURNMENT**

**At 9:50 p.m., Councilor Lown moved to adjourn. Seconded by Councilor Perkins and voted.**

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, July 11, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Resolution Authorizing a Bond Issue and/or Notes of up to Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000.00) for Costs Related to Fiscal Year 2017 Citywide Street, Sidewalk and Facility Improvements. The complete Resolution is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

### **LEGAL NOTICE**

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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

PW0020771

**CITY OF PORTSMOUTH  
TWO THOUSAND SIXTEEN  
PORTSMOUTH, NEW HAMPSHIRE**

**RESOLUTION # – 2016**

**A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR  
NOTES OF UP TO SIX MILLION EIGHT HUNDRED FIFTY  
THOUSAND DOLLARS (\$6,850,000) FOR COSTS RELATED TO  
FISCAL YEAR 2017 CITYWIDE STREET, SIDEWALK AND  
FACILITY IMPROVEMENTS.**

**BE IT RESOLVED:**

**THAT**, the sum of **Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000)** is appropriated for Fiscal Year 2017 Citywide Street, Sidewalk and Facility Improvements;

**THAT**, to meet this appropriation, the City Treasurer, with the approval of the City Manager, is authorized to borrow, on a competitive or negotiated basis, up to **Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act;

**THAT** That the expected useful life of the project is determined to be at least ten (10) years, and;

**THAT** That this Resolution shall take effect upon its passage.

**APPROVED:**

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**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

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

**BI-CD-11: CHESTNUT STREET STREETScape IMPROVEMENTS**

Department	Community Development Department
Project Location	Chestnut Street between Porter and Congress Streets
Project Type	Rehabilitation of an Existing Facility
Commence FY	2017
Ward	5
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible



Evaluation Criteria	Satisfy
Identified in Planning Document or Study: <a href="#">Master Plan 2005</a> , <a href="#">Wayfinding Analysis 2014</a>	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	Y
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	Y

**Description:** This project is a collaborative effort between the City, The Music Hall, abutting property owners and businesses to beautify and improve Chestnut Street between Porter and Congress Streets. The proposed plan includes new sidewalks and drainage improvements, new granite seating walls, flowering trees and shrubs. Changes to the street surface will improve wayfinding from Congress Street, The Music Hall and the African Burying Ground, and it will meet the City's Master Plan goals of increasing the number of community gathering areas downtown.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	25%	\$200,000						\$200,000	\$0	\$200,000
UDAG	25%	\$200,000						\$200,000	\$0	\$200,000
Revenues	0%							\$0	\$0	\$0
PPP	50%	\$400,000						\$400,000	\$0	\$400,000
	Totals	\$800,000	\$0	\$0	\$0	\$0	\$0	\$800,000	\$0	\$800,000

CAPITAL IMPROVEMENT PLAN

FY 17-22

II-36



**BI-CD-17: MULTI-PURPOSE RECREATIONAL FIELD (FORMER STUMP DUMP)**

Department	Community Development Department
Project Location	Greenland Road at Islington Street
Project Type	Construction or Expansion of a public facility, street or utility
Commence FY	2016
Ward	3
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Minimal



Evaluation Criteria	Satisfy
Identified in Planning Document or Study: <a href="#">Recreation Needs Study 2010</a>	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

**Description:** The 2010 Recreation Needs Study recommended additional multi-use fields be added to the City's inventory. This project will fulfill a long-held vision for converting the former "stump-dump" facility on Greenland Road into a regulation-sized, multi-purpose, outdoor field with artificial turf. Lighting, associated parking and other amenities are included. This project will also provide parking and trail access for the Hampton Branch trail system as well as access to other passive recreational assets such as the Great Bog.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	88%	\$1,750,000						\$1,750,000	\$0	\$1,750,000
Daniel St trust	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	13%	\$250,000						\$250,000	\$0	\$250,000
	Totals	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$2,000,000	\$0	\$2,000,000

CAPITAL IMPROVEMENT PLAN

FY 17-22

II-40

**BI-PW-19: OUTDOOR POOL UPGRADE**

Department	Public Works
Project Location	Peirce Island
Project Type	Upgrade Existing Facility
Commence FY	2017
Ward	ALL
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** This project includes the replacement of the pool gutter system and pool liner. The original pool was constructed in the 1930's and has been renovated a number of times. The existing liner is past the 15 year design life and the concrete gutter is starting to show signs of failure.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	100%	\$500,000					\$400,000	\$900,000	\$0	\$900,000
Other	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	0%							\$0	\$0	\$0
	Totals	\$500,000	\$0	\$0	\$0	\$0	\$400,000	\$900,000	\$0	\$900,000

**BI-PW-25: CITY-WIDE FACILITIES CAPITAL IMPROVEMENTS**

Department	Public Works
Project Location	City-Wide
Project Type	Upgrade Existing Facilities
Commence FY	On-Going
Ward	ALL
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study: Facilities Needs Evaluations (in development)	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** The Public Works Department has the maintenance responsibilities for all municipal facilities. These facilities are wide ranging and serve multiple uses. Due to age and usage, many facilities are in need of updating in order to continue their availability to the general public and programs conducted within. Prioritization of projects will be based on each facilities evaluation, to be completed in FY16.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	1%							\$0	\$50,000	\$50,000
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	98%	\$1,000,000			\$1,000,000			\$2,000,000	\$2,000,000	\$4,000,000
Other	0%							\$0	\$0	\$0
Revenues	1%							\$0	\$30,000	\$30,000
PPP	0%							\$0	\$0	\$0
	Totals	\$1,000,000	\$0	\$0	\$1,000,000	\$0	\$0	\$2,000,000	\$2,080,000	\$4,080,000

## TSM-PW-32: MCDONOUGH STREET AREA IMPROVEMENT PROJECT

Department	Public Works
Project Location	McDonough Street
Project Type	Construction of a public street
Commence FY	2017
Ward	2
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible



Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

**Description:** This project is at the request of the Islington Creek Neighborhood Association to have new sidewalks and traffic calming measures installed throughout the McDonough Street Area. The main purpose of this project is to enhance safety for the residents and others who travel through this area on foot, by bicycle and motor vehicle. This area is a mixed use of residential, commercial and industrial uses located between Islington Street and North Mill Pond. The work will include water, sewer, storm drainage, paving, curbing and associated landscaping constructed in a phased approach.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	100%	\$400,000						\$400,000	\$2,000,000	\$2,400,000
Other	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	0%							\$0	\$0	\$0
	Totals	\$400,000	\$0	\$0	\$0	\$0	\$0	\$400,000	\$2,000,000	\$2,400,000

**TSM-PW-36: PEASE INTERNATIONAL TRADEPORT ROADWAY REHABILITATION**

Department	Public Works
Project Location	Pease International Tradeport
Project Type	Upgrade of Existing Facilities
Commence FY	On-Going
Ward	3
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible



Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

**Description:** Per the Municipal Service Agreement between the City of Portsmouth and Pease Development Authority, the City shall provide Public Works Services in the Non-Airfield Area of the Pease International Tradeport. Public Works Services include maintaining and repairing roads, streets, bridges and sidewalks. On the following page are the Streets and Roads that are identified for improvements.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	100%	\$2,500,000			\$750,000		\$750,000	\$4,000,000	\$1,000,000	\$5,000,000
Other	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	0%							\$0	\$0	\$0
	Totals	\$2,500,000	\$0	\$0	\$750,000	\$0	\$750,000	\$4,000,000	\$1,000,000	\$5,000,000

## TSM-PW-36: ROADWAY: Pease International Tradeport Roadway Rehabilitation

### PEASE INTERNATIONAL TRADEPORT

Street	Estimated Cost
Corporate Drive	\$2,500,000
Goose Bay Drive	\$550,000
Rochester Avenue	\$700,000
Aviation Drive	\$500,000
Arboretum Drive	\$1,250,000
Oak Avenue	\$70,000
International Drive	\$100,000
<hr/>	
Total Estimated Cost	\$5,670,000

## TMS-PW-37: BANFIELD ROAD IMPROVEMENTS

Department	Public Works
Project Location	Banfield Road
Project Type	Upgrade of Existing Facilities
Commence FY	2017
Ward	3
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – <a href="#">Bicycle and Pedestrian Plan</a>	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** This project addresses a number of traffic safety related issues along the section of Banfield Road from Constitution to Ocean Road. These upgrades include culvert replacement, guard rail installation, and traffic calming measures. In addition, the effort will evaluate pedestrian and bicycle needs and measures to incorporate [“Complete Street” Design](#) into the project.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	29%		\$150,000					\$150,000	\$50,000	\$200,000
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	71%	\$500,000						\$500,000	\$0	\$500,000
Other	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	0%							\$0	\$0	\$0
	Totals	\$500,000	\$150,000	\$0	\$0	\$0	\$0	\$650,000	\$50,000	\$700,000

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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

LEGAL NOTICE  
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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

PA0020749



**CITY OF PORTSMOUTH  
TWO THOUSAND SIXTEEN  
PORTSMOUTH, NEW HAMPSHIRE**

**RESOLUTION # -2016**

**A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$2,250,000) RELATED TO WATER LINE REPLACEMENTS, WATER SYSTEM PRESSURE AND STORAGE IMPROVEMENTS.**

**RESOLVED:**

**THAT**, the sum of up to **Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000)** is appropriated for Water Line Replacements, Water System Pressure and Storage Improvements;

To meet this appropriation, the City Treasurer, with the approval of the City Manager is authorized to borrow, on a competitive or negotiated basis, up to **Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act and/or a loan program offered through the State of New Hampshire Department of Environmental Services, identified as the State Revolving Fund Loan, such borrowing to be effected by the issuance of bonds and/or notes of the City under the Municipal Finance Act in connection with the Water Line Replacements, Water System Pressure and Storage Improvements;

**THAT** the expected useful life of this project is determined to be at least twenty (20) years, and;

**THAT** this Resolution shall take effect upon its passage.

**APPROVED:**

---

**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

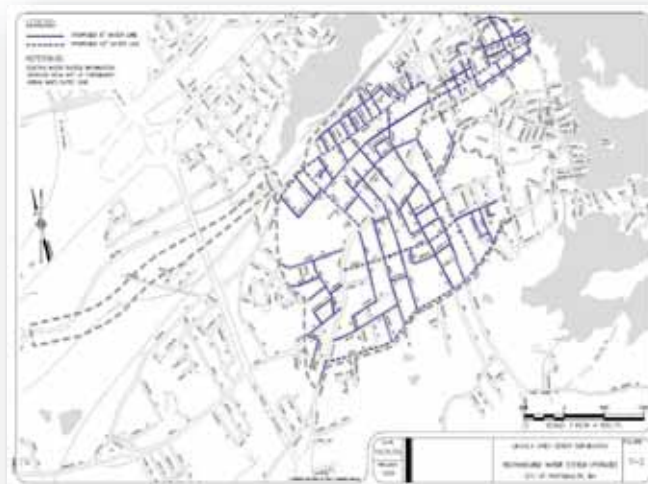
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**KELLI BARNABY, MMC  
CITY CLERK**

**EF-WD-01: ANNUAL WATER LINE REPLACEMENT**

Department	Public Works
Project Location	City-Wide
Project Type	Upgrade to Existing Facilities
Commence FY	On-Going
Ward	All
Priority	O (On-going)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – <a href="#">Water System Master Plan</a>	Y
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** The water distribution system consists of more than 150 miles of pipe. Many of the older pipes are 50 to 100 years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of water specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipe, valves and associated materials used to replace those pipes. Bond funds for large full road reconstruction projects.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	22%	\$1,500,000	\$2,000,000					\$3,500,000	\$0	\$3,500,000
Other	0%							\$0	\$0	\$0
Revenues	78%	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$3,000,000	\$9,590,000	\$12,590,000
PPP	0%							\$0	\$0	\$0
	Totals	\$2,000,000	\$2,500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$6,500,000	\$9,590,000	\$16,090,000

**EF-WD-03: WATER SYSTEM PRESSURE AND STORAGE IMPROVEMENTS**

Department	Public Works
Project Location	City-Wide
Project Type	Upgrade of Existing Facilities
Commence FY	2017
Ward	ALL
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – <a href="#">2013 Water System Master Plan</a>	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** This project consists of improvement to water mains, pumps and storage to improve water flow and pressure in the water system. Work will be performed in portions of the water system as well as sections of the system which have been identified as needing upgrades as part of the water system hydraulic model and master plan update completed in 2013.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	88%	\$750,000	\$500,000					\$1,250,000	\$1,000,000	\$2,250,000
Other	0%							\$0	\$0	\$0
Revenues	12%	\$250,000						\$250,000	\$50,000	\$300,000
PPP	0%							\$0	\$0	\$0
	Totals	\$1,000,000	\$500,000	\$0	\$0	\$0	\$0	\$1,500,000	\$1,050,000	\$2,550,000

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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

### LEGAL NOTICE

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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

PA00209767

**CITY OF PORTSMOUTH  
TWO THOUSAND AND SIXTEEN  
PORTSMOUTH, NEW HAMPSHIRE**

**RESOLUTION # -2016**

**A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN OF UP TO THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000) FOR COSTS RELATED TO SEWER LINE REPLACEMENTS, PUMPING STATION UPGRADES AND GOOSE BAY DRIVE SEWER LINE.**

**RESOLVED:**

**THAT** the sum of up to **Three Million Four Hundred Thousand Dollars (\$3,400,000)** is appropriated for Sewer Line Replacements, Pumping Station upgrades and Goose Bay Drive Sewer Line;

**To** meet this appropriation, the City Treasurer, with the approval of the City Manager is authorized to borrow, on a competitive or negotiated basis, up to **Three Million Four Hundred Thousand Dollars (\$3,400,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act and/or a loan program offered through the State of New Hampshire Department of Environmental Services, identified as the State Revolving Fund Loan, such borrowing to be effected by the issuance of bonds and/or notes of the City under the Municipal Finance Act in connection with Sewer Line Replacements, Pumping Station upgrades and Goose Bay Drive Sewer Line;

**That** the expected useful life of the project is determined to be at least twenty (20) years, and;

**That** this Resolution shall take effect upon its passage.

**APPROVED:**

---

**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

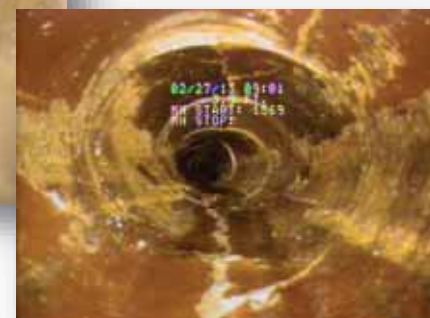
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**KELLI BARNABY, MMC  
CITY CLERK**

**EF-SD-04: ANNUAL SEWER LINE REPLACEMENT**

Department	Public Works
Project Location	City-Wide
Project Type	Upgrade of Existing Facilities
Commence FY	On Going
Ward	ALL
Priority	O (Ongoing or Programmatic)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** The wastewater collection system consists of more than one-hundred (100) miles of pipe. Many of the older pipes are fifty (50) to one-hundred (100) years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of sewer specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipes and associated materials used to replace those pipes. Bond funds are for the large full road reconstruction type projects.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	43%	\$2,500,000	\$2,500,000					\$5,000,000	\$0	\$5,000,000
Other	0%							\$0	\$0	\$0
Revenues	57%	\$1,000,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$3,500,000	\$3,250,000	\$6,750,000
PPP	0%							\$0	\$0	\$0
	Totals	\$3,500,000	\$3,000,000	\$500,000	\$500,000	\$500,000	\$500,000	\$8,500,000	\$3,250,000	\$11,750,000

**EF-SD-05: PUMPING STATION UPGRADE**

Department	Public Works
Project Location	City-Wide
Project Type	Rehabilitation of Existing Facility
Commence FY	Ongoing
Ward	ALL
Priority	O (ongoing or programmatic)
Impact on Operating Budget	Negligible



Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	Y
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	

**Description:** The City owns and operates twenty (20) wastewater pumping stations. The projected life span of a pumping station is twenty (20) years. This project plans for the replacement or major rehabilitation of the pumping stations that have not been included as separate projects. The next pumping station to be addressed under this project is the Heritage Avenue pumping station.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	90%	\$400,000		\$400,000		\$400,000		\$1,200,000	\$3,500,000	\$4,700,000
Other	0%							\$0	\$0	\$0
Revenues	10%	\$250,000	\$100,000		\$100,000		\$100,000	\$550,000	\$0	\$550,000
PPP	0%							\$0	\$0	\$0
	Totals	\$650,000	\$100,000	\$400,000	\$100,000	\$400,000	\$100,000	\$1,750,000	\$3,500,000	\$5,250,000

**EF-SD-07: GOOSE BAY DRIVE SEWER REPLACEMENT**

Department	Public Works
Project Location	Goose Bay Drive
Project Type	Rehabilitation of Existing Facility
Commence FY	2017
Ward	3
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Negligible

Evaluation Criteria	Satisfy
Identified in Planning Document or Study	
Improves Quality of Existing Services	
Provides Added Capacity to Serve Growth	Y
Addresses Public Health or Safety Need	
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



**Description:** This project addresses replacement of an existing sewer that is in poor condition and at risk of failure. Replacement of this sewer line will prevent potential sewer system overflows due to failure and will provide additional capacity for an industry served by this section of sewer.

		FY17	FY18	FY19	FY20	FY21	FY22	Totals 17-22	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	74%	\$500,000						\$500,000	\$0	\$500,000
Other	7%	\$50,000						\$50,000	\$0	\$50,000
Revenues	19%							\$0	\$125,000	\$125,000
PPP	0%							\$0	\$0	\$0
	Totals	\$550,000	\$0	\$0	\$0	\$0	\$0	\$550,000	\$125,000	\$675,000



**NH Emergency Management Performance Grant (EMPG) Grant Agreement Checklist**

Applicant: Town of Portsmouth    Project: LEOP Update    Amount of Grant: \$4,000.00

To: Chief Steven Achilles, Emergency Management Coordinator  
 From: Heather Dunkerley, EMPG Program Coordinator

Attached please find your Grant Agreement and accompanying Exhibits A, B & C. All steps below **are required** to be completed in their entirety. **Complete and return** this checklist along with the Grant Agreement documents to the address stated below.

√	<b>Check when complete</b>
	Page 1 - have a <b>majority</b> of the Select board or City Council sign in blocks 1.11
	Page 1 - Fill in block 1.12. <b>*Please print the NAMES &amp; TITLES of the signors.</b>
√	<b>Have a Notary Public or Justice of the Peace complete the following:</b>
	Fill in block 1.13
	Sign/Seal block 1.13.1
	Fill in block 1.13.2
√	<b>All Grantee signors shown in block 1.11 must:</b>
	<b>All signors</b> - Initial and date each page of the Grant Agreement
	<b>All signors</b> - Initial and date each of the Exhibit pages A, B and C.

**If any of the above items are not completed properly, the grant agreement will not be processed and will be returned for correction(s).**

**Other documentation that is required:**

1. **Minutes** of the meeting documenting that the community's/agency's GOVERNING AUTHORITY accepted/approved the EMPG grant agreement; please ensure the minutes state that **the community/agency is accepting the EMPG grant agreement terms as presented**. The minutes should also include **what the grant is for, the total project cost, and the amount of local match (50%)**. Ensure you have complied with any public meeting requirement for acceptance of this grant including, if applicable, RSA 31:95-b.
2. Certificate of Vote/Authority for Signature (**Only required if ONE person and not the majority of your board/council signs the grant agreement**) – see the enclosed document for guidance.

Please mail/ensure delivery of all documents, **including this checklist**, to:

Heather Dunkerley, EMPG Program Coordinator  
 N.H. Homeland Security and Emergency Management  
 33 Hazen Drive  
 Concord, NH 03305

<p><b>PLEASE          RETURN BY:  <u>7/10/2016</u></b></p>
--

**GRANT AGREEMENT**

The State of New Hampshire and the Subrecipient hereby  
Mutually agree as follows:  
**GENERAL PROVISIONS**

**1. Identification and Definitions.**

<b>1.1. State Agency Name</b> NH Department of Safety, Homeland Security and Emergency Management		<b>1.2. State Agency Address</b> 33 Hazen Drive Concord, NH 03305	
<b>1.3. Subrecipient Name</b> City of Portsmouth (VC#177463-B001)		<b>1.4. Subrecipient Tel. #/Address</b> 603-431-2000 1 Junkins Avenue Portsmouth, NH 03801	
<b>1.5 Effective Date</b> Business Office Approval	<b>1.6. Account Number</b> AU #80920000	<b>1.7. Completion Date</b> September 30, 2017	<b>1.8. Grant Limitation</b> \$4,000.00
<b>1.9. Grant Officer for State Agency</b> Cindy Richard, EMPG Program Manager		<b>1.10. State Agency Telephone Number</b> (603) 223-3627	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
<b>1.11. Subrecipient Signature 1</b>		<b>1.12. Name &amp; Title of Subrecipient Signor 1</b>	
Subrecipient Signature 2		Name & Title of Subrecipient Signor 2	
Subrecipient Signature 3		Name & Title of Subrecipient Signor 3	
<b>1.13. Acknowledgment:</b> State of New Hampshire, County of _____, on _____ / / _____, before the undersigned officer, personally appeared the person identified in block 1.12., known to me (or satisfactorily proven) to be the person whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
<b>1.13.1. Signature of Notary Public or Justice of the Peace</b> (Seal)			
<b>1.13.2. Name &amp; Title of Notary Public or Justice of the Peace</b> _____ (Commission Expiration) _____			
<b>1.14. State Agency Signature(s)</b> By: _____		<b>1.15. Name &amp; Title of State Agency Signor(s)</b> Steven R. Lavoie, Director of Administration	
<b>1.16. Approval by Attorney General (Form, Substance and Execution) (if G &amp; C approval required)</b> By: _____ Assistant Attorney General, On: _____ / / _____			
<b>1.17. Approval by Governor and Council (if applicable)</b> By: _____ On: _____ / / _____			

**2. SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-P:36, the Subrecipient identified in block 1.3 (hereinafter referred to as "the Subrecipient"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being hereinafter referred to as "the Project").

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

3. AREA COVERED. Except as otherwise specifically provided for herein, the Subrecipient shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
  - 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.17), or upon signature by the State Agency as shown in block 1.14 ("the effective date").
  - 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in its entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
  - 5.1. The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.
  - 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT B.
  - 5.3. In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Subrecipient the Grant Amount. The State shall withhold from the amount otherwise payable to the Subrecipient under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
  - 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Subrecipient for all expenses, of whatever nature, incurred by the Subrecipient in the performance hereof, and shall be the only, and the complete, compensation to the Subrecipient for the Project. The State shall have no liabilities to the Subrecipient other than the Grant Amount.
  - 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY SUBRECIPIENT WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Subrecipient shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Subrecipient, including the acquisition of any and all necessary permits.
7. RECORDS and ACCOUNTS.
  - 7.1. Between the Effective Date and the date three (3) years after the Completion Date the Subrecipient shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
  - 7.2. Between the Effective Date and the date three (3) years after the Completion Date, at any time during the Subrecipient's normal business hours, and as often as the State shall demand, the Subrecipient shall make available to the State all records pertaining to matters covered by this Agreement. The Subrecipient shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Subrecipient" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Subrecipient in block 1.3 of these provisions.
8. PERSONNEL.
  - 8.1. The Subrecipient shall, at its own expense, provide all personnel necessary to perform the Project. The Subrecipient warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
  - 8.2. The Subrecipient shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
  - 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
  - 9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations,
- computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Subrecipient shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Subrecipient notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
  - 11.1. Any one or more of the following acts or omissions of the Subrecipient shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
    - 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
    - 11.1.2 Failure to submit any report required hereunder; or
    - 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
    - 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
  - 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
    - 11.2.1 Give the Subrecipient a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Subrecipient notice of termination; and
    - 11.2.2 Give the Subrecipient a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Subrecipient during the period from the date of such notice until such time as the State determines that the Subrecipient has cured the Event of Default shall never be paid to the Subrecipient; and
    - 11.2.3 Set off against any other obligation the State may owe to the Subrecipient any damages the State suffers by reason of any Event of Default; and
    - 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
  - 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Subrecipient shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
  - 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Subrecipient to receive that portion of the Grant amount earned to and including the date of termination.
  - 12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Subrecipient from any and all liability for damages sustained or incurred by the State as a result of the Subrecipient's breach of its obligations hereunder.
  - 12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Subrecipient hereunder, the Subrecipient, may terminate this Agreement without cause upon thirty (30) days written notice.
13. CONFLICT OF INTEREST. No officer, member of employee of the Subrecipient, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. SUBRECIPIENT'S RELATION TO THE STATE. In the performance of this Agreement the Subrecipient, its employees, and any subcontractor or subgrantee of the Subrecipient are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Subrecipient nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Subrecipient shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Subrecipient other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Subrecipient shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Subrecipient or subcontractor, or subgrantee or other agent of the Subrecipient. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1 The Subrecipient shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 Statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 Comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Subrecipient.

19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required, or by the signing State Agency.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

24. SPECIAL PROVISIONS. The additional provisions set forth in Exhibit C hereto are incorporated as part of this agreement.

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT A**

Scope of Services

1. The Department of Safety, Division of Homeland Security and Emergency Management (hereinafter referred to as "the State") is awarding the City of Portsmouth (hereinafter referred to as "the Subrecipient") \$4,000.00 to update the community's Local Emergency Operations Plan (LEOP).
2. "The Subrecipient" agrees that the project grant period ends September 30, 2017 and that a final performance and expenditure report will be sent to "the State" by October 31, 2017.
3. "The Subrecipient" agrees to comply with all applicable federal and state laws, rules, regulations, and requirements.
4. "The Subrecipient" shall maintain financial records, supporting documents, and all other pertinent records for a period of three (3) years from the grant period end date. In these records, "the Subrecipient" shall maintain documentation of the 50% cost share required by this grant.

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT B**

Grant Amount and Method of Payment

**1. GRANT AMOUNT**

	<b>Applicant</b>	<b>Grant</b>	
	<b>Share</b>	<b>(Federal Funds)</b>	<b>Cost Totals</b>
Project Cost	\$4,000.00	\$4,000.00	\$8,000.00
Project Cost is 50% Federal Funds, 50% Applicant Share			
Awarding Agency: Federal Emergency Management Agency (FEMA)			
Award Title & #: Emergency Management Performance Grant (EMPG) EMW-2015-EP-00067			
Catalog of Federal Domestic Assistance (CFDA) Number: 97.042 (EMPG)			
Applicant's Data Universal Numbering System (DUNS): 073976706			

**2. PAYMENT SCHEDULE**

- a. "The Subrecipient" agrees the total payment by "the State" under this grant agreement shall be up to \$4,000.00.
- b. "The State" shall reimburse up to \$4,000.00 to "the Subrecipient" upon "the State" receiving appropriate documentation of expended funds (i.e, copies of invoices and cancelled checks) and proof of match from "the Subrecipient".

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT C**

**Special Provisions**

1. This grant agreement may be terminated upon thirty (30) days written notice by either party.
2. Any funds advanced to “the Subrecipient” must be returned to “the State” if the grant agreement is terminated for any reason other than completion of the project.
3. Any funds advanced to “the Subrecipient” must be expended within 30 days of receiving the advanced funds.
4. “The Subrecipient” will be required to provide the completed plan electronically (via email or CD) to the EMPG Program Manager at the completion of the project.
5. “The Subrecipient” agrees to have an audit conducted in compliance with OMB Circular 2 CFR 200, if applicable. If a compliance audit is not required, at the end of each audit period “the Subrecipient” will certify in writing that they have not expended the amount of federal funds that would require a compliance audit (\$750,000). If required, they will forward for review and clearance a copy of the completed audit(s) to “the State”.

Additionally, “the Subrecipient” has or will notify their auditor of the above requirements prior to performance of the audit. “The Subrecipient” will also ensure that, if required, the entire grant period will be covered by a compliance audit, which in some cases will mean more than one audit must be submitted. “The Subrecipient” will advise the auditor to cite specifically that the audit was done in accordance with OMB Circular 2 CFR 200. “The Subrecipient” will also ensure that all records concerning this grant will be kept on file for a minimum of three (3) years from the end of this audit period.

Subrecipient Initials: 1.) \_\_\_\_\_ 2.) \_\_\_\_\_ 3.) \_\_\_\_\_ Date: \_\_\_\_\_

## CERTIFICATE OF AUTHORITY CHECKLIST

**(Refer to this checklist if someone other than the Board of Selectmen or City Council signs the Grant Agreement/Amendment)**

### **SOURCE OF AUTHORITY**

Authority must come from the **governing body** – either:

- (1) a **majority voted** at a meeting ,
- (2) or the body provided **unanimous consent in writing**, or
- (3) the organization's **policy or governing document** (bylaws, partnership agreement, LLC operating agreement) authorizes the person to sign

### **SOURCE OF AUTHORITY WAS IN EFFECT ON DAY CONTRACT WAS SIGNED**

Certificate must show that the person signing the contract **had authority when they signed the contract** - either:

- (1) Authority was **granted the same day** as the day the contract was signed,  
or
- (2) Authority was **granted after** the day the contract was signed *and the governing body ratifies and accepts* the earlier execution, or
- (3) Authority was **granted prior** to the day the contract was signed and it has not been amended or repealed as of the day the contract was signed.

### **APPROPRIATE PERSON SIGNED THE CERTIFICATE**

The person signing the certificate may be the same person signing the contract *only if* the certificate states that the person is the **sole director** (for corps) or **sole member** (for LLCs).



ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, VEHICLES, TRAFFIC and PARKING of the ordinances of the City of Portsmouth be amended as follows by deletions from existing language stricken and highlighted in **red**; additions to existing language bolded and highlighted in **red**, remaining language unchanged from existing:

*[Explanatory note not part of ordinance. The following amendments to the parking ordinance were either implemented by the Parking and Traffic Safety Committee on a trial basis last year or are part of ongoing improvements to the parking ordinance and are forwarded to the City Council for approval. Each ordinance change is shown on diagrams attached hereto.]*

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**A. Amend:** Chapter 7, Article III – TRAFFIC ORDINANCE, Section 7.330: No Parking

**Section 7.330: NO PARKING**

A. Unless otherwise designated by ordinance, parking shall be prohibited at all times in the following described streets and locations:

**30. Cutts Street: easterly side, between Maplewood Avenue and Leslie Drive.**

**75. McDonough Street: both sides, from the easterly curb line of Dover Street to a point 90 feet east of Dover Street.**

**122. Union Street: westerly side, from State Street to a point 45 feet north of State Street.**

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**B. Amend:** Chapter 7, Article IV – OFF-STREET PARKING AREAS

**Section 7.402: AREAS ESTABLISHED, DESIGNATED, AND DESCRIBED**

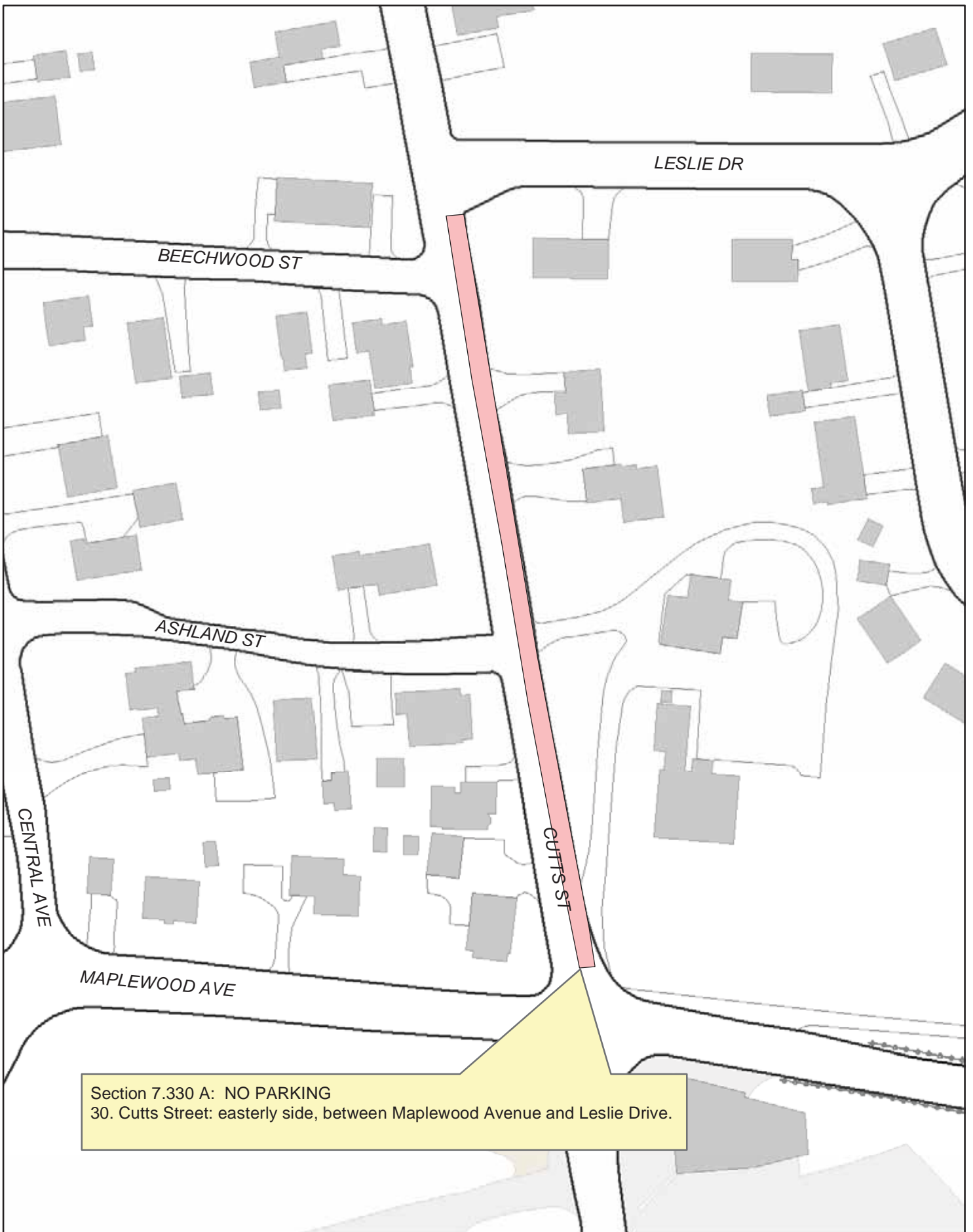
**D. ~~Vaughn Street Off-Street Parking Area (Worth Lot)~~**

The following area to be known as the ~~Vaughn Street Off-Street Parking Area~~ **Worth Lot** is hereby established for off-street parking of motor vehicles said area being more particularly bounded and described as follows:

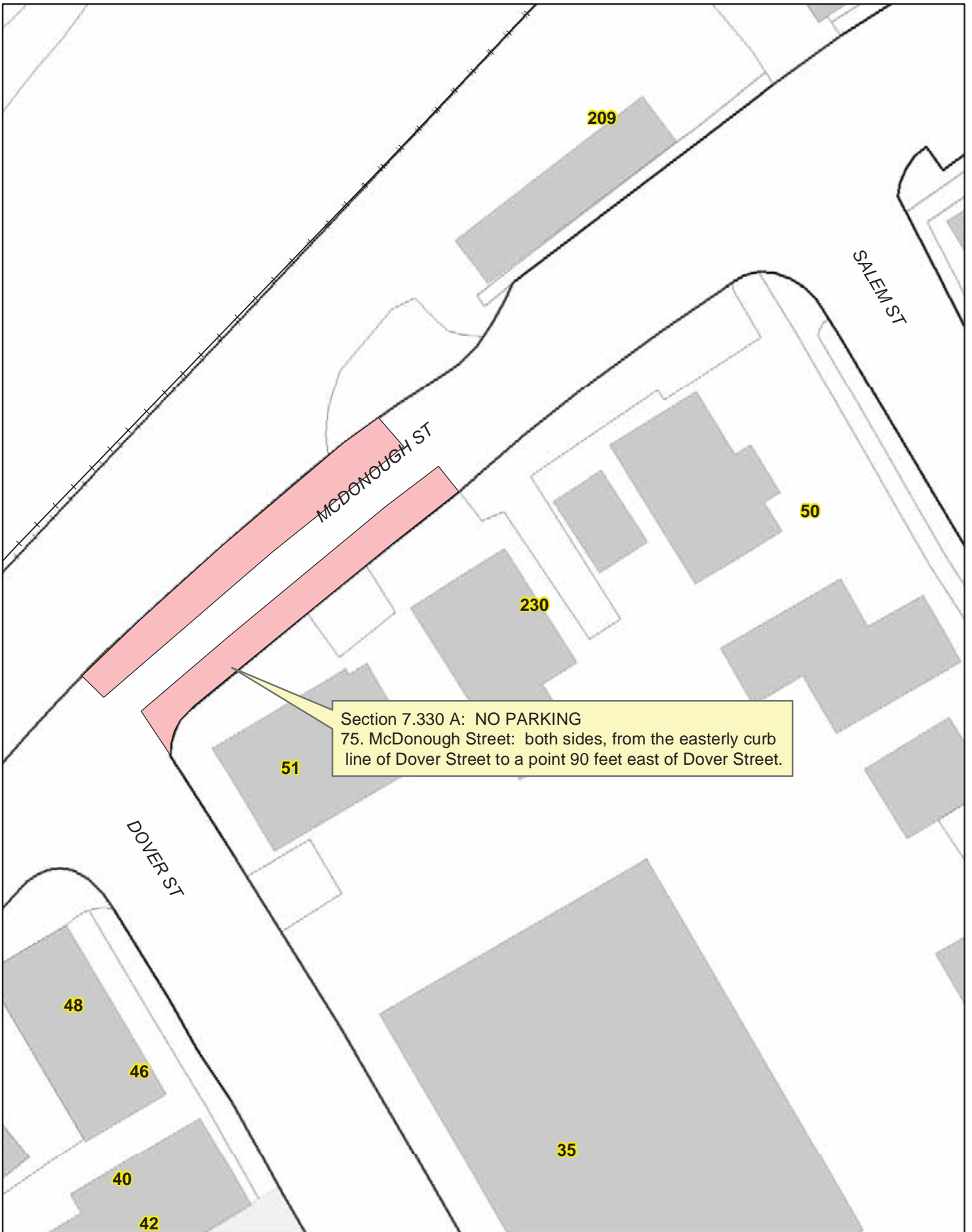
Beginning on the westerly sideline of Vaughan Street where said westerly sideline of said Vaughan Street intersects the northerly sideline of a certain right of way which extends from said Vaughan Street in a westerly direction to land now or former of the YMCA; thence running westerly by said right of way and the land of said YMCA a distance of 394.3 feet to a point; thence turning and running in a southerly direction 15 feet, more or less, to a point; thence turning and running by land now or formerly of Whitaker a distance of 75 feet, more or less, to the easterly sideline of Bridge Street; thence turning and running along said easterly sideline of said Bridge Street, a distance of 94.9 feet to the land now or formerly of Norman Munday; thence turning and running in an easterly direction along land of Munday, Knott, Roylos and Savramis a distance of 256 feet; thence turning and running in a northerly direction along land of Savramis a distance of 105.4 feet to the southerly sideline of Hanover Street; thence turning and running along said southerly sideline of said Hanover Street in an easterly direction a distance of 69.9 feet to land now or formerly of Rirado Realities, Inc.; thence turning and running in a southerly direction along land of said Rirado Realities, Inc. a distance of 118 feet to a point; thence turning and running in an easterly direction a distance of 141 feet to the westerly sideline of Vaughan Street; thence turning and running along said westerly sideline of said Vaughan Street in a southerly direction, a distance of 104.9 feet to the City of Portsmouth, NH Ordinances Page 40 Chapter 7 point of beginning. All of said area within the ~~Vaughan Street Off Street Parking~~ **Worth** Lot is hereby designated as parking meter zones.

