

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, DECEMBER 17, 2018 TIME: 6:15PM

- 6:15PM – NON-PUBLIC SESSION RE: RSA 91-A:3 II (e) – LITIGATION REGARDING JAMES G. BOYLE AS TRUSTEE, ET ALS

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

## PRESENTATIONS

- 1. Holiday Music Performed by the Portsmouth High School Band
- 2. McIntyre Project Re: Financial Plan

- V. ACCEPTANCE OF MINUTES – OCTOBER 15, 2018; NOVEMBER 19, 2018 AND DECEMBER 3, 2018

- VI. PUBLIC COMMENT SESSION

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

- A. Public Hearing – Bond Premium Resolution – Municipal Complex Improvements

SUPPLEMENTAL APPROPRIATION FOR A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF ONE MILLION TWO HUNDRED EIGHT-SIX THOUSAND ONE HUNDRED FOURTEEN DOLLARS AND TWENTY-EIGHT CENTS (\$1,286,114.28) TO BE APPLIED TO MUNICIPAL COMPLEX IMPROVEMENTS

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

*(Sample motion – move to adopt the Resolution, as presented)*

- B. Public Hearing – Bond Premium Resolution – Sewer Line Replacement

SUPPLEMENTAL APPROPRIATION FOR A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF SEVEN HUNDRED FIVE THOUSAND TWO HUNDRED SEVENTY-SEVEN DOLLARS AND FORTY CENTS (\$705,277.40) TO BE APPLIED TO ANNUAL SEWER LINE REPLACEMENT

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

*(Sample motion – move to adopt the Resolution, as presented)*

### C. Public Hearing – Bond Premium Resolution – Water Line Replacement

SUPPLEMENTAL APPROPRIATION FOR A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF THREE HUNDRED EIGHTY-TWO THOUSAND SIX HUNDRED EIGHTY-NINE DOLLARS AND FORTY THREE CENTS (\$382,689.43) TO BE APPLIED TO ANNUAL WATER LINE REPLACEMENT

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

*(Sample motion – move to adopt the Resolution, as presented)*

- D. Third and final reading amending Chapter 10 – Zoning Ordinance 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 November 27, 2018 ***(Sample motion – move to table indefinitely)***

## VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant – Portsmouth Police Department:
- Violence Against Women Act Grant - \$30,000.00
- (Sample motion – move to accept and approve the grant to the Portsmouth Police Department, as presented)***

## IX. CONSENT AGENDA

***(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)***

- A. Letter from Jeanine Sylvester, Runner’s Alley requesting permission to hold the 22<sup>nd</sup> Annual Runner’s Alley/Cisco Brewers Memorial 5k on Sunday, May 26, 2019 at 11:00 a.m. ***(Anticipation action – move to refer to the City Manager with power)***
- B. Request for License to Install Projecting Sign for Regina Piantedosi owner of Regina Piantedosi for property located at 56 State 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 the License Agreement for this request)***

### Planning Director’s Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***

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

C. Request for License to Install Projecting Sign for Tom Holbrook owner of Riverrun Bookstore, Inc. for property located at 32 Daniel 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 the License Agreement for this request***)

**Planning Director's Stipulations**

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

D. Letter from Kaity Stanton, Big Brothers Big Sisters of New Hampshire requesting permission to close Pleasant Street on Saturday, June 15, 2019 from 1:00 p.m. to 4:00 p.m. for the annual Stiletto Sprint (*Sunday, June 16, 2019 Rain Date*) (***Anticipated action – move to refer to the City Manager with power***)

E. Letter from Jennie Halstead, My Breast Cancer Support requesting permission to hold the 11<sup>th</sup> Annual Celebrate Pink 5k Walk & Run on Sunday, September 15, 2019 (***Anticipated action – move to refer to the City Manager with power***)

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

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Coco Barton & Gabby Rothstein requesting that the City provide reusable bags to each household with funding from the Public Works Department (***Sample motion – move to refer to the City Manager for report back***)

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

**A. CITY MANAGER**

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

1. Request to Establish Work Sessions Re: CIP & Budget

2. Comcast Agreement
3. Acceptance of Construction Project Re: Middle Street/Lafayette Road Bike Route Project

**City Manager's Informational Items:**

1. Events Listing
2. Breakfast Hill Area Waterline Study
3. Lead Water Quality Sampling Update
4. Short-Term Rentals
5. City Hall Hours Re: Christmas and New Year's Holidays

**B. MAYOR BLALOCK**

1. Appointments to be Considered:
  - Cyrus Beer appointment to the Historic District Commission as Regular member
  - Margot Doering appointment to the Historic District Commission as an Alternate
  - Polly Henkel appointment to the Planning Board as an Alternate
  - Colby Gamester reappointment to the Planning Board
2. \*Appointments to be Voted:
  - Corey Clark reappointment to the Planning Board as an Alternate
  - Dexter Legg reappointment to the Planning Board
  - Elizabeth Moreau reappointment to the Planning Board
  - Thomas Watson reappointment to the Trustees of Trust Funds
3. Resignation of Rick Shea from the Historic District Commission
4. \*Ethic Committee Drawing by Lot
5. \*Committee to Interview Police Commission Candidates
  - Mayor Jack Blalock, Chairman
  - Councilor Doug Roberts
  - Councilor Nancy Pearson
  - Tom Ferrini
  - John Lyons

**C. COUNCILORS PEARSON & PERKINS**

1. Worth Lot Demonstration Project (***Sample motion – move to request the City Manager pursue a partnership for a demonstration project with The Music Hall for an event activating the Worth Lot in 2019 in accordance with the vision in the Vaughan Worth-Bridge Strategic Revitalization Committee report***)

**D. COUNCILOR DENTON**

1. \*Keno Petition

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. ADJOURNMENT**

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

*\* Indicates verbal report*

## PUBLIC DIALOGUE

MUNICIPAL COMPLEX  
DATE: MONDAY, OCTOBER 15, 2018

PORTSMOUTH, NH  
TIME: 6:15PM

### Public Dialogue Session

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Denton, Perkins and Becksted

ABSENT: Councilor Dwyer

The members of the public were asked to introduce themselves and begin discussing their concerns and/or questions related to their individual topics.

Lee Roberts spoke regarding the Coakley Landfill and the right-to-know law. She spoke to the pediatric cancer cluster and the need for this to be addressed immediately.

City Manager Bohenko announced that there is a meeting tomorrow of the Coakley Landfill Group (CLG) at 1:00 p.m. and it will be televised. He will have City Attorney Sullivan speak to the stay and why it was asked of the court.

City Attorney Sullivan announced that the judge granted the stay until the filing deadline court rules or until Supreme Court rules.

City Manager Bohenko spoke regarding the adoption of procedures for the CLG. He said they will try to meet on a monthly basis. He stated he is not in favor of an appeal but we have dealt with people on the CLG for years and they are coming here tomorrow to make their case. He also indicated information has been provided on a thumb drive last week.

Mayor Blalock said he is opposed to the CLG doing an appeal.

City Attorney Sullivan said the CLG Executive Committee consists of three bodies. He stated a meeting can only occur with advance notice. He indicated he could not call or speak to any members of the CLG since the "stay" and conference calls came to an end.

Robert Landman said he has used a conference call for town office meetings.

David Meuse said he is interested in where we go from here. He said the Department of Environmental Services has strict standards and we need meetings and materials open to the public.

Erik Anderson spoke to Prescott Park request for holding their fees in abeyance until next year. He said he does not want the City manipulated regarding the stage at Prescott Park.

City Manager Bohenko said he will report back on this matter this evening during the Council meeting. He spoke to services for a preliminary design and working through a construction schedule for major projects that need to be done. He said it would be a \$10 million dollar project and the City Council would have final authority on what to do with the stage.

City Attorney Sullivan said benchmarks were put together by the City Committee. He said this is the first year the City had control over the park and that Prescott Park is a Department of the City.

Eric Weinrieb spoke on the Noise Overlay District and that he lives on a busy street which made him reach out to Noise Specialist, to do the work it would be \$20,000.00. A modified study would be \$9,000.00 to meet the requirements of the Ordinance to go for a conditional use permit.

City Manager Bohenko said the City Council is working to get Type 2 funding for Noise Barriers. He said the City needs to put an ordinance in place and Planning Director Walker has worked hard on this matter. He stated the City Council will be voting on third reading and having the ordinance implemented on January 1, 2019. City Manager Bohenko said we are working with the Department of Transportation on complying with trying to get Type 2 funding for the barriers. He recommended the City Council make an amendment this evening to make the ordinance effective January 1, 2019.

Mr. Weinrieb said he feels the way the ordinance is worded there needs to be adjustments. He said the residents that will be effected by this are not aware of this.

Paige Trace asked that Councilor Denton think hard about his proposal for a wind turbine at City Hall. She spoke to illnesses that have been caused by the turbines in close proximity of individuals. She does not support a turbine being installed at the Jones Avenue land fill. She said it is important to look at things that have environmental effects.

Councilor Denton spoke to solar arrays and the metering. He discussed the size of the solar arrays and the laws surrounding them.

James Splaine said if we started discussion on remediation on the Coakley Landfill 27 years ago, we would not be where we are currently. He said the City Council should take a formal opinion to not support an appeal.

Attorney Mark Gearreald, Town of Hampton Attorney, said the Town of Hampton does not want the City to file an appeal on the Coakley Landfill. He said the CLG should be

more open than it has over the last 27 years because the public has a right to know.

Renny Cushing, Town of Hampton State Representative, said the filing made by the CLG is to consider whether to take an appeal.

City Manager Bohenko said under the City Charter he would decide on the appeal.

Steven Erickson spoke on the Demolition of former St. Patrick's School and said it is a landmark on the street and in the neighborhood and should not be demolished. He said we need to preserve the architecture of this historic building. He suggested the Council write a letter to the Bishop and have a conversation with the church to bring stakeholders together to meet.

Councilor Perkins said she reached out to have a meeting with the church.

Mindy Messmer asked that we move past the CLG and come to a solution on the Coakley Landfill. She stated that residents living near the landfill now need to use bottled water. She said sampling needs to be done and the EPA has stated that groundwater flows into areas around the site. Ms. Messmer also spoke to the cancer cluster in the area.

Robert Landman said Coakley Landfill is a big problem and you need to pump and treat at the site.

At 7:10 p.m., Mayor Blalock closed the Public Dialogue Session.

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## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, OCTOBER 15, 2018

PORTSMOUTH, NH  
TIME: 6:15 PM

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

Mayor Blalock called the meeting to order at 7:20 p.m.

### **II. ROLL CALL**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer (Via Conference Call), Denton, Perkins, Raynolds and Becksted

### **III. INVOCATION**

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

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

Mayor Blalock led in the Pledge of Allegiance to the Flag.

