

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, DECEMBER 3, 2018 TIME: 6:15PM

- 6:15 PM – PUBLIC DIALOGUE SESSION

- I. CALL TO ORDER

- II. ROLL CALL

- III. INVOCATION

- IV. PLEDGE OF ALLEGIANCE

- V. ACCEPTANCE OF MINUTES – SEPTEMBER 17, 2018 AND OCTOBER 1, 2018

- VI. PUBLIC DIALOGUE SUMMARY

- VII. PUBLIC HEARINGS & VOTES ON ORDINANCES AND/OR RESOLUTIONS

- A. Second reading amending Chapter 10 – Zoning Ordinance by deleting the existing Article 12 – Signs, and inserting it its place in a new Article 12 – Signs as presented in the Document Titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Article 12 – Signs” dated September 25, 2018 (*Postponed second reading at the November 17, 2018 City Council meeting*)

- B. Third and final reading on Ordinance amending Chapter 7, Article I, Section 7.102 – Parking Meter Zones, Subsection A, Downtown High Occupancy Zone

- VIII. APPROVAL OF GRANTS/DONATIONS

(There are no Grants/Donations on the Agenda this evening)

- IX. CONSENT AGENDA

(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)

(There are no Consent Agenda Items on the Agenda this evening)

- X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)

- B. Letter from Joel Greer, Summit Indie Festival requesting permission to hold the Summit Indie Festival on Saturday, May 11, 2019 at the Book and Bar with low amplification (***Sample motion – move to refer to the City Manager with power***)

- C. Letter from Attorney Ciandella regarding Request of 290 Gosling Road, LLC for Zoning Change from Waterfront Industrial (WI) to Officer Research (OR) for property located at Gosling Road, Tax Map 213, Lot 1 (***Sample motion – move to refer to the Planning Board for report back***)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Presentation and Request for First Reading of Zoning Ordinance Amendments to Article 11 Off-Street Parking (Presentation to be made by Juliet Walker, Planning Director)
2. Presentation and Request for First Reading Re: Amendments to Article 2 (Administration and Enforcement) of Zoning Ordinance by Inserting a New Section 10.240 Regulating Requirements and Criteria for Granting of a Conditional Use Permit (Presentation to be made by Juliet Walker, Planning Director)
3. Request for Public Hearing Re: Use of Bond Premiums

City Manager's Informational Items:

1. Events Listing
2. Budget Award
3. Cable Franchise Agreement

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Corey Clark reappointment to the Planning Board
 - Dexter Legg reappointment to the Planning Board
 - Elizabeth Moreau reappointment to the Planning Board
 - Thomas Watson reappointment to the Trustees of Trust Funds
2. Appointments to be Voted:
 - Chase Hagaman reappointment to the Zoning Board of Adjustment
3. Resignation of Dr. Arthur Hilson from Police Commission
4. Discussion Re: Vacancy on the Police Commission

C. ASSISTANT MAYOR LAZENBY

1. Letter to the National Institute for Occupational Safety and Health regarding PFAS Health Study for Firefighters

D. COUNCILOR PEARSON

1. *Short Term Rentals

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

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


** Indicates verbal report*

INFORMATIONAL ITEM

1. Notification that the minutes of the Planning Board meeting of October 18, 2018 are available on the City's website

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: November 29, 2018
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on December 3, 2018 City Council Agenda

- ***6:15 p.m. – Public Dialogue Session***

Public Hearings & Votes on Ordinances and/or Resolutions:

1. **Second Reading of Amendments to Chapter 10 — Zoning Ordinance, be amended by deleting the existing Article 12 – Signs, and inserting in its place a new Article 12 – Signs as presented in the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Article 12 – Signs”, dated September 25, 2018 (Postponed Second Reading at the November 19, 2018 City Council Meeting).** As you will recall, the City Council voted to pass first reading at the October 15, 2018 meeting and schedule second reading and public hearing for November 19, 2018 for the aforementioned proposed Amendments to Chapter 10 — Zoning Ordinance (see attached). After the November 19th public hearing, City Council members discussed potential revisions to the proposed amendments regarding regulations of flags and the time period for election signs. The Council voted to continue second reading to the December 3, 2018 meeting in order to have staff report back with potential revisions to the proposed amendments. Attached is a memorandum November 27, 2018 from Planning Director Juliet Walker regarding this matter.