All of said area in the ~~Vaughan Street Off Street Parking area~~ (Worth Lot) is designated as a parking meter zone. All off-street area within the ~~Vaughan Street Off Street parking area~~ **Worth Lot** is hereby designated as a ~~two~~ **three** hour parking zone except as follows:

1. To the extent that contractual obligations of the City of Portsmouth require otherwise.
  2. Two spaces in the northeastern corner of the lot shall be designated and marked "Fifteen Minute Parking Only".
  3. ~~The first two spaces available in the southwestern corner of the lot shall be designated and marked "Fifteen Minute Parking Only".~~
-

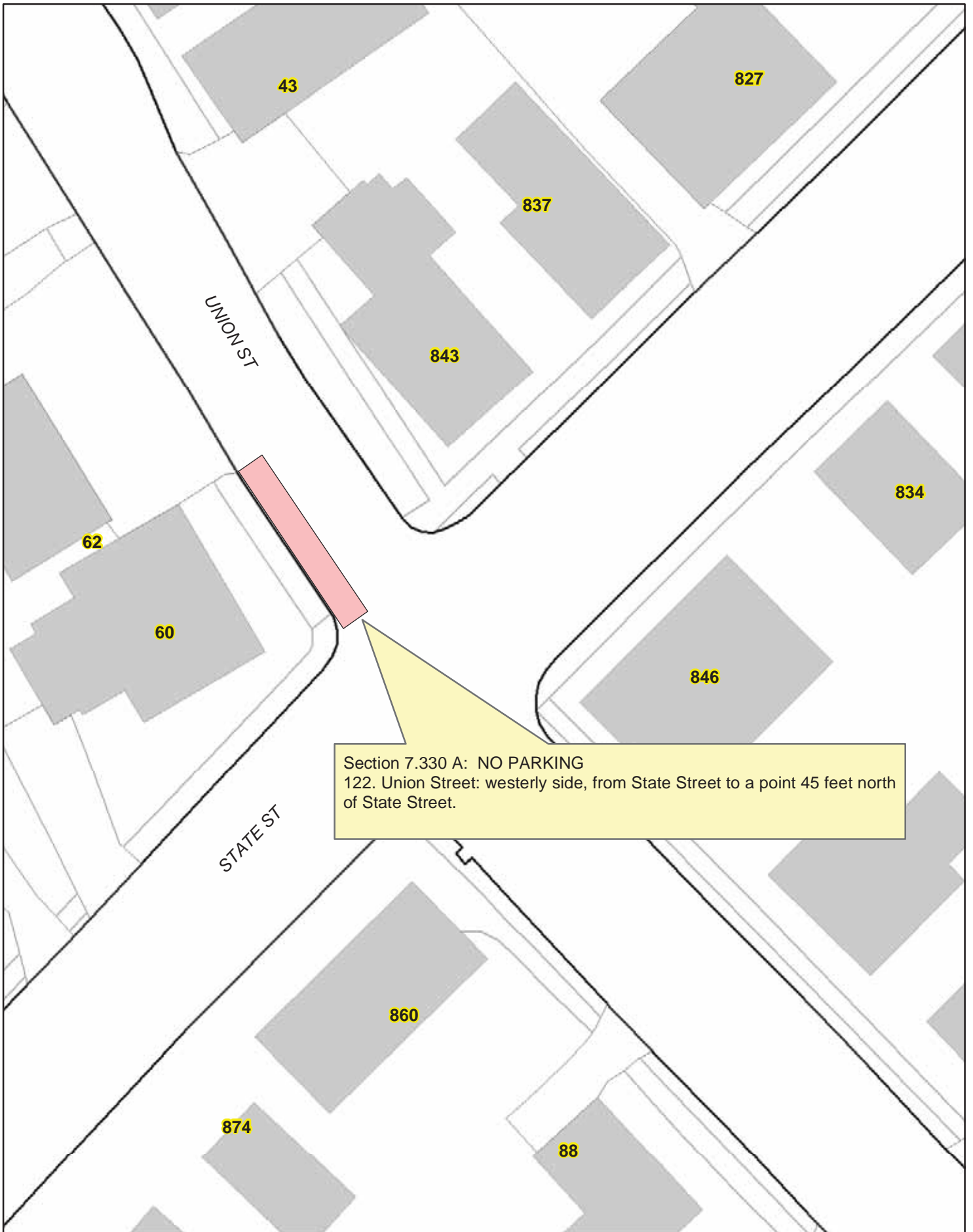


**Cutts Street No Parking  
Portsmouth, New Hampshire**



**McDonough Street No Parking  
Portsmouth, New Hampshire**

Map prepared by Portsmouth Department of Public Works, 9 June 2016  
Map document: U:\Projects\0263 Parking Traffic & Safety\Traffic and Parking Ordinance Changes\2016



**Union Street No Parking  
Portsmouth, New Hampshire**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance be amended as follows:

- (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 7/11/16.
- (2) Amend Articles 4, 5 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled “Conforming Amendments to Zoning Ordinance” dated 7/11/2016.
- (3) Amend the Zoning Map as set forth in the following maps dated 7/11/16:
  - (a) Map 10.5A21A – Character Districts and Civic Districts;
  - (b) Map 10.5A21B – Building Height Standards;
  - (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses.
- (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled “Proposed Additional West End Zoning Changes” dated 7/11/2016 and as shown on the map titled “Additional West End Zoning Changes – Third Reading – 7/11/16”.

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

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Jack Blalock, Mayor

ADOPTED BY COUNCIL:

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Kelli L. Barnaby, City Clerk

## Article 5A Character-Based Zoning

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- Section 10.5A10** General
- Section 10.5A20** Regulating Plan
- Section 10.5A30** Character District Use Standards
- Section 10.5A40** Character District Development Standards
- Section 10.5A50** Civic Districts
- Section 10.5A60** Definitions

### Section 10.5A10 General

#### 10.5A11 Purpose and Intent

The purpose of Article 5A is to encourage development that is compatible with the established character of its surroundings and consistent with the City's goals for the preservation or enhancement of the area. This is accomplished by providing a range of standards for the elements of development and buildings that define a place.

#### 10.5A12 Applicability

- 10.5A12.10 Article 5A shall apply to the Character districts and Civic districts as shown on the Regulating Plan.
- 10.5A12.20 Municipal districts are shown on the Regulating Plan for reference but are governed by other sections of the Zoning Ordinance (specifically, Sections 10.460 and 10.560) and not by Article 5A.

#### 10.5A13 Compliance with Regulating Plan

- 10.5A13.10 In the Character districts and Civic districts, all lots, buildings, structures, uses, and development shall comply with the requirements of Article 5A, as well as with all other provisions of this Zoning Ordinance that are not superseded by Article 5A.
- 10.5A13.20 No development, subdivision, re-subdivision or construction of or on any building, lot or parcel of land shall occur except pursuant to the Regulating Plan and in compliance with all standards and requirements for the district.

### 10.5A14 Relationship to Other Provisions of the Zoning Ordinance

- 10.5A14.10 The provisions of Article 5A shall take precedence over all other provisions of the Zoning Ordinance that are in conflict with Article 5A.
- 10.5A14.20 All provisions of the Zoning Ordinance that are not specifically modified or superseded by Article 5A, or that are not in conflict with Article 5A, shall apply to lots, buildings and uses in the Character districts and Civic districts.

### 10.5A15 Relationship to Other Regulations, Codes and Ordinances

- 10.5A15.10 Any proposed subdivision of land shall comply with the Subdivision Rules and Regulations, in addition to the requirements of Article 5A.
- 10.5A15.20 Any development that requires Site Plan Review under the Site Plan Review Regulations shall comply with such Regulations, in addition to the requirements of Article 5A.
- 10.5A15.30 The provisions of Article 5A do not modify or supersede any provision of the Building Code, other City ordinances or regulations, or State laws relating to the development of land.

### 10.5A16 Figures

- 10.5A16.10 The standards and definitions in the following figures are an integral part of Article 5A:
  - Figure 10.5A41.10A – Development Standards: Character District 4– Limited (CD4-L1/CD4-L2)
  - Figure 10.5A41.10B – Development Standards: Character District 4– West End (CD4-W)
  - Figure 10.5A41.10C – Development Standards: Character District 4 (CD4)
  - Figure 10.5A41.10D – Development Standards: Character District 5 (CD5)
  - Figure 10.5A43.10 – Façade Types
  - Figure 10.5A43.60 – Building Types
  - Figure 10.5A46.10 – Community Spaces
- 10.5A16.20 The diagrams, photographs and illustrations contained in the above figures are provided only to provide reference to certain regulating elements and indicate general character within the various districts and shall have regulatory force and effect only to that extent.



## 10.5A17 Definitions

Terms used throughout Article 5A may be defined in the figures (Façade Types, Building Types, and Community Spaces), in Section 10.5A60, in Article 15 or elsewhere in the Zoning Ordinance. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in Article 5A, those in Article 15, other sections of the Zoning Ordinance, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of Article 5A shall take precedence unless the context clearly indicates otherwise.

## Section 10.5A20 Regulating Plan

### 10.5A21 General

#### **10.5A21.10 Contents of Regulating Plan**

The Regulating Plan is the Zoning Map for the Character districts and Civic districts. The Regulating Plan consists of the following maps:

- Map 10.5A21A – Character Districts and Civic Districts
- Map 10.5A21B – Building Height Standards
- Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout, and Uses

#### **10.5A21.20 Building Height Standards**

10.5A21.21 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 (whichever is lower) and no less than the designated minimum number of stories.

10.5A21.22 When a lot is assigned to more than one building height standard the lot shall be apportioned as follows:

- (a) A building height standard designated along the front lot line or street shall apply to the portion of the lot that is 50 feet or less from such lot line or street.
- (b) A building height standard designated along a water body shall apply to the portion of the lot that is 100 feet or less from the mean high water line.
- (c) More than 50 feet from a front lot line or street and more than 100 feet from a water body, the building height may increase to the highest building height standard designated for the lot.
- (d) Where a lot has less depth from the front lot line, street or water body than the required minimum distances stated above, the lowest

building height standard for the lot shall be applied to the required linear distance from the lot line, street or water body.

**10.5A21.30 Special Requirements for Façade Types, Front Lot Line Buildout, and Uses**

The following standards shall apply when so designated by the Regulating Plan:

- (a) Specific façade type requirements apply to designated properties at the sidewalk level. Where a permitted building type conflicts with a required façade type, the façade type shall supersede.
- (b) For waterfront lots on Ceres Street, the maximum front lot line buildout shall be 50%, and buildings shall have a wood-sided appearance.
- (c) Specific use requirements apply to designated properties along the waterfront area (see Sections 10.5A34-35).

**10.5A22 Regulating Plan Amendment**

**10.5A22.10 General**

The Regulating Plan may be amended in accordance with the provisions of Section 10.150 (Changes and Amendments), subject to the further provisions of Section 10.5A22.20.

**10.5A22.20 Application Requirements**

An application for a Regulating Plan amendment initiated by or on behalf of the owner of property shall be accompanied by a site plan for such property that complies with the requirements for a request for Design Review under the Site Plan Review Regulations.

**Section 10.5A30 Character District Use Standards**

- 10.5A31 Buildings, structures and land within a Character district shall comply with the use regulations set forth for the applicable district in Section 10.440, except as specified below:
- 10.5A32 A lot within the Downtown Overlay District shall comply with the requirements of Section 10.642 Ground Floor Uses.
- 10.5A33 In addition to the uses permitted in the underlying Character districts, lots in the Waterfront Use Overlay as shown on Map 10.5A21C shall also permit uses 9.60, 12.20, 12.22 and 12.40 as set forth in Section 10.440 (Table of Uses).

- 10.5A34 In addition to the uses permitted in Character District 4, waterfront lots on Ceres Street as shown on Map 10.5A21C shall also permit the uses permitted in the Waterfront Industrial district as set forth in Section 10.440.

## Section 10.5A40 Character District Development Standards

### 10.5A41 Development Standards

Development, structures and lots within Character districts shall comply with the applicable general description and standards set forth in Figures 10.5A41.10A-D (Development Standards) and elsewhere in Article 5A.

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**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**

These districts consist of medium density areas with a mix of medium to large houses. Upper floor uses are almost entirely residential. Ground floors include some commercial office uses; areas zoned CD4-L2 also allow some restaurant and retail uses on the ground floor. There are shallow front yards and shallow to medium side yards, with variable private landscaping, and on-site accessory parking. Streets have sidewalks and street trees, and define medium to large blocks.



**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**



**BUILDING PLACEMENT – PRINCIPAL BUILDING**

Maximum principal front yard	15 ft	A
Maximum secondary front yard	12 ft	B
Side yard	5 ft min. to 20 ft max.	C
Minimum rear yard	Greater of 5 ft from rear lot line or 10 ft from center line of alley	D
Front lot line buildout	60% min. to 80% max.	E

**BUILDING AND LOT OCCUPATION**

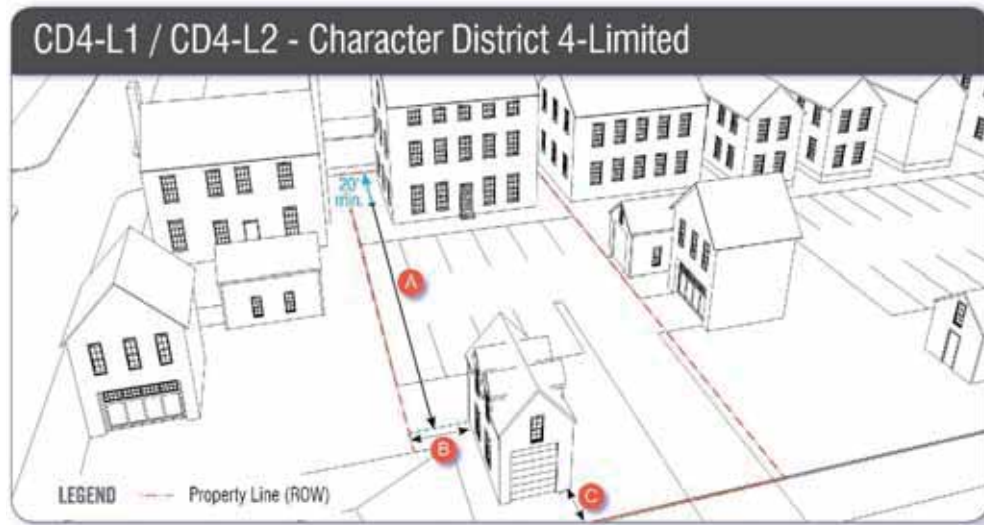
Maximum building block length	80 ft	E
Maximum façade modulation length	50 ft (see Section 10.5A43.20)	
Maximum entrance spacing	NR	
Maximum building coverage	60%	
Maximum building footprint	2,500 sf	
Minimum lot area	3,000 sf	

Minimum lot area per dwelling unit	3,000 sf
Minimum open space	25%
Maximum ground floor GFA per use	NR

**BUILDING FORM – PRINCIPAL BUILDING**

Building height	See Map 10.5A21.B & Section 10.5A43.30	F
Maximum finished floor surface of ground floor above sidewalk grade	36"	
Minimum ground story height	11 ft	
Façade glazing:		
Shopfront façade	70% min.	
Other façade types	20% min. to 40% max.	
Roof type	flat, gable, hip, gambrel, mansard	
Roof pitch, if any		
Gable	6:12 min. to 12:12 max	
Hip	3:12 min.	
Mansard/gambrel	6:12 min. to 30:12 max.	

**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**



**BUILDING PLACEMENT – OUTBUILDING**

Minimum front yard	20 ft behind a façade of a principal building	A
Minimum side yard	3 ft	B
Minimum rear yard	3 ft	C

**BUILDING TYPES**

See Figure 10.5A43.60 for building type definitions

House	permitted*
Duplex	permitted*
Rowhouse	permitted*
Apartment building	permitted*
Live/work building	permitted**
Small commercial building	CD4-L1: not permitted CD4-L2: permitted
Large commercial building	not permitted

\*Not permitted in the Downtown Overlay District  
 \*\*Residential uses are not permitted on the ground floor in the Downtown Overlay District

**BUILDING & LOT USE**

See Sections 10.5A30 and 10.440

**FAÇADE TYPES**

See Figure 10.5A43.10 for façade type definitions  
 Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

Porch	permitted
Stoop	permitted*
Step	only permitted where indicated on Map 10.5A21C
Shopfront	CD4-L1: only permitted where indicated on Map 10.5A21C CD4-L2: permitted
Officefront	only permitted where indicated on Map 10.5A21C
Forecourt	permitted*
Recessed-entry	permitted

\*Not permitted in the Downtown Overlay District

**PARKING**

See Section 10.5A44.30

**COMMUNITY SPACE**

See Section 10.5A46

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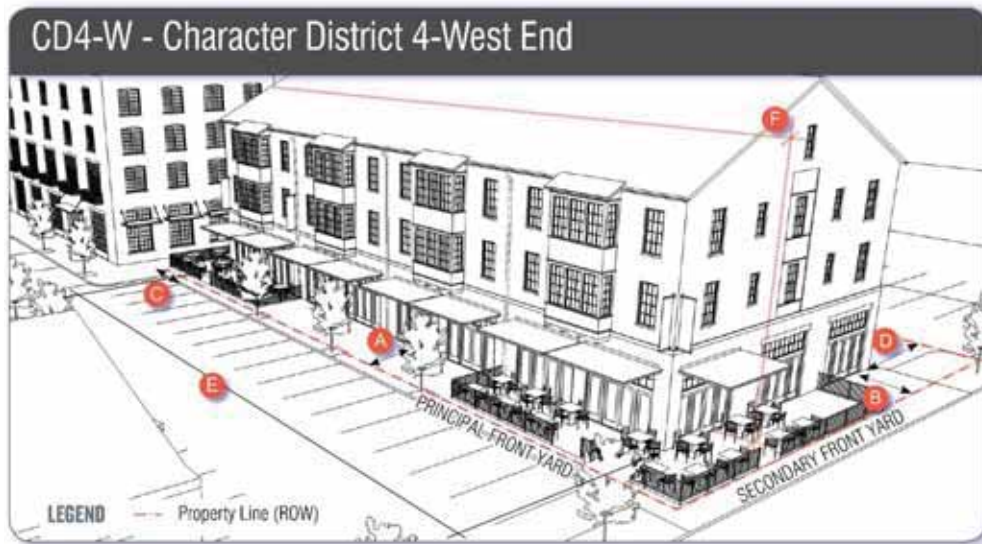


**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—WEST END (CD4-W)**

This district consists of a medium-to-high density area with a mix of building types and residential, retail, and other commercial uses. There are shallow or no front yards and medium to no side yards, with variable private landscaping and on-site accessory parking. Streets have sidewalks and street trees or other pedestrian amenities, and define medium blocks.



**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—WEST END (CD4-W)**



**BUILDING PLACEMENT – PRINCIPAL BUILDING\***

Maximum principal front yard	10 ft	A
Maximum secondary front yard	15 ft	B
Side yard	NR	C
Minimum rear yard	Greater of 5 ft from rear lot line or 10 ft from center line of alley	D
Minimum front lot line buildout	50%	E

\* Except for items listed under Section 10.5A42.12

**BUILDING AND LOT OCCUPATION**

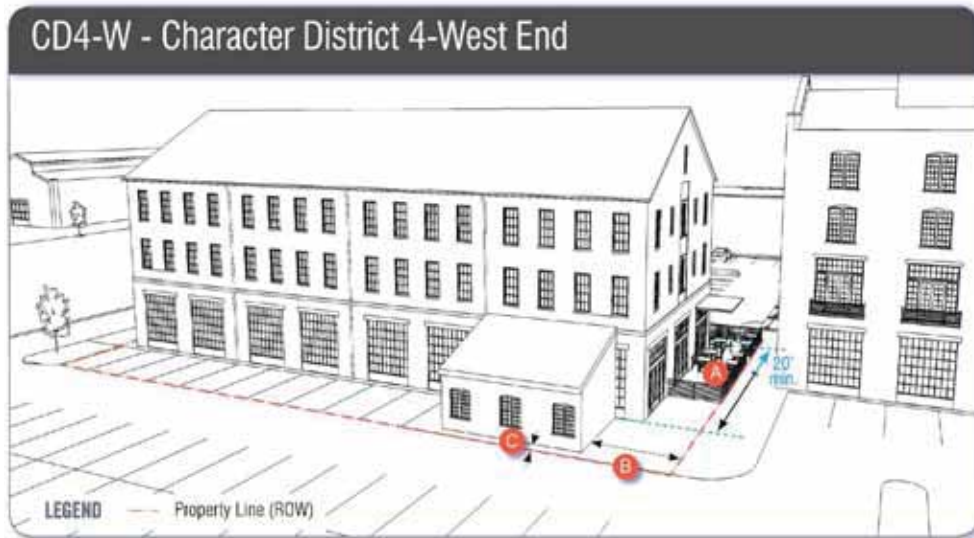
Maximum building block length	200 ft	E
Maximum façade modulation length	80 ft (see Section 10.5A43.20)	
Maximum entrance spacing	50 ft	
Maximum building coverage	60%	
Maximum building footprint	15,000 sf (or as allowed by Section 10.5A43.40)	

Minimum lot area	5,000 sf
Minimum lot area per dwelling unit	2,500 sf
Minimum open space	15%
Maximum ground floor GFA per use	15,000 sf

**BUILDING FORM – PRINCIPAL BUILDING**

Building height	See Map 10.5A21.B & Section 10.5A43.30	F
Maximum finished floor surface of ground floor above sidewalk grade	36"	
Minimum ground story height	12 ft	
Façade glazing:		
Shopfront façade	70% min.	
Other façade types	20% min. to 50% max.	
Roof type	flat, gable, hip, gambrel, mansard	
Roof pitch, if any		
Gable	6:12 min. to 12:12 max	
Hip	3:12 min.	
Mansard/gambrel	6:12 min. to 30:12 max.	

**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4—WEST END (CD4-W)**



**BUILDING PLACEMENT – OUTBUILDING**

Minimum front yard	20 ft behind a façade of a principal building	<b>A</b>
Minimum side yard	0 ft	<b>B</b>
Minimum rear yard	3 ft	<b>C</b>

**BUILDING TYPES**

See Figure 10.5A43.60 for building type definitions

House	not permitted
Duplex	not permitted
Rowhouse	permitted
Apartment building	permitted
Live/work building	permitted*
Small commercial building	permitted
Large commercial building	permitted

\*Residential uses are not permitted on the ground floor

**BUILDING & LOT USE**

See Sections 10.5A30 and 10.440
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**FAÇADE TYPES**

See Figure 10.5A43.10 for façade type definitions  
Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

Porch	not permitted
Stoop	permitted
Step	permitted
Shopfront	permitted
Officefront	permitted
Forecourt	not permitted
Recessed-entry	permitted

**PARKING**

See Section 10.5A44.30
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**COMMUNITY SPACE**

See Section 10.5A46
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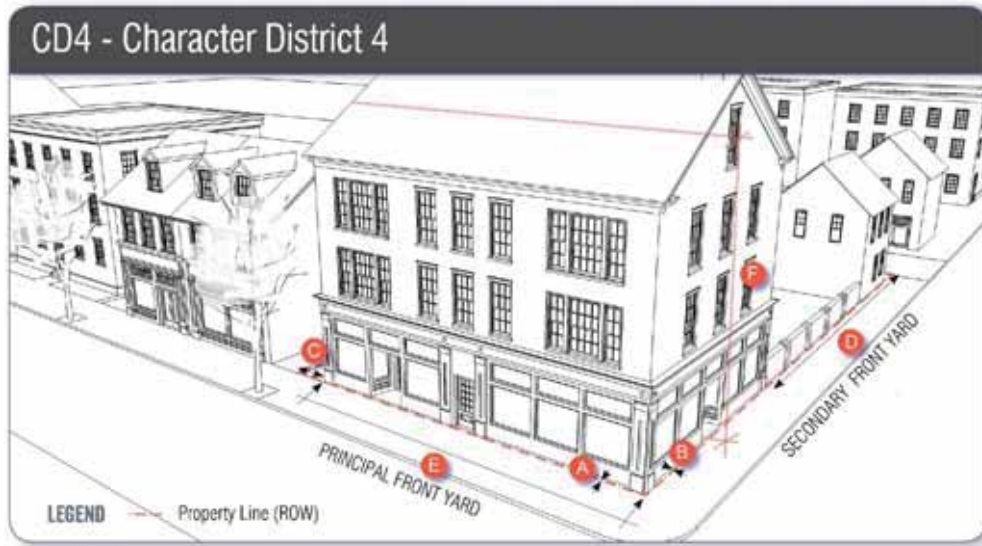
**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4 (CD4)**

This district consists of a medium-to-high density transitional area with a mix of building types and residential, retail, and other commercial uses. There are shallow or no front yards and medium to no side yards, with variable private landscaping. Streets have sidewalks and street trees or other pedestrian amenities, and define small to medium blocks.



**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS**

Character District 4 (CD4)



**BUILDING PLACEMENT – PRINCIPAL BUILDING\***

Maximum principal front yard	10 ft	A
Maximum secondary front yard	15 ft	B
Side yard	NR	C
Minimum rear yard	Greater of 5 ft from rear lot line or 10 ft from center line of alley	D
Front lot line buildout		
On Ceres Street	50% max. (See Map 10.5A21C)	
Everywhere else	50% min.	

\* Except for items listed under Section 10.5A42.12

**BUILDING AND LOT OCCUPATION**

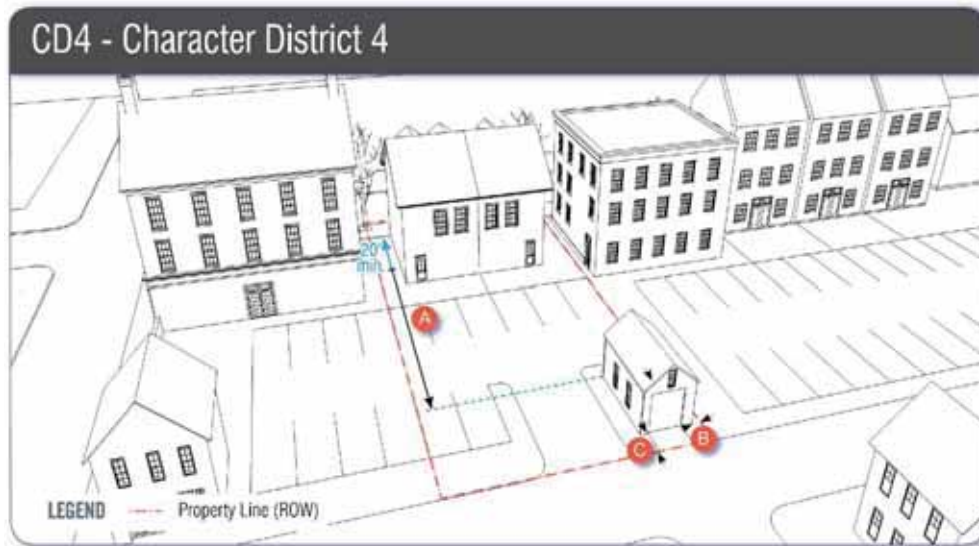
Maximum building block length	200 ft	E
Maximum façade modulation length	80 ft (see Section 10.5A43.20)	
Maximum entrance spacing	50 ft	
Maximum building coverage	90%	
Maximum building footprint	15,000 sf (or as allowed by Section 10.5A43.40)	

Minimum lot area	NR
Minimum lot area per dwelling unit	NR
Minimum open space	10%
Maximum ground floor GFA per use	15,000 sf

**BUILDING FORM – PRINCIPAL BUILDING**

Building height	See Map 10.5A21.B & Section 10.5A43.30	F
Maximum finished floor surface of ground floor above sidewalk grade	36"	
Minimum ground story height	12 ft	
Minimum second story height	10 ft	
Façade glazing:		
Shopfront façade	70% min.	
Other façade types	20% min. to 50% max.	
Roof type	flat, gable, hip, gambrel, mansard	
Roof pitch, if any		
Gable	6:12 min. to 12:12 max	
Hip	3:12 min.	
Mansard/gambrel	6:12 min. to 30:12 max.	

**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4 (CD4)**



**BUILDING PLACEMENT – OUTBUILDING**

Minimum front yard	20 ft behind a façade of a principal building	A
Minimum side yard	0 ft	B
Minimum rear yard	3 ft	C

**BUILDING TYPES**

See Figure 10.5A43.60 for building type definitions	
House	not permitted
Duplex	not permitted
Rowhouse	permitted*
Apartment building	permitted*
Live/work building	permitted**
Small commercial building	permitted
Large commercial building	permitted

\*Not permitted in the Downtown Overlay District  
 \*\*Residential uses are not permitted on the ground floor in the Downtown Overlay District

**BUILDING & LOT USE**

See Sections 10.5A30 and 10.440
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**FAÇADE TYPES**

See Figure 10.5A43.10 for façade type definitions	
Except where required façade types are indicated on Map 10.5A21C, the below standards apply:	
Porch	not permitted
Stoop	permitted
Step	permitted
Shopfront	permitted
Officefront	permitted
Forecourt	not permitted
Recessed-entry	permitted

**PARKING**

See Section 10.5A44.30
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**COMMUNITY SPACE**

See Section 10.5A46
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**FIGURE 10.5A41.10D DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 5 (CD5)**

This district consists of a high density center with a mix of building types and residential, retail and other commercial uses. There are no front yards or side yards, and limited landscaping and public parking facilities. Streets have sidewalks and trees or other pedestrian amenities, and define small to medium blocks.



**FIGURE 10.5A41.10D DEVELOPMENT STANDARDS**

Character District 5 (CD5)



**BUILDING PLACEMENT – PRINCIPAL BUILDING\***

Maximum principal front yard	5 ft	A
Maximum secondary front yard	5 ft	B
Side yard	NR	C
Minimum rear yard	Greater of 5 ft from rear lot line or 10 ft from center line of alley	D
Minimum front lot line buildout	80%	

\* Except for items listed under Section 10.5A42.12

**BUILDING AND LOT OCCUPATION**

Maximum building block length	225 ft	E
Maximum façade modulation length	100 ft (see Section 10.5A43.20)	
Maximum entrance spacing	50 ft	
Maximum building coverage	95%	
Maximum building footprint	20,000 sf (or as allowed by Section 10.5A43.40)	

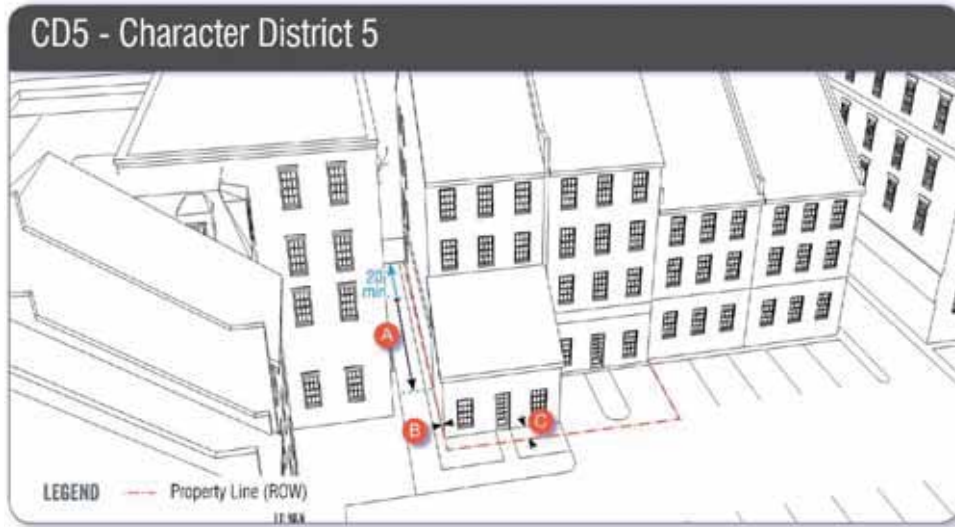
Minimum lot area	NR
Minimum lot area per dwelling unit	NR
Minimum open space	5%
Maximum ground floor GFA per use	15,000 sf

**BUILDING FORM – PRINCIPAL BUILDING**

Building height	See Map 10.5A21.B & Section 10.5A43.30	F
Maximum finished floor surface of ground floor above sidewalk grade	36"	
Minimum ground story height	12 ft	
Minimum second story height	10 ft	
Façade glazing:		
Shopfront façade	70% min.	
Other façade types	20% min. to 50% max.	
Roof type	flat, gable, hip, gambrel, mansard	
Roof pitch, if any		
Gable	6:12 min. to 12:12 max	
Hip	3:12 min.	
Mansard/gambrel	6:12 min. to 30:12 max.	

**FIGURE 10.5A41.10D DEVELOPMENT STANDARDS**

Character District 5 (CD5)



**BUILDING PLACEMENT – OUTBUILDING**

Minimum front yard	20 ft behind a façade of a principal building	A
Minimum side yard	0 ft	B
Minimum rear yard	3 ft	C

**BUILDING TYPES**

See Figure 10.5A43.60 for building type definitions

House	not permitted
Duplex	not permitted
Rowhouse	not permitted
Apartment building	not permitted
Live/work building	permitted*
Small commercial building	permitted
Large commercial building	permitted

\*Residential uses are not permitted on the ground floor in the Downtown Overlay District

**BUILDING & LOT USE**

See Sections 10.5A30 and 10.440

**FAÇADE TYPES**

See Figure 10.5A43.10 for façade type definitions  
 Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

Porch	not permitted
Stoop	permitted
Step	permitted
Shopfront	permitted
Officefront	permitted
Forecourt	not permitted
Recessed-entry	permitted

**PARKING**

See Section 10.5A44.30

**COMMUNITY SPACE**

See Section 10.5A46

## 10.5A42 Building Placement

### 10.5A42.10 Yards

10.5A42.11 Yards shall be as required in Figures 10.5A41.10A-D (Development Standards).

10.5A42.12 Yards may be increased above the maximum permitted for truncated corners or other subtractive massing techniques, alleys, vehicular accessways, increased sidewalk width or community spaces.