#### **PRESENTATIONS**

1. Pease Development Authority – Executive Director David Mullen of the PDA

Mr. Mullen provided a presentation that reviewed demographic statistics at the Tradeport. He addressed the growth at the Tradeport and spoke to the expansion of Lonza, which is increasing by 35%. He stated back in 1973 it was said that Pease impact would be \$100 million dollars, he reported that it is actually \$590 million dollars.

Councilor Becksted thanked Mr. Mullen for the presentation and asked if there is a layout of Pease. Mr. Mullen said he could provide that to City Manager Bohenko.

Councilor Reynolds spoke to the 35% increase projected for Lonza and asked if we can expect the \$6.6 million dollars to increase proportionally. Mr. Mullen said the figure is based on assessment and would go to \$9 million.

Councilor Becksted asked if he sees a possibility of a different exit on the Tradeport. Mr. Mullen reported there are currently three exits and that would be a decision of the State. He stated there would possibly be intersection improvements made, which the roads are maintained by the City.

Councilor Roberts said it is debatable to whether you can do the design of the road system. He spoke to people that do not drive because of the traffic and asked how this would be addressed from an environmental standpoint. Mr. Mullen said there are multiple bike paths and people bike in from distances. He said the system is in place and spoke to traffic counts. Councilor Roberts spoke to the 3,000 new jobs coming to the Tradeport.

Councilor Denton spoke to a crosswalk being requested by the Sherburne neighborhood. Mr. Mullen said a crosswalk would need a light and the intersection would require change lanes both exits and signals. He said it is on the books to do and will cost \$3.5 million.

2. Sister City and Citizen Diplomacy Blue ribbon Committee – Karina Quintans, Chair & Stephanie Seacord

Ms. Quintans presented the final recommendations of the Blue Ribbon Committee as outlined in the Final Report to the Council dated October 15, 2018 and spoke to the framework of the Committee proceeding into the future.



Ms. Seacord said the results of the Committee is looking at things in new ways. She outlined and provided an overview of our Sister Cities:

- Nichinan, Japan
- Sverodinsk, Russia
- Kitase, Ghana
- Carrickfergus, Ireland
- Portsmouth, England
- Parnu, Estonia
- Szolnok, Hungary
- Agadir, Morocco

She spoke to comparable Sister Cities Research that was conducted. Ms. Seacord said the other countries Portsmouth should consider are:

- Netherlands
- Canada
- Australia
- Vietnam
- Zimbabwe
- Kenya
- Portugal
- Greece
- Italy
- Pakistan
- South Africa
- Spain
- Chile
- France

Ms. Quintans spoke to leaving our dormant relationships in place. She said residents are interested in keeping the Sister Cities but we need to establish a formal application process. She recommended instituting a new committee with members serving two – three year terms.

Mayor Blalock thanked Ms. Quintans and Ms. Seacord for the report and said that the Sister Cities has enriched our community.

City Manager Bohenko said he will speak with Economic Development Manager Carmer on what action items to bring back to the City Council.

## **V. ACCEPTANCE OF MINUTES**

There are no minutes on for acceptance this evening.

## **VI. PUBLIC DIALOGUE SESSION SUMMARY**

Assistant Mayor Lazenby gave a summary of speakers and topics discussed at the Public Dialogue Session.

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

### **A. Public Hearing – Ordinance amending Chapter 7 – Shared Active Transportation**

ORDINANCE AMENDING CHAPTER 7, ARTICLE XIX, SECTION 7.1901  
– 7.1905 SHARED ACTIVE TRANSPORTATION

- **PRESENTATION**

Mayor Blalock read the legal notice.

City Attorney Sullivan said that Shared Active Transportation could become an issue and spoke to how the system works with an app on your phone. He indicated that people chose this mode of transportation and then leave these scooters all over the City streets or sidewalks. He reported that City Manager Bohenko had a staff level committee meet to be proactive on this matter. City Attorney Sullivan said the Committee reviewed the problem that is occurring in other States and decided there must be regulations, which is why an ordinance was created. He spoke to the regulations as outlined in the ordinance. He said these devices would be licensed as an obstruction and there would be bike corrals where the scooters would be placed. He also stated the fee would be established through the budget process.

- **CITY COUNCIL QUESTIONS**

Councilor Pearson asked what is the plan to communicate these requirements to the users. City Manager Bohenko said we would need to educate individuals and that any unattended scooter left for more than 2 hours would be picked up and brought to Public Works. Councilor Pearson would like something inclusive and that would discourage them from leaving these scooters unattended.

Councilor Raynolds spoke to these scooters being used in Malden, MA. He said as a City we should embrace these scooters and the mode of transportation.

Mayor Blalock open the Public Hearing and called for speakers.

- **PUBLIC HEARING SPEAKERS**

Harold Whitehouse said speaking as a Parking and Traffic & Safety Committee member he is happy that this matter has been addressed early. He is concerned that an accident could occur and said that the ordinance may be too simple.

With no further speakers, Mayor Blalock declared the public hearing closed.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

**Councilor Reynolds moved to pass second reading and hold third and final reading at the November 19, 2018 City Council meeting, as amended. Seconded by Councilor Pearson.**

**On a unanimous roll call vote 9-0, motion passed.**

**B. Public Hearing – Ordinance Amending Chapter 14 – Demolition Ordinance**

**ORDINANCE AMENDING CHAPTER 14, ARTICLE II, SECTION 14.2 –  
DEMOLITION ORDINANCE**

- **PRESENTATION**

Principal Planner Cracknell said the ordinance and amendments are largely housekeeping items. He said in 2015 when the ordinance was put together it was because of concerns by the public. He spoke to the review of applications by the Demolition Committee. He reported that very small projects could come before the Demolition Committee but we are trying to limit the projects that would come to the Committee and be very clear that the ordinance promotes dialogue.

- **CITY COUNCIL QUESTIONS**

Councilor Denton asked if under the existing ordinance or proposed ordinance would St. Patrick's School be part of it. Principal Planner Cracknell said yes, it would.

Councilor Dwyer said she would like amendments made to how the ordinance would affect out buildings and narrow the requirements.

Councilor Perkins said we want to preserve the building to make the City better. She said the ordinance would deal with deficient buildings. Principal Planner Cracknell said if proposed to the Demolition Committee it would review and determine whether the building is significant.

Councilor Becksted said he experienced the process a year ago. He also spoke to the costs to his customer. Principal Planner Cracknell said that this will not apply to small changes.

- **PUBLIC HEARING SPEAKERS**

Mayor Blalock opened the public hearing and called for speakers and with no speakers, Mayor Blalock declared the public hearing closed.

**Councilor Becksted moved to pass second reading and schedule third and final reading at the November 19, 2018 City Council meeting, as presented. Seconded by Assistant Mayor Lazenby.**

**Councilor Dwyer moved to amend Section 14.203: Applicability (3) to include small out buildings. Seconded by Councilor Roberts.**

Councilor Dwyer said out buildings should be to the discretion of code officials.

Councilor Becksted said out buildings should be defined by square footage. Principal Planner Cracknell said small out buildings is manageable and code officials will be conservative and use judgment.

**On a unanimous roll call vote 9-0, motion passed as amended.**

- C. First reading of Ordinance amending Chapter 10 – Zoning Ordinance by deleting the existing Article 12 – Signs, and inserting in its place in a new Article 12

**Assistant Mayor Lazenby moved to pass and schedule a second reading and public hearing of the proposed Ordinance at the November 19, 2018 City Council meeting to amend the Zoning Ordinance 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. Seconded by Councilor Roberts.**

**On a unanimous roll call vote 9-0, motion passed.**

- D. Third and final reading of Ordinance amending Chapter 10 – Zoning Ordinance – Creation of a Highway Noise Overlay District

**Councilor Perkins moved to pass third and final reading of zoning amendments related to the creation of a Highway Noise Overlay District. Seconded by Assistant Mayor Lazenby.**

**Councilor Perkins moved to suspend the rules in order to amend second reading by delaying the effective date of the ordinance to January 1, 2019. Seconded by Assistant Mayor Lazenby.**

**On a roll call vote 8-1, motion to amend passed. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Mayor Blalock voted in favor. Councilor Becksted voted opposed.**

Councilor Becksted said that this is affecting residents and we are asking for more and more. He said we should not wait until January 1, 2019 and said he would support the ordinance itself.

**On a unanimous roll 9-0, voted to pass main motion to pass third and final reading, as amended.**

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

- A. Acceptance of Department of Homeland Security Prospective Grant Award to the Portsmouth Police Department - \$69,638.00 (*Tabled from the October 1, 2018 City Council meeting*)

**Assistant Mayor Lazenby moved to remove the item from the table. Seconded by Councilor Perkins.**

**On a unanimous roll call vote 9-0, motion passed.**

Police Chief Merner explained the grant and security requirements. He said that the drone would be used by the department and there would be two to three officers trained on the usage of the device.

Councilor Reynolds asked if there will be a record of every use of the drone.

Officer Noury said the FAA and the Police Department would log the activities.

Assistant Mayor Lazenby asked if there would be more costs for maintaining the drone.

Chief Merner said part of the grant is maintaining the device.

**Councilor Roberts moved to accept and approve the prospective grant award to the Portsmouth Police Department, as presented. Seconded by Assistant Mayor Lazenby.**

**On a unanimous roll call vote 9-0, motion passed.**

**At 9:10 p.m., Mayor Blalock declared a brief recess. At 9:20 p.m., Mayor Blalock called the meeting back to order.**

#### **IX. CONSENT AGENDA**

- A. Request for License to Install Projecting Sign for Sherif Farag owner of Elephantine Bakery for property located at 10 Commercial Alley Unit 2 (*Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request*)

**Planning Director's Stipulations**

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

**Councilor Reynolds moved to adopt the Consent Agenda. Seconded by Assistant Mayor Lazenby.**

**On a unanimous roll call vote 9-0, motion passed.**

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

- A. Email Correspondence
- B. Letter from Caroline McCarley, Mayor of Rochester regarding Judge Delker's Right to Know Order on the Coakley Landfill Group
- C. Letter from Patricia Hersey regarding proposed relocation of the Portsmouth Post Office
- D. Letter from Jim Splaine regarding Coakley Landfill & Coakley Landfill Group
- E. Letter from Valerie Rochon, President of The Chamber Collaborative of Greater Portsmouth regarding Neighborhood Parking Plan

**Councilor Reynolds moved to accept and place the letters on file. Seconded by Councilor Roberts.**

**On a unanimous roll call 9-0 vote, motion passed.**

Assistant Mayor Lazenby said the Coakley Landfill will need to come back with a long term approach at an upcoming City Council meeting.