The amendments are being proposed primarily to bring the City's sign regulations into compliance with legal requirements for content neutrality. In the case *Reed et al. v. Town of Gilbert, Arizona, et al. (2015)*, the U.S. Supreme Court ruled that regulations that categorize signs based on the type of information they convey and then apply different standards to each category are content-based regulations of speech and are not allowed

under the First Amendment protections of the United States Constitution. Additional changes include updating the regulations regarding prohibited signs and temporary signs, clarifying sign area, and other housekeeping amendments.

The Planning Board conducted a public hearing on this proposed zoning amendment at its August 16, 2018 meeting and voted to recommend approval to the City Council with amendments at the September 17, 2018 meeting.

I recommend the City Council move the following motions:

Vote to amend the proposed amendments to Article 12 of the Zoning Ordinance by revising Section 10.1222.70 pertaining to the regulation of flags and by inserting definitions for “flags” and “flagpoles” to Section 10.1290 as presented in the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Article 12 – Signs”, dated November 27, 2018.

Vote to pass second reading and schedule third reading for December 17, 2018 of the amendments to the Zoning Ordinance to delete the existing Article 12 – Signs and insert in its place a new Article 12 – Signs as presented in the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Article 12 – Signs”, dated November 27, 2018.

2. **Third and Final Reading Re: Chapter 7, Section 7.102 Parking Meter Zones, Subsection A, Downtown High Occupancy Zone.** At the of November 19, 2018 City Council meeting, the Council voted to pass second reading amending the [attached proposed Ordinance amending Chapter 7, Section 7.102 Parking Meter Zones, Subsection A, Downtown High Occupancy Zone](#), to make it effective February 15, 2019.

The average occupancy on the streets recommended for inclusion under the definition of High Occupancy presently sit at well over 100% collectively, where 80-85% is the industry standard recognized as “optimal.” Additionally, expanding the High Occupancy Zones coincides with the 2012 Parking Principles objective to ‘Price and manage more desirable on-street parking spaces to favor users who are highly motivated to use them...’ City staff have revised Chapter 7, Section 7.102 PARKING METER ZONES, Subsection A, DOWNTOWN HIGH OCCUPANCY ZONE to include the proposed streets – [see attached proposed Ordinance](#).

I recommend the City Council move to pass third and final reading of the proposed Ordinance, as amended at the November 19, 2018 City Council meeting.

City Manager’s Items Which Require Action:

1. **Presentation and Request for First Reading Re: Zoning Ordinance Amendments to Article 11 Off-Street Parking.** [Attached is a proposed Zoning Ordinance amending Chapter 10 – Zoning Ordinance, Article 11 – Site Development Standards, Section 10.1110](#)

– Off-Street Parking. Planning Director Juliet Walker will make a presentation at the December 3, 2018 meeting as requested by the City Council.

As explained to the City Council at the November 19th meeting, the amendments are being proposed to clarify the off-street parking requirements in the zoning ordinance. Specifically, additional criteria is being proposed for the granting of a conditional use permit by the Planning Board for providing less than the minimum number of off-street parking spaces required or for exceeding the maximum of off-street parking spaces allowed. Three housekeeping amendments are also proposed.

The Planning Board conducted a public hearing on this proposed zoning amendment at its October 18, 2018 meeting and voted to recommend approval to the City Council with amendments at that time.

I recommend the City Council move to schedule a first reading for the January 7, 2019 City Council meeting to amend the Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking as presented in the document titled “Proposed Off-Street Parking Amendments” dated October 18, 2018.

2. **Presentation and Request for First Reading Re: Amendments to Article 2 (Administration and Enforcement) of the Zoning Ordinance by Inserting a New Section 10.240 Regulating Requirements and Criteria for Granting of a Conditional Use Permit.** The *attached proposed amendment* would insert a new section into the Zoning Ordinance defining approval criteria and conditions of approval for the granting of non-wetland conditional use permits by the Planning Board. NH RSA 674:21 states that communities that use conditional use permits shall adopt standards to guide the granting of the conditional use permits. Presently, a number of land uses as well as flexible zoning provisions in the City’s Zoning Ordinance require the granting of a conditional use permit by the Planning Board, but the Ordinance lacks consistency in terms of the standards of approval for granting of these. Adding this section to the Ordinance would be consistent with state laws and would also assist with administration of these permits by the Planning Board and City staff.