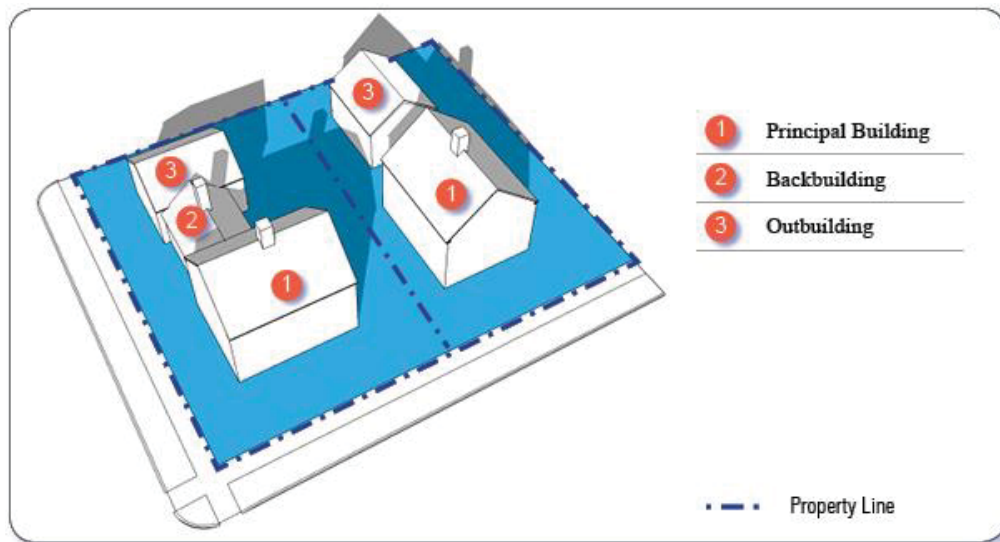
### 10.5A42.20 Façade Alignment

The façade facing the principal front yard shall be parallel to the front lot line. Where the front lot line is curved, the façade shall be parallel to a straight line connecting the points of intersection of the front lot line and the side lot lines.

### 10.5A42.30 Outbuildings and Backbuildings

A detached outbuilding, or an outbuilding attached to a principal building with a backbuilding, may be built on each lot to the rear of the principal building, as illustrated generally in Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).

**FIGURE 10.5A42.10 PRINCIPAL BUILDING/BACKBUILDING/ OUTBUILDING**



## 10.5A43 Building Form and Façades

### 10.5A43.10 Façade Types

The façade facing the principal front yard shall conform to Figure 10.5A43.10 (Façade Types) and Figures 10.5A41.10A-D (Development Standards), and to any applicable façade type requirements indicated on the Regulating Plan. Permitted building form and façade types may be combined.

**FIGURE 10.5A43.10 FAÇADE TYPES**

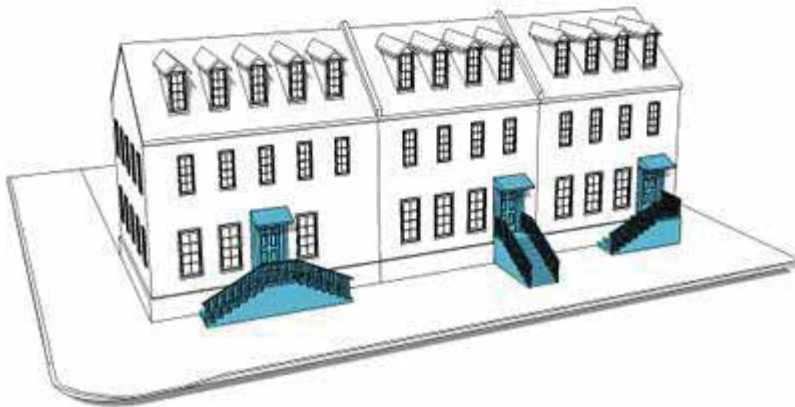
**Porch**



The façade is set back from the front lot line with an attached porch or stoop permitted to encroach. This may be used with or without a fence to maintain street spatial definition.

**Permitted districts:**  
CD4-L1, CD4-L2

**Stoop**



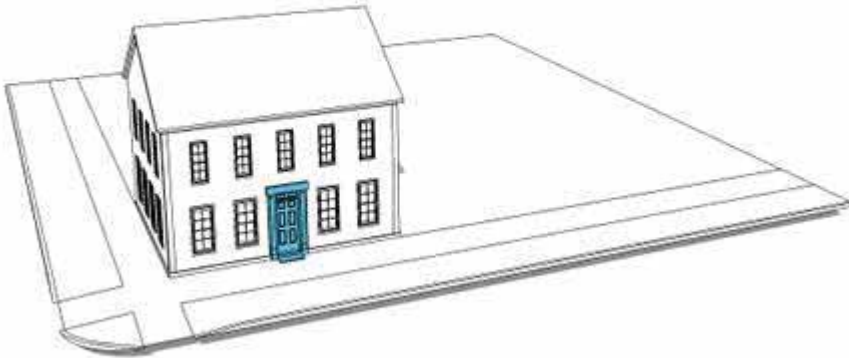
The façade is aligned close to the front lot line with the ground floor elevated from the sidewalk for privacy. The entrance has an exterior stair and landing.

This type is recommended for ground floor residential use.

**Permitted districts:**  
CD5, CD4, CD4-W, CD4-L1, CD4-L2

**FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)**

**Step**



The façade is aligned close to the front lot line with the ground floor elevated from the sidewalk for privacy. The entrance has an exterior single step without a landing.

This type is recommended for ground floor residential, office or retail use.

**Permitted districts:**

CD5, CD4, CD4-W

Only permitted in CD4-L1 & CD4-L2 where indicated on Map 10.5A21C.

**Shopfront**



The façade is aligned close to the front lot line with the building entrance at sidewalk grade and with substantial glazing on the ground floor.

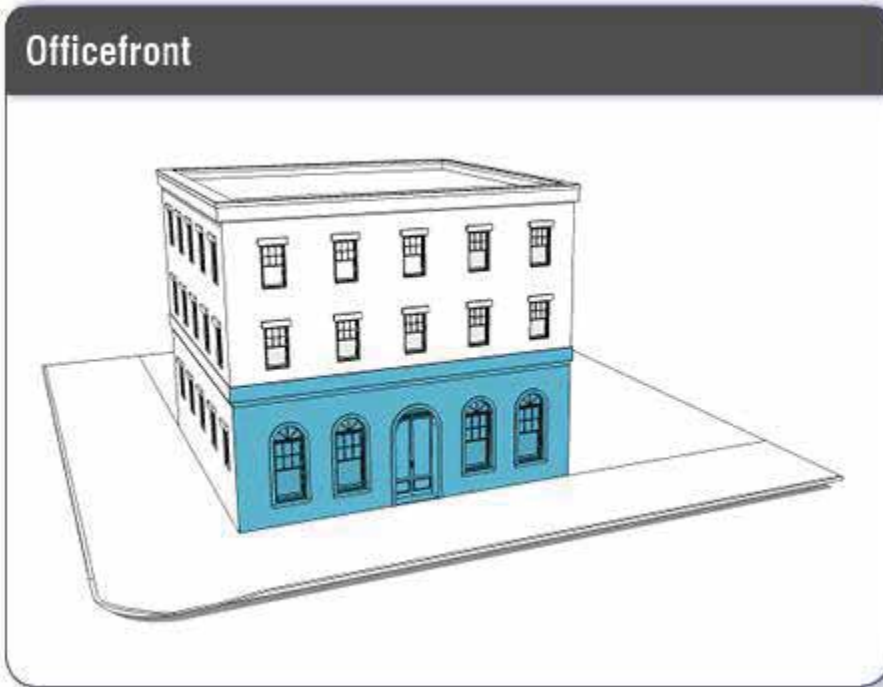
This type is conventional for retail, office or restaurant use.

**Permitted districts:**

CD5, CD4, CD4-W, CD4-L2

Only permitted in CD4-L1 where indicated on Map 10.5A21C.

FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)

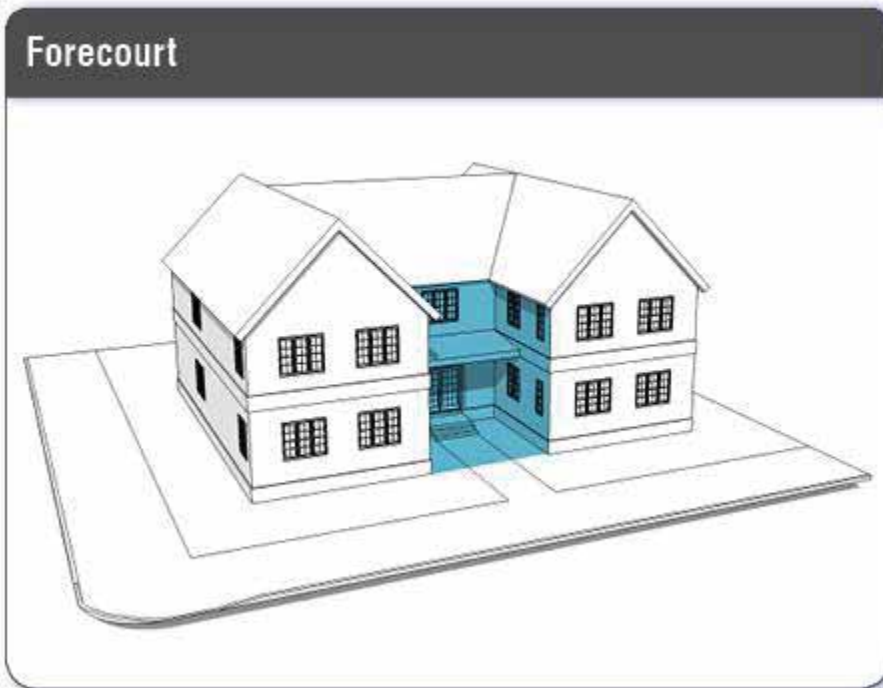


The façade is aligned close to the front lot line with the building entrance at or elevated above sidewalk grade. It may have substantial glazing on the sidewalk level.

This type is conventional for office use.

**Permitted districts:**

CD5, CD4, CD4-W  
Only permitted in CD4-L1 & CD4-L2 where indicated on Map 10.5A21C.

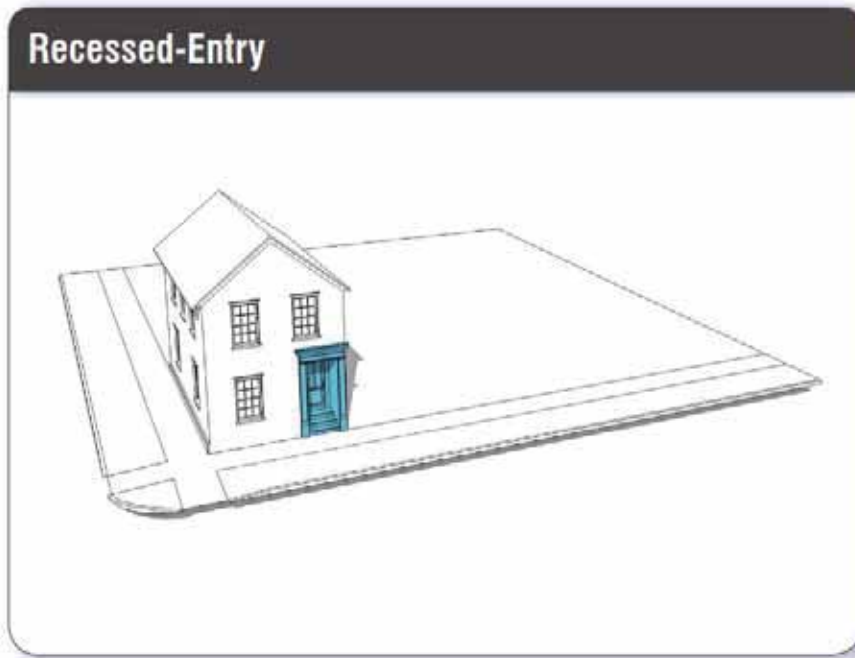


The two ends of the façade are close to the front lot line and the central portion is set back.

**Permitted districts:**

CD4-L1, CD4-L2  
This façade type is not permitted in the Downtown Overlay District.

**FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)**



The façade is aligned close to the front lot line and the primary building entrance is recessed within the façade.

This type is conventional for residential use.

**Permitted districts:**

CD4-L1, CD4-L2, CD4, CD4-W, CD5

**10.5A43.20 Façade Modulation**

10.5A43.21 Except as listed in 10.5A43.22, a façade shall be modulated by major breaks in the façade plane and/or changes in exterior materials or rooflines. No individual section of a façade shall be longer than the maximum façade modulation length listed in Figures 10.5A41.10A-D (Development Standards).

10.5A43.22 In the Historic District, Façades that have a high degree of fenestration, traditional masonry detailing, and traditional window styling (including windows recessed in the openings and with multiple panes) shall be exempt from the façade modulation requirements listed in Figures 10.5A41.10A-D (Development Standards).

**10.5A43.30 Building and Story Heights**

10.5A43.31 Specific height requirement areas are designated on Map 10.5A21B. The maximum building height in each height requirement area shall be as follows:



Height Requirement Area	Minimum Height in Stories	Maximum Height in Stories	Maximum Height in Feet
1 story	1	1	20
2 stories	2	2	35
2 stories (short 3 <sup>rd</sup> )	2	2 + short 3 <sup>rd</sup>	35
2-3 stories	2	3	40
2-3 stories (short 4 <sup>th</sup> )	2	3 + short 4 <sup>th</sup>	45
2-4 stories	2	4	50
2-4 stories (short 5 <sup>th</sup> )	2	4 + short 5 <sup>th</sup>	60
2-5 stories	2	5	60

10.5A43.32 A roof appurtenance may exceed the maximum allowed building height as specified on Map 10.5A21B (Building Height Standards) by 10 feet, subject to the following:

- (a) All roof appurtenances and other features that exceed the allowed building height for the zoning district shall not exceed 33 percent of the total roof area of the structure and, except for elevators and stair towers, shall be set back at least 10 feet from any edge of the roof.
- (b) Solar energy panels shall not be subject to the 33 percent limitation provided that they are not visible from a point 20 feet above the edge of the street right-of-way on the opposite side of the street.
- (c) The area of roof appurtenances that comply with this section shall not be considered as part of the building’s gross floor area calculations.

10.5A43.33 A development that is not located in an incentive overlay district and that contains at least one acre of lot area shall be allowed an additional story in height (up to 10 feet) if at least 20% of the property is assigned and improved as a community space. Such community space shall count toward the required open space listed in Figures 10.5A41.10A-D (Development Standards). The size, location and type of the community space shall be based on the size and location of the development, and the proposed and adjacent uses.

**10.5A43.40 Maximum Building Footprint**

10.5A43.41 No building or structure footprint shall exceed the applicable maximum building footprint listed in Figures 10.5A41.10A-D (Development Standards) except as provided in Sections 10.5A43.42-44 below.

10.5A43.42 In the CD5 district, a detached liner building may have a building footprint of up to 30,000 sq. ft. if it meets all other development standards and is integrated into a parking structure through the provision of community space or shared access.

- 10.5A43.43 For a building that contains ground floor parking, a parking garage or underground parking levels, and is not subject to Section 10.5A43.42, the Planning Board may grant a conditional use permit to allow a building footprint of up to 30,000 sq. ft. in the CD4 or CD4-W districts, and up to 40,000 sq. ft. in the CD5 district, if all of the following criteria are met:
- (a) No story above the ground floor parking shall be greater than 20,000 sq. ft. in the CD4 or CD4-W districts or 30,000 sq. ft. in the CD5 district.
  - (b) All ground floor parking areas shall be separated from any public or private street by a liner building.
  - (c) At least 50% of the gross floor area of the ground floor shall be dedicated to parking.
  - (d) At least 30% of the property shall be assigned and improved as community space. Such community space shall count toward the required open space listed under Figures 10.5A41.10A-D (Development Standards) and community space required under Section 10.5A47.20. The size, location and type of the community space shall be determined by the Planning Board based on the size and location of the development, and the proposed and adjacent uses.
  - (e) The development shall comply with all applicable standards of the ordinance and the City's land use regulations.
- 10.5A43.44 The building footprint of a parking structure shall be no greater than 40,000 sq. ft., and the façade length shall be no greater than 300 feet.

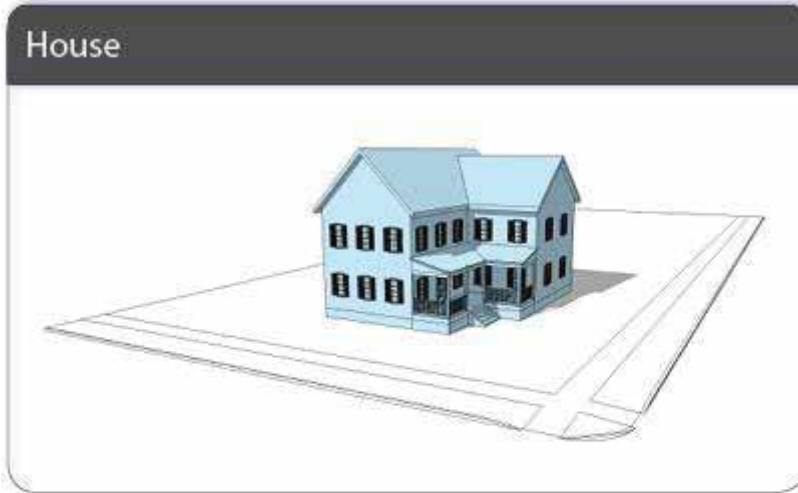
**10.5A43.50 Streetscreens**

Any streetscreen in a front yard shall be built on the same plane as the façade of the principal building and shall be between 3.5 and 4.0 feet in height.

**10.5A43.60 Building Types**

Buildings in each Character district shall be of one or more of the building types specified for such Character district in Figure 10.5A43.60 (Building Types).

**FIGURE 10.5A43.60 BUILDING TYPES**

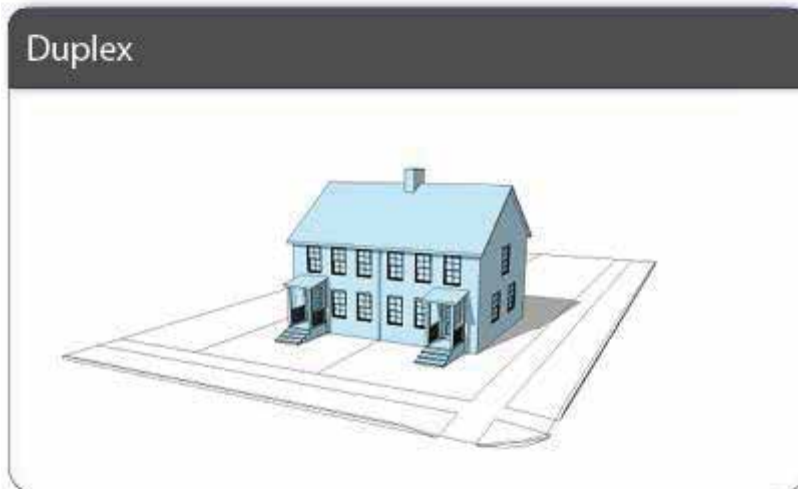


A residential building that has the appearance of a single-family dwelling, with yards on all sides.

**Permitted districts:**

CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.

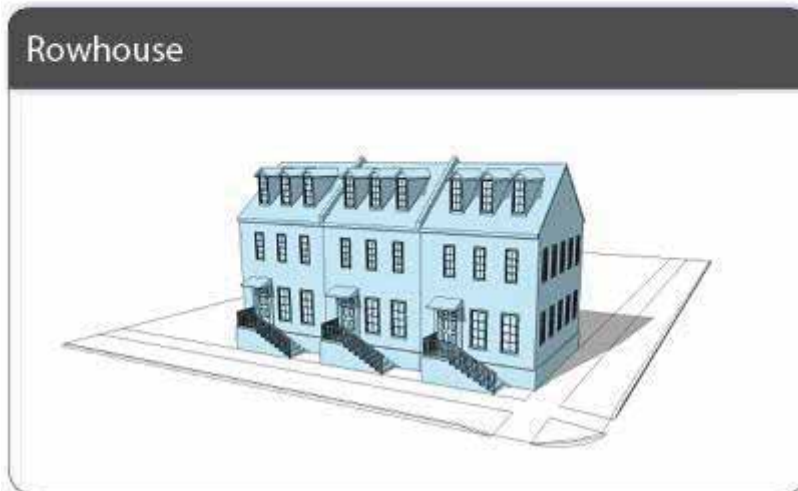


A residential building with two vertically-separated units with separate entrances. The building may have yards on all sides, or it may be divided along the party wall by a lot line where permitted by the standards of the Character district.

**Permitted districts:**

CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.



A building that may occupy the full width of the lot and shares a party wall with one or more buildings of the same type, with a minimal front yard.

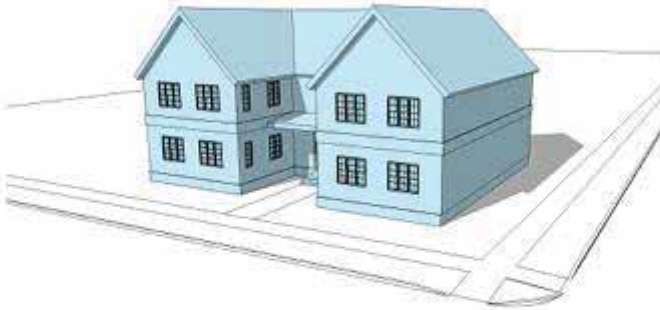
**Permitted districts:**

CD4, CD4-W, CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.

**FIGURE 10.5A43.60 BUILDING TYPES (CONTINUED)**

**Apartment Building**



A building that has the appearance of a multifamily dwelling, with yards on all sides.

**Permitted districts:**

CD4, CD4-W, CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.

**Live / Work Building**



A building designed to accommodate a ground floor commercial use and a residential use above or beside.

**Permitted districts:**

CD5, CD4, CD4-W, CD4-L1, CD4-L2

Residential uses are not permitted on the ground floor in the Downtown Overlay District.

**Small Commercial Building**



A building with a shopfront or officefront façade type and minimal or no front yard, and that is no more than 3 stories in height.

**Permitted districts:**

CD5, CD4, CD4-W, CD4-L2

**FIGURE 10.5A43.60 BUILDING TYPES (CONTINUED)**



A building with a shopfront or officefront façade type and minimal or no front yard, and that is 4 or more stories in height.

**Permitted districts:**  
CD5, CD4, CD4-W

## 10.5A44 Off-Street Parking and Loading Requirements

### 10.5A44.10 General

10.5A44.11 Except as otherwise provided in this Section, all buildings, structures and uses in the Character districts and Civic districts shall comply with the off-street parking requirements set forth in Section 10.1110.

10.5A44.12 Buildings, structures and uses in the Character districts and Civic districts that are also within the Downtown Overlay District shall comply with the additional standards in Section 10.643.

### 10.5A44.20 Number of Required Spaces

10.5A44.21 Uses in the Character districts and Civic districts that are not located in the Downtown Overlay District shall provide off-street parking in accordance with Section 10.1112.

10.5A44.22 Uses in the Character districts and Civic districts that are included in the Downtown Overlay District shall comply with the off-street parking requirements for the Downtown Overlay District in accordance with Section 10.1115.

10.5A44.23 Subject to approval by the Planning Board, any portion of the required off-street parking spaces may be dedicated to public use.

### 10.5A44.30 Parking, Loading, and Driveway Locations and Standards

10.5A44.31 All off-street parking spaces shall be located at least 20 feet behind any façade of a principal building, except when in an underground parking level. This restriction shall not apply to off-street parking for a single-family or two-family dwelling.

- 10.5A44.32 Parking lots and loading areas shall be screened from the street by a building or streetscreen except for any driveway.
- 10.5A44.33 Driveways at the street and within a required front yard shall be no wider than 24 feet.
- 10.5A44.34 All parking lots, garages, and parking structures shall include a pedestrian exit directly to a front lot line.
- 10.5A44.35 The above-ground portion of a parking structure or garage shall have a liner building at least the height of the ground floor along the entire width of any front yard except for driveways and pedestrian entrances.
- 10.5A44.36 A parking lot containing more than 75 parking spaces shall have least one internal pedestrian walkway at least 8 feet wide that is paved differently from the parking spaces with respect to texture, material, style, and/or color.

**10.5A44.40 Parking Lot Landscaping**

Parking lots that contain 10 or more spaces shall conform to the following:

- 10.5A44.41 Landscape islands:
  - (a) Parking lots shall contain one landscaped island for every 10 parking spaces.
  - (b) A parking lot with more than one landscaped island shall have such islands distributed throughout the parking lot.
  - (c) Each landscaped island shall be a minimum of 325 square feet.
- 10.5A44.42 Trees:
  - (a) Parking lots shall contain at least one tree for every 7 parking spaces.
  - (b) No parking space shall be more than 75 feet from a tree within the lot, as measured from the center of the tree to the nearest line demarcating the space.
  - (c) All trees shall be separated from paved surfaces by at least 3 feet.
- 10.5A44.43 All landscaping required pursuant to this Section 10.5A44.40 shall be located and designed in a manner to protect the vegetation from vehicular damage.

**10.5A44.50 Loading Docks, Storage and Service Areas**

Loading docks, storage and service areas shall not be permitted between the principal building and any front lot line.

**10.5A45 Architectural Design Guidelines**

In reviewing a proposed project within the Historic District under Section 10.630, the Historic District Commission shall review the application for compliance with the Architectural Design Guidelines. The initial Guidelines shall be those contained in the document titled “Interim Architectural Design Guidelines for the Character-Based Zoning Ordinance,” adopted by the Historic District Commission and dated November 18, 2013, which shall apply until superseded by new guidelines adopted by the Historic District Commission and approved by the City Council.

**10.5A46 Community Spaces**

10.5A46.10 Figure 10.5A46.10 (Community Spaces) describes the types of community spaces that may be provided as part of a development in accordance with Sections 10.5A42, 10.5A43 or 10.5A47.10.5A46.20.

10.5A46.20 A community space that is provided on site and otherwise qualifies as open space shall count towards the open space requirement for the development.

**FIGURE 10.5A46.10 COMMUNITY SPACES**



An area of natural, semi-natural, or planted space set aside for human enjoyment and recreation or for the protection of wildlife or natural habitats. A park may consist of grassy areas, trees and other natural or planted landscape features, and may also contain walking paths and trails, monuments, fountains, playground equipment, benches, picnic tables and similar amenities.



A linear community space that may follow natural corridors providing unstructured and limited amounts of structured recreation. A greenway may be spatially defined by landscaping rather than buildings. Its landscape shall consist of paths and trails, waterbodies, and trees, naturalistically disposed.



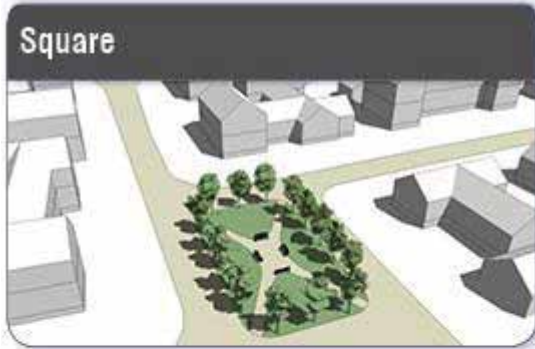
A paved/brick pedestrian connector between buildings. Pedestrian alleys provide shortcuts through long blocks and connect community spaces and parking areas with streets. Pedestrian alleys may be covered by a roof and/or lined by shopfronts. The minimum width shall be 15 feet.



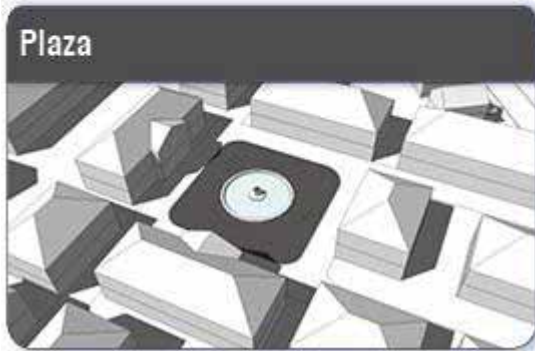
A wide pedestrian sidewalk located between the building façade and the public right of way. Wide pedestrian sidewalks provide space between the façade and the curbline for comfortable pedestrian movement, street trees and street furniture.



**FIGURE 10.5A46.10 COMMUNITY SPACES (CONTINUED)**



A community space available for unstructured recreation and community purposes. A square is spatially defined by buildings. Its landscape shall consist of paths, ground cover and trees, formally disposed. Squares shall be located at the intersection of important streets. The minimum size shall be 1/8 acre.



A community space available for community purposes and commercial activities. A plaza should be spatially defined by buildings. Its landscape should consist primarily of pavement. Trees are optional. Plazas should be located at the intersection of important streets. The minimum size shall be 1/8 acre.



A community space available for informal activities in close proximity to neighborhood residences. A pocket park is spatially defined by buildings. Its landscape shall consist of paths, lawns and trees, formally disposed. The minimum size shall be 500 sq. ft.



A community space designed and equipped for the recreation of children. A playground should be fenced and may include an open shelter. Playgrounds shall be interspersed within residential areas and may be placed within a block. Playgrounds may be included within parks and greens. The minimum size shall be 500 sq. ft.

### 10.5A47 Incentive Overlay Districts

The Incentive Overlay Districts are designated on Map 10.5A21B. In such areas, certain specified development standards may be modified as set forth in Section 10.5A47.10 below, if the development provides community space or workforce housing in accordance with Section 10.5A47.20, as applicable:

#### 10.5A47.10 Incentives to Development Standards

DEVELOPMENT STANDARDS	INCENTIVES	
	North End Incentive Overlay District	West End Incentive Overlay District
Maximum building coverage	No Change	80%
Maximum building footprint	30,000 sf	30,000 sf
Minimum lot area	No Change	2,000 sf
Minimum lot area per dwelling unit	No Change	No minimum
Maximum building height	Plus 1 story up to 10 ft <sup>1</sup>	Plus 1 story up to 10 ft <sup>1,2</sup>
Minimum off-street parking	Residential: 1 space per dwelling unit 0.5 space per micro-unit	Residential: 1 space per dwelling unit 0.5 space per micro-unit Non-residential: 25% reduction from underlying standard

<sup>1</sup> In order to receive the building height incentive, the sidewalk width in front of any façade shall be at least 10 feet plus two feet for each story of building height above three stories. Any property area needed to comply with this requirement shall count as open space as listed in Figures 10.5A41.10A-D (Development Standards) as community space; even if less than 15 feet in width.

<sup>2</sup> For parcels over 80,000 sq. ft. in area that are located south of Islington Street, up to two stories or 20 feet may be added to the maximum building height provided both requirements listed under Section 10.5A47.22 (1) and (2) are met.

#### 10.5A47.20 Requirements to Receive Incentives to the Development Standards

10.5A47.21 For a lot located adjacent to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, the development shall include a community space consisting of a continuous public greenway at least 20 feet in width that is parallel to the waterfront for the entire length of the rear or side lot line. The greenway shall include legal and physical access to abutting lots or public ways. When access is not available due to

current conditions on an abutting lot, provisions shall be made for future access in a location determined by the Planning Board.

10.5A47.22 For a lot that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, the development shall include either a community space or workforce housing as specified below:

- (1) Community space option – All of the following criteria shall be met:
  - (a) The community space shall be a community space type that is permitted within the applicable Character district.
  - (b) The community space shall constitute at least 20% of the gross area of the lot and shall not have any dimension less than 15 feet.
  - (c) The community space shall adjoin the public sidewalk and shall be open on one or more sides to the sidewalk.
  - (d) The community space shall include trees and other landscaping to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other street furniture.
  - (e) The community space shall be located on or adjacent to the same lot as the development, except as provided in (f) below.
  - (f) The Planning Board may grant a conditional use permit to allow a proposed community space to be located on a different lot than the development if it finds that all of the following criteria will be met:
    - (i) An appropriate community space cannot feasibly be provided on the same lot as the development.
    - (ii) The proposed community space is within the same Incentive Overlay District as the development.
    - (iii) The proposed community space is suited to the scale, density, uses and character of the surrounding properties.
- (2) Workforce housing option – One or more of the following criteria shall be met:
  - (a) At least 30% of the dwelling units within a building, but no less than three units, shall be workforce housing units for sale (affordable to a household with an income of no more than 100 percent of the area median income for a 4-person household). Such units shall be at least the average gross floor area of the proposed units in the building or 1,000 sq. ft., whichever is greater. The workforce housing units shall be distributed throughout the building wherever dwelling units are located; or
  - (b) At least 10% of the dwelling units within a building, or at least two units, shall be workforce housing units for rent (affordable to a household with an income of no more than 60 percent of the area median income for a 3-person household). Such units shall be at least the average gross floor area of the proposed units in the building or 800 sq. ft., whichever is

greater. The workforce housing units shall be distributed throughout the building wherever dwelling units are located.

## Section 10.5A50 Civic Districts

### 10.5A51 Purpose

10.5A51.10 Civic districts are designated to preserve existing buildings and uses which are open to the general public and owned and operated by a not-for-profit organization or entity other than the City of Portsmouth.

### 10.5A52 Standards

10.5A52.10 Permitted uses in the Civic district are uses open to the general public and dedicated to arts, culture, education, religion, recreation, government, transit, gardening, horticulture, public gathering, assembly or meeting.

10.5A52.20 Structures may be converted to other civic uses permitted under 10.5A52.10.

10.5A52.30 When specified in the Site Plan Review Regulations, Site Plan approval is required for changes made to existing structures or the lot.

10.5A52.40 New structures, alterations and expansions of existing structures in the Civic district are exempt from the requirements of 10.5A42 and 10.5A43 provided that all uses remain civic.

10.5A52.50 Structures in the Civic district that are proposed for and/or converted to non-civic uses permitted under 10.5A30 shall require Regulating Plan amendment as set forth in Section 10.5A22.

## Section 10.5A60 Definitions

This Section provides definitions for certain terms in Article 5A that are not otherwise defined in Article 5A or Article 15:

### Backbuilding

A single-story structure connecting a principal building to an outbuilding. See Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).

### Block

The aggregate of private lots, rear alleys and rear lanes, circumscribed by streets, paths or pedestrian alleys.

### Community space

An area that is dedicated for public use with permanent deeded access to the City of Portsmouth and conforming to the types shown in Figure 10.5A46.10.

Entrance spacing

The distance between any two publicly accessible pedestrian entrances to a building along a façade.

Façade

The side of a building facing a front yard.

Façade glazing

The portion of a façade that consists of transparent windows and doors.

Front lot line buildout

The portion of the width of the required front yard that is occupied by a building.

Liner building

A building that is at least 20 feet deep measured from the façade and is specifically designed to mask a parking lot or a parking structure from the street. A liner building may be separated from a parking structure by community space if directly integrated with subsurface parking or vehicular access to a parking structure.

Outbuilding

A building, usually located toward the rear of the same lot as a principal building, and sometimes connected to the principal building by a backbuilding. See Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).

Path

A pedestrian way traversing a park, square or other open space, or otherwise separated from streets by landscaped areas, and ideally connecting directly with the urban sidewalk network.

Regulating Plan

The zoning map or set of maps that shows the Character districts, Municipal districts, Civic districts and any additional requirements of areas subject to, or potentially subject to, regulation by Article 5A.

Streetscreen

A freestanding wall or fence built on the same plane as a façade to mask a parking lot, structure or use from the street, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm.

CHARACTER-BASED ZONING – 2016 REVISIONS  
CONFORMING AMENDMENTS TO ZONING ORDINANCE

City Council Third Reading – 7/11/2016

Amend Chapter 10 – Zoning Ordinance as follows:  
(deletions from existing language ~~stricken~~; additions to existing language **bolded**;  
remaining language unchanged from existing)

- A. In Article 2, amend Section 10.234 – Procedures for Variances, Special Exceptions and Appeals from Decisions of the Code Official, as follows:

10.234.50 In any case in which the Board of Adjustment is required to give notice of a public hearing in accordance with the provisions of State law, all persons owning property within 300 feet of the property involved in the appeal or request shall be given notice in the manner set forth by State law, provided that failure to give notice beyond statutory requirement shall not give rise to any right of appeal or protest. The requirements of this paragraph shall not apply in ~~the Central Business A and Central Business B Districts~~ **Character Districts 4 and 5 (CD4 and CD5) and the Downtown Overlay District.**

- B. In Article 4, amend Section 10.410 – Establishment and Purpose of Districts, as follows:

District	Purpose
<b>Character Districts</b>	
Character District 4-L1    CD4-L1	To promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development.
Character District 4-L2    CD4-L2	
<b>Character District 4-W    CD4-W</b>	
Character District 4        CD4	
Character District 5        CD5	
<b>Business Districts</b>	
<del>Central Business A        CBA</del>	<del>To promote a wide range of business, retail, residential, cultural and other public and private uses, in and surrounding the City's historic commercial core, at intensities and patterns that promote pedestrian circulation and support public transit.</del>
<del>Central Business B        CBB</del>	

District	Purpose
Other Districts	
<b>Civic District</b>	<b>To preserve existing buildings and uses that are open to the general public and owned and operated by a not-for-profit entity other than the City of Portsmouth.</b>

C. In Article 4, amend Section 10.440 – Table of Uses – Residential, Mixed Residential and Industrial Districts, as follows:

1. Delete the column headed “CBA”.
2. In the header row, delete “CBB”, as follows:

<del>CBB</del>
CD5
CD4

3. In the column headed “CD4-L2”, change “N” to “S” for 7 specific uses, as follows:

Use	CD4-L2
3.70 Club, fraternal or service organization	<del>N</del> S
5.32 Retail bank	<del>N</del> S
7.20 Personal services	<del>N</del> S
7.30 Consumer services such as copy shop, bicycle repair, and pet grooming	<del>N</del> S
7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers	<del>N</del> S
8.70 Manufacture of goods sold at retail on the premises, such as crafts, coffee roasting and bakery goods	<del>N</del> S
10.30 Inn	<del>N</del> S

4. In the header row, insert “CD4-W” below “B”, as follows:

B
<b>CD4-W</b>

5. In the column headed “B/**CD4-W**”, change specific uses, as follows:

Use	B <b>CD4-W</b>
1.20 Townhouse	<del>N</del> <b>P</b>
3.51 Outdoor performance facility	
3.511 Occupancy up to 500 persons	<del>S</del> <b>N</b>
3.522 Occupancy more than 500	<del>S</del> <b>N</b>
8.40 Shopping center	<del>P</del> <b>S</b>
9.50 Restaurant, place of public assembly or function room	
9.51 Occupancy load less than 250	<del>P</del> <b>S</b>

6. Insert additional supplemental regulation for use 1.40 Multifamily dwelling, as follows:

Use	Supplemental Regulations
1.40 Multifamily dwelling	<b>10.5A32 (Character district permitted uses)</b>
1.41 3 or 4 dwelling units	10.640 (Downtown Overlay district)
1.42 5 to 8 dwelling units	10.730 (Gateway district)
1.43 More than 8 dwelling units	10.813 (Multifamily Dwellings in the Business District)



7. Amend uses 9.40 through 9.60 as follows:
- (a) Move the row for use 9.40 to before existing use 9.51 (i.e., as a new use 9.51), and amend as follows:
    - 9.51 ~~Restaurant with no accessory uses and with no nightclub or bar, place of public assembly or function room~~  
**Occupant load less than 50**
  - (b) Amend existing use 9.51 (new 9.52) as follows:
    - 9.52 Occupant load **from 50 to** less than 250.
  - (c) Renumber uses 9.50 through 9.60 as 9.40 through 9.50.
- D. In Article 5, amend Section 10.516 – Exceptions to Yard Requirements, as follows:
- 10.516.30 Corner Lot Vision Obstruction
- On a corner lot, no structure, accessory structure, landscaping, or screening which obstructs visibility shall be erected or maintained between the heights of 2.5 feet and 10 feet above the edge of pavement grades within the area bounded by the sidelines of the intersecting street rights-of-way and a straight line joining points along said street sidelines 20 feet from the point of intersection of such sidelines or extensions thereof. This provision shall not apply in ~~the CBA and CBB districts~~ **Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.**
- E. In Article 5, Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, delete the columns headed “CBA” and “CBB”.
- F. In Article 5, delete Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts.