City Manager Bohenko said there was a change in the parts per trillion between MA and NH and MA and ME. He stated not a lot changed except the amount of the limit. He stated we were off by .06.

Assistant Mayor Lazenby said he would like to know when we would see results. City Manager Bohenko said we are working on the overall larger project, the similar project we would report back in a similar point of time.

Mayor Blalock said we are looking to see what it would cost to bring water to the home that has been affected.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

**Mayor Blalock moved that the City Council reaffirm and demand that the Coakley Landfill Group not appeal the decision of Judge Delker on the right-to-know and public entity. Seconded by Councilor Roberts.**

Councilor Perkins said she does not want to tie the hands of the City Manager. She understands why we would not appeal but she would like to allow staff to have more leeway.

City Attorney Sullivan suggested that the word demand should be replaced with strongly encourage the Coakley Landfill Group.

Mayor Blalock withdrew his motion to rephrase and take the advice of City Attorney Sullivan on the language. Councilor Roberts agreed as the second to the motion.

**Mayor Blalock moved to reaffirm the City Council's intention to strongly encourage that the Coakley Landfill Group does not appeal the decision of Judge Delker on the right-to-know and public entity. Seconded by Councilor Roberts.**

**On a unanimous roll call vote 9-0, motion passed.**

Councilor Roberts asked if there was any notice that the levels would be reduced. City Manager Bohenko said he was not aware, maybe there was an administrative rule change and he would let Councilor Roberts know.

Councilor Perkins would like a general understanding of capital expenditures over a 10 year period in a report in the next 6 months.

City Manager Bohenko said we want to look at money from the State and that it would be premature to put that in the plan. He said that when it comes back we would need to work with Rye Water District.

Mayor Blalock said on the larger expansion of water he would like to speak with the Town of Greenland to energize our efforts that the money is spent on what it is meant for.

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

### **A. CITY MANAGER**

#### **1. Connect Community Church Six Month Lease Renewal**

City Manager Bohenko said the renewal of the lease is for a term from November 1, 2018 through April 30, 2019. He said the six month renewal is because the church is marketing the property to explore development opportunities.

**Councilor Roberts moved to approve the renewal of the Connect Community Church Agreement, as presented, and further, authorize the City Manager to execute the Agreement. Seconded by Assistant Mayor Lazenby.**

Councilor Reynolds asked if the City should consider trying to acquire the property. City Manager said not at the amount of money it would cost.

**On a unanimous roll call vote 9-0, motion passed.**

#### **2. Extension of Comcast Franchise Agreement**

City Manager Bohenko said this is a short term extension and indicated the Cable Commission meets on a regular basis and a draft contract has been reached. He stated next month the contract will be brought to the City Council for approval.

**Councilor Roberts moved to authorize the City Manager to enter into an extension of the current franchise agreement with Comcast for cable television services to December 31, 2018. Seconded by Councilor Perkins.**

Councilor Roberts asked what items are being negotiated. Deputy City Attorney Woodland reported location of office, removal of poles, the community access and 5% franchise fee. City Manager Bohenko stated we have limited authority on what can be negotiated.

**On a unanimous roll call 9-0 vote, motion passed.**

#### **3. City Council Letter to the Postal Service Re: Potential Relocation**

**Assistant Mayor Lazenby moved to submit the written testimony in support of keeping the Post Office at the McIntyre site, and to work with the City to implement appropriate interim measures as the site is redeveloped. Seconded by Councilor Reynolds.**



Councilor Becksted said the Post Office never said anything about efficient parking and he would like that removed from the letter.

Deputy City Manager Colbert Puff said the amendment is fine. She said through discussions with them parking is a concern to them.

**Councilor Pearson moved to amend the third paragraph second sentence of the letter by striking the words “At that meeting you cited” and replace with “throughout the process you cited” and pass the main motion, as amended. Seconded by Councilor Perkins.**

**On a unanimous roll call vote 9-0, motion passed, as amended.**

*City Manager’s Informational Items*

3. Letter Request from Prescott Park Arts Festival

City Manager Bohenko spoke to Prescott Parks Arts Festival request to waive the annual payment due the City under the agreement entered into earlier this year. He stated the amount is \$20,000.00 for FY19 (July 1, 2018 through June 30, 2019). City Manager Bohenko indicated to the City Council he would defer this payment to the end of the 2019 season and would not recommend charging interest.

Mayor Blalock said he is a strong supporter of Prescott Park and he would be opposed to adding to the financial burden of Prescott Park. He said he wants to see Prescott Park continue and that this is not a forgiveness of the fees but a deferral.

Councilor Pearson said she wants the City Manager to use his discretion next year if this reoccurs.

Councilor Reynolds said given all the work and planning for Prescott Park Arts Festival (PPAF) it is something valued. He said he trusts City Manager Bohenko and further supports the City Council handling this discretionally.

Councilor Becksted said other organizations have not asked for forgiveness of fees.

City Manager Bohenko said there is a provision in the contract that this would not be a breach of contract. He said that the idea of deferral will not be offered again.

Assistant Mayor Lazenby said he supports the City Manager’s recommendation of deferral of the funds this time.

**B. MAYOR BLALOCK**

1. Appointment to be Voted:
  - Katelyn Kowka reappointment to the Economic Development Commission

**Assistant Mayor Lazenby moved to reappoint Katelyn Kwoka to the Economic Development Commission until October 1, 2022. Seconded by Councilor Pearson.**

Councilor Perkins stated she would be recusing from voting on this matter.

**On a roll call vote 7-1, motion passed. Councilor Becksted voted opposed and Councilor Perkins recused from voting on this matter.**

**C. COUNCILOR ROBERTS**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the October 4, 2018 meeting

Councilor Roberts provided a brief report on the action sheet and minutes. He addressed the bike lanes on Middle Street. He also addressed the Market Street Gateway which was discussed. He stated no public discussion had taken place on the two lanes for the Gateway and staff was reluctant to make a change. He also indicated that the Parking Program maybe on the next Parking and Traffic Safety Committee meeting.

**Councilor Roberts moved to accept and approve the action sheet and minutes of the October 4, 2018 Parking and Traffic Safety Committee meeting. Seconded by Councilor Raynolds.**

Councilor Becksted said there are 7 COAST stops on the bike lane path and they stop in the middle of the road and the bollards do not allow the bus to pull over. Councilor Roberts suggested Councilor Becksted email his concerns to Planning Director Walker or Parking Engineer Eby.

**On a unanimous roll call vote 9-0, motion passed.**

**D. COUNCILOR DENTON**

1. Final Report on Sagamore Creek

Councilor Denton said he would like to know if the City Council would support a new grant from the PUC. He spoke to solar projects and the electricity produced. He requested a report back on whether the City is interested in pursuing a new renewable energy project. He spoke to installing solar arrays at Jones Avenue or Sagamore Creek. He also spoke to the possibility of placing a small wind turbine on top of City Hall.

City Manager Bohenko said a report back would be provided.

Mayor Blalock said solar arrays should not be put on the Jones Avenue cap because he is concerned it could pierce the cap.

Councilor Reynolds said he agrees with Councilor Denton and would like to look at solar arrays. He said there are different designs for turbines.

Councilor Becksted said the turbine on Ricci Construction do not produce and he would not want to explore this at the taxpayers' expense.

Councilor Reynolds said there are other financial models which the City or individuals could take advantage of energy.

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**LEGISLATIVE SUBCOMMITTEE**

- A. NHMA Policy Conference and Final Legislative Policy Recommendations
- B. NHMA 2019-2020 Legislative Policy Positions – Action Policies

Councilor Dwyer reviewed the report on the NHMA Policy Conference recommendation, policy positions and action policies with the Council.

Mayor Blalock thanked Councilor Dwyer's work on these matters.

Assistant Mayor Lazenby said he would like to ask the City Council if we are due for a discussion on the McIntyre project and review before the year end.

Mayor Blalock said it would be a Non Public Session and a night that a City Council meeting will not be taking place.

City Manager Bohenko said he and Mayor Blalock will work on scheduling a Non Public Session. Mayor Blalock said he does not want to have the discussion on a City Council meeting evening.

**XIII. ADJOURNMENT**

**At 10:20 p.m., Assistant Mayor Lazenby moved to adjourn. Seconded by Councilor Perkins.**

**On a unanimous roll call vote 9-0, motion passed.**

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, NOVEMBER 19, 2018

PORTSMOUTH, NH  
TIME: 6:15 PM

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

Mayor Blalock called the meeting to order at 7:10 p.m.

### **II. ROLL CALL**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Becksted

**Assistant Mayor Lazenby moved to seal the minutes of the Non-Public Session. Seconded by Councilor Becksted.**

**On a unanimous roll call 9-0, voted to seal the minutes of the Non-Public Session.**

Mayor Blalock closed the Non Public Session at 7:15 p.m.

### **III. INVOCATION**

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

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

Mayor Blalock led in the Pledge of Allegiance to the Flag.

## **PRESENTATION**

### **1. McIntyre Property**

Deputy City Manager Colbert Puff said all designs remain conceptual and Redgate will be speaking on the preservation and use plan. She also advised the Council at the December 17, 2018 City Council meeting we will have a Presentation on the Redgate/Kane financial plan, with a public hearing on the project January 7, 2019 and approval of the HSP application development agreement and lease.

Steve Purdue, Redgate provided a brief presentation regarding the plan, design and agreements for the project. He addressed the housing units and parking as well as the site plan and guiding principles. He spoke to the design of the outdoor plazas and spaces. He said that many different activities and strong programming will make the site successful. Mr. Purdue also addressed the active lively community space that is being considered for the project.

Councilor Dwyer asked Mr. Purdue to address environmental conditions in the building. Mr. Purdue reported that the building has asbestos throughout that would need to be removed and has been factored into the plan.

Councilor Becksted asked about the United States Postal Service remaining in the building. Mr. Purdue stated that the United States Postal Service would like to speak with Redgate/Kane again on that topic. Councilor Becksted spoke on the importance of parking at the site. He said there needs to be a plan for parking for employees and to make sure there is a plan not to impact that part of the City.

Councilor Roberts asked why you don't expand the parking garage and what would be the cost. Mr. Purdue said that they cannot expand the garage because of limited space, and to put parking under neither is cost prohibitive.

Councilor Pearson asked if the programmed plaza space would have an office on site. Mr. Purdue said they have not given that much thought at this point.

Mayor Blalock said we could appoint a committee on programming the space.

Councilor Roberts asked if there will be a Transportation Management Plan. Mr. Purdue said that is correct.