The Planning Board conducted public hearings on this proposed zoning amendment at its October 18, 2018 and November 19, 2018 meetings and voted to recommend approval to the City Council as revised.

A presentation on this item will be made by the Planning Director at the December 3, 2018 City Council meeting.

Vote to schedule a first reading for the January 7, 2018 City Council meeting to amend the Portsmouth Zoning Ordinance, Article 2 – Administration and Enforcement, by inserting a new Section 10.240 as presented on the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Section 10.240 – Conditional Use Permits”, dated November 19, 2018.

3. **Request to Establish Public Hearing Re: Use of Bond Premium.** The City of Portsmouth currently holds the highest bond rating available from Standard and Poor’s rating agency (AAA).

The City issued bonds in June 2017 and June 2018; \$5,650,000 and \$19,650,000 respectively for a total of \$25.3 million. The proceeds of the bonds financed certain General Fund, Water and Sewer capital projects. As a result of the City’s “AAA” bond rating and market conditions at the time of the bond issue, the City received \$2,374,081.11 in bond premiums in addition to the \$25.3 million in principal.

A premium is the amount by which the purchase price of a bond is greater than its par value. Under certain market conditions, in order to enhance the marketability of the bonds, bond underwriters will structure their bids with bond premiums. In this case, the City of Portsmouth received True Interest Cost (TIC) rates of 2.24% (2017) and 2.69% (2018) and total bond premiums of \$2,374,081.11. Under Federal Tax Law and State Statutes, the City is restricted on how to appropriate and use these funds.

RSA 33:3-states that any premium received shall not be used to increase the amount to be spent for the purpose for which the loan was originally incurred. Therefore, the City cannot use this money to increase the costs of the projects set forth for the \$31.773 Million bond issuance. However, the RSA states “*a city by a vote of 2/3 of the City Council may authorize the expenditure for the premiums received for any purpose or purposes for which bonds or serial notes may be issued for an equal or longer period of time.*”

The bond premium of \$2,374,081.11 has been allocated respectively as follows (see attached proposed Resolutions):

- General Fund - \$1,286,114.28;
- Water Fund - \$382,689.43;
- Sewer Fund - \$705,277.40

In accordance with State Statute, I recommend that the City Council authorize appropriations of \$2,374,081.11 from bond premiums for capital projects as follows:

General Fund Project:

- Municipal Complex Improvements - \$1,286,114.28

Water Fund Project:

- Annual Water Line Replacement - \$382,689.43

Sewer Fund Project:

- Annual Sewer Line Replacement - \$705,277.40

As these projects have a useful life that exceeds the original bond issue from which the premiums were received, and would be eligible for bonding under the Municipal Finance Act, it is in the best interest of the City to utilize the premium of \$2,374,081.11 to fund costs associated with General Fund, Water Fund and Sewer Fund projects.

I recommend the City Council schedule a public hearing for the December 17, 2018 City Council meeting.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the updated Events Listing showing events from this date forward through 2018](#). In addition, this can be found on the City's website.
2. **Press Release Re: Budget Award.** [Attached is a news release](#) announcing the Government Finance Officers Association of the United States and Canada (GFOA) has awarded the City the Distinguished Budget Presentation Award for the Fiscal Year 2019 budget document.
3. **Cable Franchise Agreement.** At the City Council meeting of October 15, 2018, the City Council agreed to extend the City's current Cable Television Franchise Agreement with Comcast from October 31, 2018 to December 31, 2018 to allow the Cable Commission additional time to continue its negotiations with Comcast for a new Franchise Agreement. The Cable Commission met most recently on Tuesday, November 27, 2018, to review the latest response from Comcast on a proposed Cable Television Renewal Franchise agreement. The Cable Commission is not yet satisfied with Comcast's response. Consequently, at the City Council meeting of December 17, 2018, I will be prepared to provide an update on the franchise renewal negotiations and will request an additional two-month extension of the existing agreement to February 28, 2019 to allow Comcast to continue to lawfully serve Portsmouth customers while the parties work to close the remaining gap.

Comcast's internal legal review process is not always able to respond as quickly as the City would prefer, however, the Commission sees no detriment to Portsmouth customers in this slight delay in completing negotiations in that the City does not have the authority to regulate rates or programming.