- G. In Article 5, Section 10.590 – Minimum Distance Between Nonresidential Uses and Residential or Mixed Residential Districts, make the following changes:
1. In Section 10.591, insert the words “Gateway District” after the words “General Business District”, and replace the words “property zoned residentially” with the words “a parcel in a Residential or Mixed Residential district or Character District 4-L1.”
  2. In Section 10.592.10, replace the words “Residential or Mixed Residential District” with the words “Residential or Mixed Residential district or Character District 4-L1” in both the introductory sentence and the table header row.
  3. In the footnote to Section 10.592.10, replace the words “the Central Business A (CBA) or Central Business B (CBB) district” with the words “Character District 4 or 5 (CD4 or CD5) or the Downtown Overlay District.”
  4. In Section 10.592.20, replace the words “Residential or Mixed Residential District” with the words “Residential or Mixed Residential district or Character District 4-L1” in both the introductory sentence and the table header row.
- H. Amend Article 6, Section 10.640 Downtown Overlay District, as follows:
- 10.641 Establishment and Purpose
- 10.641.10 The Downtown Overlay District (DOD) is an overlay district applied to portions of the ~~Central Business A and Central Business B districts~~ and the Character districts. All properties located in the DOD must satisfy the requirements of both the DOD and the underlying districts.
- 10.641.20 The purpose of the DOD is to promote the economic vitality of the ~~central business district~~ **downtown** by ensuring continuity of pedestrian-oriented business uses along streets.
- I. Delete Article 6, Section 10.643 Off-Street Parking Facilities
- J. In Article 8, Section 10.830 – Business Uses, delete Section 10.831 – Waterfront Industrial District Adjacent to Central Business District.

K. Amend Article 8, Section 10.860 Hours of Operation, as follows:

10.861 The following uses are limited to operation during the times specified:

Use No.*	Use	District with time limitations	From	To
3.51	Performance facility, indoor	<del>CBA, CBB, CD5,</del> <b>CD4, CD4-W,</b> GB, GW, B	8 AM	11 PM
3.52	Performance facility, outdoor	<del>CBA, CBB, CD5,</del> <b>CD4, CD4-W,</b> GB, GW, B	4 PM	11 PM
8.111 8.121	Convenience goods 1 & Convenience goods 2	<del>MRB, CBA, CBB,</del> <b>CD5, CD4,</b> <b>CD4-W, CD4-L2,</b> GB, GW, B	6 AM	11 PM

\* Refer to Section 10.440, Table of Uses.

L. Amend Article 11, Section 10.1120 Off-Street Loading, as follows:

10.1121 General Requirements

10.1121.10 ~~In all Business (except Central Business A and B), Airport, and Industrial districts, All new structures, additions to existing structures, and changes and intensification of use in existing structures shall be provided with off-street loading areas in accordance with this Section, except in Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.~~

10.1121.20 No loading areas shall be required in ~~the Central Business A and Central Business B districts~~ **Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.**

M. Amend Article 12, Section 10.1230 Sign Districts, as follows:

10.1231 The City is hereby divided into sign districts for the purpose of establishing standards for the number, type, size, location and illumination of signs. These sign districts are overlay districts. A property shall be subject to the regulations of both the sign district and the underlying zoning district.

10.1232 Unless otherwise specified by ordinance, the sign districts shall correspond to underlying zoning districts as follows:

Sign Districts	Underlying Zoning Districts
Sign District 3	<del>Central Business A</del> <del>Central Business B</del> <b>Character District 4-W</b> Character District 4 Character District 5

N. Amend Article 15 Definitions, Section 10.1530 Terms of General Applicability, by inserting the following definitions in alphabetical order:

**Garage**

**An area within a principal building or outbuilding that provides space for parking vehicles as an accessory use. Not synonymous with parking structure. (See also: parking lot, parking structure, underground parking level.)**

**Parking lot**

**A ground-level open area within a lot for parking vehicles as a principal use or accessory use. (See also: garage, parking structure, underground parking level.)**

**Parking structure**

**A structure containing multiple stories of parking as a principal use or accessory use. (See also: garage, parking lot, underground parking level.)**

O. In Article 15, Section 10.1525 add the terms **Recessed entry** and **Entrance spacing** to the list of terms primarily used in Article 5A.

- P. Amend Article 15 Definitions, Section 10.1530 Terms of General Applicability, as follows:

Building footprint

The total area ~~of a building~~, at or above 18 inches in elevation as measured from the outside walls at the grade plane, **of a detached building, or of two or more buildings separated only by fire walls, common walls or property lines.**

Story

That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. For the purpose of determining the number of stories in a building, a story above grade plane shall count as a full story. An attic, **half story or penthouse** shall not be counted as a story, but a ~~half story or a~~ short story shall be counted as a story. (See also: building height, grade plane, half story, short story, and story above grade plane)

Workforce housing

~~Housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the area median income for a 4 person household; or rental housing which is affordable to a household with an income of no more than 60 percent of the area median income for a 3 person household. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this definition.~~  
**A dwelling, or group of dwellings developed as a single project, containing workforce housing units, provided that a housing development that excludes minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Ordinance. All workforce housing units shall include a restrictive covenant that ensures affordability as specified in RSA 674:58,IV, for the maximum allowable term but no less than 30 years.**

Character-Based Zoning – 2016 Revisions

**Proposed Additional West End Zoning Changes**

Third Reading – 7/11/2016

(Parcels are listed by Assessors Map-Lot references)

From Character District 4-L1 (CD4-L1) to General Residence C (GRC)

126-27  
126-28  
126-31  
126-32

From Mixed Residence Business (MRB) to General Residence C (GRC)

138-48	139-2	146-19
138-48-1	139-3	146-20
138-48-2	139-4	146-21
138-49	139-5	146-22
138-50	139-6	146-23
138-51		
138-52	144-40	147-22
138-54		147-23
138-55	145-14	147-24
138-56	145-19	147-25
138-57	145-20	147-26
138-58	145-21	147-27
138-59	145-29	147-28
	145-30	147-29
		147-30
		147-30A
		156-24
		156-35

From Business (B) to General Residence C (GRC)

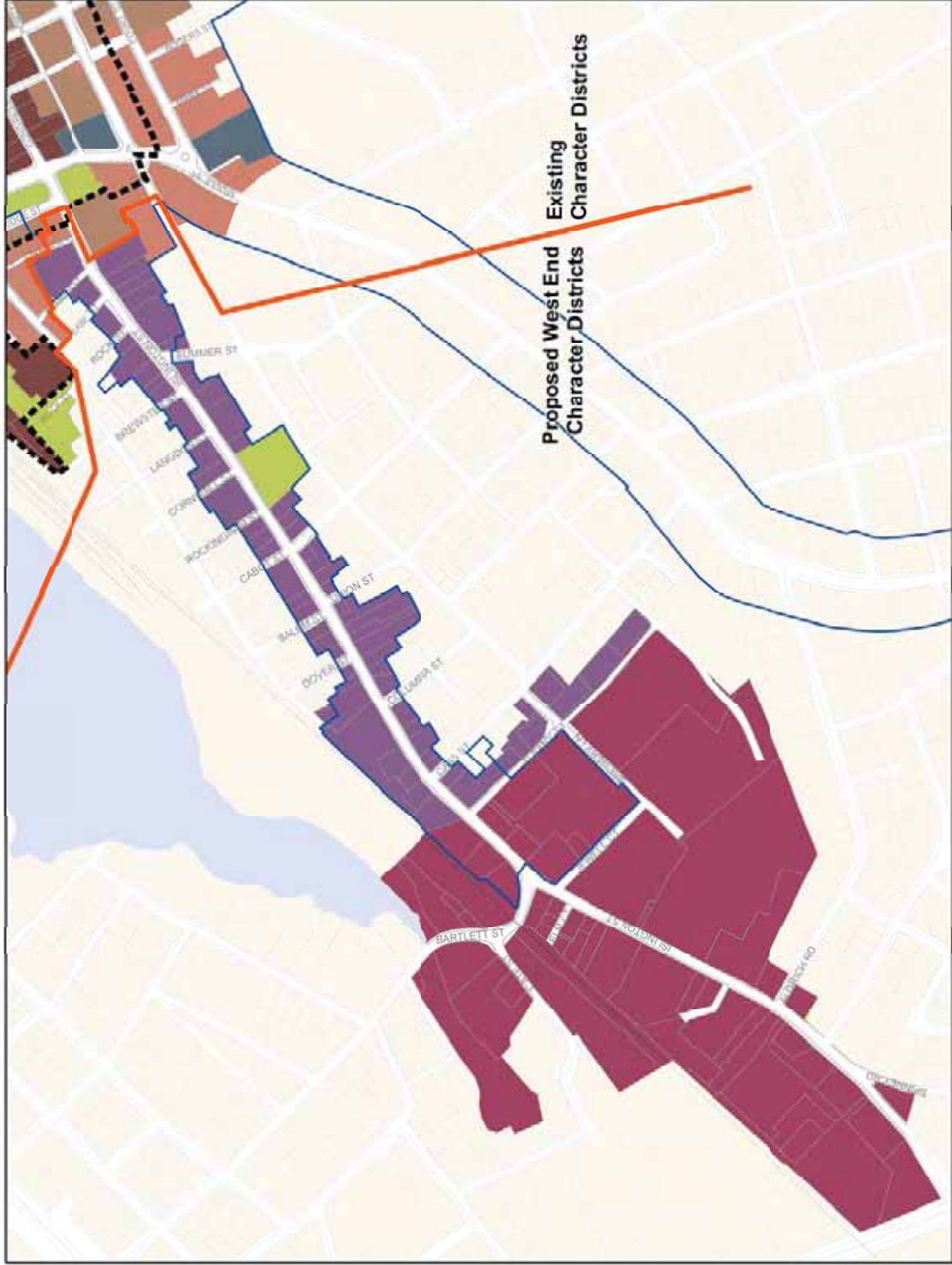
157-10  
157-11  
157-12  
157-13  
157-14

From Central Business B (CBB) to General Residence C (GRC)

138-34

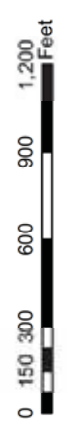
# Map 10.5A21A Character Districts and Civic Districts

Third Reading 7/11/16



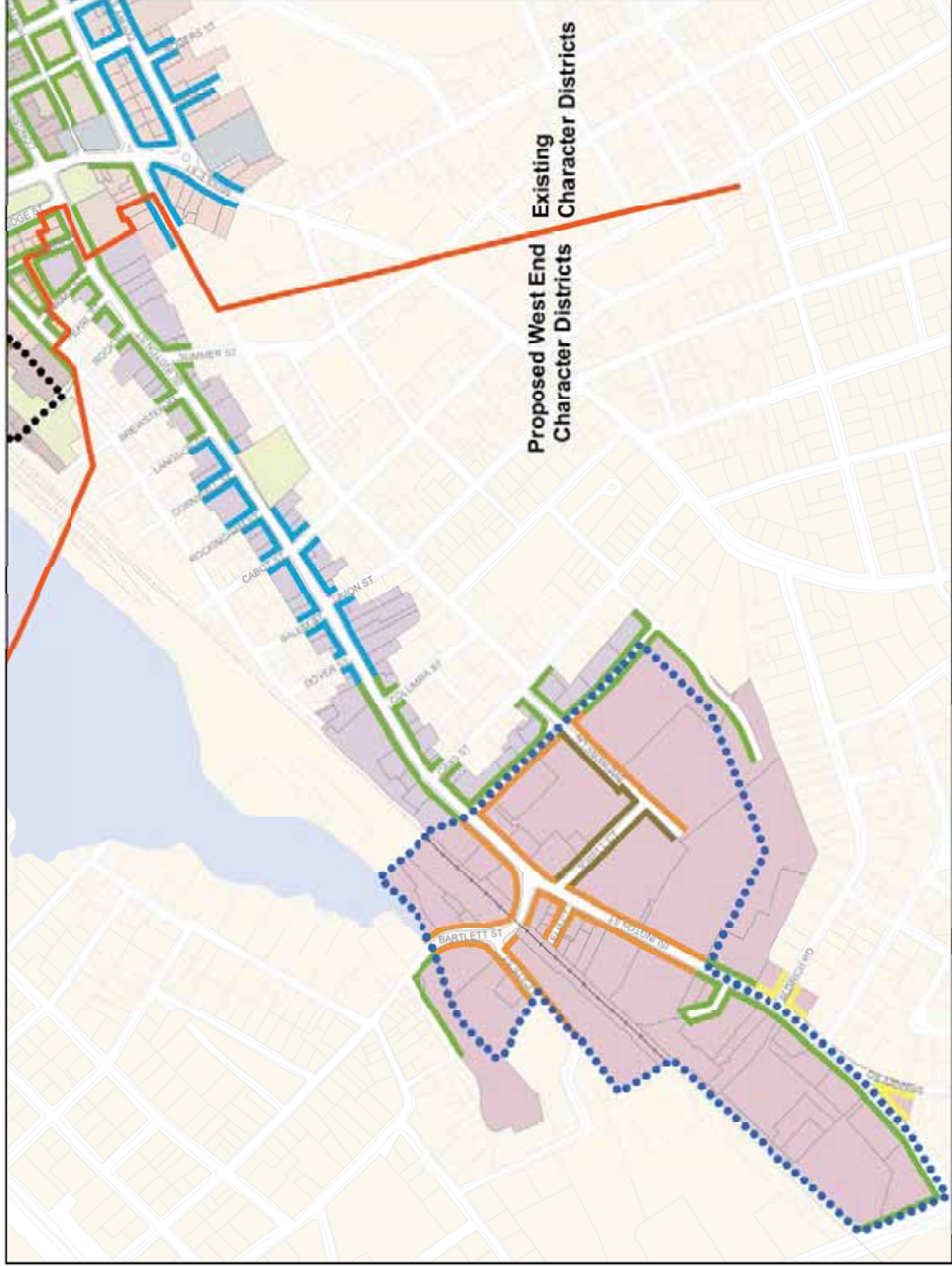
## Legend

- Downtown Overlay District
- Historic District
- Character Districts**
  - Character District 5
  - Character District 4
  - Character District 4-W
  - Character District 4-L1
  - Character District 4-L2
- Civic District**
  - Civic District
- Municipal District**
  - Municipal District



# Map 10.5A21B Building Height Standards

Third Reading 7/11/16



## Legend

Height requirement area	Maximum building height*
1 Story	20'
2 Stories	35'
2 Stories (short 3rd*)	35'
2-3 Stories	40'
2-3 Stories (short 4th*)	45'
2-4 Stories	50'
2-4 Stories (short 5th*)	60'
2-5 Stories	60'

\*Penthouse levels may exceed the building height by 2 feet.

1. A short story includes either: 1) use of a top story below the cornice line of a sloped roof that is at least 20% shorter in height than the story below; or 2) a story within a mansard roof with a pitch no greater than 30:12.

2. When a lot is assigned to more than one height requirement standard refer to the requirements listed in Section 10.5A21.22.

3. Attic space within either a gable, gambrel, hip or hip-top mansard roof or a penthouse level on a flat roof is not considered a story. Attic space is permitted above the top story provided the proposed building is no greater than the maximum building height.

## Incentive Overlay Districts

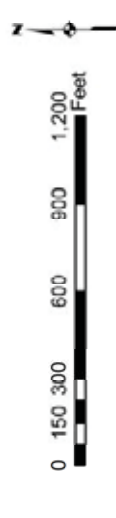
Within the Incentive Overlay Districts, certain specified development standards, including height, density and parking, may be modified pursuant to Section 10.5A47.

### ••• North End Incentive Overlay District

Between Maplewood Avenue and Russell Street, the boundary of the North End Incentive Overlay District is established at 100 feet from the mean high water line.

### ••• West End Incentive Overlay District

The boundary of the West End Incentive Overlay District is established at 200 feet from the rear lot lines of the abutting Aldrich Road lots and/or 100 feet from the rear lot lines of lots that abut the public or private portions of Chevrolet Avenue, whichever is greater.





# Map 10.5A21C Special Requirements for Façade Types, Front Lot Line Buildout, and Uses

Third Reading 7/11/16



## Legend

### Required Façade Types

- Shopfront façade type
- Step, stoop or recessed entry façade type
- Officefront façade type

### Waterfront Lots



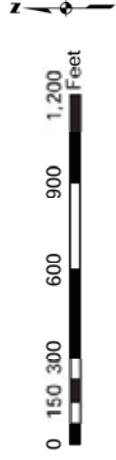
### Waterfront Use Overlay

In addition to the uses permitted in the underlying Character districts, lots in the Waterfront Use Overlay shall also permit uses 9.60, 12.20, 12.22, and 12.40 as set forth in Section 10.440 (Table of Uses). (Section 10.5A34).

### Waterfront lots on Ceres Street

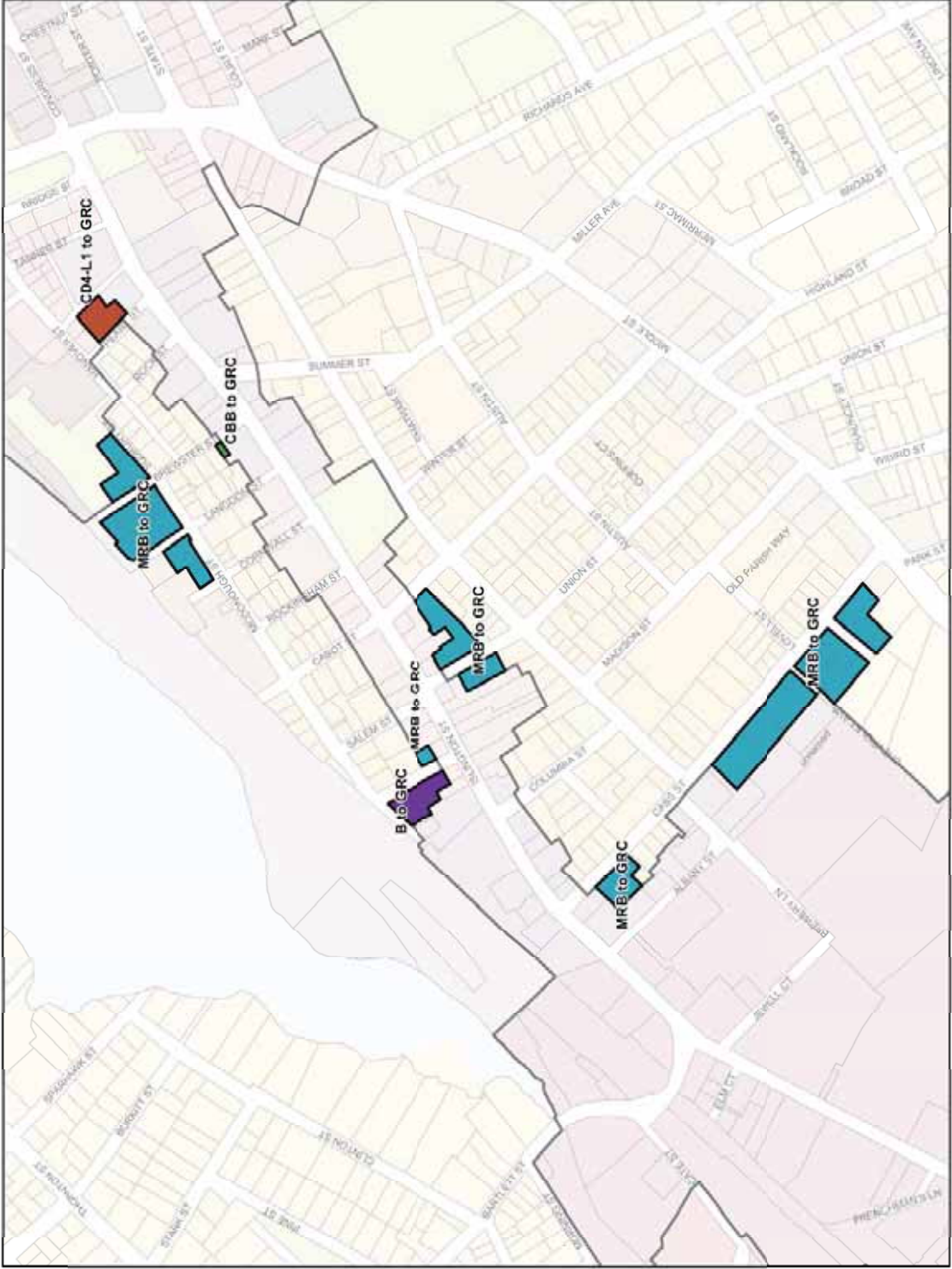
For waterfront lots on Ceres Street, the maximum front lot line buildout shall be 50%, and buildings shall have a wood-sided appearance (Section 10.5A21.30).

In addition to the uses permitted in Character District 4, waterfront lots on Ceres Street shall also permit the uses permitted in the Waterfront Industrial district as set forth in Section 10.440 (Section 10.5A35).

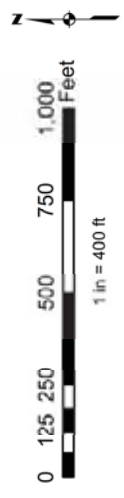


# Additional West End Zoning Changes

Third Reading 7/11/16



- Legend**
- Character districts area
  - Additional West End Zoning Changes**
    - Business to General Residence C
    - Central Business B to General Residence C
    - Character District 4-L1 to General Residence C
    - Mixed Residential Business to General Residence C





National  
Multiple Sclerosis  
Society  
Greater  
New England  
Chapter



June 13, 2016

Mr. John P. Bohenko, City Manager  
One Junkins Avenue  
Portsmouth, NH 03801

Dear Mr. Bohenko:

On behalf of the National Multiple Sclerosis Society, Greater New England Chapter, I would like to extend our deep gratitude for the continuous support Portsmouth has shown throughout the years.

I have begun planning for the 2016 Bike MS NH Seacoast Escape. This year's date is set for Saturday, August 27<sup>th</sup>. The purpose of this letter is to ask for permission to use roads within Portsmouth and to inform you of the route through the city of Portsmouth. I have enclosed written riding directions for you. Our first cyclist (of approximately 250) should enter Portsmouth at 10:30am, and the last cyclist should depart at 1:00 PM.

Our routes feature safety stops every 10-15 miles, so that our cyclists remain hydrated and nourished. All cyclists agree to follow rules of the road, and are directed to ride single file. We issue one warning to cyclists not following the rules of the road. On the next infraction, we pull them from the ride and require they ride to the finish in one of our safety vehicles.

We mark our route with small cardboard signs attached to utility poles or stakes. We will begin marking the route on August 25th. A volunteer will follow the route on the day of the ride and remove all signs after the final cyclist has passed.

Please let me know if you have any questions about the ride and our route. I can be reached at 781-693-5154.

Sincerely,

Emily Christian  
Development Manager  
781-693-5154  
[Emily.christian@nmss.org](mailto:Emily.christian@nmss.org)

101A First Avenue Suite 6 Waltham MA 02451 1115 tel +1 800 344 4867 fax +1 781 890 2089 [www.MS.newengland.org](http://www.MS.newengland.org)

JOIN THE MOVEMENT



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/26/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07960-6454  123456-Stand--14-15                      BEDFO	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext):                      FAX (A/C, No): E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC #	
<b>INSURED</b> NATIONAL MULTIPLE SCLEROSIS SOCIETY GREATER NEW ENGLAND CHAPTER 101A FIRST AVENUE, SUITE 6 WALTHAM, MA 02451	<b>INSURER A:</b> Federal Insurance Company                      20281	
	<b>INSURER B:</b> Great Northern Insurance Company                      20303	
	<b>INSURER C:</b> ACE Property & Casualty Insurance Company                      20699	
	<b>INSURER D:</b> Employers Insurance Company Of Wausau                      21458	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-006620265-05                      **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC			3583-33-49	12/31/2014	12/31/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			7353-02-37	12/31/2014	12/31/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp/Coll Deductible \$ 1,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			M00552835 004	12/31/2014	12/31/2015	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	WCC-291-451053-014	12/31/2014	12/31/2015	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 TOWN OF PORTSMOUTH IS ADDED AS ADDITIONAL INSURED EXCLUDING WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY POLICY.

<b>CERTIFICATE HOLDER</b>  TOWN OF PORTSMOUTH 1 JUNKINS AVENUE PORTSMOUTH, NH 03801	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Manashi Mukherjee <i>Manashi Mukherjee</i>

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2016 Bike MS NH Seacoast Escape - 25 mile

NET CONTROL - 978-888-3363

Miles	Direction	Description	Go	Town:
0.00	L	out of Stratham Hill Park onto Route 33	0.60	
0.60	R	onto Squamscott Road	1.10	
1.70	R	onto Route 108	1.00	Newfields
2.70	R	onto New Road @ Ship to Shore Restaurant	0.10	Newmarket
2.80		<b>Caution: Narrow wooden bridge</b>	2.30	
5.10	R	stop sign onto Route 108 (use caution entering town center)	0.60	
5.70	<b>Sharp R</b>	onto Bay Road	0.40	
6.10	<b>BL</b>	to stay on Bay Road	7.00	Durham
13.10	<b>BR</b>	onto Route 108	0.30	
13.40		<b>REST STOP -- Durham Town Offices - Route 108</b>		
13.40	<b>BR</b>	out of rest stop <b>ROUTE SPLITS</b>	0.10	
13.50	L	at stop sign to continue on Route 108	1.30	Newmarket
14.80	R	Bennet Rd	1.60	
		<b>Caution: Narrow wooden bridge</b>		
16.40	L	Packers Falls	2.00	
		<b>Caution: Look right</b>		
18.40	R	S. Main St	0.50	
18.90	L	Grant	1.10	
20.00	L	Ash Swamp	2.00	
22.00	L	Ash Swamp	0.10	
22.10	R	Rt. 108 South	1.30	
23.40	L	Squamscott Road	1.10	Stratham
24.50	L	Onto Route 33/Portsmouth Ave.	0.60	
25.1	R	Finish Chute	0.00	
	<b>FINISH</b>	<b>Finish Line - Congratulations! You made it!</b>		
<b>Route closes at 4:00PM</b>				

## 2016 Bike MS NH Seacoast Escape - 60 mile

NET CONTROL - 978-888-3363

Miles	Direction	Description	Go	Town:
0.00	L	out of Stratham Hill Park onto Route 33	0.60	
0.60	R	onto Squamscott Road	1.10	
1.70	R	onto Route 108	1.00	Newfields
2.70	R	onto New Road @ Ship to Shore Restaurant	0.10	Newmarket
2.80		<b>Caution: Narrow wooden bridge</b>	2.30	
5.10	R	stop sign onto Route 108 (use caution entering town center)	0.60	
5.70	<b>Sharp R</b>	onto Bay Road	0.40	
6.10	BL	to stay on Bay Road	7.00	Durham
13.10	BR	onto Route 108	0.30	
13.40		<b>REST STOP -- Durham Town Offices --Route 108</b>		
13.40	BR	out of rest stopn <b>ROUTE SPLITS</b>	0.10	
13.50	R	at traffic light to continue on Route 108	0.60	
14.10		pass under Route 4	2.30	Madbury
16.40	S	through light	1.00	Dover
17.40	S	through light on Route 108 <b>Caution: busy area</b>	0.10	
17.50	S	through 2 lights, passing under Spaulding Turnpike	0.30	
17.80	BL	to stay on Route 108	0.40	
18.20	S	through light, continue on Route 108	0.30	
18.50	BR	at traffic light, following signs for Routes 4,9 and 108	0.10	
18.60	BL	staying on path for Routes 4,9 and 108	0.10	
18.70	R	onto Portland Avenue	0.10	
18.80	BR	onto unmarked Cocheco Street (towards water)	0.30	
19.10	S	through stop sign	0.40	
19.50	BR	at yield sign onto Gulf Road	1.80	
21.30	X	bridge over water	1.20	Eliot, ME
22.50	R	at light onto Route 236 South	0.40	
22.90	R	onto Route 103 South	1.50	
24.40	R	onto River Road	2.90	
27.30	BR	at yield sign onto Old Road	0.70	
28.00	S	after stop sign onto Route 103 East	0.30	
28.30		<b>REST STOP -- Eliot Elementary School - 1298 State Road</b>		
28.30	L	out of rest stop, staying on Route 103	0.10	
29.35	R	staying on Route 103 East	0.90	
30.25	S	through yellow blinking light	1.70	Kittery, ME
31.95		Pass under I-95	0.30	
32.25	R	staying on Route 103 East	0.40	
32.65	L	onto Government Street	0.10	
32.75	BR	up hill on Government Street	0.20	
32.95	R	onto Route 1 South	0.10	
33.05		Cross bridge back to New Hampshire (stay on sidewalk)	0.50	Portsmouth
33.55	R	onto Harbour Place which becomes State Street	0.10	
33.65		<b>*Follow signs for Strawberry Banke*</b>		
33.45	L	onto Marcy Street	0.30	
33.75	L	onto Route 1B South	1.50	
35.25		<b>Caution: crossing bridge</b>		

L=Left, R=Right, X=Cross, S=Straight, B=Bear, @=at

2016 Bike MS NH Seacoast Escape - 60 mile

NET CONTROL - 978-888-3363

Miles	Direction	Description	Go	Town:
35.25		<b>Caution: crossing bridge</b>		Newcastle
35.25	<b>BL</b>	to stay on Route 1B South	1.60	Rye
36.85		Walk bike over bridge on wooden walkway	1.10	Portsmouth
37.95	<b>L</b>	at stop sign onto Route 1A South	0.50	
38.45	<b>L</b>	at rotary to stay on Route 1A South	1.80	
40.25		<b>REST STOP - Odiorne State Park -- Route 1A</b>		
40.25	<b>L</b>	out of rest stop, pass Rye Harbor St.Park	7.50	North Hampton
47.75	<b>R</b>	onto Route 111	3.20	
51.85	<b>S</b>	thru traffic light, continue onto Route 111	0.50	
52.35	<b>L</b>	at stop sign	0.10	
52.45	<b>R</b>	at stop sign onto Route 151N	0.10	
52.55	<b>L</b>	onto Walnut Ave.	1.70	
54.25	<b>R</b>	onto Lovering Road	1.40	
55.65	<b>L</b>	onto Post Road	0.10	
55.75	<b>L</b>	onto Winnicut Road	1.70	Stratham
57.45	<b>X</b>	Union Road	2.20	
59.65	<b>R</b>	Onto Route 33/Portsmouth Ave.	1.00	
60.65	<b>S</b>	through stop light	0.30	
60.95	<b>R</b>	into Stratham Hill Park	0.00	
	<b>FINISH</b>	<b>Finish Line - Congratulations! You made it!</b>		
<b>Route closes at 4:00PM</b>				



March of Dimes Foundation  
New England Chapter

New Hampshire Division  
25 Lowell Street, Suite 304  
Manchester, NH 03101  
Telephone (603) 228-0317  
Nh634@marchofdimes.com

[marchofdimes.com/newhampshire](http://marchofdimes.com/newhampshire)

June 15, 2016

Mayor Jack Blalock and City Council  
1 Junkins Avenue  
Portsmouth, NH 03801

Dear Mayor Blalock & City Council Members,

I am the Development Specialist for the March of Dimes New Hampshire Division and am writing to you to request your permission to host our **2017 Seacoast March for Babies in Portsmouth on May 6, 2017**. March for Babies is a walk-a-thon event that raises money to support the mission of the March of Dimes, to improve the health of babies by preventing birth defects, premature birth, and infant mortality.

This letter is a request to reserve Peirce Island on May 6, 2017 from 6:00am to 12:00pm. In the event that space is unavailable I would like to reserve Little Harbour Elementary School as it has been there in the past. We expect approximately 250 people to join us as we walk to improve the health of all babies.

Once our venue is reserve I can request a certificate of insurance and forward the official document to you upon receipt. Enclosed for your review is the anticipated the walk directions/map. Thank you for your consideration of a permit for this event.

If you have any questions or concerns please feel free to contact me at 978-729-5849 or [jdolan@marchofdimes.com](mailto:jdolan@marchofdimes.com).

For Healthy Babies,

Jenelle Dolan  
Development Specialist





March of Dimes Foundation  
New England Chapter

New Hampshire Division  
25 Lowell Street, Suite 304  
Manchester, NH 03101  
Telephone (603) 228-0317  
Nh634@marchofdimes.com

[marchofdimes.com/newhampshire](http://marchofdimes.com/newhampshire)

## March for Babies Seacoast Walker Route

Starting at Peirce Island,  
Take a left onto Marcy Street,  
Veer right onto South Street,  
Follow South Street,  
Take a right on Middle Street,  
Take a right at the Baptist Church,  
Turn right onto Court Street.  
At the end of Court Street turn right onto Marcy Street.  
Continue walking across the bridge and the finish will be at Peirce Island

Greetings,

On behalf of the Portsmouth Halloween Parade committee I would like to request a permit to hold our 22nd annual parade this year on Monday, October 31. We plan to march the same route as last year, beginning at Pierce Island to conclude at Prescott Park. We wanted to initiate this early this year, in case there are problems with the route beginning at Pierce Island.

As always, members of the committee will be happy to meet with your team to discuss particulars of the event.

Thank you for your consideration.

Best,



Abby

Abigail Wiggin  
Farm Manager  
Wake Robin Farm  
52 Union RD  
Stratham NH 03885  
[Find us on Facebook!](#)  
[Find awesome recipes on our Pinterest boards!](#)

City of  
Portsmouth  
Department of Public Works



MEMORANDUM

**TO:** John P. Bohenko, City Manager  
**FROM:** Ryan Flynn, Construction Project Coordinator   
**DATE:** July 5, 2016  
**SUBJECT:** BayRing - Petition and License for Underground Cable and  
Conduit Location on Ladd Street 

I have reviewed the conduit location information provided by BayRing for Petition and License. This request is to license 60 feet of 4 inch conduit from the utility pole located at the corner of Ladd Street and an unnamed alleyway, across Ladd Street to another utility pole located within a private alley/parking area. This work will allow the utility pole on Ladd Street to be removed in future efforts to bury overhead utilities in this area.

After examining the proposed installation, I have determined that this work poses no impact to existing city infrastructure. **However, only 20 feet of the proposed conduit are located within the Ladd Street right-of-way. The remaining 40 feet are located on private property. Therefore, I recommend approval of this license, but only for the 20 feet located in within the Ladd Street right-of-way as I have marked on the plan.**

Attached is the submitted plan. Please contact me with any questions.

cc: Peter Rice, P.E. Director of Public Works  
Kelli Barnaby, City Clerk

# BayRing

COMMUNICATIONS



Ms. Kelli Barnaby  
Office of the City Clerk  
City of Portsmouth  
One Junkins Avenue  
Portsmouth, NH 03801

Dear Ms. Barnaby:

On behalf of Freedom Ring Communications, LLC d/b/a BayRing Communications, please find enclosed a petition and order to place conduit Across Ladd St. Additionally, you will find a set of plans depicting the work proposed.

We've had discussion about this project with the City's Public Works Project coordinator Ryan Flynn, Eversource, and other utilities. This is regarding the Hanover St project involving removal of utility poles to underground service. In order to keep fiber optic Phone and data service to 20 Ladd St. we need to redirect the existing 4" conduit placed at pole 23/2Y to pole 23/2YC located in the parking lot adjacent. Eversource has requested that all utility poles involved in this project are to be removed by fall 2016.

If you have any questions, please feel free to reach out to me.