## **V. ACCEPTANCE OF MINUTES – SEPTEMBER 4, 2018**

**Councilor Perkins moved to accept and approve the minutes of the September 4, 2018 City Council meeting. Seconded by Assistant Mayor Lazenby.**

**Councilor Roberts moved to amend page 7 of the minutes by deleting paragraph 4. Seconded by Councilor Reynolds and voted.**

**Main motion passed, as amended.**

## **VI. PUBLIC COMMENT SESSION**

Roy Helsel spoke on Jay Walking and how that is a problem in the City and would like to see individuals receive tickets for this violation. He also suggested installing Jay Walking is prohibited signs.

Esther Kennedy spoke regarding a meeting held on drinking water and receiving feedback on what is happening and for this to take place in the near future.

James Boyle spoke on the exposure the City has regarding the lawsuit. He asked to put the permit in place for him to operate his business.

Pat Bagley would like to see microphones added to Conference Room A during meetings in order to hear individuals speaking when the meeting is being televised.

Paige Trace spoke regarding the Boyle lawsuit and the need for the City to settle. She said that taxpayers want the City to sit down with Mr. Boyle and settle the case and to treat him with respect. She also asked to lengthen the holiday parking time.

**Assistant Mayor Lazenby moved to suspend the rules to bring forward the Fee Committee Item XI. E.1. – Report Back relative to resident discount at on-street parking meters in conjunction with expansion of the meter rates in High Occupancy Zones. Seconded by Councilor Denton and voted.**

**Assistant Mayor Lazenby moved to reopen the public hearing on Ordinance amending Chapter 7, Article I, Section 7.102 – Parking Meter Zones, Subsection A, Downtown High Occupancy Zone. Seconded by Councilor Denton and voted.**

**E. COUNCILORS DWYER & RAYNOLDS**

1. Memorandum and Minutes from Fees Schedule Study Committee:
  - Resident Discount at Parking Meters in conjunction with expansion of the meter rates in High Occupancy Zones

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

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE I, SECTION 7.102 – PARKING METER ZONES, SUBSECTION A, DOWNTOWN HIGH OCCUPANCY ZONE

• **PRESENTATION**

City Manager Bohenko requested that the Fee Committee speak relative to this matter.

Councilor Dwyer reported that the Fee Committee worked with Ben Fletcher, Parking Director and research was conducted on park easy and the added discount of \$.25. She stated that the high occupancy areas will allow residents to do a discount of \$.50.

City Manager Bohenko asked Parking Director Fletcher to come forward and speak to the reduction which was changed from \$.25 to \$.50 at the metered spaces. Parking Director Fletcher said that this is a holistic approach on parking management between long term and short term parkers and discounting users that use the easy park system. He reported that it is prudent to increase the high occupancy parking zone and that the September data has changed and the City needs to move forward with a completed approach. He advised the Council that the roll out date will be before the end of the first calendar quarter. He spoke to the easy park system application with credit card payment and stated there will be a resident list of easy park users.

- **CITY COUNCIL QUESTIONS**

Councilor Pearson asked if users would need to come to City Hall to get the device. Parking Director Fletcher stated users would need to come to City Hall to pick up the device.

Councilor Raynolds asked why residents would need to come down to verify residency. City Manager Bohenko said State law prohibits the City from accessing the State data base of vehicle owners.

Discussion followed on the credit card features, payments and convenience fees. City Manager Bohenko stated that residents do not pay the convenience fee.

Councilor Roberts said he would like to know about more dynamic pricing. City Manager Bohenko said we were going to look at dynamic pricing but that more time is needed to report back on that matter. He stated that we are estimating \$200,000.00 in parking revenue and would like to come back in a year with a report back.

Mayor Blalock read the legal notice and reopened the public hearing.

- **PUBLIC HEARING SPEAKERS**

Louise Richardson stated the new parking ordinance will impact Washington Street and increase the meter rate. She spoke on the increase and said some people refuse to come and visit her on Washington Street due to the parking meter fees. Mrs. Richardson said that now tenants have multiple cars and she has developed a parking plan for her property. She requested that the parking plan exclude the Washington Street area.

Roy Helse asked what we are doing for people that do not have a smart phone.

CJ Fleck said the vast majority of residents will not go to City Hall for the app, so basically you are increasing the price of parking by doing this.

Beth Danilowski said people in the Washington Street area do not support the increase in the parking rate. She also stated that people do not know the Foundry Garage is open, and the cost of parking at that garage is less than the High Hanover Parking Garage.

With no further speakers, Mayor Blalock closed the public hearing.

**Assistant Mayor Lazenby moved to pass second reading and schedule third and final reading of the proposed Ordinance, as amended.**



**Councilor Becksted moved to postpone second reading of the ordinance until April 2, 2019. Seconded by Councilor Denton.**

Councilor Dwyer said people will get the easy park device and not use a smart phone. She said the reason for the high occupancy zone is to address turn over for merchants which will get cars to move along. She said in the New Year we need to bring all boards together and look at turn over and what residential parking would be. She stated many things have changed since the parking principles were created. She suggested having a parking summit.

Councilor Pearson said residents will come to City Hall and not the Police Department for the parking app.

Councilor Raynolds said he agrees with Councilor Dwyer that many things have changed. He said it is important that we continue to advertise the \$.50 reduction for residents.

Councilor Becksted said Penhallow Street costs \$2.00 an hour to park and \$50.00 per day and \$50.00 a day for a meter bag, where another section of the City would only cost \$35.00 a day. He stated you are effecting business owners and taxpayers. He said these increases raise the cost for the taxpayers.

Assistant Mayor Lazenby said coming up with the discount is a good achievement and feels we should continue the discussion.

Councilor Dwyer said we could have the ordinance go into effect when the app goes into operation. She said Councilor Becksted raises a question in parking at a bagged space would the discount apply and could we connect this to the availability of the app.

Councilor Pearson said we may not have the data available by April.

*Councilor Becksted withdrew his motion and Councilor Denton withdrew the second.*

**Councilor Becksted moved to postpone second reading until February 1<sup>st</sup> when the app becomes available. Motion received no second.**

**Councilor Dwyer moved to pass second reading amending the ordinance to make it effective February 15, 2019. Seconded by Councilor Raynolds.**

Councilor Becksted asked if third reading would take place at the next meeting.

Mayor Blalock confirmed that it would.

**Motion passed, as amended.**

Councilor Roberts requested that a handout be provided on the discount when individuals register their vehicles.

**On a roll call 8-1, voted to pass main motion, as amended. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Mayor Blalock voted in favor. Councilor Becksted voted opposed.**

- B. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE BY DELETING THE EXISTING ARTICLE 12 – SIGNS AND INSERTING IN 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

- **PRESENTATION**

Planning Director Walker provided a presentation on the ordinance and advised the Council it has been recommended by the Planning Board. She stated this change will bring the ordinance into legal compliance. She spoke to being cautious on the regulation of signs and how it could affect first amendment rights. Planning Director Walker reported that consultant Rick Taintor worked on these ordinance amendments. She spoke to regulations on real estate signs which are temporary signs which are allowed on a lot for a certain period of time. She stated there is no permit required for the sign placement. She addressed the placement of election signs for 90 days with removal in 7 days after the election. Planning Director Walker also spoke regarding information signs and key changes to clarify flags as a sign type does not require a permit however, added a provision on the number of flags allowed. She said other signs such as on motor vehicles cannot take the place of the sign and need a sign permit. She further stated we are not trying to regulate holiday decorations. She spoke to changes that were made to free standing signs and adding to gateway zoning districts.

- **CITY COUNCIL QUESTIONS**

Councilor Becksted asked if there is any guidance on signs on public property. Planning Director Walker said zoning will not regulate or restrict the signs.

Councilor Denton asked about the giant inflatables. Planning Director Walker said it probably falls under lighting signage and there are regulations for special events. Councilor Denton asked about banners and if they need to be receiving approval. Planning Director Walker said a banner on a public building would require approval.

- **PUBLIC HEARING SPEAKERS**

Mayor Blalock declared the public hearing open and called for speakers.

Esther Kennedy said she does not feel 7 days is long enough to remove a political sign. She also addressed illumination signs and said we could allow illumination for holiday signs as only being allowed.

With no further speakers, Mayor Blalock declared the public hearing closed.

**Councilor Raynolds moved to pass second reading and schedule third and final reading of the proposed Ordinance at the December 3, 2018 City Council meeting to amend the Zoning ordinance 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. Seconded by Councilor Denton.**

Councilor Denton said he would recommend not regulating flags. Planning Director Walker said the recommendation of the Planning Board was to regulate flags by local or federal government officials. Councilor Denton would like to not limit the content of the flags. He said on elections signs he understands 90 days prior but with the federal elections he does not want to limit the placement of the signs.

Assistant Mayor Lazenby said he would like to broaden the flag regulations and would like to allow more time for the placement of signs.

Councilor Dwyer said you do not want to see a big Texaco sign and to allow all kinds of flags. She said we could regulate content and suggested coming back with a report on the various discussions.

Mayor Blalock suggested postponing until the next meeting.

**Councilor Roberts moved to post pone until the next meeting. Seconded by Councilor Becksted.**

Councilor Dwyer said you could go to the Zoning Board of Adjustment for a variance for lighting regulations.

**Motion passed.**

- C. Third and final reading of Ordinance amending Chapter 7, Article XIX, Section 7.1901 – 7.1905 – Shared Active Transportation

**Councilor Pearson moved to pass third and final reading of the proposed Ordinance. Seconded by Councilor Roberts and voted.**

- D. Third and final reading of Ordinance amending Chapter 14, Article II, Section 14.2 – Demolition Ordinance

**Councilor Dwyer moved to pass third and final reading of the proposed Ordinance. Seconded by Assistant Mayor Lazenby and voted.**

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

- A. Acceptance of Donations Re: USS New Hampshire
- Wilcox Industries Corp - \$500.00
  - Renee Plummer dba Two International Marketing - \$500.00
  - Piscataqua Savings Bank - \$500.00
  - Sean Mahoney - \$500.00
  - Propeller Club of the United States 06/92 - \$500.00

**Assistant Mayor Lazenby moved to accept and approve the donations for the USS New Hampshire, as presented. Seconded by Councilor Pearson and voted.**

- B. Acceptance of Grant for Household Hazardous Waste Collection

**Councilor Dwyer moved to accept and expend a \$4,287.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Seconded by Assistant Mayor Lazenby and voted.**

- C. Acceptance of Grants and Donation – Portsmouth Police Department
- Bulletproof Vest Grant - \$5,817.50
  - FY 2018 Internet Crimes Against Children Task Force Funding Grant - \$274,854.00
  - Highway Safety Grants - \$31,930.00
  - Lonza Biologics Corporations - \$4,000.00

**Councilor Roberts moved to accept and approve the grants and donation to the Portsmouth Police Department, as presented. Seconded by Councilor Pearson and voted.**

- D. Acceptance of Donation – Portsmouth Fire Department - \$2,000.00 from Oreen M. Audette, “In Memory of Our Loved Ones” from the Audette Family

**Assistant Mayor Lazenby moved to accept and approve the donation to the Portsmouth Fire Department, as presented. Seconded by Councilor Raynolds and voted.**

#### **IX. CONSENT AGENDA**

- A. Request for License to Install Projecting Sign for Regina Piantedosi owner of Regina Piantedosi for property located at 46 State 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 the License Agreement for this request***)

**Planning Director’s Stipulations**

- ***The license shall be approved by the Legal Department as to content and form;***
  - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
  - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works)***
- B. Letter from Donald Allison, Eastern States 20 Mile Road Race requesting permission to hold the race on Sunday, March 24, 2019 (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Lilia Potter-Schwartz, Race to Educate requesting permission to hold their annual race on Sunday, May 26, 2019 at 12:30 p.m. (***Anticipated action – move to refer to the City Manager with power***)
- D. Letter from Emily Christian, National Multiple Sclerosis requesting permission to hold the 2019 Walk MS: Portsmouth on Saturday, April 13, 2019 from 10:00 a.m. until 2:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)

**Assistant Mayor Lazenby moved to adopt the Consent Agenda. Seconded by Councilor Roberts and voted.**

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

- A. Email Correspondence

**Assistant Mayor Lazenby moved to accept and place on file. Seconded by Councilor Pearson and voted.**

- B. Letter from Jim Splaine regarding Coakley Landfill & Coakley Landfill Group

**Councilor Dwyer moved to accept and place on file. Seconded by Assistant Mayor Lazenby and voted.**

- C. Petition from Residents of Pinehurst Road requesting to change the zoning for the properties on Pinehurst Road from General Resident A (GRA) to Single Resident B (SRB)

**Councilor Pearson moved to refer to the Planning Board for report back. Seconded by Assistant Mayor Lazenby.**

Councilor Roberts requested the Planning board to be careful on limiting the density to just Single Resident B.

**Motion passed.**

- D. Letter from Colette Foley regarding Middle Street and Lafayette Road Bicycle Lanes

**Assistant Mayor Lazenby moved to accept and place on file. Seconded by Councilor Dwyer and voted.**

At 9:00 p.m., Mayor Blalock called a brief recess. At 9:10 p.m., Mayor Blalock called the meeting back to order.

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

**A. CITY MANAGER**

1. Acceptance of Doble Deed

City Manager Bohenko said we have received the deed and will move forward with construction of the Senior Activity Center. He reported that we are using Community Development funds for the design. He stated the work includes logistical preparations for taking control of the building and ensuring the building and grounds are maintained after site control is secured. City Manager Bohenko said the new space will allow for

more programming and provide needed space for other community programs that complement and expand the senior offerings, including intergenerational programming.

**Councilor Becksted moved to accept the deed for the property at 125 Cottage Street in Portsmouth, New Hampshire and further authorize the City Manager to execute all necessary documentation to affect the same subject to a time search. Seconded by Assistant Mayor Lazenby and voted.**

2. Report Back Re: Quitclaim Deed – Property located off of Lafayette Road – Tax Map 296, Lot 2

Deputy City Attorney Woodland said in order to clear up title to a 6.5 acre mostly wet, land-locked parcel on the border of Greenland and Rye, the Legal Department recommends that the City accept a quitclaim deed for the parcel from Mary Beth Herbert who resides at 112 Gates Street, Portsmouth. She reported in 1995 the former Tax Collector issued a tax deed conveying land located on Lafayette Road known as Tax Map 296, Lot 2 to Mary Beth Herbert. She stated this conveyance was in error. Deputy City Attorney Woodland said Ms. Herbert does not wish to retain any interest in Lot 2 and the Legal Department has prepared a quitclaim deed to accomplish this clearing up of title. She advised the Council that the Planning Board voted to recommend acceptance of a quitclaim deed.

**Assistant Mayor Lazenby moved to accept a quitclaim deed from Ms. Herbert for property located at Tax Map 296, Lot 2, for land-locked property located off of Lafayette Road on the border of Greenland and Rye. Seconded by Councilor Denton and voted.**

3. 299 Vaughan Temporary Construction License
4. 135 Congress Street Temporary Construction License
5. 46-64 Maplewood Avenue Amended Fee for Approved Temporary Construction License

City Manager Bohenko said there are changes that have been reflected to address some fees for temporary construction licenses for project-related work that will require the encumbrance of City property along Green Street and Vaughan Street for different periods of time during the project's construction. He said the total fee for the temporary license was calculated based on the \$0.15 per square foot per day as defined in the City Council policy. He advised the Council the policy also allows him to waive the license fees for parking in unmetered spaces if the applicant can provide equivalent public parking in the immediate vicinity of the licensed area. City Manager Bohenko reported the developer is proposing to continue to provide the four (4) temporary parking spaces at the 111 Maplewood Avenue property as approved for the Phase 1 license, labeled as T6 or T9 on the license plan provided. He stated in addition, the developer is proposing to provide 16 daily parking passes for covered spaces in the Portwalk Place parking garage – 10 of these will be available 7 days a week, 6 will be weekday only.

Planning Director Walker reviewed the parking credits where each space is 160 square feet, which calculates to \$24 per space per day. She said for the 4 uncovered spaces, 240 days, the total credit is \$23,040. She reported the covered parking spaces are generally higher value to the City and the users than an unmetered on-street space, City staff are proposing a credit of \$36 per day per space. She reported for the 10 covered spaces, 240 days, the total credit is \$86,400.00 and for the 6 covered spaces, 185 days, the total credit is \$39,960. She further stated as a result, the license fee has been reduced from \$224,460 to \$75,060.

City Manager Bohenko said staff is recommending that the authorization of the license provide the ability for City staff to adjust the fee if the policy is amended during the term of the license without further action of the City Council. He advised the City Council based on the currently proposed revised policy as reviewed and recommended by the Fee Committee, the new base fee would be \$74,820 and the adjusted parking credits would be \$49,880, bringing the total license fee to \$24,940.

**Assistant Mayor Lazenby moved to authorize the City Manager to execute and accept the temporary construction license regarding 299 Vaughan Street as submitted and that the City Manager may adjust the fee if the License Fee for Encumbrance of City Property Policy is amended by City Council during the term of the license. Seconded by Councilor Roberts.**

Councilor Becksted said a reduction in fees is significant on some large projects.

City Manager Bohenko said there is a fine line between a fee and a tax. He said we needed to make an adjustment not to create a tax.

Planning Director Walker said the total reduction could be reduced by \$75,000.00 the parking credit is proposed at a lower fee that would be an effect on the total project cost.

Councilor Dwyer said you can't just arbitrarily set fees, you need to keep the parking credit under certain circumstances.

Deputy City Attorney Woodland said we need to manage the fees and we are learning as we move along.

**Motion passed. Councilor Becksted voted opposed.**

4. 135 Congress Street Temporary Construction License

**Assistant Mayor Lazenby moved to authorize the City Manager to execute and accept the temporary construction license regarding 135 Congress Street as submitted and that the City Manager may adjust the fee if the License Fee for Encumbrance of City Property Policy is amended by City Council during the term of the license. Seconded by Councilor Dwyer and voted. Councilor Becksted voted opposed.**



5. 46-64 Maplewood Avenue Amended Fee for Approved Temporary Construction

**Councilor Reynolds moved to authorize the City Manager to execute and accept an amendment to the temporary construction license for 46-64 Maplewood Avenue as approved by the Council on October 1, 2018 by adding the following:**

**In the event that the City Council amends and reduces the License Fee for Encumbrance of City Property Policy during the term of this License, the City will reimburse Licensee a portion of its License Fee on a pro rata basis consistent with the amended policy without the need of further vote of the Council. Seconded by Assistant Mayor Lazenby. Councilor Becksted voted opposed.**

6. 90 & 110 Brewery Lane License for Street Lights on Public Property

Councilor Denton recused himself from this matter as he is a resident of 110 Brewery Lane.

City Manager Bohenko reported that the owners of the property require a perpetual license from the City to allow the property owner to install, maintain, replace and pay electric bills for the five street lights. He stated the license agreement requires that the lights shall be turned on consistent with the hours of operation for the City's other street lights, but shall otherwise be the responsibility of the property owner to maintain, repair, and if necessary, replace.

**Councilor Pearson moved to authorize the City Manager to execute and accept a license agreement with Brewery Lane Portsmouth, LLC for street lights associated with the project located at 90 & 110 Brewery Lane. Seconded by Assistant Mayor Lazenby and voted. Councilor Denton recused from voting on this matter.**

7. Request for First Reading Re: Zoning Ordinance Amendments to Article 11 Off-Street Parking

City Manager Bohenko said the amendments are being proposed to clarify the off-street parking requirements in the zoning ordinance. He said 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.

Councilor Dwyer said we need to look at a broader set of parking principles.

Planning Director Walker said that it would be good to have the regulations in effect for the Planning Board on parking regulations and considering the conditional use permit.

Councilor Roberts said he agrees with Councilor Dwyer's idea for the need of a broader set of parking principles.

City Manager Bohenko said he would withdraw to bring forward at a later date.

Councilor Perkins asked why Councilor Roberts is concerned. Councilor Roberts said it is adding regulations for residents and various businesses.

Planning Director Walker said these are already part of Planning Board regulations.

City Manager Bohenko withdrew this item and will bring it forward at a later date.

8. 2019 Schedule of City Council Meetings and Work Sessions

**Assistant Mayor Lazenby moved to approve the 2019 Schedule. Seconded by Councilor Dwyer and voted.**

9. Next Steps Re: Mayor's Blue Ribbon Committee on Sister Cities and Citizen Diplomacy

**Assistant Mayor Lazenby moved to accept the report. Seconded by Councilor Roberts.**

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said he would keep a Sister Cities Committee active and further our relationships with those that currently exist as well as form new relationships.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

**Motion passed.**

10. Holiday Parking

City Manager Bohenko said in keeping with past traditions, the Parking Division proposed that the City Council consider offering on-street downtown parking free of charge from Monday, December 17<sup>th</sup> through Monday, December 24<sup>th</sup> in an effort to attract the shopping public and in support of downtown businesses.

Mayor Blalock said he would like to include Christmas Day to the Holiday Parking.

Councilor Becksted said he would like to keep Holiday Parking at 10 days.

Councilor Perkins said this makes it harder for parking downtown.

City Manager Bohenko said we enforce the parking limits and we encourage shop owners not to park in front of their businesses.

Councilor Pearson said this is a feel good welcoming gesture and would like to have some notice of the new parking garage as additional available parking.