Sincerely,

Shawn Smith  
OSP Engineer  
BayRing Communications/Oxford Networks  
603-205-9795  
ssmith@oxfordnetworks.com

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359 Corporate Drive, Portsmouth, NH 03801-6808

(603) 766-1000 – Fax (603) 766-1050

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**PETITION AND CONDUIT LICENSE**

**PETITION**

Portsmouth, New Hampshire

June 29, 2016

To the City Council of the City of Portsmouth New Hampshire:

Freedom Ring Communications, LLC d/b/a BayRing Communications, requests a license to install and maintain underground conduits, cables, wires and maintain structures with wires, cables, conduits and devices thereon, together with such sustaining, strengthening and protecting fixtures as may be necessary along and under the following public way.

**Ladd St**— redirect one (1), four-inch PVC conduit at an approximate depth of 30 inches from pole 23/2Y , approximately sixty (60) feet across Ladd St to pole 23/2YC. Repairing and replacing all pavement as the town requires.

**ORDERED**

This \_\_\_\_\_ day of \_\_\_\_\_, 2016, that BayRing Communications be and hereby is granted a license to install and maintain underground conduits, cables, wires and maintain structures with wires, cables, conduits and devices thereon, together with such sustaining, strengthening and protecting fixtures, in the public way covered by said petition. All conduit(s) shall be installed in accordance with the City's Public Works Departments specifications.

**City of Portsmouth, New Hampshire**

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

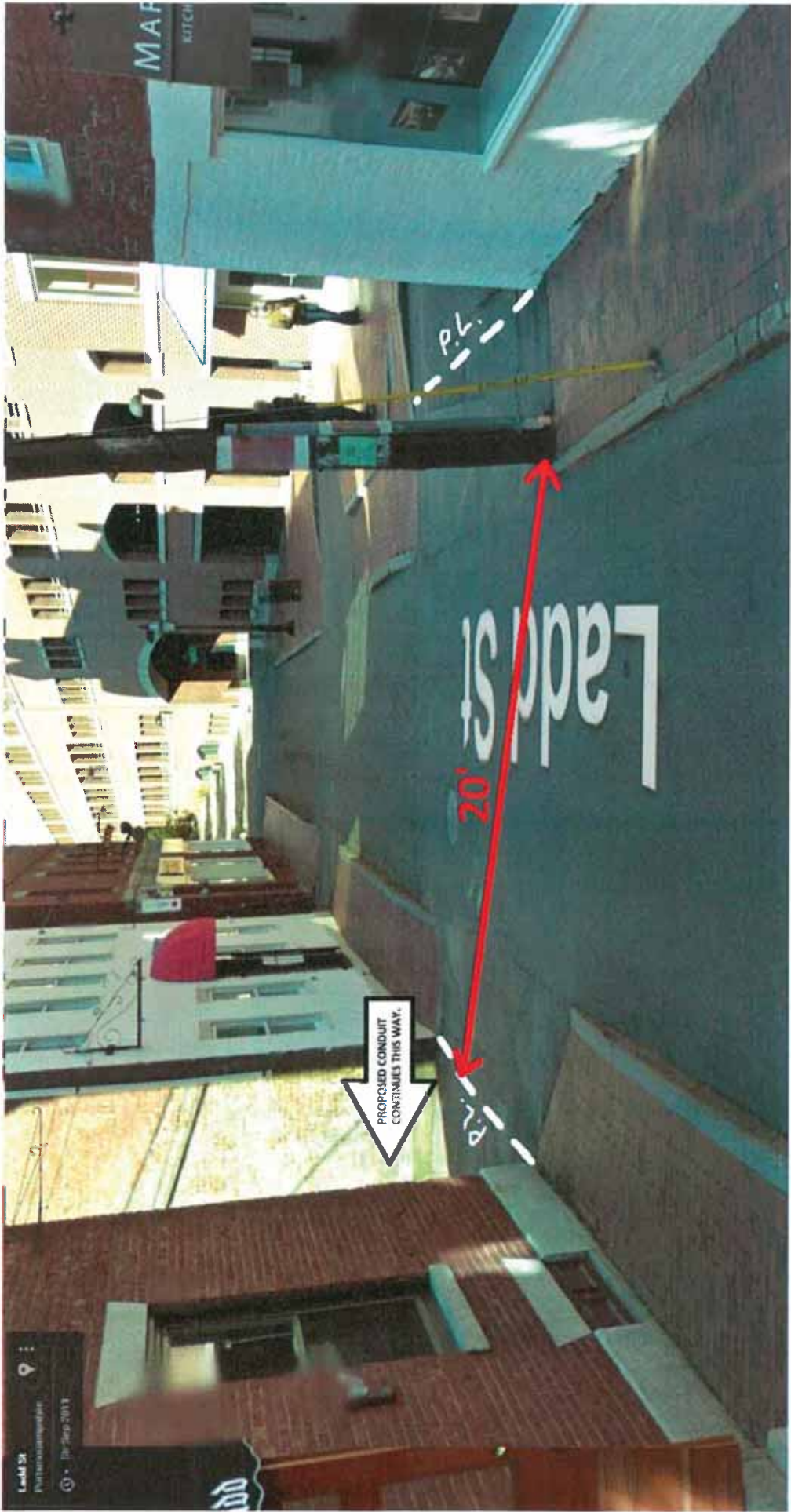
By: \_\_\_\_\_

Received and entered in the records of the City of Portsmouth: Book \_\_\_\_\_ Page \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

**City Clerk**



PROPOSED CONDUIT CONTINUES THIS WAY.

20'

P.L.

Ladd St

Ladd St  
Portland, Oregon, OR 97203

MAP  
KITCH

4" CONDUIT IS HERE CURRENTLY.  
POLE BEING REMOVED. CONDUIT  
NEEDS TO BE DIRECTED ACROSS LADD  
TO POLE 23/YC

UNNAMED  
ALLEY

23/2Y

APPROVE LICENSE  
FOR  
THIS SECTION ONLY.  
LADD ST

20'

23/2YC

PARKING GARAGE

High St.

MARKET ST

DATE: 6/29/2018  
SCALE: 25

FILENAME: LADD CONDUIT  
DRAWN BY: [unreadable]  
LAST ACCURSED BY: [unreadable]  
LAST SAVED: 6/29/2018

ADDENDUM PER RSA 231:163

- 1) All licensee(s) and any other entity using and/or occupying property of the City pursuant to a license, lease or other agreement shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date.
- 2) All licensee(s) and any other entity using and/or occupying property of the City shall provide for the payment of properly assessed real and personal property taxes on structures or improvements added by the licensee(s) or any other entity using or occupying property of the city; and
- 3) Failure of the licensee(s) and any other entity using and/or occupying property of the City to pay duly assessed personal and real taxes when due shall be cause to terminate said agreement by the lessor.

The changes to the licenses, leases and other agreements set forth in the preceding paragraphs shall remain in effect until changed in accordance with the requirements of RSA 231:163.

Approved by City Council: \_\_\_\_\_





received  
2/1/16

June 21, 2016

Glen D. Crawford, MD  
Robert E. Eberhart, MD  
Mayo A. Noerdlinger, MD  
Akhilesh Sastry, MD  
William S. Sutherland, MD  
Tyler P. Welch, MD  
J. Andrew McMahon, DO  
Cameron L. Eilts, DPM  
Brian D. Barry, PA-C  
Barry C. Cusson, PA-C  
Christina M. Scardina, PA-C  
Meghan E. Trovage, PA-C

Portsmouth NH City Council  
1 Junkins Avenue  
Portsmouth, NH 03801

Dear Councilors,

Please accept this letter as a formal request to initiate the process of transferring ownership of the service road adjacent to our facility at 1900 Lafayette Road to the City of Portsmouth. The existing service road connects Campus Drive to West Road and has been upgraded as directed by Portsmouth DPW from our location north.

We will await your response and further direction for obligations and responsibilities that we may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Nalton", is written over a horizontal line.

Principals  
Lafayette Place, Tenants In Common

cc:

Jack Blalock, Mayor  
148 Brackett Road  
Portsmouth NH 03801


James Splaine, Assistant Mayor  
201 Oriental Gardens  
Portsmouth NH 03801

Rebecca Perkins, Councilor  
37 Langdon Street  
Portsmouth NH 03801

M. Chris Dwyer, Councilor  
600 Broad Street  
Portsmouth NH 03801

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** July 7, 2016  
**To:** Honorable Mayor Jack Blalock and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on July 11, 2016 City Council Agenda

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**6:00 p.m. – Non-public session in accordance with RSA 91-A:3, II (a) regarding a personnel matter.**

**Non-meeting with counsel in accordance with RSA 91-A:2, I (b) regarding collective bargaining and negotiations.**

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

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***Presentation:***

1. **Senior Services Update.** On Monday evening, Brinn Chute, Senior Services Coordinator will give an update to the City Council regarding Senior Services ([see attached](#)).

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

1. **Acceptance of Emergency Management Performance Grant Agreement.** The City of Portsmouth has submitted an Emergency Management Performance Grant (EMPG) application on June 1, 2016 to the State of New Hampshire Homeland Security and Emergency Management for a grant in the amount of \$4,000.00 to update the community's Local Emergency Operations Plan (LEOP). [See attached letter](#). The total for this project is \$8,000.00. The amount of the local match is (50%) or \$4,000.00. The City Council is required to accept the EMPG grant agreement terms, as presented.

*I recommend the City Council move to accept the Emergency Management Performance Grant Agreement Terms, as presented, and further, authorize the City Manager to execute the Agreement. Action on this matter should take place under Section VIII of the Agenda.*

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

### **1. First Reading of Proposed Ordinance Amendments.**

- 1.1 **Annual Omnibus Ordinance Change, Parking and Traffic.** Attached please find the annual omnibus set of ordinances by the Parking and Traffic Safety Committee. This year's omnibus changes are detailed on the attached sheets, and address changes to on-street parking spaces and update wording to reflect current conditions.

By way of background, On March 29, 2000, the City Council adopted Ordinance #4-2000 under Chapter 7, Article 1, Section 7.103 of the Vehicles, Traffic and Parking Ordinance. This ordinance was adopted in order to be more responsive to the changing parking needs of the downtown. Before its adoption, it often took three readings of the City Council to simply change a parking space from a two-hour time restriction to a 15-minute one. This process would often take four to six months to complete.

The current ordinance authorizes the Parking Traffic and Safety Committee to recommend temporary parking and traffic regulations to the City Council for its approval in the form of its monthly meeting minutes. Once the Council approves these minutes, the temporary regulations are in effect for a period not to exceed one year. During that year the Council and the public have the benefit of seeing how a temporary regulation works before adopting it as a permanent change to the parking ordinance. These temporary regulations are presented at one time to the Council for its consideration.

The attached amendments to Chapter 7, Vehicles, Traffic and Parking for the Council's consideration summarize the temporary parking regulations implemented by the Parking and Traffic Safety Committee between June 12, 2015 and June 2, 2016, as well as updates to reflect current conditions.

*I recommend the City Council move to pass first reading and schedule second reading and a public hearing on the proposed Ordinance at the August 1, 2016 City Council meeting, as presented. Action on this matter should take place under Section IX of the Agenda.*

2. **Public Hearing and Adoption Proposed Resolutions.**

2.1 **Public Hearing and Adoption Re: Proposed Resolutions for Bond Authorizations for FY17 City Improvements.** As a result of the June 20th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and adoption the proposed [borrowing authorizations](#) identified in the FY17-22 Capital Improvement Plan ([see attached Resolutions and respective element sheets](#)).

The three (3) Resolutions are:

**GENERAL FUND**

1) **Resolution for borrowing authorization of up to \$6,850,000 for FY17 Citywide Street, Sidewalk, and Facility Improvements.**

- **Chestnut Area Improvements - \$200,000:**  
*(Page II-36 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
This project is a collaborative effort between the City, The Music Hall, abutting property owners and businesses to beautify and improve Chestnut Street between Porter and Congress Street. The proposed plan includes new sidewalks and drainage improvements, new granite seating walls, flowering trees and shrubs. Changes to the street surface will improve wayfinding from Congress Street, The Music Hall, and the African Burying Ground, and it will meet the City's Master Plan goals of increasing the number of community gathering areas downtown.
- **Multi-Purpose Recreation Field (Former Stump Dump) - \$1,750,000:**  
*(Page II-40 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
The 2010 Recreation Needs Study recommended additional multi-use fields be added to the City's inventory. This project will fulfill a long-held vision for converting the former "stump-dump" facility on Greenland Road into a regulation sized, multi-purpose, outdoor field with artificial turf. Lighting, associated parking and other amenities are included. This project will also provide parking and trail access for the Hampton Branch trail system as well as access to other passive recreational assets such as the Great Bog.
- **Outdoor Pool Upgrades - \$500,000:**  
*Page II-41 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
This project includes the replacement of the pool gutter system and pool liner. The original pool was constructed in the 1930's and has been renovated a number of times. The existing liner is past the 15 year design life and the concrete gutter is starting to show signs of failure.

- **Citywide Facilities Capital Improvements - \$1,000,000:**  
*(Page II-44 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 The Public Works Department has the maintenance responsibilities for all municipal facilities. These facilities are wide ranging and serve multiple uses. Due to age and usage, many facilities are in need of updating in order to continue their availability to the general public and programs conducted within. Prioritization of projects will be based on each facilities evaluation, to be completed in FY17.
- **McDonough St Area Improvements - \$400,000:**  
*(Page II-71 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 This project is at the request of the Islington Creek Neighborhood Association to have new sidewalks and traffic calming measures installed throughout the McDonough Street Area. The main purpose of this project is to enhance safety for the residents and others who travel through this area on foot, by bicycle and motor vehicle. This area is a mixed use of residential, commercial and industrial uses located between Islington Street and North Mill Pond. The work will include water, sewer, storm drainage, paving, curbing and associated landscaping constructed in a phased approach.
- **Pease International Tradeport Roadway Rehabilitation - \$2,500,000:**  
*(Page II-74 & II-75 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 Per the Municipal Service Agreement between the City of Portsmouth and Pease Development Authority, the City shall provide Public Works Services in the Non-Airfield Area of the Pease International Tradeport. Public Works Services include maintaining and repairing roads, streets, bridges and sidewalks.
- **Banfield Road Improvements - \$500,000:**  
*(Page II-76 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 This project addresses a number of traffic safety related issues along the section of Banfield Road from Constitution to Ocean Road. These upgrades include culvert replacement, guard rail installation, and traffic calming measures. In addition, the effort will evaluate pedestrian and bicycle needs and measures to incorporate “Complete Street” Design into the project.

## WATER FUND

### 2) Resolution for borrowing authorization of up to \$2,250,000 related to Water Line Replacements, Water System Pressure and Storage Improvements.

- **Annual Water Line Replacement - \$1,500,000:**

*(Page II-78 of Appendix II of the Proposed Annual Budget Book 2016-2017)*

The water distribution system consists of more than 150 miles of pipe. Many of the older pipes are 50 to 100 years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of water-specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipe, valves and associated materials used to replace those pipes. Bond funds for large full road reconstruction projects.

- **Water System Pressure and Storage Improvements - \$750,000:**

*(Page II-80 of Appendix II of the Proposed Annual Budget Book 2016-2017)*

This project consists of improvement to water mains, pumps and storage to improve water flow and pressure in the water system. Work will be performed in portions of the water system as well as sections of the system which have been identified as needing upgrades as part of the water system hydraulic model and master plan update completed in 2013.

## SEWER FUND

### 3) Resolution for borrowing authorization of up to \$3,400,000 for Costs related to Sewer Line Replacements, Pumping Station Upgrades and Goose Bay Drive Sewer Line

- **Annual Sewer Line Replacement - \$2,500,000:**

*(Page II-85 of Appendix II of the Proposed Annual Budget Book 2016-2017)*

The wastewater collection system consists of more than one-hundred (100) miles of pipe. Many of the older pipes are fifty (50) to one-hundred (100) years old, undersized and at the end of their design life. Pipes are replaced programmatically as part of sewer specific capital projects, roadway reconstruction and prior to annual paving. This item will fund the purchase of pipes and associated materials used to replace those pipes. Bond funds are for the large full road reconstruction type projects.

- **Pumping Station Upgrade - \$400,000:**  
*(Page II-86 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 The City owns and operates twenty (20) wastewater pumping stations. The projected life span of a pumping station is twenty (20) years. This project plans for the replacement or major rehabilitation of the pumping stations that have not been included as separate projects. The next pumping station to be addressed under this project is the Heritage Avenue pumping station.
- **Goose Bay Drive Sewer - \$500,000:**  
*(Page II-87 of Appendix II of the Proposed Annual Budget Book 2016-2017)*  
 This project addresses replacement of an existing sewer that is in poor condition and at risk of failure. Replacement of this sewer line will prevent potential sewer system overflows due to failure and will provide additional capacity for an industry served by this section of sewer.

*I recommend that the City Council move the following motions:*

- 1) *Move to adopt a Bond Resolution for FY17 Citywide Street, Sidewalk and Facility Improvements in the amount of up to \$6,850,000. (Roll call vote and two-thirds vote required.)*
- 2) *Move to adopt a Bond Resolution for FY17 Water Line Replacements, Water System Pressure and Storage Improvements in the amount of up to \$2,250,000. (Roll call vote and two-thirds vote required.)*
- 3) *Move to adopt a Bond Resolution for FY17 Sewer Line Replacements, Pumping Station Upgrades and Goose Bay Drive Sewer Line in the amount of up to \$3,400,000. (Roll call vote and two-thirds vote required.)*

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

### 3. **Third and Final Reading of Proposed Ordinance Amendments:**

- 3.1 **Third Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance – Character-Based Zoning and Related Amendments.** As a result of the June 20<sup>th</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for third reading the [attached proposed Ordinance amending Chapter 10 – Zoning Ordinance](#) addressing character-based zoning in the West End, additional revisions to Article 5A affecting other character districts, and related amendments to the Zoning Ordinance and the Zoning Map ([see attachments below](#)):
  - [A one-page ordinance incorporating all the proposed zoning amendments;](#)
  - [A proposed revision to Article 5A — Character Districts \(39 pages\);](#)
  - [A set of “conforming amendments” to other sections of the Zoning Ordinance \(8 pages\);](#)

- A list of additional proposed zoning changes for 52 lots adjacent to the proposed Character districts in the Islington Street corridor and West End (1 page); and
- A set of four maps showing proposed amendments to the Zoning Map. The first three maps are revisions to the existing Regulating Plan for the Character districts, extending character-based zoning down Islington Street to the West End, while the fourth map shows the 52 additional lots proposed for rezoning.

At its meeting on June 20, 2016, the Council voted to adopt several amendments to the proposed zoning maps, the proposed revision to Article 5A, and the proposed “conforming amendments,” and passed second reading on the amended ordinances. The [attached](#) documents, dated 7/11/2016, incorporate all the revisions voted by the City Council on June 20<sup>th</sup>, and are otherwise unchanged from the draft that was presented for second reading, dated May 2, 2016.

*I recommend the City Council move to pass third and final reading of the proposed Ordinance, as presented, at the City Council meeting of July 11, 2016. Action on this matter should take place under Section IX of the Agenda.*

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

1. **McIntyre Property.** As a follow-up to Council’s work session on the future disposition of the Federal McIntyre property, I offer the following for consideration at the July 11<sup>th</sup> Council meeting.

The Council appeared to favor the City remaining involved in the redevelopment of the McIntyre site and the relocation/construction of a new Federal facility within the downtown. A three-party (City/GSA/real estate developer), public-private partnership is envisioned. In addition, the Bridge Street parking lot is a proposed City-owned downtown location that the General Services Administration (GSA) found to meet its requirements at this preliminary stage.

The City Council was interested in learning more about the foreseeable process, and raised some important issues to consider as we move forward with this project. They include:

- 1) What is the expectation for public involvement in visioning for the redevelopment of the McIntyre site? Defining expectations is essential for the community as well as for any development partner – clarity as to the future process is essential to avoid public misunderstandings, and added project costs. Public input is essential, and should be solicited and included in visioning (perhaps via a charrette?), but should not be allowed to devolve into an ineffective and costly “design by committee” approach.
- 2) What level of influence will the City have in the eventual design and redevelopment program? Will a Section 106 and/or HDC review be required? What are the City’s



goals for the project? Are they reasonable and achievable and within the City’s existing capacity/expertise? and,

- 3) Should the City consider designating the McIntyre property as a Tax Increment Financing district in order to facilitate desired public improvements as part of the redevelopment (examples of these included cultural space, non-profit use, green/open space/civic plazas, public parking, office space, etc.)?

All of the aforementioned issues touch upon the City’s role and responsibilities in executing a successful public-private partnership. While there is ambiguity surrounding specific answers at this stage, the presumption is that through such a partnership, a greater “win/win” scenario is envisioned that would otherwise be unattainable.

Private partners will need to be prepared for a high level of scrutiny, and will need to commit to an open, public process that acknowledges the importance of this project to the community. Their role includes due diligence in becoming familiar with the community, assessing the feasibility of the concept/design, attracting financing interests, involving an experienced, resilient development team.

Following are key milestones in the project over the near term (target dates are subject to change):

July 11, 2016	<ul style="list-style-type: none"> <li>• City Council votes to endorse City’s continued pursuit of a public private partnership for redevelopment of the McIntyre site and construction of a new Federal facility on the proposed Bridge Street lot.</li> </ul>	<ul style="list-style-type: none"> <li>➤ City works to develop options for TIF program and plan. (City has designated CIP funding for consulting assistance re: McIntyre redevelopment.)</li> </ul>
July	City Manager finalizes a Request for Proposals in collaboration with the GSA.	
August	<ul style="list-style-type: none"> <li>• Council reviews final RFP and establishes a Project Steering Committee (perhaps a Committee of the Whole) to oversee the developer selection process.</li> <li>• City Council re-affirm adoption of RSA Chapter 162K : Municipal Economic Development and Revitalization Districts.</li> </ul>	

September-October	RFP is issued for private development partner.	<ul style="list-style-type: none"> <li>➤ City assesses market demand and financial feasibility of conceptual redevelopment alternatives.</li> <li>➤ City conducts initial goal-setting/visioning exercise in public forum (charrette?).</li> <li>➤ City outlines approval process with boards and departments.</li> </ul>
October	Receive, evaluate, and conduct initial interviews with interested partners	
November-December	Select and contract with the most qualified partner to work with in developing an option to optimize the City's interests and enable GSA's disposition of the McIntyre site to the City.	
<p>2017:</p> <p>City begins work in partnership with selected developer and GSA to design public participation process, project schedule, assess financial feasibility (including potential TIF use), etc. of McIntyre redevelopment and construction of the new Federal building.</p>		

*I recommend the City Council move to endorse City's continued pursuit of a public private partnership for redevelopment of the McIntyre site and construction of a new Federal facility on the proposed Bridge Street lot.*

2. **Proposed Use of Tax Increment Financing for Redevelopment of the McIntyre Area.**

As discussed during the City Council Work Session on the McIntyre Property, there was interest from the City Council to look at authorizing Tax Increment Financing (TIF) as a possible economic development tool the City can use to finance public infrastructure projects related to redevelopment McIntyre Federal Building parcel.

Basically, tax increment financing is a method of targeting tax revenue to a specified area of the municipality (called a development district) to finance public improvements as outlined in RSA 162-K "Municipal Economic Development and Revitalization Districts". The district is typically an area in which the municipality wishes to encourage development and which would benefit from activities such as streetscape improvements, property acquisition, a parking garage or a commercial or industrial park.

The first step required before identifying potential TIF districts and projects is adoption of the TIF legislation. The City undertook this step in 2006. Next, a TIF district is established and a financing plan is developed. Depending on the plan, tax revenue for assessed value on new development gained above the base year is projected for the district.

The improvements planned in the district may be made over time as the tax revenues come in from new development or, may be built upfront and financed with bonds paid by the

projected tax revenue increment. The City has the discretion to determine how much of the incremental tax revenues it allocates for this use. It can be anywhere from 10% to 100% of the revenues garnered from new value in the district. Development districts are dissolved per the initial plan, usually upon completion of an improvement, a set time period or, in the case of bond-financed improvements, final payment of the debt.

*I recommend the City Council move to incorporate Tax Increment Financing as part of the redevelopment of the McIntyre area and to authorize the City Manager to take the necessary steps to implement this process.*

3. **Peirce Island Wastewater Treatment Facility Re: Barging.** City Engineer Terry Desmarais and Don Chelton of AECOM will provide an update of the Peirce Island Wastewater Treatment Facility upgrade. The presentation will include: an update of the construction impact mitigation efforts; the results of the bids for the construction of the upgrade; and the barging alternatives (see attached).

The low bidder for the project is Methuen Construction at \$72.79 million. The next highest bidder is Archer Western at \$80.67 million.

The City staff recommends that the City proceed with an award to Methuen Construction for \$72.79 million without a barging alternative. This is within the amount previously authorized by the City Council and within the amount authorized by the State of New Hampshire Department of Environmental Services for State Revolving Loan funding.

Staff does not recommend the selection of a barging alternative. It is not a cost effective means for dealing with the construction impacts of this project including construction vehicle traffic (see attached amortization schedules). In addition to the contractor's costs for the barging alternatives, the City would incur additional costs associated with permitting, natural resource mitigation, engineering and coordination. Staff also is concerned about increased risk factors associated with barging and noise.

If the City Council wishes to proceed with a barging alternative, an additional amount would have to be authorized for borrowing. A public hearing and vote on a borrowing/bond resolution could be scheduled for the August 1, 2016 City Council meeting.

*I recommend the City Council move to authorize the City Manager to proceed with the bid award to Methuen Construction for the Wastewater Treatment Facility upgrade on Peirce Island without any barging alternative.*

4. **165 Deer Street Re: Ratification of Purchase and Sale Agreement.** On April 18, 2016 the City Council voted to authorize the City Manager, "to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form...". The transaction was not completed at that time

due to a number of unresolved issues and uncompleted documents. A major unresolved issue concerned whether or not the municipal sewer currently located underneath the site of the proposed garage would remain in place or would be moved to the proposed Deer Street Extension. That matter is now resolved in favor of moving the location of the sewer line. The uncompleted documentation included a proposed Parking Agreement to allow Deer Street to use the City property for approximately 60 parking spaces at the City's prevailing rate; an Environmental Agreement under which DSA would escrow \$500,000 to assist in environmental remediation of parking garage site; and a Title Indemnity Agreement under which DSA would be contractually obligated to indemnify the City in the amount of \$250,000 in the event that eminent domain is necessary to clear the title to the site for garage construction. Approximately fifty (50) other documents were required to be created and executed in order to hold a real estate closing on the property.

Attached hereto the City Council will find a copy of the final Purchase and Sale Agreement, the final Post Closing Obligation Agreement and a Document Agenda to be used for the actual closing. The Document Agenda lists all of the documents previously referenced, all of which would be available for Council inspection. However, due to the volume of this paperwork it has not been included in the agenda packet.

As previously explained to the Council it should be expected that minor changes to any of these documents might be necessary up to and including the moment at which the City actually acquires title to the land on which the garage would be built.

The City Council is hereby requested to ratify its action of April 18, 2016, and reiterate the authority of the City Manager to negotiate and execute the Purchase and Sale Agreement, Post Closing obligation Agreement and all related agreements and documents with Deer Street Associates necessary to bring about the acquisition of the municipal parking garage site on Deer Street.

*Therefore, I recommend the City Council move to ratify its action of April 18, 2016, and reiterate the authority of the City Manager to negotiate and execute the Purchase and Sale Agreement, Post Closing obligation Agreement and all related agreements and documents with Deer Street Associates necessary to bring about the acquisition of the municipal parking garage site on Deer Street.*

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

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on June 20, 2016. In addition, this can be found on the City's website.
2. **Seacoast Public Health Network.** For your information, [attached is an update from Mary Cook, Public Health Emergency Preparedness Manager](#), regarding the public health preparedness initiatives of the Seacoast Public Health Network.

3. **Report Back Re: Bicycles in City Parks.** At the June 20, 2016 meeting, the City Council voted to refer Chapter 8, Article II, Section 8.204 – Traffic – Item G regarding bicycle riding in parks to the Parking & Traffic Safety Committee for a report back.

At present, this section of the ordinance stipulates that “no person in a park shall ride a bicycle on other than a vehicular road or park path designated for that purpose.” This section also indicates that “a bicyclist shall be permitted to wheel or push a bicycle by hand over any grassy area or wooded trail or on any paved area reserved for pedestrian travel.”

In order to reduce potential conflicts between pedestrians and bicyclists in highly pedestrian areas and also provide for safe and convenient bicycle and pedestrian paths between destinations, City transportation staff is reviewing all of the City’s parks and will be recommending locations where existing paths could be designated for shared bicycle and pedestrian use. Appropriate signage or pavement markings for these shared use paths will also be part of the staff’s recommendation in this regard. No significant changes to the ordinance are anticipated at this time.

4. **Report Back Re: Veterans of Foreign Wars Location.** The following is a report back on Councilor Denton’s request regarding possible re-use of available City-owned buildings by the VFW Emerson Hovey Post 168 which is currently located at 238 Deer Street and which needs to relocate.

The VFW Post 168 building is used as a lodge and social club and consists of a two-story, brick structure on 0.14 acres with a gross building area of 8,100 square feet and a small 732 square foot parking area. The building is handicapped accessible and is served by an elevator.

The City does not have an inventory of under-utilized or vacant buildings that match the current VFW Emerson Hovey Post 168 property at 238 Deer Street. Further, there is not a handicapped accessible, City-owned facility that is not currently committed and that would work as a facility for only VFW member meetings.

For potential private properties, a check of zoning requirements reveals that social club/lodge/fraternal organizations are allowed by right in the downtown CD4 and CD5 zones and by special exception in the Gateway Zone. Other locations in the City may meet the VFW needs but would require a variance for this purpose. A recent property search on the NH CIBOR real estate website reveals a few properties in these zones on the market that may work. Staff can refer VFW representatives to the realtors listing these properties.



# Peirce Island WWTF Upgrade

Portsmouth City Council Meeting

July 11, 2016

# Topics of Discussion

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- Items Added Since Joint Work Session
- Safety Consultant Review
- Barging Alternates
- Bid Results
- Status of Funding
- Staff Recommendation



# Items Added Since April 2016 Joint Work Session

- Staging and Pedestrian Safety
  - Additional Fencing and Barricades
  - Bus Turnaround Area for Pool
- Traffic and Pedestrian Mitigation (ongoing)
  - Four Tree Island Parking Lot Expansion
  - Additional Parking Adjacent to Boat Ramp





# Safety Consultant

- Focus on Pedestrian Safety and Segregation from Construction Traffic
- Recommendations:
  - Fencing and Barriers Near Play Ground and Pool
  - Construction Entrance Attendant
  - Roadway Striping and In-street Pedestrian Signage
  - Cross Walk at Mechanic Street
  - Prohibit Dogs from Island During Construction
  - Resident Parking Via Permit on Island



# City Council Vote March 14, 2016 Regarding Barging Alternates

...voted to direct the City Manager to develop one or more bid alts for the Peirce Island Wastewater Treatment Facility Upgrades for the delivery and removal of equipment and materials by water...



## Barging Alternates

Barging Bid Alternate	Estimated Cumulative Reduction In Construction Vehicles (%)
Alt. 1 – Barge Demo and Surplus Excavation Materials	50%
Alt. 2 – Additional Cost to Barge Selected Construction Materials	60%
Alt. 3 – Additional Cost to Barge Vehicles 3 Axles or Greater and Construction Equipment Except Concrete Trucks and Pump Trucks	75%
Alt. 4 – Additional Costs for Concrete Batch Plant and Barge Raw Concrete Materials	90%

# Rounded Bid Results

Item	Low Bid Total	Added Cost
Base Costs (No Barging)	\$72,790,000	\$0
Barging Alt 1 (~50% Traffic Reduction)	\$76,730,000	\$3,940,000
Barging Alt 2 (~60% Traffic Reduction)	\$85,980,000	\$13,190,000
Barging Alt 3 (~75% Traffic Reduction)	\$89,770,000	\$16,980,000
Barging Alt 4 (~90% Traffic Reduction)	\$93,790,000	\$21,000,000

## Rounded Bid Results (Million \$)

Item	Methuen Const	Archer Western	PC
Bid Construction Cost Without Barging	\$72.79	\$80.67	\$84.59
Barging Alt 1 (50% Traffic Reduction)	\$3.94	\$5.45	\$8.35
Barging Alt 2 (50% to 60% Traffic Reduction)	\$9.25	\$3.15	\$25.16
Barging Alt 3 (60% to 75% Traffic Reduction)	\$3.79	\$0.35	\$3.14
Barging Alt 4 (75% to 90% Traffic Reduction)	\$4.02	\$5.30	\$9.68
Total Barging Cost	\$21.00	\$14.25	\$46.33
Total Construction Cost With Barging	\$93.79	\$94.92	\$130.91

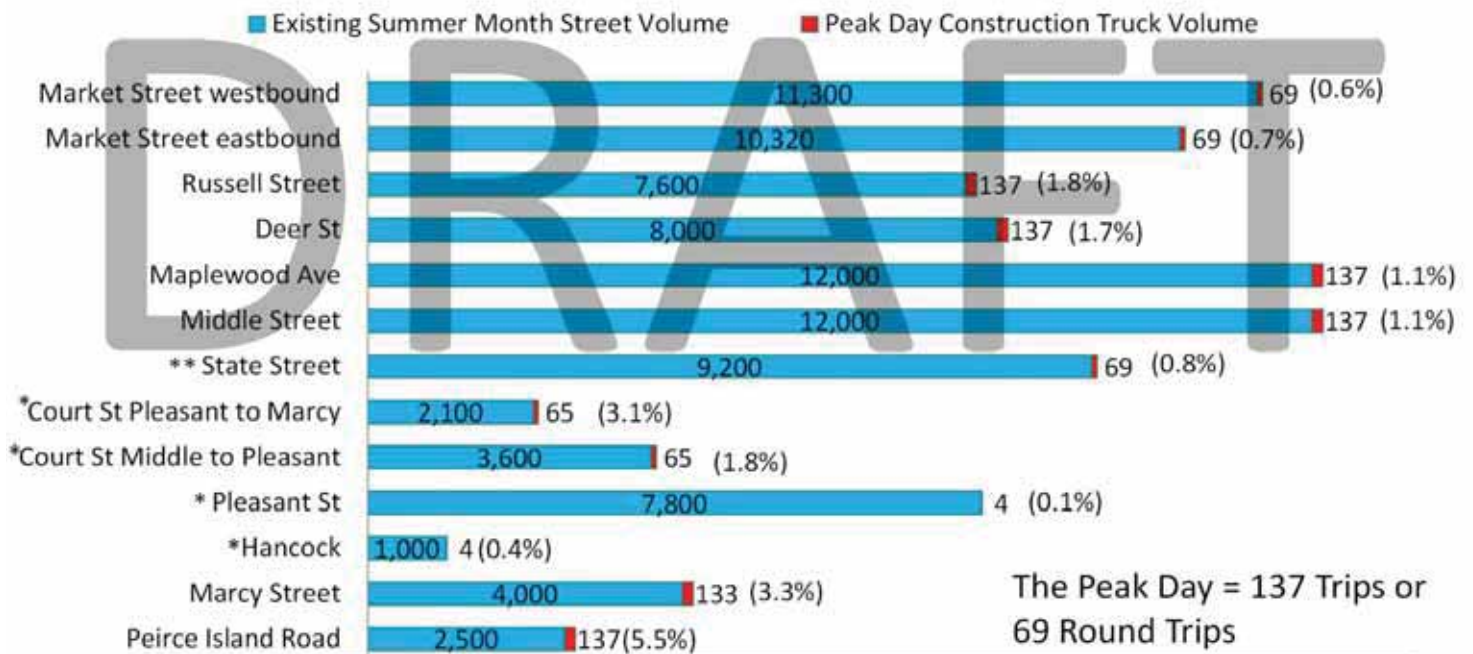
# Barging Considerations

- Overlap in Construction and Permitting
  - Natural Resource Permitting
  - Waterway Permitting (Army Corps, USCG)
- Engineering and Coordination
- Potential Natural Resource Mitigation
- Increases Risk Factor
- Increases Costs



# Estimated Traffic Volume (No Barging)

## Summer Condition Traffic Volumes with Peak Day Construction Traffic (Trips per Day)



Notes: \*Outbound Construction Traffic Only \*\*Inbound Construction Traffic Only



# Funding Summary

- Construction Phase Project Costs
  - Construction (\$72.79M)
  - Construction Oversight Engineering
  - Construction Contingency
- Council Bond and Loan Authorizations
  - Allows for Award of Base Bid
  - Allows for Initial Construction Oversight Engineering Contract
  - Includes 2.5% Contingency





# Recommendation

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- Approve Award of Contract to Low Bidder Without Barging
- Continue Mitigation of Construction Impacts





Questions

COST OF BARGE ALTERNATE #1

50% TRAFFIC REDUCTION

AMORTIZATION AND PAYMENT SCHEDULE-20 YEAR

BOND \$3,940,000  
 YEARS 20  
 RATE 2.55%

Note: Approximately \$100,000 = \$0.09 on the Sewer rate  
 FY 17 Sewer Rate: 12.24/13.47