Councilor Roberts said he would like to see the funds spent on other things. He said we should look at applying the money to working transportation such as public transportation and circular buses.

Councilor Reynolds said he agrees with Councilor Roberts comment for circular buses.

**Assistant Mayor Lazenby moved to authorize the City Manager to implement a free holiday parking period from Sunday, December 16<sup>th</sup> through Tuesday, December 25<sup>th</sup>. Seconded by Councilor Pearson and voted.**

#### 11. Banfield Road Improvements

City Manager Bohenko said that the Public Works Department is working on road improvements as part of the Banfield Road Improvements Project. He said City-owned property located on the south side of Banfield Road is currently a conservation property as defined and regulated by City Ordinance. He said pursuant to that Ordinance, any use other than for the purposes of passive recreation must be approved by the City Council by a two-thirds vote. He said the City is seeking to use the property for drainage purposes to improve the road, a vote of the Council is required.

**Councilor Denton moved to refer to the Conservation Commission the proposed roadway drainage impacts to conservation property identified as parcel 0294-0009-0000 for a review and report back. Seconded by Councilor Pearson and voted.**

Councilor Dwyer asked for an update on the budget work session for next week. City Manager Bohenko spoke to the budget work session that have been held for expansion of services. He stated on November 28<sup>th</sup> a pro-forma budget will be created to show operating costs as well as a status quo budget. He said the City Council could schedule other work sessions on the budget to implement some services on a gradual basis.

Councilor Becksted asked if there will be public participation. Mayor Blalock said the public could submit questions written on cards.

City Manager said we would provide the numbers on the evening of the work session and make a presentation.

Councilor Perkins would like to see another work session scheduled.

**B. MAYOR BLALOCK**

1. Appointment to be Considered:
  - Chase Hagaman reappointment to the Zoning Board of Adjustment

City Council considered the reappointment of Chase Hagaman to the Zoning Board of Adjustment to be voted on at the December 3, 2018 City Council meeting.

**C. COUNCILOR ROBERTS**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of November 1, 2018 meeting

**Councilor Roberts moved to accept and approve the action sheet and minutes of the November 1, 2018 Parking and Traffic Safety Committee meeting. Seconded by Councilor Perkins and voted.**

2. Proposed Demolition of St. Patrick School

Councilor Roberts said there is a proposal to demolish St. Patrick School. He spoke to drafting a letter to Bishop Labasci for a dialogue with community members.

**Councilor Roberts moved to send a respectful communication to Bishop Labasci expressing the City Council's support for the Church engaging in a dialogue with community members to find a creative reuse for the St. Patrick's School building that would meet the needs and mission of the Church and preserve the historic structure. Seconded by Councilor Denton.**

Councilor Denton said that this is to engage in a dialogue for a possible solution.

Councilor Dwyer said she supports a dialogue but feels the motion goes too far. She said we should look at how the building could be preserved.

Councilor Perkins said she feels that dialogue could have an effect but does not know if it is the City Council's role to ask for a dialogue.

Councilor Raynolds agreed with Councilors Dwyer and Perkins.

**Councilor Denton moved to amend the motion and strike everything after Church. Seconded by Assistant Mayor Lazenby.**

Councilor Roberts said the needs of the community need to be a factor.

Councilor Roberts withdrew his motion and Councilor Denton the second to the original motion.

**Councilor Roberts moved to send a respectful communication to Bishop Labasci expressing the City Council's support for the Church engaging in a dialogue with community members regarding the St. Patrick's School building that would meet the needs of the Church and the community. Seconded by Councilor Denton and voted.**

**D. COUNCILOR PEARSON**

1. Update on Foundry Garage Art

Councilor Pearson said Foundry Garage opened and the percent for art is being installed. She explained the design which will be etched onto the glass. She said the design will be on both sides of the tower and close to the sidewalk.

Mayor Blalock thanked Councilor Pearson, staff and City Manager Bohenko and said the art work will enhance the building.

Councilor Pearson said we will have an art opening at the Liars Bench once the project is completed.

**E. COUNCILORS DWYER & RAYNOLDS**

1. Memorandum and Minutes from Fees Schedule Study Committee:
- Proposed amendment to City Policy 2018-02 – License Fee for Encumbrance of City Property

Councilor Dwyer moved to accept the proposed amendment to City Policy 2018-02 License Fee for Encumbrance of City Property. Seconded by Councilor Raynolds.

**On a roll call 8-1, motion passed. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Mayor Blalock voted in favor. Councilor Becksted voted opposed.**

**F. COUNCILOR DENTON**

1. Request the City complete a Capital Improvement form for a Level 3 480 volt Direct Current Fast Charger to be placed in Market Square

Councilor Denton requested to have a Capital Improvement Plan Form completed to place a Level 3 480 Fast Charger in the downtown and discuss this item during the Capital Improvement Plan process.

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. ADJOURNMENT**

**At 10:15 p.m., Assistant Mayor Lazenby moved to adjourn. Seconded by Councilor Becksted 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

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, DECEMBER 3, 2018

PORTSMOUTH, NH  
TIME: 6:15 PM

### **Public Dialogue Session – One Table**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Denton, Perkins, Raynolds and Becksted

The members of the public were asked to introduce themselves and begin discussing their concerns and/or questions related to their individual topics.

John Mikolajcyk, Portsmouth resident and Manager of the Portsmouth Elks Lodge stated that he and Frank Desper of the American Legion, are requesting that the City Council reconsider allowing Keno in the City of Portsmouth for non-profit organizations. He further explained that Keno would be very helpful for their charitable fundraising.

City Attorney Sullivan explained that it is not possible to authorize keno per type of business or non-profit agency and the City Council has no authority over it other than to vote to put in on the ballot per City Charter. He stated that the City Council in 2017 voted against bringing it to the voters.

Mayor Blalock concurred stating that this can be brought forward again for a Council vote to put to the next Municipal ballot or a petition can be brought forward as well. He continued that if it passes, then any establishment that wanted to have Keno could have it and the city would have no control of it.

Councilor Denton stated that a petition with signatures amounting to 10% of the last municipal election's voters would be required.

Councilor Raynolds asked what the benefit of Keno would be to the Elks and other non-profits.

Mr. Mikolajcyk explained that the Elks raises approximately \$80,000 a year in charitable donations and it is currently through member donations, pull tab tickets, etc. He stated that Keno would allow another resource to raise these funds.

Councilor Raynolds stated that is admirable and he would consider Keno for non-profits if that was allowed, but at this point the law would have to be changed. He stated he is not in favor of all businesses being able to have Keno.

Councilor Roberts stated he is sympathetic but is opposed to opening the city up to any type of gambling.

Mayor Blalock stated that if this went to the ballot then the community would decide. He stated we could also reach out to those communities who did approve it and see how it is working out.

Mr. Mikolajcyk stated that there are many restaurants and bars that don't want Keno and they wouldn't have to offer it.

Harold Whitehouse thanked everyone in the City for taking care of him and his family and friends at the recent Holiday Parade where he was this years' Grand Marshall.

Erik Anderson discussed the current budget process which is beginning earlier than usual and asked what the expectations are of the new process. He asked if they will be going by department rather than issuing a flat-line increase across the board stating that any increase puts a variety of people on the fringes of being able to afford to live here.

Mayor Blalock stated he is glad we are starting the process earlier as we can find out from the departments what they want and how much it will cost and also make the public aware earlier. He explained that the Joint Budget Committee used to set an arbitrary number across the board, but all departments are different and have different needs.

Mr. Anderson asked if there is a perception that last year's budget is the baseline and feels that the CAFR audit document is needed to be a part of this process.

City Manager Bohenko stated that the second meeting of January 2019 is when the Auditor will make the presentation of the CAFR to the City Council and the document will be posted to the web after that meeting.

Councilor Pearson stated that this will be her 3<sup>rd</sup> budget process and explained that a vast majority of the budget is salary and benefits which goes up every year and the Council has no control over that. She stated this means that last years' budget is the starting point because otherwise we start cutting services.

Councilor Raynolds agreed stating that unless people believe that the current budget has extra people who aren't needed then yes we start with the current budget. He stated that the City Manager and staff do look for efficiencies in other places.

Assistant Mayor Lazenby stated he likes that we are beginning earlier and hearing what the increases may be and the impact of those.

Roy Helsel discussed the salaries of the employees stating that there are 19 people who make over \$100,000, 20 who make over 90,000, many more over \$80,000 and they all get benefits.

Councilor Roberts stated his goal is still to keep the increase below the rate of inflation but it is a challenge with a 2% built in raise in salaries.

Patricia Bagley asked about the off-street zoning ordinance amendment being proposed on tonight's agenda and whether this is expected to benefit the public, residents or developers.

Councilor Roberts stated this would make it more difficult to grant exceptions to developers. He stated we will be looking to get all Boards and Commissions together to talk about parking policies in the future.

Planning Director Walker stated she will be making a presentation this evening but this is meant to formalize what is already allowed, it is not a change.



Mrs. Bagley asked if this is a change of wording for no reason.

Planning Director Walker stated it is meant to be a better explanation of the process.

Russell Osgood, City of Portsmouth Firefighter, spoke in support of the proposed letter to NIOSH regarding PFAS health study for firefighters. He explained that firefighters were removed from the Pease testing because of additional occupational exposures.

Councilor Reynolds asked if we are one of many making this request.

Mr. Osgood explained that there are other privately funded studies going on, but they are hoping to be the catalyst for NIOSH.

Assistant Mayor Lazenby stated when it was announced that the firefighters were being eliminated from the testing, it was understood for this particular case, but it also brought the issue to light.

Wes Tator spoke regarding climate change and thanked and congratulated the City Council for passing the resolution regarding endorsement of the Carbon Fee and Dividend which will place a fee on fossil fuels at the source. He stated that this comes on the heel of 2 disturbing reports on Climate change and wishes Councilor Dwyer was present so he could assure her that her concern regarding passing the resolution not doing any good, did in fact make a difference. He stated there has been tremendous press coverage which provides the foundation for furthering support so when it comes back to the Legislature as a bipartisan bill, it broadens the capacity of people to talk across party lines.

Beth Danilowski presented a petition of over 150 signatures, both downtown business employees and residents, requesting that the high-occupancy zone not be expanded. She explained that there are safety concerns as well as raising the rates which will push people to park in residential areas.

Louise Richardson, mother of Beth, stated she is proud of the efforts her daughter is making and feels that people assume that if you live in Portsmouth, you have money. She stated she and her husband own property downtown and rent to working class people at affordable rents, but parking is always an issue and makes it hard for them to afford to live here. She stated people with money have no problem paying the extra fees, but working people do.

Councilor Pearson stated that residents will be able to get the resident discount rates.