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance	Sewer rate Effect
					3,940,000	
1	3,940,000	197,000	100,470	<b>297,470</b>	3,743,000	\$0.27
2	3,743,000	197,000	95,447	<b>292,447</b>	3,546,000	\$0.26
3	3,546,000	197,000	90,423	<b>287,423</b>	3,349,000	\$0.26
4	3,349,000	197,000	85,400	<b>282,400</b>	3,152,000	\$0.25
5	3,152,000	197,000	80,376	<b>277,376</b>	2,955,000	\$0.25
6	2,955,000	197,000	75,353	<b>272,353</b>	2,758,000	\$0.25
7	2,758,000	197,000	70,329	<b>267,329</b>	2,561,000	\$0.24
8	2,561,000	197,000	65,306	<b>262,306</b>	2,364,000	\$0.24
9	2,364,000	197,000	60,282	<b>257,282</b>	2,167,000	\$0.23
10	2,167,000	197,000	55,259	<b>252,259</b>	1,970,000	\$0.23
11	1,970,000	197,000	50,235	<b>247,235</b>	1,773,000	\$0.22
12	1,773,000	197,000	45,212	<b>242,212</b>	1,576,000	\$0.22
13	1,576,000	197,000	40,188	<b>237,188</b>	1,379,000	\$0.21
14	1,379,000	197,000	35,165	<b>232,165</b>	1,182,000	\$0.21
15	1,182,000	197,000	30,141	<b>227,141</b>	985,000	\$0.20
16	985,000	197,000	25,118	<b>222,118</b>	788,000	\$0.20
17	788,000	197,000	20,094	<b>217,094</b>	591,000	\$0.20
18	591,000	197,000	15,071	<b>212,071</b>	394,000	\$0.19
19	394,000	197,000	10,047	<b>207,047</b>	197,000	\$0.19
20	197,000	197,000	5,024	<b>202,024</b>	-	\$0.18

Totals 20 year 3,940,000 1,054,935 **4,994,935**

Average Payment 249,747

COST OF BARGE ALTERNATE #2

60% TRAFFIC REDUCTION

AMORTIZATION AND PAYMENT SCHEDULE-20 YEAR

BOND \$13,190,000  
 YEARS 20  
 RATE 2.55%

Note: Approximately \$100,000 = \$0.09 on the Sewer rate  
 FY 17 Sewer Rate: 12.24/13.47

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance	Sewer rate Effect
					13,190,000	
1	13,190,000	659,500	336,345	<b>995,845</b>	12,530,500	\$0.90
2	12,530,500	659,500	319,528	<b>979,028</b>	11,871,000	\$0.88
3	11,871,000	659,500	302,711	<b>962,211</b>	11,211,500	\$0.87
4	11,211,500	659,500	285,893	<b>945,393</b>	10,552,000	\$0.85
5	10,552,000	659,500	269,076	<b>928,576</b>	9,892,500	\$0.84
6	9,892,500	659,500	252,259	<b>911,759</b>	9,233,000	\$0.82
7	9,233,000	659,500	235,442	<b>894,942</b>	8,573,500	\$0.81
8	8,573,500	659,500	218,624	<b>878,124</b>	7,914,000	\$0.79
9	7,914,000	659,500	201,807	<b>861,307</b>	7,254,500	\$0.78
10	7,254,500	659,500	184,990	<b>844,490</b>	6,595,000	\$0.76
11	6,595,000	659,500	168,173	<b>827,673</b>	5,935,500	\$0.74
12	5,935,500	659,500	151,355	<b>810,855</b>	5,276,000	\$0.73
13	5,276,000	659,500	134,538	<b>794,038</b>	4,616,500	\$0.71
14	4,616,500	659,500	117,721	<b>777,221</b>	3,957,000	\$0.70
15	3,957,000	659,500	100,904	<b>760,404</b>	3,297,500	\$0.68
16	3,297,500	659,500	84,086	<b>743,586</b>	2,638,000	\$0.67
17	2,638,000	659,500	67,269	<b>726,769</b>	1,978,500	\$0.65
18	1,978,500	659,500	50,452	<b>709,952</b>	1,319,000	\$0.64
19	1,319,000	659,500	33,635	<b>693,135</b>	659,500	\$0.62
20	659,500	659,500	16,817	<b>676,317</b>	-	\$0.61

Totals 20 year 13,190,000 3,531,623 **16,721,623**

Average Payment 836,081

COST OF BARGE ALTERNATE #3

75% TRAFFIC REDUCTION

AMORTIZATION AND PAYMENT SCHEDULE-20 YEAR

BOND \$16,980,000  
 YEARS 20  
 RATE 2.55%

Note: Approximately \$100,000 = \$0.09 on the Sewer rate  
 FY 17 Sewer Rate: 12.24/13.47

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance	Sewer rate Effect
					16,980,000	
1	16,980,000	849,000	432,990	<b>1,281,990</b>	16,131,000	\$1.15
2	16,131,000	849,000	411,341	<b>1,260,341</b>	15,282,000	\$1.13
3	15,282,000	849,000	389,691	<b>1,238,691</b>	14,433,000	\$1.11
4	14,433,000	849,000	368,042	<b>1,217,042</b>	13,584,000	\$1.10
5	13,584,000	849,000	346,392	<b>1,195,392</b>	12,735,000	\$1.08
6	12,735,000	849,000	324,743	<b>1,173,743</b>	11,886,000	\$1.06
7	11,886,000	849,000	303,093	<b>1,152,093</b>	11,037,000	\$1.04
8	11,037,000	849,000	281,444	<b>1,130,444</b>	10,188,000	\$1.02
9	10,188,000	849,000	259,794	<b>1,108,794</b>	9,339,000	\$1.00
10	9,339,000	849,000	238,145	<b>1,087,145</b>	8,490,000	\$0.98
11	8,490,000	849,000	216,495	<b>1,065,495</b>	7,641,000	\$0.96
12	7,641,000	849,000	194,846	<b>1,043,846</b>	6,792,000	\$0.94
13	6,792,000	849,000	173,196	<b>1,022,196</b>	5,943,000	\$0.92
14	5,943,000	849,000	151,547	<b>1,000,547</b>	5,094,000	\$0.90
15	5,094,000	849,000	129,897	<b>978,897</b>	4,245,000	\$0.88
16	4,245,000	849,000	108,248	<b>957,248</b>	3,396,000	\$0.86
17	3,396,000	849,000	86,598	<b>935,598</b>	2,547,000	\$0.84
18	2,547,000	849,000	64,949	<b>913,949</b>	1,698,000	\$0.82
19	1,698,000	849,000	43,299	<b>892,299</b>	849,000	\$0.80
20	849,000	849,000	21,650	<b>870,650</b>	-	\$0.78

Totals 20 year 16,980,000 4,546,395 **21,526,395**

Average Payment 1,076,320

COST OF BARGE ALTERNATE #4

90% TRAFFIC REDUCTION

AMORTIZATION AND PAYMENT SCHEDULE-20 YEAR

BOND \$21,000,000  
 YEARS 20  
 RATE 2.55%

Note: Approximately \$100,000 = \$0.09 on the Sewer rate  
 FY 17 Sewer Rate: 12.24/13.47

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance	Sewer rate Effect
					21,000,000	
1	21,000,000	1,050,000	535,500	<b>1,585,500</b>	19,950,000	\$1.43
2	19,950,000	1,050,000	508,725	<b>1,558,725</b>	18,900,000	\$1.40
3	18,900,000	1,050,000	481,950	<b>1,531,950</b>	17,850,000	\$1.38
4	17,850,000	1,050,000	455,175	<b>1,505,175</b>	16,800,000	\$1.35
5	16,800,000	1,050,000	428,400	<b>1,478,400</b>	15,750,000	\$1.33
6	15,750,000	1,050,000	401,625	<b>1,451,625</b>	14,700,000	\$1.31
7	14,700,000	1,050,000	374,850	<b>1,424,850</b>	13,650,000	\$1.28
8	13,650,000	1,050,000	348,075	<b>1,398,075</b>	12,600,000	\$1.26
9	12,600,000	1,050,000	321,300	<b>1,371,300</b>	11,550,000	\$1.23
10	11,550,000	1,050,000	294,525	<b>1,344,525</b>	10,500,000	\$1.21
11	10,500,000	1,050,000	267,750	<b>1,317,750</b>	9,450,000	\$1.19
12	9,450,000	1,050,000	240,975	<b>1,290,975</b>	8,400,000	\$1.16
13	8,400,000	1,050,000	214,200	<b>1,264,200</b>	7,350,000	\$1.14
14	7,350,000	1,050,000	187,425	<b>1,237,425</b>	6,300,000	\$1.11
15	6,300,000	1,050,000	160,650	<b>1,210,650</b>	5,250,000	\$1.09
16	5,250,000	1,050,000	133,875	<b>1,183,875</b>	4,200,000	\$1.07
17	4,200,000	1,050,000	107,100	<b>1,157,100</b>	3,150,000	\$1.04
18	3,150,000	1,050,000	80,325	<b>1,130,325</b>	2,100,000	\$1.02
19	2,100,000	1,050,000	53,550	<b>1,103,550</b>	1,050,000	\$0.99
20	1,050,000	1,050,000	26,775	<b>1,076,775</b>	-	\$0.97

Totals 20 year

21,000,000      5,622,750      **26,622,750**

Average Payment      1,331,138

COST OF BARGE PERMITTING

AMORTIZATION AND PAYMENT SCHEDULE-20 YEAR

BOND \$2,000,000  
 YEARS 20  
 RATE 2.55%

Note: Approximately \$100,000 = \$0.09 on the Sewer rate  
 FY 17 Sewer Rate: 12.24/13.47

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance	Sewer rate Effect
					2,000,000	
1	2,000,000	100,000	51,000	<b>151,000</b>	1,900,000	\$0.14
2	1,900,000	100,000	48,450	<b>148,450</b>	1,800,000	\$0.13
3	1,800,000	100,000	45,900	<b>145,900</b>	1,700,000	\$0.13
4	1,700,000	100,000	43,350	<b>143,350</b>	1,600,000	\$0.13
5	1,600,000	100,000	40,800	<b>140,800</b>	1,500,000	\$0.13
6	1,500,000	100,000	38,250	<b>138,250</b>	1,400,000	\$0.12
7	1,400,000	100,000	35,700	<b>135,700</b>	1,300,000	\$0.12
8	1,300,000	100,000	33,150	<b>133,150</b>	1,200,000	\$0.12
9	1,200,000	100,000	30,600	<b>130,600</b>	1,100,000	\$0.12
10	1,100,000	100,000	28,050	<b>128,050</b>	1,000,000	\$0.12
11	1,000,000	100,000	25,500	<b>125,500</b>	900,000	\$0.11
12	900,000	100,000	22,950	<b>122,950</b>	800,000	\$0.11
13	800,000	100,000	20,400	<b>120,400</b>	700,000	\$0.11
14	700,000	100,000	17,850	<b>117,850</b>	600,000	\$0.11
15	600,000	100,000	15,300	<b>115,300</b>	500,000	\$0.10
16	500,000	100,000	12,750	<b>112,750</b>	400,000	\$0.10
17	400,000	100,000	10,200	<b>110,200</b>	300,000	\$0.10
18	300,000	100,000	7,650	<b>107,650</b>	200,000	\$0.10
19	200,000	100,000	5,100	<b>105,100</b>	100,000	\$0.09
20	100,000	100,000	2,550	<b>102,550</b>	-	\$0.09

Totals 20 year

2,000,000 535,500 **2,535,500**

Average Payment 126,775

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT made as of \_\_\_\_\_, 2016 (the "Effective Date") by and between CITY OF PORTSMOUTH, NEW HAMPSHIRE, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter referred to as the "City") and DEER STREET ASSOCIATES, a New Hampshire limited partnership of P.O. Box 100, York Harbor, Maine 03911 (hereinafter referred to as the "Seller").

### *Recitals*

WHEREAS, the Seller owns certain recently subdivided property located in the vicinity of Bridge and Deer Streets in the City of Portsmouth, County of Rockingham, State of New Hampshire;

WHEREAS, the City would like to acquire an approximately 1.24 +/- acre portion of Seller's property (see Parcel A on the Disposition Plan attached hereto as Schedule 1.12) and a small triangle of land from a third party (see Parcel C on the Disposition Plan), together with related easements, for the purpose of constructing a municipal parking garage of 600 or more spaces, with public access thereto, and to relocate certain existing municipal easements in connection therewith;

WHEREAS, subsequent to the transaction contemplated by this Agreement, the Seller may improve its remaining property and land to be acquired from the City pursuant to this Agreement (see Parcel B on the Disposition Plan) with buildings and related improvements, and as part of said process may transfer to the City approximately .2 +/- acres as open civic space in the form of a park (see Lot 2 on the Subdivision Plan attached hereto as Schedule 1.32);

WHEREAS, the City's and the Seller's respective projects remain in the design phase, but the Seller and the City intend to share design elements and features of their projects, including without limitation the aforesaid civic space which is intended to contain an at grade vehicular connection between the Seller's remaining property and the parking garage parcel; and

WHEREAS, the Seller and the City desire to collaborate post closing on the design of their respective projects, for their mutual benefit, as addressed in the Post Closing Obligations Agreement attached to this Agreement as Schedule 1.22.

NOW THEREFORE, for and in consideration of the mutual promises contained hereinbelow, the adequacy and sufficiency of which is hereby acknowledged, the Seller agrees to sell and convey, and the City agrees to buy, the Premises (defined below), together with any and all easements and appurtenances thereto, and the City Easements (defined below), all upon the following terms and conditions:



1. **Definitions.** In addition to those terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used herein:

1.1 “**Affiliate**” means any individual, entity, association, or trust, including without limitation any corporation, limited liability company, or partnership, controlled by or under common control with the Seller.

1.2 “**Agreement**” means this Purchase and Sale Agreement and includes the following exhibits and schedules attached hereto:

<u>Schedule 1.3</u>	Amendment and Relocation Agreement
<u>Schedule 1.6</u>	City Temporary Building Encroachment Easement
<u>Schedule 1.7</u>	City Temporary Construction and Maintenance Easement
<u>Schedule 1.8</u>	City Triangle Parcel Legal Description
<u>Schedule 1.11</u>	Deer Street Extension Parcel Legal Description
<u>Schedule 1.12</u>	Disposition Plan
<u>Schedule 1.15</u>	Environmental Agreement
<u>Schedule 1.17</u>	Gray Trust Parcel Legal Description
<u>Schedule 1.22</u>	Post Closing Obligations Agreement/PCOA
<u>Schedule 1.29</u>	Road Alignment Plan
<u>Schedule 1.33</u>	Subdivision Plan
<u>Schedule 2</u>	Terminated Sidewalk Easement Legal Description
<u>Schedule 5.2(i)</u>	Warranty Deed – Premises
<u>Schedule 5.2(vii)</u>	Title Affidavit
<u>Schedule 5.3(iv)</u>	Termination and Release of Sidewalk Easement
<u>Schedule 5.3(v)</u>	Release Deed – City Triangle Parcel
<u>Schedule 5.3(xi)</u>	Amendment to Municipal Sewer Easement
<u>Schedule 6</u>	Permitted Encumbrances
<u>Schedule 7.2</u>	Access and Indemnity Agreement
<u>Schedule 7.3</u>	Title Commitment
<u>Schedule 16.11</u>	Statutory Disclosures

1.3 “**Amendment and Relocation Agreement**” means an Amendment and Relocation Agreement modifying the Railroad Access Deed and the Railroad Agency Office Deed, and allowing for the relocation of the Railroad Agency Office and the Railroad Access to Lot 1 and other property of the City in accordance therewith, in form and substance set forth on Schedule 1.3 attached hereto.

1.4 “**City Easements**” means the City Temporary Building Encroachment Easement and the City Temporary Construction and Maintenance Easement.

1.5 “**City Project**” means: (a) the construction upon the Premises of the Parking Garage and related improvements as described in the PCOA, (b) the construction and opening of the Deer Street Extension Parcel as a public right-of-way, and (c) related improvements to the development of the Premises by the City as aforesaid.

**1.6 “City Temporary Building Encroachment Easement”** means a temporary easement granted to the City by the Seller at Closing for the continued encroachment by the Encroaching Building in the approximate location shown on page C2 of the Disposition Plan<sup>1</sup>, which easement shall: (i) be subject to the rights of the existing tenant of the building labeled as “Building #165” on the Subdivision Plan relative to loading and existing structures; (ii) terminate upon removal of the Encroaching Building by the Seller; and (iii) be in form and substance set forth on Schedule 1.6.

**1.7 “City Temporary Construction and Maintenance Easement”** means a temporary construction and maintenance easement granted to the City by the Seller at Closing being ten (10) feet in width and located on Lot 2, having a westerly boundary running along the lot line shared between Lot 1 and Lot 2, which easement shall terminate no later than five (5) years following the Closing and be in form and substance set forth on Schedule 1.7.

**1.8 “City Triangle Parcel”** means the triangle shaped parcel of land, with improvements thereon, at the corner of Deer Street and Bridge Street shown as Area B on page C1 of the Disposition Plan and also shown on the Road Alignment Plan, and as more particularly described on Schedule 1.8.

**1.9 “Closing”** means the ceremony at which the transactions contemplated by this Agreement are consummated.

**1.10 “Closing Date”** means the date on which the Closing takes place, and is set forth in Section 5.1 hereof.

**1.11 “Deer Street Extension Parcel”** means the parcel of land denoted as “Future Access” on the Disposition Plan, being a portion of Lot 1 and also including the Gray Trust Parcel, and as more particularly described on Schedule 1.11.

**1.12 “Disposition Plan”** means that certain plan of two pages (C1 – Disposition Plan Land Ownership, and C2 – Disposition Plan Easements) prepared by Ambit Engineering, Inc. and entitled “Proposed Parking Garage Project – Deer & Bridge Streets – Portsmouth, N.H.” dated July, 2015, and last revised on September 15, 2015, attached hereto as Schedule 1.12 and incorporated herein by reference.

**1.13 “Effective Date”** means the date first set forth in the preamble to this Agreement.

**1.14 “Encroaching Building”** means that certain existing building labeled on the Subdivision Plan as a “1 Story Building” and also shown on the Disposition Plan being primarily located on Lot 1 but encroaching onto Lot 2.

**1.15 “Environmental Agreement”** means the agreement to be executed and delivered by the Parties at Closing with respect to the Seller’s obligation to

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<sup>1</sup> See Proposed Easement 13 on page C2 of the Disposition Plan.

contribute to certain cost increases to the City for the development of the City Project resulting from environmental conditions discovered by the City prior to the Effective Date of this Agreement, and escrow up to Five Hundred Thousand Dollars (\$500,000.00) at Closing to pay the same, in form and substance as set forth on Schedule 1.15.

**1.16** “Escrow Agent” means Pierce Atwood LLP.

**1.17** “Gray Trust Parcel” means the triangle shaped parcel of land, with improvements thereon, located within the Future Access shown and depicted on the Subdivision Plan and further shown as Area C on page C1 of the Disposition Plan, as more particularly described on Schedule 1.17.

**1.18** “Lot” means a subdivided lot as shown on the Subdivision Plan.

**1.19** “Municipal Sewer Easement” means that certain sewer easement taken by the City and referenced in Waiver of Boston & Maine R.R. dated October 8, 1957 and recorded in the Registry on October 19, 1957 at Book 1448, Page 0463.

**1.20** “Parking Garage” means the municipal parking garage of no less than 600 spaces to be constructed by the City on the Premises post Closing.

**1.21** “Parties” means, collectively, the City and the Seller. Each of the Parties is herein referred to as a “Party.”

**1.22** “Post Closing Obligations Agreement” or “PCOA” means the agreement to be executed and delivered by the Parties at Closing with respect to the Parties’ collaboration on the City Project and the improvement of a portion of Seller’s Remaining Land, in form and substance as set forth on Schedule 1.22.

**1.23** “Premises” means Lot 1 as shown on the Subdivision Plan, together with any and all buildings and improvements thereon and the Encroaching Building.

**1.24** “Railroad Access” means that certain vehicular and pedestrian ingress and egress along the 20’ wide driveway on a portion of the DSA Property and City Property, all as more particularly described in the Railroad Access Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement.

**1.25** “Railroad Access Deed” means that certain deed from Boston and Maine Corporation to the Seller dated May 8, 1986 and recorded in the Registry at Book 2602, Page 0569.

**1.26** “Railroad Agency Office” means that certain railroad agency office having 400-500 square feet, together with lights, heat, toilet facilities and a supply closet, currently located on Lot 2 and referenced in the Railroad Agency Office Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement.

**1.27** “**Railroad Agency Office Deed**” means that certain deed from Robert W. Meserve and Charles W. Barrett, as Trustees of the Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-F, to John W. Goodwin dated December 19, 1972 and recorded in the Registry at Book 2199, Page 0434.

**1.28** “**Registry**” means the Rockingham County Registry of Deeds.

**1.29** “**Road Alignment Plan**” means that certain plan entitled “Proposed Roadway Alignment & Land Transfer Plan – Tax Map 125, Lot 17 – City of Portsmouth to Deer Street Associates – Lot Located At: Bridge & Deer Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July 25, 2015 and last revised 8/7/15, approved by the City Planning Board on August 20, 2015, and recorded in the Registry on or before the Effective Date, and as attached hereto as Schedule 1.29.

**1.30** “**Seller Access Easement**” means an easement encumbering the Deer Street Extension Parcel (other than the Gray Trust Parcel) to be retained by the Seller at Closing over and across the Deer Street Extension Parcel for the benefit of Seller’s Remaining Land adjacent thereto, for all purposes that a public street may be used (including without limitation the running of utilities), which easement shall: (i) be subject to interference which is reasonable and customary by the City with respect to and during the City’s construction of the City Project, and (ii) only terminate at the time that the Deer Street Extension Parcel is established and opened as a public right-of-way.<sup>2</sup>

**1.31** “**Seller’s Remaining Land**” means Lots 2, 3, 4, 5 and 6 shown on the Subdivision Plan.

**1.32** “**Sidewalk Easement**” means that certain public sidewalk easement described in Sidewalk Easement Deed from the Seller to the City dated September 16, 2005 and recorded in the Registry at Book 4550, Page 1885.

**1.33** “**Subdivision Plan**” means that certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 8/6/15, approved by the City Planning Board on August 20, 2015 and to be recorded at the Registry, and as attached hereto as Schedule 1.33.

**2. Purchase Price.** The purchase price to be paid to the Seller by the City for the Premises, any and all easements and appurtenances thereto, the City Temporary Building Encroachment Easement, and the City Temporary Construction and Maintenance Easement, shall be Four Million Nine Hundred Thousand and 00/100 Dollars (\$4,900,000.00)(the “Purchase Price”). As additional consideration: (i) the City

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<sup>2</sup> See Proposed Easement 12 on page C2 of Disposition Plan.

shall transfer to the Seller at Closing by release deed all of its right, title and interest in and to the City Triangle Parcel, free and clear of any and all encumbrances (including without limitation the rights of the public); (ii) the Seller shall retain the Seller Access Easement; and (iii) the City shall terminate that portion of the Sidewalk Easement shown as the shaded portion of Existing Easement 3 on page C2 of the Disposition Plan and as further shown on the Road Alignment Plan, as more particularly described on Schedule 2, by instrument executed and delivered by the City at Closing and to be recorded at the Registry as part of the Closing, and shall have discontinued any and all rights of the public to the same prior to the Closing.

**3. Payment of Purchase Price and Deposit Escrow Provisions.** The City shall pay the Purchase Price to the Seller at Closing as follows:

**3.1** Six Hundred Thousand and 00/100 Dollars (\$600,000.00) (the “Deposit”) shall be paid by wire transfer to the Escrow Agent on or before the Effective Date.

**3.2** On or before the Closing, the City shall cause to be delivered to Escrow Agent, for the benefit of Seller, the balance of the Purchase Price by wire transfer of immediately available funds to the account of Escrow Agent.

**3.3** All such amounts delivered to the Escrow Agent in accordance with Section 3.1 and 3.2 above not otherwise disbursed in accordance with the terms of this Agreement shall be disbursed in accordance with the settlement statement mutually agreed to by the Parties at Closing upon recording of the warranty deed from the Seller to the City at the Registry, with Seller’s proceeds delivered in accordance with wiring instructions to be provided by Seller to Escrow Agent.

**3.4** The Deposit shall be held in a non-interest bearing account by the Escrow Agent and shall be paid to Seller or returned to the City in accordance with the terms and conditions of this Agreement. Escrow Agent agrees to hold, keep and deliver said Deposit and all other sums delivered to it pursuant hereto in accordance with the terms and provisions of this Agreement. Escrow Agent shall be liable to hold said sums and deliver the same to the Parties in accordance with the provisions of this Agreement. In the event of any disagreement between the Parties resulting in any adverse claims and demands being made in connection with or for the monies involved herein or affected hereby, Escrow Agent shall refuse to comply with any such claims or demands so long as such disagreement may continue; and in so refusing Escrow Agent shall make no delivery or other disposition of any of the monies then held by it under the terms of this Agreement, and Escrow Agent shall continue to refrain from acting until (a) the rights of the adverse claimants shall have been finally adjudicated in a court of competent jurisdiction of the monies involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement between the Parties, and Escrow Agent shall have been notified in a writing signed by the Parties of the terms of such agreement. Escrow Agent shall not disburse any of the monies held by it under this Agreement unless in accordance with joint written instructions signed by the Parties. Escrow Agent shall have the right at all times to pay all sums held by it into any court of competent jurisdiction after a dispute between or among the Parties has arisen.

4. **Transfer Taxes; Prorations.** At the Closing, the City and Seller shall each pay their respective shares of all real property transfer taxes related to the purchase of the Premises and the other transactions contemplated hereby, as required by applicable law. Notwithstanding the foregoing, the Parties acknowledge and agree that as of the Effective Date, the sale of the Premises as contemplated by this Agreement is exempt from transfer taxes pursuant to RSA 78-B:2, I, and that barring any changes to applicable law, rule, or regulation effective prior to the Closing, the deed and any required declarations of consideration shall so state. All property taxes and other fees, levies and assessments of any nature whatsoever related to the Premises shall be prorated between the City and the Seller as of the close of business on the Closing Date. Property taxes shall be prorated in accordance with the concept that taxes in the City of Portsmouth are collected in arrears with the tax bill due on December 1, 2015 applying to the first half of the municipal budget year commencing the previous July 1, 2015 and covering ownership of the Premises from July 1, 2015 through December 31, 2015; and the tax bill paid on June 1, 2015 covers a period of ownership of the Premises from January 1, 2015 to June 30, 2015.

5. **Closing and Deliverables.**

5.1 **Closing.** The Closing shall occur at the offices of Pierce Atwood LLP, One New Hampshire Avenue, Portsmouth, New Hampshire commencing at 10:00 a.m. local time on May 25<sup>th</sup>, 2016 (the "Closing Date").<sup>3</sup>

5.2 **Seller Deliverables.** On the Closing Date, Seller shall deliver to City at the Closing the following documents and materials:

- (i) The warranty deed for the Premises but reserving the Seller Access Easement, duly executed, acknowledged and in substantially the same form and substance as set forth on Schedule 5.2(i) attached hereto;
- (ii) The City Temporary Building Encroachment Easement duly executed, acknowledged, and in substantially the same form and substance as set forth on Schedule 1.6 attached hereto;
- (iii) The City Temporary Construction and Maintenance Easement duly executed, acknowledged, and in substantially the same form and substance as set forth on Schedule 1.7 attached hereto;
- (iv) Duplicate originals of the Post Closing Obligations Agreement, duly executed by the Seller, and in substantially the same form and substance as set forth on Schedule 1.22 attached hereto;
- (v) A certificate duly executed by Seller to the effect that, as of the Closing Date, all representations and warranties by Seller set forth in this Agreement remain true and correct to the same extent as if made on and as of the Closing Date and disclosing no material changes or qualifications reasonably objectionable to the City;

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<sup>3</sup> Note to draft: The Closing Date may be modified at the time of signing to a date on or before July 25<sup>th</sup>, 2016

- (vi) A non-foreign status certification, duly executed by Seller under penalty of perjury, certifying that Seller is not a “foreign person,” pursuant to Section 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended (“Section 1445”);
- (vii) A mechanic’s lien and parties in possession affidavit in favor of the City’s title company in substantially the same form and substance set forth on Schedule 5.2(vii) attached hereto duly executed by the Seller;
- (viii) Evidence reasonably satisfactory to the City and the City’s title company of Seller’s authority to execute and deliver all documents required to be delivered by Seller to the City at Closing and to perform all of Seller’s obligations hereunder, including a general partner certificate and a certificate of existence for Seller issued by the New Hampshire Secretary of State;
- (ix) A closing and disbursement statement duly executed by the Seller;
- (x) A property tax proration agreement consistent with Section 4 of this Agreement, duly executed by the Seller;
- (xi) Duplicate originals of the Environmental Agreement in substantially the same form and substance set forth on Schedule 1.15 attached hereto, duly executed by the Seller;
- (xii) If not previously recorded at the Registry, an original of the Amendment and Relocation Agreement in form and substance set forth on Schedule 1.3 attached hereto, duly executed and acknowledged by the parties thereto and in recordable form; and
- (xiii) Such other documents and instruments as are required by law and/or are those that the City may reasonably request consistent with the terms of this Agreement, including without limitation a CD-57-S, 1099-S, paid water and sewer bill, broker commission statement, payoff statement(s), and a compliance agreement.

**5.3 City Deliverables.** On the Closing Date, the City shall deliver to Seller at the Closing:

- (i) By wire transfer, the Purchase Price for the Premises;
- (ii) The Subdivision Plan and the Road Alignment Plan, duly signed by the City’s Planning Board and otherwise in recordable form;
- (iii) A certificate duly executed by the City to the effect that as of the Closing Date, all representations and warranties by the City set forth in this Agreement remain true and correct to the same extent as if made on and as

of the Closing Date and disclosing no material changes or qualifications reasonably objectionable to Seller;

- (iv) An instrument sufficient to terminate and release to Seller the portion of the shaded portion of the Sidewalk Easement shown as Existing Easement 3 on page C2 of the Disposition Plan and shown on the Road Alignment Plan attached hereto as Schedule 1.29 and as more particularly described on Schedule 2 attached hereto, duly executed by the City, acknowledged and in recordable form and in substantially the same form as set forth on Schedule 5.3(iv) attached hereto;
- (v) A release deed of the City Triangle Parcel, duly executed, acknowledged and in recordable form, in substantially the same form and substance as set forth on Schedule 5.3(v) attached hereto;
- (vi) Duplicate originals of the Post Closing Obligations Agreement, duly executed by the City, and in substantially the same form and substance as set forth on Schedule 1.22 attached hereto;
- (vii) Evidence reasonably satisfactory to Seller and Seller's title insurance company, if any, of City's authority to execute and deliver all documents required to be delivered by the City to Seller at Closing and to perform all of the City's obligations hereunder;
- (viii) A closing and disbursement statement duly executed by the City;
- (ix) A property tax proration agreement consistent with Section 4 of this Agreement, duly executed by the City;
- (x) Duplicate originals of the Environmental Agreement in substantially the same form and substance set forth on Schedule 1.15 attached hereto, duly executed by the City;
- (xi) An amendment to the Municipal Sewer Easement which specifically and expressly allows construction, maintenance, repair and replacement of buildings, structures and other improvements upon Seller's Remaining Land over the Municipal Sewer Easement, duly executed by the City, acknowledged and in recordable form and in substantially the same form as set forth on Schedule 5.3(xi) attached hereto; and
- (xii) Such other documents and instruments as are required by law and/or are those that Seller may reasonably request consistent with the terms of this Agreement, including without limitation a CD-57-P and a compliance agreement.

**6. Title and Deed.** At Closing, the Seller shall convey to the City, by warranty deed, with good and marketable title: (i) fee simple ownership interest in the Premises, and (ii) the City's Easements. Title shall be free and clear of any and all liens, mortgages,



leases, tenancies, parties in possession, charges, security interest, conditions, covenants, servitudes, encumbrances, reservations, easements, rights of way, restrictions and claims of any kind or nature whatsoever, except for those matters set forth and identified on Schedule 6 of this Agreement (“Permitted Encumbrances”). Permitted Encumbrances shall not include a general omnibus exception which states the City’s title to the Premises is “subject to all covenants, conditions, reservations, easements, encumbrances, rights of way, or restrictions of record,” or other such similar language.

**7. Due Diligence.**

**7.1 Prior Due Diligence Period and Inspections.** City acknowledges and agrees that: (1) prior to the Effective Date, City has had access to the Premises for the purposes of conducting all inspections, studies, or analyses City may have wished to perform with respect to City’s decision to enter into this Agreement and purchase the Premises and the City Easements on the terms hereof, including without limitation the Limited Subsurface Investigation – Proposed Deer Street Parking Garage – Deer and Bridge Streets – Portsmouth New Hampshire prepared by Ransom Environmental Consulting, Inc. for Mr. David Allen, City of Portsmouth Department of Public Works dated October 29, 2015, and (2) that City has not, is not, and will not rely on any information provided by the Seller or any representative or agent of the Seller except as expressly set forth in Section 8 or Section 11 of this Agreement.

**7.2 Access and Indemnity.** The Access and Indemnity Agreement executed by and between the Parties and attached hereto as Schedule 7.2: (i) is in full force and effect; (ii) is hereby ratified and confirmed by the Parties; and (iii) will survive the execution, delivery and termination of this Agreement, and the Closing.

**7.3 City’s Owner’s Title Insurance Commitment.** The City’s obligation to proceed with the purchase of the Premises is subject to City receiving an ALTA Owners Title Insurance commitment from a reputable and national title insurance company, (reasonably acceptable to the City) subject to commercially reasonable requirements, for an owner’s title policy to issue at Closing with respect to the Premises in the amount of the Purchase Price, subject to Permitted Encumbrances and standard exceptions and exclusions, in substantially the same form and substance as set forth on Schedule 7.3 attached hereto (the “Title Commitment”).

**8. Representations and Warranties of Seller.** As an inducement to the City to enter into this Agreement and to consummate the transactions contemplated hereby, the Seller hereby represents and warrants Sections 8.1 through 8.11, inclusive, to City as of the Effective Date and the Closing Date, which representations and warranties shall survive Closing, that:

**8.1 Due Authorization.** Seller is a New Hampshire limited partnership, duly organized, validly existing, and in good standing under the laws of the State of New Hampshire and Seller has full power and authority to execute, deliver and carry out the terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by Seller pursuant hereto and has taken all necessary action to authorize the execution, delivery, and performance of this

Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments and documents herein required to be made or delivered by Seller pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and this Agreement does in such documents constitute legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**8.2 No Conflict.** The execution and delivery of, and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any of the agreements or instruments to which Seller is now a party or by which it or the Premises is bound, or any order, rule or regulation of any court or other governmental agency or official.

**8.3 Bankruptcy Matters.** Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts generally as they come due, or made an offer of settlement, extension or composition to its creditors generally.

**8.4 Legal Proceedings.** To the Seller's knowledge, there are no pending legal proceedings, legal actions, suits, arbitrations, or other legal, administrative, or governmental investigations, inquiries or proceedings, pending, or threatened against or affecting any of the Premises or the Seller's interest therein.

**8.5 Labor and Materials/Parties in Possession.** There are no amounts due and owing to any person or entity on account of labor performed or materials provided to the Seller in connection with any construction or repair work to the Premises that would give rise to a mechanic's lien, other than amounts which will be paid in the ordinary course but no later than one hundred and twenty days following Closing. There are no parties in possession of the Premises that will remain in possession as of the Closing Date.

**8.6 Default.** Seller has not received written notice from: (i) any governmental authority of any violation of any applicable federal, state or local law, ordinance or rule or regulation (including without limitation those governing wetlands), except as have been provided to the City with respect to environmental conditions at the Premises known by the City as a result of its due diligence, or (ii) any person entitled to enforce the same of any violations of covenants, conditions, restrictions, rights-of-way, or easements, in either case affecting any of the Premises and that remains uncured.

**8.7 Fraudulent Transfer.** In consummation of the transactions contemplated by this Agreement, the Seller has not made any transfer or incurred any obligations with the intent to disturb, delay, hinder or defraud either present or future creditors or partners.

**8.8 No Conveyance.** Following the Effective Date, Seller has not sold, leased encumbered or otherwise transferred any part of the Premises, or any interest therein, or consented to any lien or encumbrance thereon, other than Permitted Encumbrances and other matters to be discharged by Seller at or prior to Closing.

**8.9 No Agreements.** Seller has not entered into any agreements with third parties regarding the Premises, other than Permitted Encumbrances, which will be binding on the City following the Closing.

**8.10 Railroad Agency Office.** The Railroad Agency Office is not located on Lot 1 as of the Effective Date, but may be so located pursuant to the Amendment and Relocation Agreement.

**8.11 Encroaching Building.** Seller has no actual knowledge of any facts which would prevent the removal of the Encroaching Building.

**8.12 File Share Information.** The City acknowledges and agrees that the City was provided certain information by the Seller through a file share or data room prior to the Effective Date (the "File Share Information"). The File Share Information was provided for informational purposes only to aid the City in its own due diligence and without warranty or representation of any kind whatsoever by Seller or any other person, including without limitation any representation or warranty as to the truth, accuracy or completeness thereof. At no time shall this paragraph relieve the Seller from any liability for fraud, or for any liability for warranties or representations expressly made by Seller in Section 8 of this Agreement.