Ms. Danilowski stated that with the rate increase, the residential fee will still be .25 more.

Assistant Mayor Lazenby stated raising the rates is not meant to squeeze more money out of people, but is meant to promote turnover of the spaces. He stated that residents will have the opportunity for discounted rates with the new app and he feels it is important to get the right mix.

Mayor Blalock stated he heard the concerns of Mr. and Mrs. Richardson at the last meeting regarding the small area of Washington Street and agrees that it should not be a part of the high occupancy zone and will be proposing an amendment accordingly.

Basil Richardson reiterated the concerns previously addressed by his daughter and his wife regarding the effect of the rate increases on his tenants.

Mayor Blalock closed the Public Dialogue session at 7:00 p.m.

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## **CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:10 p.m.

### **I. ROLL CALL**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer (via teleconference), Denton, Perkins, Raynolds and Becksted

### **II. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silence and recognized the recent passing of President George H.W. Bush.

### **III. PLEDGE OF ALLEGIANCE**

Mayor Blalock led in the Pledge of Allegiance.

### **IV. ACCEPTANCE OF MINUTES – SEPTEMBER 17, 2018 AND OCTOBER 1, 2018**

**Assistant Mayor Lazenby moved to accept the minutes of September 17, 2018 City Council meeting, seconded by Councilor Roberts.**

Councilor Becksted requested an amendment to page 16, correcting Councilor Perkins to Councilor Pearson.

**Motion to accept September 17, 2018 minutes as amended pass on an 8-0 roll call vote. Councilor Raynolds was out of Chambers.**

**Assistant Mayor Lazenby moved to accept the minutes of October 1, 2018 City Council meeting, seconded by Councilor Roberts. Motion passed on a 9-0 roll call vote.**

### **V. PUBLIC DIALOGUE SUMMARY**

Assistant Mayor Lazenby gave a brief summary of the topics discussed at the Public Dialogue session.

## 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 19, 2018 City Council meeting)***

**Councilor Perkins moved to remove item from the table. Seconded by Assistant Mayor Lazenby and voted on a 9-0 roll call.**

Planning Director Walker gave a brief presentation of the changes being requested regarding Flags and Elections Signs to be added to the ordinance amendment.

Councilor Becksted stated he hates election signs and always thought there was a time limit to picking up signs. He stated he would still like to have it be that signs must be picked up within 7 days after the election and feels that people were looking at an extension before the election, not after.

Councilor Roberts asked if the sign that resident Ruth Griffin puts in her yard will exceed the proposed sign limit of 6 feet.

Planning Director Walker stated yes, it will be illegal, and clarified that it is currently not allowed anyway, but they would be asked to comply.

Councilor Denton asked about the various signs that have been posted in people’s yards as to content.

Planning Director Walker stated this is not about content, unless it is very offensive.

City Manager Bohenko stated we always try to be on the more lenient side but if there is an ordinance, we have the mechanism of enforcement if something is unsafe, etc.

Next, discussion ensued regarding the Flags portion of the ordinance with Planning Director Walker explaining that currently they are not allowed, but feels it is important to have the definition and regulation in place for consistency.

**Councilor Denton moved 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, seconded by Assistant Mayor Lazenby.**

Councilor Becksted stated he doesn’t see the need to regulate Flags.

City Manager Bohenko stated that it will give staff guidance.

Councilor Roberts stated he is ambivalent about Ruth Griffins' sign, but will support this and look at it again if there is a problem.

**Motion passed on an 8-1 roll call vote, Councilor Becksted voted oppsed.**

**Assistant Mayor Lazenby moved 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., seconded by Councilor Pearson. Motion passed on a 9-0 roll call vote.**

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

*Mayor Blalock passed the gavel to Assistant Mayor Lazenby.*

**Mayor Blalock moved to suspend the rules to allow for amendment to ordinance, seconded by Councilor Denton. Motion passed on a 9-0 roll call vote.**

**Mayor Blalock moved to amend by deleting #17 – Washington Street from State Street to Court Street – from Section 1.702, Parking Meter Zones, Paragraph A, Downtown High Occupancy Zone and renumbering accordingly, seconded by Councilor Denton.**

Mayor Blalock explained that he took to heart the testimony from Mr. and Mrs. Richardson about this issue and in particular the section of Washington Street which seemed out of place in the proposed zone.

Councilor Becksted stated he agrees with Mayor Blalock on this section, but the Richardsons also spoke about the other areas as well and the impact to workers and residents. He suggested changing the time back to 2 hours instead of 3 hours which would help with the turnover.

Mayor Blalock explained that it used to be 2 hours but the restaurants requested 3 hours to allow people time to eat, etc. He stated the hours of enforcement were also extended.

Councilor Pearson stated she supports this amendment as this section is not an area most people are familiar with anyway.

Councilor Dwyer stated that there would be a discount to residents anyway.

**Motion to amend passed on an 8-1 roll call vote, Councilor Dwyer voted opposed.**

*Assistant Mayor Lazenby returned the gavel to Mayor Blalock.*

**Councilor Pearson moved to pass third and final reading of the proposed Ordinance, as amended at the November 19, 2018 and December 3, 2018 City Council meeting, seconded by Councilor Denton.**

Councilor Becksted asked Parking Director Fletcher if putting the hours back to 2 would help with the turnover.

Parking Director Fletcher stated that we have turnover already but the issue is demand and pricing strategy.

Councilor Becksted asked if there has been any change since the Foundry Place garage went online.

Parking Director Fletcher stated there has been about an 8-10% drop.

Assistant Mayor Lazenby asked if the mid-February effective date is still good in regards to the app being available. He stated that it was clever to design this so that it will essentially pay for itself.

Parking Director Fletcher stated yes, there is a 30-45 day roll out on the app.

Councilor Roberts stated that there was discussion on dynamic pricing previously and asked when we will know if that is practical.

City Manager Bohenko stated there will be a report back coming.

**Motion passed on an 8-1 roll call vote, Councilor Becksted voted opposed.**

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

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

#### **IX. CONSENT AGENDA**

*(There were no Consent Agenda Items on the Agenda this evening)*

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

##### **A. Email Correspondence**

**Councilor Reynolds moved to accept and place on file. Seconded by Assistant Mayor Lazenby and passed on a 9-0 roll call vote.**

- 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**

**Assistant Mayor Lazenby moved to refer to the City Manager with power. Seconded by Councilor Pearson and passed on a 9-0 roll call vote.**

- 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

**Assistant Mayor Lazenby moved to refer to the Planning Board for report back. Seconded by Councilor Perkins and passed on a 9-0 roll call vote.**

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

### **A. CITY MANAGER**

- 1. Presentation and Request for First Reading of Zoning Ordinance Amendments to Article 11 Off-Street Parking

Planning Director Walker gave a brief power point presentation explaining the amendments being requested.

**Councilor Pearson moved to schedule a first reading for the January 7, 2019 City Council meeting to amend the Article II – Site Development Standards, Section 10.1110 – Off-Street Parking, as presented in the document titled “Proposed Off-Street Parking Amendments” dated October 18, 2018, seconded by Assistant Mayor Lazenby.**

Councilor Becksted requested that examples of the approvals and outcomes be provided when the ordinance is presented for first reading.

Councilor Dwyer suggested putting in parameters as defined in the parking demand analysis. She also asked if it would automatically go to the Planning Board or would they be able to go to the ZBA.

Planning Director Walker stated that staff would encourage people not to go to the ZBA first but they cannot prevent them from doing that, although the ZBA wants people to go to the Planning Board first as well. She stated that the decisions will be content-based at the Planning Board level with an overall view of development.

Mayor Blalock clarified they can still go to the ZBA.

Councilor Becksted asked if examples can be provided based on the McIntyre Project.

Planning Director Walker stated that she can provide historical data but not project into the future.

Councilor Perkins stated this process is a collaborate effort to try and reduce the burden to the ZBA of the one-off requests.

Councilor Roberts asked about parking restrictions that only apply to residences and hotels but are less strict on businesses.

Planning Director Walker stated these are based on parking principles that are already in place.

Councilor Roberts asked if there is anything in the Zoning ordinance regarding 3 apartments having 2 parking spaces and having to provide long-term lease or a payment to the City.

Planning Director Walker explained there is a shared parking provision in the ordinance, but there is no “in lieu of” any longer because that was cumbersome to manage.

**Motion passed on a 9-0 roll call vote.**

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)

Planning Director Walker gave a brief power point presentation explaining the amendments being requested.

**Councilor Pearson moved 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, seconded by Assistant Mayor Lazenby.**

Councilor Becksted requested that examples of the approvals and outcomes be provided when the ordinance is presented for first reading.

**Motion passed on a 9-0 roll call vote.**

3. Request for Public Hearing Re: Use of Bond Premiums

**Assistant Mayor Lazenby moved to schedule a public hearing for the December 17, 2018 City Council meeting, seconded by Councilor Pearson.**

Councilor Becksted requested a breakdown of what will be spent on the municipal complex, etc.

*Mayor Blalock passed the gavel to Assistant Mayor Lazenby.*

Mayor Blalock stated that this money is available because the city is managed so well financially. He stated that because of our low bond rating our bonds are very popular and hard to come by and credited the City Manager, Finance Director and staff.

*Assistant Mayor Lazenby returned the gavel to Mayor Blalock.*

**Motion passed on a 9-0 roll call vote.**

**City Manager's Informational Items:**

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

City Manager Bohenko stated that the Cable Franchise Agreement will be on the December 17<sup>th</sup> agenda stating that there are limited areas that can be negotiated as a city, but we are looking at fees regarding PPMTV and Channel 22 etc.

Mayor Blalock commended the City Manager and staff for again receiving the Budget Award.

City Manager Bohenko stated there are only 3 awarded in the State of New Hampshire.

**B. MAYOR BLALOCK**

1. Appointments to be Considered:
  - Corey Clark reappointment as an alternate 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

The aforementioned individuals were considered for reappointment and will be voted at the December 17, 2018 City Council meeting.

2. Appointments to be Voted:
  - Chase Hagaman reappointment as an alternate to the Zoning Board of Adjustment

Councilor Becksted requested clarification from the Clerk that Mr. Hagaman is being reappointed as an alternate as the agenda did not specify.

**Assistant Mayor Lazenby moved to reappoint Chase Hagaman as an alternate to the Zoning Board of Adjustment with term to expire December 1, 2023. Seconded by Councilor Pearson and voted on a 9-0 roll call.**

3. Resignation of Dr. Arthur Hilson from Police Commission

**Assistant Mayor Lazenby moved to accept the resignation with deep regret, of Dr. Arthur Hilson from the Police Commission. Seconded by Councilor Roberts and voted on a 9-0 roll call.**

4. Discussion Re: Vacancy on the Police Commission

Mayor Blalock stated he is going to form a committee to review applications to fill the vacancy on the Police Commission. He stated he is planning on appointing 3 Councilors and 2 citizens.