**9. Representations and Warranties of the City.** City hereby represents and warrants to Seller as of the Effective Date and the Closing Date, which representations and warranties shall survive Closing, that:

**9.1 Due Authorization.** City is a New Hampshire municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of New Hampshire, and City has full power to execute, deliver and carry out the terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by City pursuant hereto, and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments and documents herein required to be made or delivered by City pursuant hereto on behalf of City are and shall be duly authorized to sign the same on City's behalf and to bind City thereto. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by City and this Agreement does in such documents constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency,

reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**9.2 No Conflict.** The execution and delivery of, and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any agreement or instrument to which City is now a party or by which it is bound, or, any order, rule or regulation of any court or other governmental agency or official.

**9.3 Bankruptcy Matters.** City has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or composition to its creditors generally.

## **10. Conditions Precedent to the Parties' Obligations.**

**10.1 Mutual Conditions Precedent.** The obligation of the Parties to purchase and sell the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

- (a) Execution and delivery by the Parties at Closing of the Post Closing Obligations Agreement and the Environmental Agreement; and
- (b) The Subdivision Plan, the Road Alignment Plan, and the Amendment and Relocation Agreement are recorded at the Registry, or will be recorded contemporaneously with the Closing.

**10.2 City Conditions Precedent.** The obligation of the City to purchase the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

- (a) No material change in condition of the Premises between the Effective Date and the Closing, as may be confirmed by a walk through inspection of the Premises within twenty-four (24) hours of Closing;
- (b) The Seller shall have performed its obligations under this Agreement in all material respects; and
- (c) The warranties and representations of the Seller as set forth in this Agreement are true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of such time.

**10.3 Seller Conditions Precedent.** The obligation of the Seller to sell the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

(a) The warranties and representations of the City as set forth in this Agreement are true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of such time;

(b) The City shall have performed its obligations under this Agreement in all material respects;

(c) All public rights to the City Triangle Parcel and to the portion of the Sidewalk Easement shown as the shaded portion of Existing Easement 3 on page C2 of the Disposition Plan, as shown on the Road Alignment Plan and more particularly described on Schedule 2, shall have been discontinued in accordance with all applicable laws, rules, regulations and ordinances;

(d) The release deed from the City to DSA of the City Triangle Parcel shall transfer marketable and insurable title thereto to DSA; and

(e) review of the local ordinances (with any proposed changes thereto) of the City applicable to Seller's Remaining Land for purposes of determination of suitability for redevelopment of the same in accordance with the Post Closing Obligations Agreement and otherwise as contemplated by the Seller as of the Closing Date.

**10.4 Satisfaction of Conditions Precedent.** The Seller may waive any of the conditions precedent set forth in Section 10.1 and 10.3 above and proceed to Closing, and in the event that Seller so proceeds and the Closing occurs each of said conditions precedent shall be deemed satisfied without further action, acknowledgment or documentation. The City may waive any of the conditions precedent set forth in Section 10.1 and 10.2 above and proceed to Closing, and in the event that the City so proceeds and the Closing occurs each of said conditions precedent shall be deemed satisfied without further action, acknowledgment or documentation.

**11. Brokers and Finders.** Each of the Parties represents and warrants to the other Party that neither the representing and warranting Party, nor any of its agents, have employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated hereby, except One Commercial Real Estate/Robert Marchewka of Portsmouth NH, who shall be paid a commission by Seller at Closing free and clear of any obligation of the City.

**12. Risk of Loss.** The risk of loss or damage to any of the Premises from fire or other casualty or cause shall be upon the Seller at all times prior to the Closing. Notwithstanding anything contained herein to the contrary, if at anytime prior to the Closing the Premises is destroyed or damaged by fire or other casualty or cause, Seller shall transfer to City at Closing any unused insurance proceeds, and all rights to the same, in an amount not to exceed any net increase to the cost of the City Project resulting from the loss or damage, as reasonably estimated by the City.

**13. Expenses.** Except as otherwise specifically provided by this Agreement, the City and the Seller shall each pay all of their own costs incurred incident to the preparation, execution and delivery of this Agreement and the performance of their obligations hereunder, including, without limitation, the fees and disbursements of counsel, accountants and consultants, whether or not the transactions contemplated by this Agreement shall be consummated.

**14. Default.**

**14.1 City's Default/Seller's Remedy.** In the event City defaults in its obligation to consummate the Closing on and subject to the terms of this Agreement, then Seller, as its sole and exclusive remedy therefor, shall be entitled to terminate this Agreement and receive the Deposit from Escrow Agent as reasonable liquidated damages. THE PARTIES HEREBY AGREE THAT THE AMOUNT OF THE DEPOSIT IS A FAIR AND REASONABLE ESTIMATE OF THE TOTAL DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT OF CITY'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF AND IS NOT A PENALTY. EXCEPT AS SET FORTH BELOW, SELLER IRREVOCABLY WAIVES THE RIGHT TO SEEK OR OBTAIN ANY OTHER LEGAL OR EQUITABLE REMEDIES, INCLUDING THE REMEDIES OF DAMAGES AND SPECIFIC PERFORMANCE FOR CITY'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF. Notwithstanding the foregoing, or any language to the contrary contained in this Agreement, following the Closing the aforesaid limitation of remedy shall not apply to, and Seller shall be entitled to all remedies at law or in equity on a non-exclusive, non-cumulative basis with respect to: (a) the indemnity and other obligations of City provided for in that certain Access and Indemnity Agreement executed by and between the Parties and attached hereto as Schedule 7.2, and (b) any other covenants, obligations, representations or warranties of the City contained in this Agreement that survive the Closing, or are contained in any document, certificate, instrument or Agreement of the City executed and delivered by the City at Closing, including without limitation the Post Closing Obligations Agreement. Seller shall not be entitled to special, consequential or incidental damages, including without limitation lost profits, under any circumstance.

**14.2 Seller's Default/City's Remedy.** In the event of Seller's default in the performance of its obligations under this Agreement, the City may elect to terminate this Agreement and receive the Deposit from the Escrow Agent, or to bring an action for specific performance, which shall be City's sole remedies at law and in equity, provided that the foregoing limitation shall not apply to, and City shall be entitled to all remedies at law or in equity on a non-exclusive, non-cumulative basis with respect to, any other covenants, obligations, representations or warranties of the City contained in this Agreement that survive the Closing, or are contained in any document, certificate, instrument or Agreement of the Seller executed and delivered by the Seller at Closing, including without limitation the Post Closing Obligations Agreement. The City shall not be entitled to special, consequential or incidental damages, including without limitation lost profits, under any circumstance.

**15. Waiver of Jury Trial.** Each Party hereby knowingly, intentionally and voluntarily waives trial by jury in any action or proceeding of any kind or nature, in any

court in which an action may be commenced by or against the other party arising out of this agreement or the transactions contemplated hereby. Each Party acknowledges that such waiver is made with full knowledge and understanding of the nature of the rights and benefits waived hereby, and with the benefit of advice of counsel.

**16. Miscellaneous Provisions.**

**16.1 Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given when hand-delivered to the Party to be given such notice or other communication or on the business day following the day such notice or other communication is sent by overnight courier, to the following:

If to the City:	At the address set forth in the first paragraph of this Agreement, Attn: City Manager
with a copy to:	Robert P. Sullivan, City Attorney City of Portsmouth 1 Junkins Avenue Portsmouth, NH 03801
If to the Seller:	At the address set forth in the first paragraph of this Agreement, Attn: Kim S. Rogers
with a copy to:	Denis O. Robinson, Esq. Pierce Atwood LLP One New Hampshire Avenue, Suite 350 Portsmouth, New Hampshire 03801

or to such other address as the Parties may designate in writing.

**16.2 Benefit and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors, assigns, heirs and legal representatives; provided, however, that the City's rights and obligations pursuant to this Agreement may not be assigned or assumed without the prior written consent of the Seller, in the Seller's sole and absolute discretion; and provided further that the Seller's rights and obligations pursuant to this Agreement may not be assigned or assumed prior to Closing without prior written notice to the City and except in the case of an assignment to an Affiliate of Seller, without the prior written consent of the City, in the City's sole and absolute but good faith discretion. Any assignment or assumption by Seller to an Affiliate of the Seller shall not relieve the Seller of its obligations pursuant hereto, and the Seller and said assignee shall be jointly and severally liable for the obligations of Seller, as seller hereunder.

**16.3 Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, each of which counterpart shall be deemed to be an original, but all of which counterparts shall taken together constitute a single agreement.

**16.4 Severability.** Any provision hereof determined by a court of competent jurisdiction to be prohibited by or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be deemed ineffective and deleted herefrom without affecting any other provision of this Agreement. It is the intention and desire of the Parties hereto that this Agreement be enforced to the maximum extent permitted by law, and should any provision contained herein be held unenforceable, the Parties hereby agree and consent that such provision shall be reformed in as similar terms as possible to reflect the Parties' intent and to make it a valid and enforceable provision to the maximum extent permitted by law. The Parties agree that if any term, covenant, condition or restriction contained herein is held unenforceable, then the Parties hereby mutually agree and consent that such provision shall be reformed to make it a valid and enforceable provision to the maximum extent permitted by law. The Parties hereby intend that there shall be added as part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and valid and enforceable.

**16.5 No Third Party Beneficiaries.** The execution and delivery of this Agreement is not intended to, and shall not be deemed to, confer any rights upon, nor obligate any of the Parties hereto to, any person or entity other than the Parties hereto.

**16.6 Waiver.** No delay or omission by any Party hereto to exercise any right or power occurring upon any noncompliance or failure of performance by the other Party under the provisions of this Agreement shall impair any such right or power or be construed to be waiver thereof. A waiver by any Party hereto of any of the terms, covenants, conditions, or agreements hereof, to be performed by the other Party shall not be construed to be a waiver of any succeeding breach thereof, or of any other term, covenant, condition or waiver herein contained. This Agreement or any of its terms may not be waived, modified, or amended except by written instrument signed by both the Seller and City.

**16.7 Headings.** The headings to the various Sections and paragraphs of this Agreement have been inserted for convenient reference only, and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

**16.8 Construction.** In this Agreement, where applicable, words used in the singular form shall be construed as though they also are used in the plural form, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa. Each Party hereto, and such Party's counsel have had the full opportunity to review and comment upon, and have reviewed and commented on, this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

**16.9 Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral statements, promises, understandings or agreements with respect thereto, including without limitation that certain letter of intent by and between the Parties dated February 2, 2015 and executed and delivered prior to the Effective Date. The Parties agree and acknowledge that (a) this Agreement has not been entered into under undue time pressure, and that all Parties have had an adequate opportunity to review this Agreement with counsel, (b) no oral assurances have been given



by any Party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming, (c) there are no oral conditions or promises that supplement or modify this Agreement, and (d) this Section 16.9 does not constitute “boilerplate”, but rather is a critical substantive provision of this Agreement.

**16.10 Choice of Law.** This Agreement shall be interpreted according to the laws of the State of New Hampshire.

**16.11 State Law Disclosures.** Seller disclosure forms required by applicable law are contained in Schedule 16.11 attached hereto.

**16.12 Time is of the Essence.** Time is of the essence with respect to performance and all deadlines and dates and time specified in this Agreement, whether or not “TIME IS OF THE ESSENCE” or words of similar import are used, including without limitation the Closing Date.

**16.13 Amendment.** The provision of this Agreement may be modified or amended in whole or in part only with the consent of the Parties hereto, their successors and permitted assigns, in a written instrument duly executed and delivered.

**16.14 Facsimile or DocuSigned Signatures.** The Parties agree that a facsimile or DocuSigned transmission of any signature signed on the original Agreement (or copy thereof) constitutes an original and binding signature of that Party to this Agreement.

[Remainder of page blank – signature pages to follow]

In Witness Whereof we have herein set our hands and seals effective as of the Effective Date.

The CITY:

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

See City Council Vote dated \_\_\_\_\_, 2016.

The SELLER:

DEER STREET ASSOCIATES

By its general partner

DSA Rogers, LLC

By its manager

G.L. Rogers & Co., Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

Schedule 1.3 - Amendment and Relocation Agreement

Schedule 1.6 - City Temporary Building Encroachment Easement

Schedule 1.7 - City Temporary Construction and Maintenance Easement

Schedule 1.8- City Triangle Parcel Legal Description

Schedule 1.11 – Deer Street Extension Parcel Legal Description



Schedule 1.12 - Disposition Plan

Schedule 1.15 – Environmental Agreement

Schedule 1.17 - Gray Trust Parcel Legal Description

Schedule 1.22 – Post Closing Obligations Agreement

Schedule 1.29 – Road Alignment Plan

Schedule 1.33 - Subdivision Plan

Schedule 2 - Terminated Sidewalk Easement Legal Description

Schedule 5.2(i) – Warranty Deed (Premises)



Schedule 5.2(vii) – Title Affidavit

Schedule 5.3(iv) – Termination and Release of Sidewalk Easement

Schedule 5.3(v) – Release Deed (City Triangle Parcel)

Schedule 5.2(xi) – Amendment to Municipal Sewer Easement

Schedule 6 – Permitted Encumbrances

Schedule 7.2 - Access and Indemnity Agreement

Schedule 7.3 – Title Commitment

Schedule 16.11 – Statutory Notifications

The Seller hereby advises the City of the following with respect to the Premises:

**RADON GAS:** Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

**LEAD PAINT:** Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

**WATER SUPPLY (well): public**

Location:

Malfunctions (if any):

Date of Installation:

Date of most recent test:

Problems (if any):

**SEWAGE DISPOSAL SYSTEM: public**

Size of Tank:

Type of System:

Location:

Malfunctions (if any):

Age of System:

Name of Contractor who services system:

**PUBLIC UTILITY TARIFF:**

To the Seller's knowledge, no metered public utility services at the Premises that the Buyer may be responsible for paying as a condition of such utility service is provided under a tariff with unamortized or ongoing charges for energy efficiency or renewable energy improvements pursuant to RSA 374:61.



**POST CLOSING OBLIGATIONS AGREEMENT**

<b>FINAL DRAFT PCOA 7-5-2016</b>
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This POST CLOSING OBLIGATIONS AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2016 (the “Effective Date”) by and between CITY OF PORTSMOUTH, NEW HAMPSHIRE (hereinafter referred to as the “City”), a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “City”) and DEER STREET ASSOCIATES, a New Hampshire limited partnership of P.O. Box 100, York Harbor, Maine 03911 (“DSA”).

RECITALS

A. The City is the owner of certain property with improvements thereon mainly acquired from DSA on the Effective Date and further defined below as the “City Property”, upon which the City intends to construct a municipal parking garage and a public right of way referred to herein as Deer Street Extension, and to construct related improvements.

B. DSA is the owner of certain property with improvements thereon adjacent to the City Property more particularly defined below as DSA Property, which DSA intends to improve.

C. The City and DSA desire to allow for the design and potential improvement of their properties in a mutually beneficial manner, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and DSA agree as follows:

1. **Definitions.** In addition to those terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings when used herein:

1.1 “**Agreement**” has the meaning as set forth in the preamble of this document and means this Post Closing Obligations Agreement, and includes all Schedules attached hereto.

1.2 “**Amendment and Relocation Agreement**” means an Amendment and Relocation Agreement modifying the Railroad Access Deed and the Railroad Agency Office Deed, and allowing for the relocation of the Railroad Agency Office and the Railroad Access to Lot 1 and other property of the City in accordance therewith, recorded at the Registry on or prior to the Effective Date.

1.3 “**Anticipated City Improvements**” means: (i) the construction by the City of Deer Street Extension in accordance with the Design Plans; and (ii) the City’s relocation of the Municipal Waterline Easement and the Municipal Easement and the City’s construction of all related lines and infrastructure in accordance with the Design Plans, which shall be in accordance with applicable City ordinances and

written administrative policies relative to relocation of utilities; and (iii) the City's construction of the relocated Railroad Agency Office and ingress and egress referenced in the Railroad Access Easement Covenant in accordance with the Design Plans.

**1.4** “**City**” has the meaning as set forth in the preamble of this Agreement and means the City of Portsmouth, New Hampshire, and includes the successors and assigns of the City of Portsmouth, New Hampshire.

**1.5** “**City Manager**” or “**Portsmouth City Manager**” means the then acting City Manager of the City, or the Deputy City Manager of the City, acting by and on behalf of the City in said capacity.

**1.6** “**City Project**” means the construction upon the City Property of the Parking Garage and related improvements, including without limitation the construction and opening of the Deer Street Extension Parcel as a public right-of-way and the relocation of the Municipal Sewer Easement and the Municipal Waterline Easement.

**1.7** “**City Property**” means Lot 1, together with the Gray Trust Parcel.

**1.8** “**Community Space**” means certain public community space to be maintained by the City on Lot 2 in the event that the same is transferred to the City, and designed by the Parties during the Pre-Construction Period.

**1.9** “**Construction Drawing Design Phase**” means that portion of the Pre-Construction Period beginning at the conclusion of the Permitting Phase and continuing until Design Plans are agreed upon pursuant to Sections 4 and 6 of this Agreement, but no later than six (6) months following the conclusion of the Permitting Phase (as may be extended by Force Majeure).

**1.10** “**Deer Street Extension**” means a public right of way to be constructed by the City within the Deer Street Extension Parcel providing access to the Parking Garage, and Lots 2, 3 and 6.

**1.11** “**Deer Street Extension Parcel**” means the parcel of land denoted as “Future Access” on page C-2 of the Disposition Plan and further described on Schedule 1.11 attached hereto, being a portion of Lot 1 and also including the Gray Trust Parcel.

**1.12** “**Deer Street Liner Building**” means a six (6) story+ building to be constructed by DSA on Lot 3, which building is intended to mask the Parking Garage from public view from the intersection of Deer Street and Bridge Street.

**1.13** “**Design Plans**” means the design plans and construction drawings produced by the City and DSA during the Pre-Construction Period, as set forth in this Agreement.

1.14 “**Disposition Plan**” means that certain plan of two pages (C1 – Disposition Plan Land Ownership, and C2 – Disposition Plan Easements) prepared by Ambit Engineering, Inc. and entitled “Proposed Parking Garage Project – Deer & Bridge Streets – Portsmouth, N.H.” dated July, 2015, and last revised on [REDACTED], 2015, attached hereto as Schedule 1.14.

1.15 “**DSA**” is first referenced in the preamble of this Agreement and means Deer Street Associates, a New Hampshire limited partnership, and includes the successors and assigns of Deer Street Associates.

1.16 “**DSA Access Easement**” means an access easement over and across the Deer Street Extension Parcel for the benefit of DSA’s Property adjacent thereto, for all purposes that a public street may be used (including without limitation the running of utilities), reserved to DSA in that certain Warranty Deed of Lot 1 from DSA to the City of near or even date herewith.

1.17 “**DSA Parking Garage Spaces**” means that number of parking spaces represented by the greater of fifty-eight (58) parking spaces or one space less than ten percent (10%) of the vehicular parking spaces constructed at the Parking Garage, which shall benefit DSA Property at the then current public monthly or similar long term parking pass rate generally applicable to the Parking Garage on a non-discriminatory basis; provided, however, that if the Parking Garage is not completed on or before the Anticipated Completion Date, the number of spaces shall be fixed at fifty-eight (58) spaces and shall be located in an area on Lot 1 to be agreed to by the Parties during the Site Plan Review Phase. Any DSA Parking Garage Spaces located in the Parking Garage shall be floating and shall not be designated spaces, but rather the right to use a specified number of spaces utilizing a method chosen by the City to assure the continuous availability of those spaces on a 24/7 basis (subject to maintenance requirements). The rights and obligations of the Parties with respect to the DSA Parking Garage Spaces shall be set forth in the recorded agreement described in Section 10(g).

1.18 “**DSA Flex Parking Spaces**” means a total of no more than ten (10) paved vehicular parking spaces to be located on Lot 1 or Lot 2 in an area shown on the Design Plans. The total number of DSA Flex Parking Spaces shall be determined by subtracting from sixty-eight (68) the number of DSA Parking Garage Spaces. The rights and obligations of the Parties with respect to the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required) shall be set forth in the recorded agreement described in Section 10(g).

1.19 “**DSA Project**” means the construction by DSA of the Deer Street Liner Building, the Hill Street Building, and buildings on Lot 4 and Lot 5, including any and all related site work and improvements.

1.20 “**DSA Property**” means Lots 2, 3, 4, 5 and 6.

1.21 “**Force Majeure**” means a delay caused by fire, earthquake or other acts of God, strike, or other cause outside the applicable Party’s reasonable control.

1.22 “**Governmental Entity**” means any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

1.23 “**Gray Trust Parcel**” means the triangle shaped parcel of land, with improvements thereon shown as Area C on page C1 of the Disposition Plan, and further described on Schedule 1.23.

1.24 “**Gray Trust Parcel Access Easement**” means an access easement over and across the Gray Trust Parcel for the benefit of DSA’s Property adjacent thereto and adjacent to Deer Street Extension, for all purposes that a public street may be used (including without limitation the running of utilities).

1.25 “**Hill Street Building**” means a four (4) story+ building to be constructed by DSA on Lot 6, which building is intended to mask the Parking Garage from public view from Hill and Hanover Streets.

1.26 “**Joint Project**” means, collectively, the DSA Project and the City Project. Each of the DSA Project and the City Project is sometimes referred to as a “**Project**”.

1.27 “**Lot**” means a subdivided lot as shown on the Subdivision Plan, with Lot 1 referring to the lot shown and depicted as lot 1 on the Subdivision Plan, Lot 2 referring to the lot shown and depicted as lot 2 on the Subdivision Plan, and so on.

1.28 “**Municipal Sewer Easement**” means any and all sewer and stormwater drainage easements held by the City and located on Lots 1 through 4, inclusive, as of the Effective Date, including as shown on the Disposition Plan.

1.29 “**Municipal Waterline Easement**” means that waterline easement described in a Waterline Easement Deed from DSA to the City dated September 16, 2005 and recorded in the Registry on September 19, 2005 at Book 4550, Page 1887.

1.30 “**Parking Garage**” means the municipal public parking garage of no less than 590 spaces to be constructed by the City on Lot 1.

1.31 “**Parties**” means, collectively, the City and DSA. Each of the Parties is herein referred to as a “Party.”

1.32 “**Permitting Phase**” means that portion of the Pre-Construction Period beginning at the conclusion of the Site Plan Design Phase and continuing until Permits for the Projects are issued, but no later than twelve (12) months following the expiration of the Site Plan Design Phase (as may be extended by Force Majeure).

1.33 “**Permits**” means all necessary federal, state and local governmental permits, licenses and approvals of any type or nature required in connection with the development and operation of the Party’s respective project (the City Project

with respect to the City, and the DSA Project with respect to DSA), including without limiting the generality of the foregoing, all necessary site plan, and other governmental permits, licenses, and approvals, of any type and from any necessary Governmental Entity.

**1.34** “**Person**” means any individual, entity, association, or trust, including without limitation any corporation, limited liability company, or partnership, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits.

**1.35** “**Pre-Construction Period**” means a period of time beginning on the Effective Date and continuing for a period of one (1) to two (2) years thereafter (as may be extended by Force Majeure) and comprised of three phases known as the Site Plan Design Phase, Permitting Phase, and Construction Drawing Design Phase.

**1.36** “**Railroad Access**” means that certain vehicular and pedestrian ingress and egress along the 20’ wide driveway on a portion of the DSA Property and City Property, all as more particularly described in the Railroad Access Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement and the terms of this Agreement.

**1.37** “**Railroad Access Deed**” means that certain deed from Boston and Maine Corporation to the Seller dated May 8, 1986 and recorded in the Registry at Book 2602, Page 0569.

**1.38** “**Railroad Agency Office**” means that certain railroad agency office having 400-500 square feet, together with lights, heat, toilet facilities and a supply closet, currently located on Lot 2 and referenced in the Railroad Agency Office Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement and the terms of this Agreement.

**1.39** “**Railroad Agency Office Deed**” means that certain deed from Robert W. Meserve and Charles W. Barrett, as Trustees of the Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-F, to John W. Goodwin dated December 19, 1972 and recorded in the Registry at Book 2199, Page 0434.

**1.40** “**Registry**” means the Rockingham County Registry of Deeds.

**1.41** “**Road Alignment Plan**” means that certain plan entitled “Proposed Roadway Alignment & Land Transfer Plan – Tax Map 125, Lot 17 – City of Portsmouth to Deer Street Associates – Lot Located At: Bridge & Deer Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July 25, 2015 and last revised 8/7/15, approved by the City Planning Board on August 20, 2015, and recorded in the Registry on or before the Effective Date, and as attached hereto as Schedule 1.40.

**1.42** “**Site Plan Design Phase**” means that portion of the Pre-Construction Period beginning at the Effective Date and continuing until Design Plans are

produced pursuant to Sections 4(a) and 4(b) of this Agreement, but no later than six (6) months following the Effective Date (as may be extended by Force Majeure).

**1.43** “**Subdivision Plan**” means that certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 8/6/15, approved by the City Planning Board on August 20, 2015, and recorded in the Registry on or before the Effective Date, and as attached hereto as Schedule 1.42.

**1.44** “**Substantially Completed**” or “**Substantial Completion**” means when the applicable construction work or portion of the Joint Project is completed in accordance with the Design Plans, is presently ready for use in accordance with its intended purpose, and only minor, punchlist items remain to be completed.

**2. Pre-Construction Period/Joint Design.** The City and DSA shall cooperate during the Pre-Construction Period to create Design Plans relative to Deer Street Extension, the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required), the Community Space, the relocation of the Railroad Agency Office, the relocation of the ingress and egress easement referenced in the Railroad Access Easement Covenant, and the relocation of the Municipal Sewer Easement and the Municipal Waterline Easement. The location and final design shall be consistent with the terms of this Agreement. Construction of the Joint Project shall be consistent with the Design Plans.

**3. Certain Design Plan Criteria.**

- a. Mandatory Design Plan Criteria.** The Design Plans shall include and reflect the following criteria, all subject to the approval of the City Planning Board during the Permitting Phase:
- i. Deer Street Extension will be designed consistent with and include plans for: (a) the construction of a future sidewalk along the northerly boundary of the Deer Street Extension Parcel; (b) the construction of a future pedestrian connection from Deer Street along Deer Street Extension to Rock Street; and (c) such short-term public street parking spaces as the City shall deem advisable for customers and deliveries for commercial uses along Deer Street Extension.
  - ii. The Design Plans for Deer Street Extension will not include any public sidewalks located on DSA Property other than within two (2) feet of the boundary between Deer Street Extension and Lot 6.
  - iii. The Municipal Waterline Easement and Municipal Sewer Easement and related infrastructure, as relocated in accordance with applicable City ordinances and written administrative policies relative to relocation of utilities, shall continue to provide convenient access and service to DSA Property, but shall not be located on DSA Property except as provides exclusive service thereto. The Design Plans for the relocated Municipal Waterline Easement and Municipal Sewer Easement shall include, without limitation, locations and capacities of water, sewer and stormwater drainage lines and other facilities to provide border service to the DSA Property in

locations and capacities reasonably specified by DSA, in accordance with applicable City ordinances and written administrative policies relative to relocation of applicable utilities.

- iv. The Railroad Agency Office as redesigned and relocated shall be approximately 400-500 +/- square feet such that the same is located on the City Property in accordance with the Amendment and Relocation Agreement.
  - v. The ingress and egress easement referenced in the Railroad Access Easement Covenant shall be located in accordance with the Amendment and Relocation Agreement.
  - vi. The Community Space shall not include any permanent buildings or structures within thirty (30) feet of the boundary line shared with Lot 2 and Lot 3 (other than a fence, if any, running along the northerly boundary of Lot 2 adjacent to railroad property), without the prior written consent of DSA (including the then owner of Lot 3), which consent shall not be unreasonably withheld, conditioned or delayed.
  - vii. The Community Space shall be dedicated for public use, qualify as unoccupied space and otherwise have qualities sufficient for purposes of meeting the requirements of Exception 1.2 of IBC-2009, Section 705.8.1, Exception 1.2.
- b. **Optional Design Plan Criteria.** The Design Plans may include and reflect the following criteria, all subject to the approval of the City Planning Board during the Permitting Phase:
- i. The Community Space may, by agreement of the Parties but without obligation of either Party, include a parking garage connector structure and/or parking spaces.

#### 4. Site Plan Design Phase.

- a. **City Site Plans.** During the Site Plan Design Phase, the City shall prepare at its sole cost and expense, and submit to DSA for DSA's review, preliminary building design plans, utility plans and a site plan for its Project, including for Deer Street Extension, the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required), the DSA Parking Garage Spaces, the relocated Municipal Waterline Easement, the relocated Municipal Sewer Easement, the relocated Railroad Agency Office, the relocation of the ingress and egress easement referenced in the Railroad Access Easement Covenant, all consistent with the Design Plans and terms and conditions set forth in this Agreement. If DSA disapproves of any such plans, then DSA shall provide a reasonable basis supporting such disapproval and the City shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by DSA and said plans shall be resubmitted to DSA for review. DSA's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by the City within fourteen (14) business days after DSA's receipt thereof. The Portsmouth City Manager shall have final authority to determine all City plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans

- for the foregoing that are sufficient for each Party to submit and utilize for purposes of obtaining Permits for its Project during the Permitting Phase.
- b. **DSA Site Plans.** During the Site Plan Design Phase, DSA shall prepare at its sole cost and expense, and submit to the Portsmouth City Manager for the Portsmouth City Manager's review, preliminary building design plans, utility plans and a site plan for its Project, all consistent with the Design Plans and the terms and conditions set forth in this Agreement. If the Portsmouth City Manager disapproves of any such plans, then the Portsmouth City Manager shall provide a reasonable basis supporting such disapproval and DSA shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by the City and said plans shall be resubmitted to the Portsmouth City Manager for approval. The Portsmouth City Manager's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by DSA within fourteen (14) business days after the Portsmouth City Manager's receipt thereof. DSA shall have the final authority to determine all DSA plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to submit and utilize for purposes of obtaining Permits for its Project during the Permitting Phase.
  - c. **Land Use Approvals.** Notwithstanding this provision, DSA must follow and comply with all applicable City and State land use regulations not otherwise waived or the subject of a variance, special exception, or similar relief granted by the relevant land use regulatory board. The Portsmouth City Manager's agreement with DSA plans does not indicate or mandate land use regulatory approvals.

## 5. Permitting Phase.

- a. **Permitting.** During the Permitting Phase, each Party shall, at its sole cost and expense, apply for and exercise commercially reasonable efforts to obtain its Permits.
- b. **Cooperation.** The Parties shall cooperate to the greatest extent possible in filing applications to the City Planning Board for the City Property and DSA Property consistent with the Design Plans and otherwise sufficient to qualify the DSA Project as part of an "overall development" which includes a municipally owned or operated covered parking facility for purposes of Section 10.1113.111 of the City's zoning ordinance.
- c. **Traffic and Improvements.** The City, at its initial cost and expense, will cause a traffic study to be performed by an appropriate third party professional with respect to the Joint Project reasonably acceptable to DSA and shall cause to be made such improvements as are recommended therein or otherwise recommended by the City Planning Board. In the event that a traffic signal or other improvements to public or intended public rights of way (other than Deer Street Extension) is required by the Planning Board or recommended in the traffic study in connection with either Project, either Party shall reimburse the other within sixty (60) days of written demand for its share of the reasonable out-of-pocket costs thereof, which costs shall be allocated between the Parties



based on the Parties' pro-rata share of traffic generation determined in the traffic study; provided, however, that in no event shall the City's share of said costs exceed the sum of Fifty Thousand Dollars (\$50,000.00). DSA shall reimburse the City within sixty (60) days of written demand for: (i) one-half (½) of the first Thirty Thousand Dollars (\$30,000.00) of reasonable out-of-pocket cost incurred by the City with respect to the traffic study obtained by the City pursuant to this Section 5(c); plus (ii) all of the reasonable out-of-pocket costs incurred by the City with respect to the traffic study obtained by the City pursuant to this Section 5(c) in excess of Thirty Thousand Dollars (\$30,000.00). DSA's obligation to reimburse the City with respect to (ii) above shall be conditioned upon DSA's prior written approval of the engagement and fees of the applicable professional(s), in the exercise of reasonable and good faith discretion.

- d. **Changes to Design Plans During Permitting Phase.** Either Party may make changes necessary to its Design Plans as may be required by City or State land use regulatory boards and agencies, but shall use commercially reasonable efforts to reduce any costs to be incurred by the other Party as a result of said change.
- e. **Termination.** If for any reason whatsoever other than the failure to exercise commercially reasonable efforts, either Party is unable to obtain all Permits having reasonably satisfactory conditions, with all appeal periods having expired without appeal (or any such appeal finally resolved), on or before the expiration of the Permitting Period, then the Party unable to so obtain its Permits may, in its sole discretion, terminate its obligation to obtain the same pursuant to this Agreement.

## 6. **Construction Drawing Design Phase.**

- a. **City Construction Drawings.** During the Construction Drawing Design Phase, the City shall prepare at its sole cost and expense, and submit to DSA for DSA's review, final construction drawings for its Project based upon the Design Plans, all consistent with the terms and conditions set forth in this Agreement. If DSA disapproves of any such plans, then DSA shall provide a reasonable basis supporting such disapproval and the City shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by DSA and said plans shall be resubmitted to DSA for review. DSA's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by the City within fourteen (14) business days after DSA's receipt thereof. The Portsmouth City Manager shall have the final authority to determine all City plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to obtain bids for construction of its Project.
- b. **DSA Site Plans.** During the Construction Drawing Design Phase, DSA shall prepare at its sole cost and expense, and submit to the Portsmouth City Manager for the Portsmouth City Manager's review, final construction drawings for its Project based upon the Design Plans, all consistent with the terms and conditions set forth in this Agreement. If the Portsmouth City Manager

disapproves of any such plans, then the Portsmouth City Manager shall provide a reasonable basis supporting such disapproval and DSA shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by the City and said plans shall be resubmitted to the Portsmouth City Manager for review. The Portsmouth City Manager's approval of any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by DSA within fourteen (14) business days after the Portsmouth City Manager's receipt thereof. DSA shall have the final authority to determine all DSA plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to obtain bids for construction of its Project.

- c. **Land Use Approvals.** Notwithstanding this provision, DSA must follow and comply with all applicable City and State land use regulations not otherwise waived or the subject of a variance, special exception, or similar relief, or similar relief granted by the relevant land use regulatory board. The Portsmouth City Manager's agreement with DSA plans does not indicate or mandate land use regulatory approvals.

**7. Additional Easements, Licenses.** In the event that either Party reasonably determines at any time within six (6) years of the Effective Date that any easements, leases or licenses encumbering the other Party's property are necessary or convenient to its respective Project, then such Party may request that the other Party grant such an easement, lease or license which approval will not be unreasonably withheld, conditioned or delayed. The requesting Party shall be responsible for the costs to prepare and record any such easement, lease or license, including without limitation: (a) the costs associated with any required plans and surveys to design and locate the same; and (b) the reasonable costs and expenses reasonably incurred by the non-requesting Party in connection with the proposed easement, lease or license. Notwithstanding the foregoing, neither Party shall be required to approve any easement, lease or license: (i) which unreasonably interferes with the intended use of the Property of the non-requesting Party; (ii) for parking, access or building encroachments; (iii) which materially increases the cost of the Project of the non-requesting Party; or (iv) which materially alters the Project of the non-requesting Party.

**8. Construction of Projects.**

- a. **No Obligation to Construct.** Neither Party shall have any right or obligation to cause the construction of either Project, except that: (i) the failure of the City to construct certain portions of the City Project is provided for in Section 8(b) hereof; and (ii) if the Parking Garage is constructed by the City, the Railroad Agency Office shall be constructed and located therein in accordance with the Design Plans and the terms and conditions of this Agreement. In the event that the City determines to construct improvements on or within the vicinity of the City Property, such construction shall be done in a manner to reasonably minimize impact to existing tenants, occupants, guests and invitees of the DSA Property.
- b. **City Decision Not To Construct.** *If* the City has not Substantially Completed the Anticipated City Improvements in accordance with the Design Plans on or before that date which is the three (3) year anniversary of the Effective Date

(the “**Anticipated Completion Date**”), *then*: (a) the Mortgage and all payment and performance obligations pursuant thereto shall be of no further force and effect and shall be discharged of record at the Registry at the City’s sole cost and expense; (b) DSA shall have the right, but not the obligation, at DSA’s sole cost and expense, to complete all or a portion of Deer Street Extension and the relocation of the Municipal Sewer Easement and Municipal Waterline Easement, and related infrastructure, in accordance with the Design Plans, and the City shall cooperate and provide DSA with reasonable access to its rights and properties to accomplish the same; and (c) subject to approval by the City Engineer (which approval shall not be unreasonably withheld, conditioned or delayed), and the approval of the City Planning Board and any other applicable land use boards, DSA shall have the right, at DSA’s sole cost and expense, but not the obligation, to construct and relocate the Railroad Agency Office together with the ingress and egress referenced in the Railroad Access Easement Covenant to the City Property as a free standing building and otherwise in accordance with the Amendment and Relocation Agreement, and the City shall cooperate and provide DSA with reasonable access to its rights and properties to accomplish the same. The Anticipated Completion Date may, at the City’s option, be extended by Force Majeure to a date not more than one (1) year subsequent to said date, upon DSA’s receipt prior to said date of written notice of the extension to a date set forth therein (and consistent with the foregoing).

- c. **Acquisition of the Gray Trust Parcel.** The City shall acquire the Gray Trust Parcel prior to the expiration of the Site Plan Design Phase. Once acquired by the City, the DSA Access Easement shall be amended to include the Gray Trust Parcel Access Easement by an instrument in recordable form proposed by DSA and acceptable to the City in its reasonable discretion, and the City shall execute and deliver the same to DSA for recording at the Registry.
- d. **Municipal Waterline Easement and Municipal Sewer Easement.** The City shall not be required to remove any of the utility lines or related infrastructure for the existing Municipal Waterline Easement or Municipal Sewer Easement Easement from DSA Property.
- e. **Relocated Railroad Agency Office.** In the event that the Parking Garage is constructed, the City shall be responsible at the City’s sole cost and expense for the turn-key relocation and construction of: (i) the Railroad Agency Office within the Parking Garage, including without limitation interior design, fit and finish, and together with water, sewer, gas and electrical service lines and in substantially the same or better condition as exists as of the Effective Date, and (ii) the relocation and construction of the ingress and egress referenced in the Railroad Access Easement Covenant in substantially the same or better condition as exists as of the Effective Date, in both instances of (i) and (ii) using new materials and in accordance with all applicable laws, rules, regulations and ordinances and in accordance with the Amendment and Relocation Agreement. Upon Substantial Completion of the relocated Railroad Agency Office and the said ingress and egress (either by the City, or by DSA pursuant to Section 8(b) above), the City shall, and hereby does agree to, assume the Railroad Access Easement Covenant and all obligations of DSA set forth in the Railroad Deed or otherwise applicable to the Railroad Agency Office, including the Amendment and Relocation Agreement, and such agreement shall be

memorialized by an instrument signed by the Parties and recorded at the Registry at DSA's sole cost and expense.

**9. Community Space.** On or before the fourth (4<sup>th</sup>) anniversary of the Effective Date, DSA shall, at DSA's option, cause either of the following to occur: (a) the transfer of good and marketable title to Lot 2 by warranty deed to the City, subject to all matters of public record existing as of the Effective Date or subsequently jointly created or assented to by the Parties, and further subject to a restriction in said deed prohibiting permanent structures and/or buildings within thirty (30) feet of the lot line between Lot 2 and Lot 3; or (b) pay the City the sum of Eight Hundred Thousand Dollars (\$800,000.00); provided, however, that neither (a) nor (b) need occur if the City refuses for any reason to accept the Lot 2 warranty deed referenced in (a) and tendered by DSA within said four year period. The aforesaid date may, at DSA's option, be extended by Force Majeure to a date not more than two (2) years subsequent to said date, upon the City's receipt prior to said date of written notice of the extension to a date set forth therein (and consistent with the foregoing). The payment or performance obligation of DSA pursuant to this Section 9 shall be secured by a statutory power of sale mortgage encumbering Lot 2 in form and substance attached hereto as Schedule 9 (the "**Mortgage**") which Mortgage shall be recorded with the Registry on the Effective Date of this Agreement and contain a due on sale clause which excludes transfers to affiliates of DSA. In the event of a dedication or transfer of Lot 2 to the City pursuant to this Section 9, the City shall maintain the Community Space thereon as an attractive, park-like public community space that generally enhances and does not cause disruption to the neighborhood.

**10. Recording of Subdivision Plan, Mortgage, Easements and Other Instruments.** Each of the below referenced Subdivision Plan, Mortgage, easements and other instruments shall be executed and delivered in recordable form by the applicable Party on or before the following dates, and subsequently recorded at Registry (or if indicated below, recorded on or before such date) with each Party being responsible for any transfer tax assessed against the Party with respect to said document, and the grantee or its equivalent responsible for recording fees and L-Chip costs required to be paid at the time of such recording:

- a. Road Alignment Plan recorded on or before the Effective Date;
- b. Subdivision Plan recorded on or before the Effective Date;
- c. Mortgage recorded on or before the Effective Date;
- d. Amendment of DSA Access Easement to include Gray Trust Parcel Access Easement on or before the earlier of the date the City acquires the Gray Trust Parcel or six (6) months from the Effective Date;
- e. Termination of the Municipal Waterline Easement and the Municipal Sewer Easement on or before the Anticipated Completion Date;
- f. Assumption of relocated Railroad Agency Office obligations and Railroad Access Easement Covenant on or before Substantial Completion of the Parking Garage, or Substantial Completion of the relocated Railroad Agency Office on Lot 1 by DSA as contemplated by Section 8(e) of this Agreement;
- g. An agreement in recordable form between the City and DSA, their successors and assigns, attached hereto as Schedule 10(g) as shall be amended to cause the same to be sufficient to cause the DSA Parking Garage Spaces and the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required)

to count toward any parking for the DSA Project required by the City's zoning ordinance, including without limitation to satisfy Section 10.1113.10 of the City's zoning ordinance relative to the Proximity to Principal Use of parking spaces with respect to DSA's Project, and in which the City will provide DSA with the DSA Parking Garage Spaces and the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required) for an unlimited duration. Said agreement shall be recorded on or before Substantial Completion of the Parking Garage.

- h. Additional easements and notices of lease contemplated by Section 7 of this Agreement on or before a date which is reasonable under the circumstances of the easement or lease.

**11. Removal of Encroaching Building.** The City shall remove that certain existing building labeled on the Subdivision Plan as a "1 Story Building" and also shown on the Disposition Plan primarily located on Lot 1 but encroaching onto Lot 2, as well as three other buildings shown on said Subdivision Plan located on Lot 1. DSA shall reimburse the City pursuant to the Environmental Agreement (schedule 1.15 to the Purchase and Sale Agreement) in an amount not to exceed \$5,000.00.

**12. Default.** In the event of either Party's default in the performance of its obligations under this Agreement, the non-defaulting Party shall be entitled to all remedies set forth in this Agreement or otherwise available, at law or in equity on a non-exclusive, non-cumulative basis; provided, however, that neither Party shall be entitled to consequential damages, including without limitation lost profits, under any circumstance.

**13. Miscellaneous Provisions.**

**13.1 *Notices.*** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given when personally delivered to the Party to be given such notice or other communication or on the business day following the day such notice or other communication is sent by overnight courier, to the following:

- If to the Buyer: At the address set forth in the first paragraph of this Agreement
  
- with a copy to: Robert P. Sullivan, City Attorney  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801
  
- If to the Seller: At the address set forth in the first paragraph of this Agreement
  
- with a copy to: Denis O. Robinson, Esq.  
Pierce Atwood LLP  
One New Hampshire Avenue, Suite 350  
Portsmouth, New Hampshire 03801

or to such other address as the Parties may designate in writing.

**13.2 *Benefit and Assignment.*** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors, assigns, heirs and legal representatives.

**13.3 *Counterparts.*** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument.

**13.4 *Severability.*** No determination that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstances not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed whenever possible as being consistent with, applicable law.

**13.5 *Headings.*** The headings to the various Sections and paragraphs of this Agreement have been inserted for convenient reference only, and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

**13.6 *Construction.*** In this Agreement, where applicable, words used in the singular form shall be construed as though they also are used in the plural form, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa.

**13.7 *Entire Agreement.*** This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral statements, promises, understandings or agreements with respect thereto. The Parties agree and acknowledge that (a) this Agreement has not been entered into under undue time pressure, and that all Parties have had an adequate opportunity to review this Agreement with counsel, (b) no oral assurances have been given by any Party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming, (c) there are no oral conditions or promises that supplement or modify this Agreement, and (d) this Section 13.7 does not constitute “boilerplate”, but rather is a critical substantive provision of this Agreement.

**13.8 *Choice of Law.*** This Agreement shall be interpreted according to the laws of the State of New Hampshire.

**13.9 *Amendment.*** The provision of this Agreement may be modified or amended in whole or in part only with the consent of the Parties hereto, their successors and permitted assigns, in a written instrument duly executed and delivered.

[Remainder of page blank – signature pages to follow]

In Witness Whereof we have herein set our hands and seals to this Post Closing Obligations Agreement effective as of the Effective Date.

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

DEER STREET ASSOCIATES  
By its general partner

DSA Rogers, LLC  
By its manager

G.L. Rogers & Co., Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

Schedule 1.11  
Deer Street Extension Parcel Legal Description



Schedule 1.14  
Disposition Plan

Schedule 1.23  
Gray Trust Parcel Legal Description

Schedule 1.40  
Road Alignment Plan

Schedule 1.42  
Subdivision Plan

Schedule 9  
Mortgage

Schedule 10(g)  
DSA Parking Spaces Agreement

**DEER STREET ASSOCIATES**

**Sale of:**

**LOT 1 OFF OF DEER AND BRIDGE STREET,  
PORTSMOUTH NH**

**to**

**CITY OF PORTSMOUTH, NEW HAMPSHIRE**

**DOCUMENT AGENDA**

**PARTIES TO THE TRANSACTION AND COUNSEL**

Buyer ("B")	Buyer's Counsel ("BC")
City of Portsmouth, New Hampshire 1 Junkins Avenue Portsmouth, NH 03801  Attn: John Bohenko, City Manager	Robert P. Sullivan, City Attorney City of Portsmouth 1 Junkins Avenue Portsmouth, NH 03801  and  Briand T. Wade, Esq. P.O. Box 1464 Portsmouth, NH 03802-1464
Deer Street Associates ("S")	Seller's Counsel ("SC")
Deer Street Associates P.O. Box 100 York Harbor, ME 03911  Attn: Kim Rogers, President, G.L. Rogers & Co.	Denis O. Robinson, Esq. PIERCE ATWOOD LLP One New Hampshire Avenue, Suite 350 Portsmouth, NH 03801 P: 603-373-2003 F: 603-433-6372 <a href="mailto:drobinson@pierceatwood.com">drobinson@pierceatwood.com</a>
Premises	Date and Place of Closing
Lot 1 on certain plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1" = 50' " dated July, 2015 and last revised 8/6/15	Pierce Atwood LLP Portsmouth, NH <b>June 30, 2016</b>

**CLOSING DOCUMENTS**

Item No.	Item	Resp. Party
<b>Main Transaction Documents</b>		
1.	<b>Purchase and Sale Agreement (“P&amp;S”) (2 originals)</b>  <u>Schedule 1.3</u> Amendment and Relocation Agreement <u>Schedule 1.6</u> City Temporary Building Encroachment Easement <u>Schedule 1.7</u> City Temporary Construction and Maintenance Easement  <u>Schedule 1.8</u> City Triangle Parcel Legal Description <u>Schedule 1.11</u> Deer Street Extension Parcel Legal Description <u>Schedule 1.12</u> Disposition Plan <u>Schedule 1.15</u> Environmental Agreement <u>Schedule 1.17</u> Gray Trust Parcel Legal Description <u>Schedule 1.22</u> Post Closing Obligations Agreement/PCOA <u>Schedule 1.29</u> Road Alignment Plan <u>Schedule 1.33</u> Subdivision Plan <u>Schedule 2</u> Terminated Sidewalk Easement Legal Description <u>Schedule 5.2(i)</u> Warranty Deed – Premises <u>Schedule 5.2(vii)</u> Title Affidavit <u>Schedule 5.3(iv)</u> Termination and Release of Sidewalk Easement <u>Schedule 5.3(v)</u> Release Deed – City Triangle Parcel <u>Schedule 5.3(xi)</u> Amendment to Municipal Sewer Easement <u>Schedule 5.2 (xiii)</u> Title Indemnity Agreement <u>Schedule 6</u> Permitted Encumbrances <u>Schedule 7.2</u> Access and Indemnity Agreement <u>Schedule 7.3</u> Title Commitment <u>Schedule 16.11</u> Statutory Disclosures	All
2.	Post Closing Obligations Agreement (“PCOA,” Schedule 1.22, P&S) (2 originals)	All
3.	Environmental Agreement (Schedule 1.15, P&S) (2 originals)	All
4.	Title Indemnity Agreement (Schedule 5.2(xiii), P&S)	All
<b>Recording Documents</b>		
5.	Warranty Deed – Premises (Schedule 5.2(i), P&S)	S/SC
6.	Consolidation & Subdivision Plan (Schedule 1.33, P&S)	B/BC
7.	Road Alignment Plan (Schedule 1.29, P&S)	B/BC
8.	Release Deed – City Triangle Parcel (Schedule 1.8, P&S)	B/BC
9.	City Temporary Building Encroachment Easement (Schedule 1.6, P&S)	B/BC
10.	City Temporary Construction and Maintenance Easement (Schedule 1.7, P&S)	B/BC
11.	Partial Release and Termination of Sidewalk Easement	B/BC
12.	Amendment to Municipal Sewer Easement (Schedule 5.3(xi), P&S)	B/BC
13.	Parking Agreement (Schedule 10(g), PCOA)	B/BC



Item No.	Item	Resp. Party
14.	Mortgage – Lot 2 (Schedule 9, PCOA)	S/SC
15.	MDA Partial Discharge of Mortgage	S/SC
16.	Boston and Maine Corporation Release Deeds a. 1962 Book 1613, Page 461 (Green) b. 1986 Book 2602, Page 0564 (Blue) c. 1986 Book 2647, Page 1271 (Purple) d. 2013 Book 5452, Page 0138 (Taube Triangle) e. 2015 Book 5631, Page 2429 (Rock Street Rectangle) f. 1950 Book 1167, Page 0058 (Redlon & Johnson)	S/SC (a-e)  B/BC (f)
17.	Release of Rights to Parking re: easement for parking from Deer Street Associates to Hill-Hanover Group, LLC recorded in Book 5518, Page 2747	S/SC
18.	Certified copy of the deed from the State of New Hampshire to Boston and Maine Corporation recorded in the Hillsborough County Registry of Deeds at Book 5575, Page 1962	S/SC
19.	Amendment to Notice of Lease (Eastern Bank)	S/SC
<b>Closing Documents</b>		
20.	Settlement/Disbursement Statement	All
21.	Tax Proration Agreement	All
22.	Seller's Bring-Down Certificate	S/SC
23.	Buyer's Bring-Down Certificate	B/BC
24.	Title Affidavits (Schedule 5.2(vii), P&S)	First Am
25.	Seller Certification re: Lease to Boston and Maine Railroad in the deed recorded in the Rockingham County Registry of Deeds at Book 868, Page 845	S/SC
26.	1099-S	SC
27.	W-9 (Seller)	SC
28.	W-9 (Buyer)	BC
29.	FIRPTA - Certificate of Non-Foreign Status (Seller)	SC
30.	CD-57-S and CD-57-P (Premises - N/A)	N/A
31.	PA-34 (Premises)	BC
32.	CD-57-S (Release Deed – City Triangle Parcel)	BC
33.	CD-57-P (Release Deed – City Triangle Parcel)	SC
34.	PA-34 (Release Deed – City Triangle Parcel)	SC
35.	CD-57-S (City Temporary Building Encroachment Easement)	SC

<b>Item No.</b>	<b>Item</b>	<b>Resp. Party</b>
36.	CD-57-P (City Temporary Building Encroachment Easement)	BC
37.	CD-57-S (City Temporary Construction and Maintenance Easement)	BC
38.	CD-57-P (City Temporary Construction and Maintenance Easement)	SC
39.	Patriot Act Agreement	SC
40.	Privacy Policy	SC
41.	Compliance Agreement	SC
<b>Authority Documents and Certificates</b>		
42.	Seller's General Partner Certificate a. Resolutions of Seller's General Partner	S/SC
43.	Seller's Certificate of Existence/Good Standing (NH)	S/SC
44.	City Clerk Certificate re: City Council Approval Vote(s)	B/BC
<b>Non-Execution Closing Documents</b>		
45.	Payoff Statement – TD Bank	S
46.	Payoff Statement – Camden National Bank	S
47.	Broker's Commission Statement	S
48.	ALTA Survey of Premises	Ambit
49.	Title Policy (City)	First Am
50.	Title Policy (DSA)	First Am

Run: 7/07/16  
11:05AM

## Event Listing by Date

Page: 1

Starting Date: 6/20/2016

Ending Date: 3/31/2017

Start End	Type Description	Location	Requestor	Vote Date
6/25/2016 6/25/2016	PRIDE Contact: Jess Dorr, Executive Director 603-552-5824, Portsmouth Pride Community Event with Six Walks into Market Square	Market Square	Seacoast Ouright	3/21/2016
6/26/2016 6/26/2016	MARCH St. John's Lodge March at 9:00 a.m. - March to St. John's Church - Route from the William Pitt Tavern on Court St. crossing State St. then up Chapel St to the Church. Contact: Robert Sutherland, Jr. 603-828-5246	March to St. John's Church, Chapel Street	St. John's Lodge	6/ 6/2016
7/ 2/2016 7/ 2/2016	MUSIC Barbara Massar, Executive Director is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/ 2/2016 7/ 2/2016	MUSKET Alena Shellenbean, Manager, Special Events is the contact for this event. Tel. #(603) 828-2979	Strawbery Banke	Strawbery Banke	/ /
7/ 4/2016 7/ 4/2016	RACE David Hampson is the contact for this event. Telephone No. 334-3032 Race Start: 9:00 a.m. Registration: 7:30 a.m.	Strawbery Banke, Marcy Street	Easter Seals Veteran's Count	12/ 7/2015
7/ 9/2016 7/ 9/2016	FUND Jim O'Brien is the contact for this event. Tel. 603-380-5343	Market Square - Boot Drive	Portsmouth Professional Fire F	4/18/2016
7/16/2016 7/16/2016	BIKE TOUR Contact: Chris Vlangas 1-800-757-0203 Event begins at 7:30 a.m. from Shapleigh Middle School in Kittery.	From Kittery, ME to Route 1B to Rye back to Kitter	Cystic Fibrosis Foundation	1/25/2016
7/16/2016 7/16/2016	MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/23/2016 7/23/2016	MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/30/2016 7/30/2016	BOAT Molly Bolster is the contact for this event. This event begins at 9:00 a.m. to 3:00 p.m. Raindate: 7/31/16	Peirce Island	Round Island Regatta	3/14/2016
7/30/2016 7/30/2016	MUSIC Barbara Massar, Executive Director This event is from 5:00 to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015

## Event Listing by Date

Starting Date: 6/20/2016

Ending Date: 3/31/2017

Start End	Type Description	Location	Requestor	Vote Date
8/ 4/2016 8/ 4/2016	RACE Justin Finn is the contact for this event. Race Start: 6:00 p.m. Registration: 4:30 p.m.	Portsmouth High School Cross Country Track	Portsmouth Rotary Club	12/ 7/2015
8/20/2016 8/20/2016	FUND Jim O'Brien is the contact for this event. Tel. (603) 380-5343	Market Square - Boot Drive	Portsmouth Professional Fire F	4/18/2016
9/17/2016 9/17/2016	RACE Holly Tennent and Melissa Mikulski are the contacts for this event. mmikulski@bottomline.com 501-5335 htennent@bottomline.com 501-6653 This event begins at 9:00 a.m.	Pease Tradeport	Bottomline Technologies	4/ 4/2016
9/17/2016 9/17/2016	WALK Contact: Ken La Valley, Chair - Out of Darkness Walk on Saturday, September 17, 2016 Registration: 8:30 a.m. Walk Duration 10:00 a.m. - Noon Peirce Island - Begin and end. Proposed Walk route 2.3 miles	Peirce Island	American Foundation for Suicid	1/11/2016
9/18/2016 9/18/2016	RACE Wendy McCoole is the contact for this event. Telephone #603-759-5640 Race Start: 9:00 a.m. Registration: 7:30 a.m.	Portsmouth Middle School	Celebrate Pink	12/ 7/2015
9/24/2016 9/25/2016	BIKE TOUR Donna Hepp is the contact for this event. Tel. 414-258-3287	Through Portsmouth	Grante State Wheelmen	12/ 7/2015
9/24/2016 9/25/2016	FESTIVAL David Hallowell is the contact for this event. This is a 2-day event starting at 8:00 a.m. to 6:00 p.m.	Pleasant Street	Portsmouth Maritime Folk Festi	1/25/2016
9/24/2016 9/25/2016	TOUR Caroline Amport Piper is the contact for this event. Tel. (603) 686-4338 Location of this event is to be determined. This event begins each day at 11:00 a.m. to 3:00 p.m.	To Be Determined	Friends of the South End	12/ 7/2015
10/ 9/2016 10/ 9/2016	ROAD RACE Contacts: (Date changed to October 9, 2016 instead of October 8th) Ben Anderson - ben@prescottpark.org Angela Greene - angela@prescottpark.org Race Start: 10:00 a.m. Registration: 8:00 a.m.	Memorial Bridge Portsmouth	Memorial Bridge Road Race	12/ 7/2015
10/22/2016 10/22/2016	WALK Contact Susan von Hemert Annual Memorial Bridge Walk walking acorss Memorial Bridge to Prescott Park	Memorial Bridge Walk to Prescott Park	Seacoast Rotary	3/ 3/2016
11/13/2016 11/13/2016	ROAD RACE Jay Diener, Co-race Director is the contact for this event. He can be reached at (603) 758-1177 Runners start at 8:30 a.m.	Portsmouth, New Castle, Rye	Seacoast Half Marathon	4/18/2016

Run: 7/07/16  
11:05AM

## Event Listing by Date

Page: 3

Starting Date: 6/20/2016

Ending Date: 3/31/2017

Start End	Type Description	Location	Requestor	Vote Date
11/24/2016 11/24/2016	ROAD RACE Matt Junkin, Race Director is the contact for this event. This is the Thanksgiving Day Turkey Trot which begins at Peirce Island and ends at Strawberry Banke. Registration begins at 7:00 a.m. Race commences at 8:30 a.m.	Peirce Island is the start - Strawberry Banke is th	Seacoast Rotary Turkey Trot 5K	11/16/2015
12/11/2016 12/11/2016	ROAD RACE Thomas M. Bringle is the contact for this event. Tel. 603-724-6080 tbringle@arthritis.org. Registration begins at 9:00 a.m. Race start time: 10:00 a.m.	Little Harbour School	Arthritis Foundation - Jingle	1/25/2016
1/ 1/2017 1/ 1/2017	RACE Michael Rennebu is the contact for this event. Cell #603-969-9783 Race Start: 11:00 a.m. Registration: 9:00 a.m.	Portsmouth Middle School	Great Bay Services	12/ 7/2015



## Seacoast Public Health Network Public Health Emergency Preparedness Annual Update

Mary Cook, M.Ed, CHES  
Public Health Emergency Preparedness Manager  
128 State Route 27  
Raymond NH 03077  
mcook@seacoastphn.org  
603-244-7311  
[www.seacoastphr.org](http://www.seacoastphr.org)

Dear Chairman:

This letter serves to update you on the public health preparedness initiatives of the Seacoast Public Health Network. Your Fire Chief/Emergency Management Director and/or health officer is a member of our network and attends bimonthly meetings. If you have any questions or comments, please refer to my contact information above. I enjoy working with your town representative in the preparation, response, and recovery of public health emergencies. A regional approach assures and strengthens regional and local emergency preparedness response capacities for both naturally and manmade events. In addition, it can help access additional public health resources in a more timely and organized manner.

**The Seacoast Public Health Network** is one of 13 public health regions in the state created to help the residents in our regions to prepare for, respond to and recover from public health emergencies. Each region has a coordinator who is funded by a Centers for Disease Control (CDC) and Prevention Preparedness and Response grant. The Town of Exeter accepted this grant in 2006 and facilitated it up until June 30, 2015. **Lamprey Health Care, Inc. became the fiscal agency on July 1, 2015 and hosts the staff of the Network on the 2<sup>nd</sup> floor of the Raymond office.** Mary Cook has been with the Network since 2011 and has worked in public health and health education for over twenty years and has her Master's in Education with an emphasis in Health Promotion and Wellness and is a Certified Health Education Specialist. In addition, three new staff persons have been hired to coordinate substance misuse prevention, treatment, and recovery as well as coordination of a Community Health Improvement Plan (CHIP).

The Seacoast Public Health Region includes 23 towns in the seacoast region with a population of 140,201. Please follow us at [www.seacoastphr.org](http://www.seacoastphr.org) or on twitter at seacoastphr.

**The focus of the Emergency Preparedness Manager's work is to:**

- Ongoing improvements to the public health preparedness and response plans, which are integrated into the local emergency operations plan of each town in the region; coordinate and/or participate in regional trainings and exercises related to public health preparedness. The

coordinator is also responsible for the activation and coordination of point of dispensing sites, and alternate care sites in the region in the event of a disease outbreak such as Anthrax or Hepatitis A.

- Facilitate an Emergency Preparedness Team made up of government, health care, behavioral health, schools, nonprofit and community representatives to focus on public health preparedness issues. The Team meets bimonthly and includes a training component.
- Establish and maintain a cadre of medical and non-medical volunteers through Seacoast Medical Reserve Corps/CERT. Currently, there are 125 volunteers in the system. We support the towns during shelter operations and can provide a skilled medical team and other workers as well as cots and blankets. Three trailers of supplies are stored in Exeter and two trailers in Portsmouth.
- Assist in the coordination of resources and communication during public health emergencies through the Multi-Agency Coordination Entity (MACE); serve as a liaison between local entities and the State of NH, Division of Public Health Services.

#### Ongoing:

- Ongoing Family Preparedness Workshops: Approx. 150 residents attended Family Preparedness Workshops at mobile home parks, senior centers, libraries, healthcare centers, and campgrounds.
- CERT Classes: We offer 2 Community Emergency Response Trainings per year. This free 20-hour Fire Academy approved training provides participants with the knowledge and skills to assist 1<sup>st</sup> responders in a disaster.
- Outreach Events: Volunteers participate in the Sail Portsmouth event, the Portsmouth Spill Watch Drill, community events that teach the public how to build a Go kit if they are evacuated from their home or a stay-at-home kit if asked to shelter in place by local authorities.
- Annual Completion of a Technical Assistance Review (TAR) of our Point of Dispensing Plans with the Centers for Disease Control.

#### Activities and Priorities for 2015/2016:

- Ongoing improvements to the regional public health emergency annex. The Annex includes plans for point of dispensing, medical surge/alternate care site, the MACE (Multi-area Coordinating Entity), Public Information, Medical Supplies and Trailer Inventory, and a Facilities and Services Directory.
- Facilitate training and exercise for regional partners. Trainings have included Creating Emergency Kits & Plans with People with Disabilities, Triage and Assessment at First Aid Stations, Family Preparedness, Social Media training, working in a Family Assistance Center, and Continuity of Operations Training.
- Continue to develop agreements with strategic partners for services and use of facilities during public health emergencies.
- Continue to secure grant funds for the Seacoast Medical Reserve Corps/CERT to fund a part-time volunteer coordinator who recruits, trains, and manages medical and non-medical volunteers.
- Coordinate and Exercise the Raymond Point of Dispensing Plans in a Full Scale Exercise on August 6, 2016.

Dear Bert,

I have been mulling this over for awhile. I feel badly that I have been unable to attend so many meetings. I feel at this point in my life it might be better to give my seat up for someone who can be a more active participant. I have enjoyed my time with all of you and learned so much. Thank you for all you have done and will continue to do for the city.

Sincerely

Bob Cook

P.S. Thanks for the call Bert.



# MEMORANDUM

**To:** Mayor Jack Blalock  
Portsmouth City Council  
City Manager John Bohenko

**CC:** Housing Committee members (Councilor Spear, Councilor Dwyer, Commissioner Kennedy, Deputy City Manager Colbert-Puff, Mr. Rick Taintor, Ms. Jessa Berna)

**From:** Councilor Perkins

**Date:** 7/6/2016

**Re:** **Housing Committee: Mid-Point update**

The Housing Committee has now had three meetings, and I wanted to provide an update for the Council on its progress and next steps. In addition, the Committee held a public input session in which we received feedback from approximately 40 people, through a mix of in-person testimony and online submissions to a Google form, which is all available publicly. Overall, this session provided quality, concrete feedback and the Committee will incorporate this valuable information into its work.

## **Progress on objectives**

As a refresher, the Committee has three objectives, to be reached through discussion and public input. We have made progress on each of these goals as follows:

### **Objective #1: Identify three new areas in the City for either incentive zoning or village centers, with the goal of building authentic neighborhoods.**

- **Update:** Attached as Exhibit A hereto is the official map showing the areas that the Housing Committee has identified that could allow for additional housing units either through incentive zoning or village centers.
  - o These areas comprise either larger commercial areas which could be revitalized with the addition of housing units, or smaller areas which lie between different zones which are good candidates for infill development.
  - o The public input suggested additional locations to consider such commercial plazas down Route 1, neighborhoods bisected by highways, and Pease (among others).

### **Objective #2: Identify the components that make a desirable neighborhood:**

- **Some of these components are zoning: mixed-use zoning, minimal setbacks, density incentives.**
- **Other components are public infrastructure, such as civic space, sidewalks, bike racks, etc.**

- **Update:** Input from the public input session identified the following as elements that the public would like to see in both the areas identified by the Committee, and any additional housing that is built:
  - o Public input was widely varied and included suggestions for reuse of existing properties; mixed uses, ages, and incomes; integration with existing neighborhoods; widespread use of ADUs, including detached; using the CIP process to incentivize neighborhoods which are re-zoned; creating parking regulation; and microapartments.

July 6, 2016

- The Committee would also like to hear further input from developers on what components would incentivize additional market-based and workforce-covenant housing units.

**Objective #3: Make recommendations to Staff on how to implement the components identified in Objective #2 in the areas identified in Objective #1.**

- Update: It is too early in the process to make any recommendations, as the Committee is only halfway through its work. However, the Committee's recommendations could include the following:
  - Recommendation to the staff to draft one or more zoning amendments concerning the areas identified on Exhibit A. These amendment(s) would have to come before the City Council for a vote to refer such amendments to the Planning Board. Any such amendments would likely come before the Council in early 2017.
  - "Housing Guiding Principles": A potential list of 5-10 principles which would comprise Section 3.2 of the new Master Plan, in order to guide the Planning Department and the Planning Board in their zoning and project work over the next 10 years.
    - This section was referred to the Housing Committee by the Planning Board earlier this year. The Master Plan is expected to be completed in this calendar year, so the Committee would have to shape its work around that timeline.

**Schedule**

The Housing Committee proposes to meet on the following dates going forward, with a request to add one additional meeting in September:

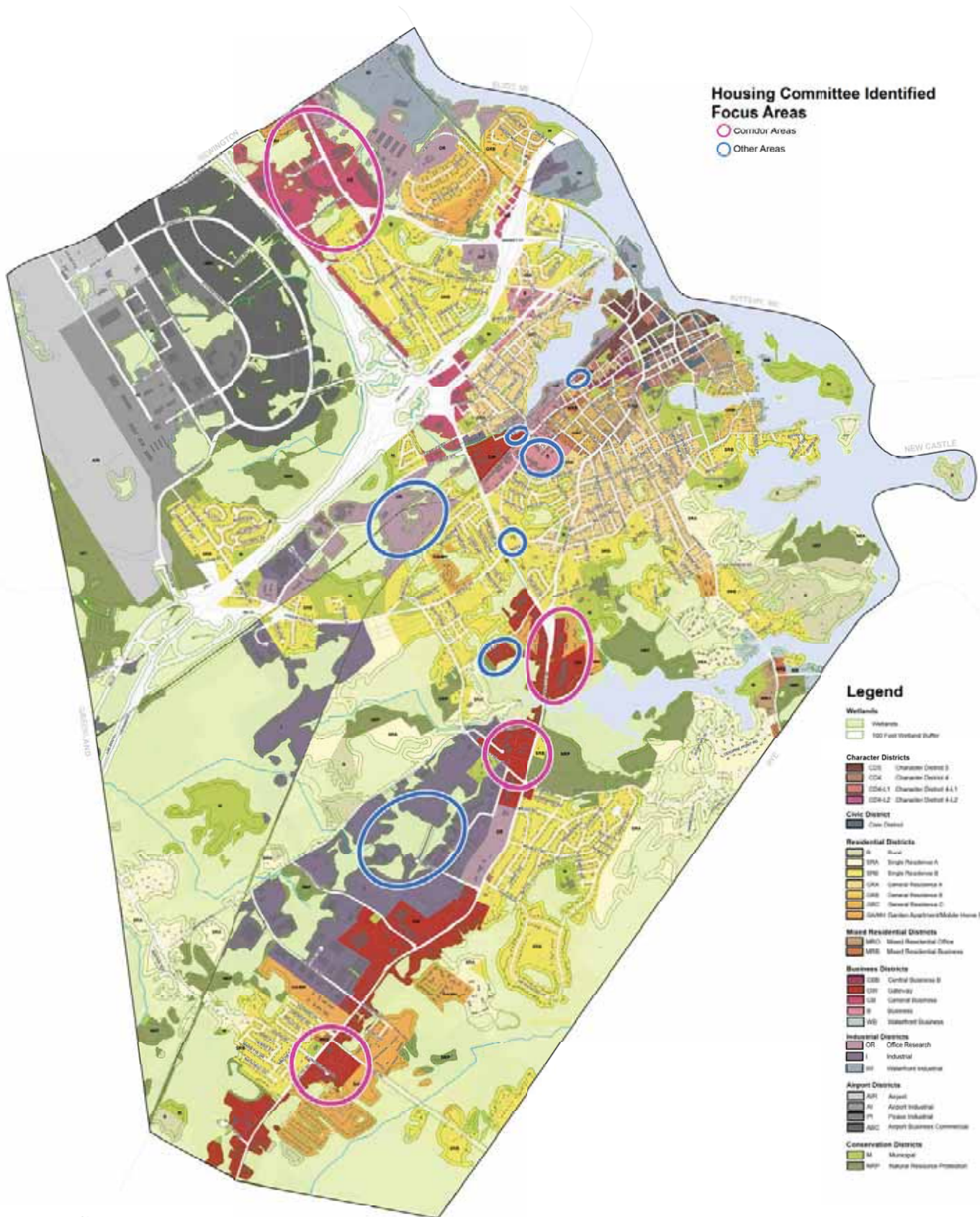
- July 15<sup>th</sup>, 8:30 am – Discussion and incorporation of public input
- August 10<sup>th</sup>, 8:30 am – Developer input session; and
- September, date and time of meeting TBD: Discuss and issue recommendations.

**Other Resources**

To ensure quality and a variety of public input, the Committee has made an effort to reach out in various formats, venues and audiences. For information on the outreach and education efforts made by the Committee and myself on behalf of the Committee to date, please see the following:

1. **Housing Committee website, including maps, data and reports:**  
<http://planportsmouth.com/housingcommittee.html>
2. **Presentations by Rick Taintor**  
<http://www.cityofportsmouth.com/agendas/2016/misc/HousingCommittee5-11-16ppt.pdf>  
<http://www.cityofportsmouth.com/agendas/2016/misc/HousingCommittee6-21-16ppt.pdf>
3. **Google Form:** <https://docs.google.com/forms/d/1KSuIMSnMvv-W8FfuT7iSO89-tjSdp-W4cm4UjpBLdKs/viewform>
4. **"Housing Huddle":** Held by Workforce Housing Coalition of the Greater Seacoast (June 1<sup>st</sup>, June 28<sup>th</sup>; next meeting July 26<sup>th</sup>) – gathering of housing and partner organizations to support workforce housing in Portsmouth through the Housing Committee (WHC, Plan NH, Chamber of Commerce, Optima Bank in attendance; PHA and PS 21 invited as well)
5. **Portsmouth Herald Op Ed on the Housing Committee**  
<http://www.seacoastonline.com/news/20160602/help-city-solve-its-workforce-housing-challenge>
6. **Portsmouth Herald article:** <http://www.seacoastonline.com/news/20160601/portsmouth-councilor-zoning-changes-key-to-affordable-housing>
7. **PechaKucha, hosted by 3S Artspace:** <https://www.youtube.com/watch?v=nMOuWy31PIc>
8. **Lookout 603, hosted by the 603 Initiative:** <https://www.facebook.com/events/1713173938963863>
9. **Seacoast Currents, hosted by WSCA:** [WSCA-SEACOAST-C\\_06-02-2016.mp3](http://www.wscanews.com/2016/02/06/seacoast-currents-06-02-2016.mp3)

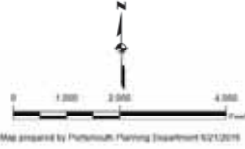
# City of Portsmouth



**Housing Committee Identified Focus Areas**  
 ○ Corridor Areas  
 ○ Other Areas

## Legend

- Wetlands**
  - Wetlands
  - 100 Foot Wetland Buffer
- Character Districts**
  - CD3 Charleston District 3
  - CD4 Charleston District 4
  - CD4-L1 Charleston District 4-L1
  - CD4-L2 Charleston District 4-L2
- Civic District**
  - Civic District
- Residential Districts**
  - R Single Residential A
  - R2 Single Residential B
  - R3A General Residential A
  - R3B General Residential B
  - R3C General Residential C
  - R4 Multi-Family Residential
  - R5 Medium Density Residential
  - R6 Single-Family Residential
  - R7 Single-Family Residential
  - R8 Single-Family Residential
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  - R99 Single-Family Residential
  - R100 Single-Family Residential
- Mixed Residential Districts**
  - M1 Mixed Residential Office
  - M2 Mixed Residential Business
- Business Districts**
  - B1 Central Business District
  - B2 Gateway Business District
  - B3 General Business District
  - B4 Business District
  - B5 Industrial Business District
- Industrial Districts**
  - I1 Office Research
  - I2 Industrial
  - I3 Warehouse Industrial
- Airport Districts**
  - A1 Airport
  - A2 Airport Industrial
  - A3 Prime Industrial
  - A4 Airport Business Commercial
- Conservation Districts**
  - C1 Municipal
  - C2 Natural Resource Protection



# City of Portsmouth