Councilor Denton stated he is fine with the committee to make recommendations but asked if a Councilor can also bring forward candidates.

Mayor Blalock stated yes, the committee will only be making recommendations.

Councilor Denton stated he would like to see the process formalized and advertised to let people know we are accepting applications during the time before the committee is announced.

Councilor Becksted stated he is in favor of this process but explained the last time this occurred the committee was made up of only residents and no Councilors and would like to see this again.

Mayor Blalock stated Councilors are residents as well and feels that there should be Council representation. He stated he will announce the committee at the December 17<sup>th</sup> Council meeting and explained that the Police Commission cannot meet without all 3 members.

**Councilor Becksted moved to allow Mayor Blalock to form a committee to review candidates for the Police Commission which will be announced at the December 17, 2018 City Council meeting, seconded by Assistant Mayor Lazenby.**

Councilor Dwyer asked if the replacement will be for the remainder of the term or until the next election.

City Attorney Sullivan stated the replacement will be appointed until the November 2019 Municipal Election.

**Motion passed on a 9-0 roll call vote.**

**C. ASSISTANT MAYOR LAZENBY**

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

**Councilor Roberts moved to send the proposed letter (or a version thereof) requesting a health study for firefighters, seconded by Councilor Pearson.**

Assistant Mayor Lazenby explained that the firefighters were removed from the Pease study due to other potential work related exposure but they still need a PFAS study.

Councilor Dwyer stated she likes the letter and feels this is important and feels that this will be a study of causes and not just testing the outcome.

**Motion passed on a 9-0 roll call vote.**

**D. COUNCILOR PEARSON**

1. Short Term Rentals

Councilor Pearson requested a report back on Short Term Rentals as she has had several requests from residents for an update on this issue.

Councilor Dwyer stated we will also have the legislation that has been filed as well.

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Pearson presented a pamphlet from a recent conference she attended hosted by the NH Women's Foundation which reviewed the status of New Hampshire women in various categories; Health, Safety, Economic, etc. for 2018. She stated that the City of Portsmouth falls within the average range for most categories.

Mayor Blalock stated he has always been proud that Mayor Dondero was the first woman Mayor east of the Mississippi.

City Manager Bohenko stated that the City is well represented with women Department Heads.

**XIII. ADJOURNMENT**

**Assistant Mayor Lazenby moved to adjourn at 8:50 p.m., seconded by Councilor Perkins. Motion passed on a 9-0 roll call vote.**

Respectfully submitted:

VALERIE A. FRENCH, CNHMC  
DEPUTY CITY CLERK

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 17, 2018 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a General Fund Supplemental Appropriation for a Resolution Appropriating from Bond Premium the sum of One Million Two Hundred Eight-Six Thousand One Hundred Fourteen Dollars and Twenty-Eight Cents (\$1,286,114.28) to be applied to Municipal Complex 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

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

PM0040371z

**CITY OF PORTSMOUTH, NEW HAMPSHIRE  
GENERAL FUND SUPPLEMENTAL APPROPRIATION  
TWO THOUSAND EIGHTEEN**

**RESOLUTION #**

**A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF ONE MILLION TWO HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED FOURTEEN DOLLARS AND TWENTY-EIGHT CENTS (\$1,286,114.28) TO BE APPLIED TO MUNICIPAL COMPLEX IMPROVEMENTS.**

**RESOLVED:**

**BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

**THAT**, bond premium in the amount of **One Million Two Hundred Eighty-Six Thousand One Hundred Fourteen Dollars and Twenty-Eight Cents (\$1,286,114.28)** be and hereby is appropriated to be applied to Municipal Complex Improvements, and such sum representing the amount of **One Million Two Hundred Eighty-Six Thousand One Hundred Fourteen Dollars and Twenty-Eight Cents (\$1,286,114.28)** be appropriated from bond premium the City received from the sale of previously issued General Obligation bonds (after payment of underwriter's discount) that is allocable to the municipal complex improvements.

**THAT**, the expected useful life of the project is determined to be at least 20 years.

**THAT**, this resolution shall take effect upon its passage.

**APPROVED BY:**

\_\_\_\_\_  
**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

\_\_\_\_\_  
**KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK**

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**SECTION 7.14-AMENDMENTS TO BUDGET AFTER ADOPTION**

No appropriation shall be made for any purpose not included in the annual budget as adopted unless voted by a two-thirds (2/3) majority of the Council after a public hearing held to discuss said appropriation. The Council shall, by resolution, designate the source of any money so appropriated.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 17, 2018 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Sewer Fund Supplemental Appropriation for a Resolution Appropriating from Bond Premium the sum of Seven Hundred Five Thousand Two Hundred Seventy-Seven Dollars and Forty Cents (\$705,277.40) to be applied to Annual Sewer Line Replacement. 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

11-24-2018

**CITY OF PORTSMOUTH, NEW HAMPSHIRE  
SEWER FUND SUPPLEMENTAL APPROPRIATION  
TWO THOUSAND EIGHTEEN**

**RESOLUTION #**

**A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF SEVEN HUNDRED FIVE THOUSAND TWO HUNDRED SEVENTY-SEVEN DOLLARS AND FORTY CENTS (\$705,277.40) TO BE APPLIED TO ANNUAL SEWER LINE REPLACEMENT.**

**RESOLVED:**

**BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

**THAT**, bond premium in the amount of **Seven Hundred Five Thousand Two Hundred Seventy-Seven Dollars and Forty Cents (\$705,277.40)** be and hereby is appropriated to be applied to Annual Sewer Line Replacement, and such sum representing the amount of **Seven Hundred Five Thousand Two Hundred Seventy-Seven Dollars and Forty Cents (\$705,277.40)** be appropriated from bond premium the City received from the sale of previously issued General Obligation bonds (after payment of underwriter's discount) that is allocable to the sewer fund capital improvement projects.

**THAT**, the expected useful life of the project is determined to be at least 20 years.

**THAT**, this resolution shall take effect upon its passage.

**APPROVED BY:**

\_\_\_\_\_  
**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

\_\_\_\_\_  
**KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK**

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**SECTION 7.14-AMENDMENTS TO BUDGET AFTER ADOPTION**

No appropriation shall be made for any purpose not included in the annual budget as adopted unless voted by a two-thirds (2/3) majority of the Council after a public hearing held to discuss said appropriation. The Council shall, by resolution, designate the source of any money so appropriated.

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 17, 2018 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Water Fund Supplemental Appropriation for a Resolution Appropriating from Bond Premium the sum of Three Hundred Eighty-Two Thousand Six Hundred Eighty-Nine Dollars and Forty-Three Cents (\$382,689.43) to be applied to Annual Water Line Replacement. 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

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 17, 2018 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Water Fund Supplemental Appropriation for a Resolution Appropriating from Bond Premium the sum of Three Hundred Eighty-Two Thousand Six Hundred Eighty-Nine Dollars and Forty-Three Cents (\$382,689.43) to be applied to Annual Water Line Replacement. 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

**CITY OF PORTSMOUTH, NEW HAMPSHIRE  
WATER FUND SUPPLEMENTAL APPROPRIATION  
TWO THOUSAND EIGHTEEN**

**RESOLUTION #**

**A RESOLUTION APPROPRIATING FROM BOND PREMIUM THE SUM OF THREE HUNDRED EIGHTY-TWO THOUSAND SIX HUNDRED EIGHTY-NINE DOLLARS AND FORTY-THREE CENTS (\$382,689.43) TO BE APPLIED TO ANNUAL WATER LINE REPLACEMENT.**

**RESOLVED:**

**BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

**THAT**, bond premium in the amount of **Three Hundred Eighty-Two Thousand Six Hundred Eighty-Nine Dollars and Forty-Three Cents (\$382,689.43)** be and hereby is appropriated to be applied to Annual Water Line Replacement, and such sum representing the amount of **Three Hundred Eighty-Two Thousand Six Hundred Eighty-Nine Dollars and Forty-Three Cents (\$382,689.43)** be appropriated from bond premium the City received from the sale of previously issued General Obligation bonds (after payment of underwriter's discount) that is allocable to the water fund capital improvement projects.

**THAT**, the expected useful life of the project is determined to be at least 20 years.

**THAT**, this resolution shall take effect upon its passage.

**APPROVED BY:**

\_\_\_\_\_  
**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL**

\_\_\_\_\_  
**KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK**

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**SECTION 7.14-AMENDMENTS TO BUDGET AFTER ADOPTION**

No appropriation shall be made for any purpose not included in the annual budget as adopted unless voted by a two-thirds (2/3) majority of the Council after a public hearing held to discuss said appropriation. The Council shall, by resolution, designate the source of any money so appropriated.




**CITY OF PORTSMOUTH**

**LEGAL DEPARTMENT**

**MEMORANDUM**

DATE: December 11, 2018  
TO: JOHN P. BOHENKO, CITY MANAGER  
FROM: ROBERT P. SULLIVAN, CITY ATTORNEY  
RE: PROPOSE SIGN ORDINANCE AMENDMENTS SCHEDULED FOR  
THIRD READING ON DECEMBER 17, 2018



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This will advise that subsequent to passage of second reading of the captioned ordinance the City has received correspondence from Attorney Gilles Bissonnette of the New Hampshire Civil Liberties Union concerning the proposed amendments. NHCLU has raised a number of potential issues regarding the constitutionality of the ordinance. These concerns arise under the First Amendment, primarily due to the suggestion that the amendments as drafted may impermissibly regulate the content of signs. This would particularly be true in the case of political signs where First Amendment analysis is conducted with heightened intensity.

A brief listing of NHCLU concerns are as follows:

1. Because political signs by their nature are "temporary signs" the regulation of temporary signs necessarily regulates political signs differently than others with possible constitutional ramifications.
2. Sign area restrictions, "may strongly impair the free flow of protected speech".
3. Ideological speech may be entitled to greater first amendment protection than commercial speech, but in some manner the City's proposed ordinance amendments might operate in the reverse.
4. Allowing illumination of commercial signs but not temporary signs such as those with political speech might raise the same concern as the previous item.

While the foregoing is not an exhaustive list of NHCLU concerns, it is illustrative of them.

As a result of past transactions the relationship between the City of Portsmouth and the New Hampshire Civil Liberties Union is very good. We have routinely referred questions to NHCLU and have benefited greatly from the responses. The issue of the sign ordinance seems to call out for a continuation of that relationship.

For the foregoing reasons, Planning Director Juliet Walker and I each recommend that when the ordinance comes to third reading that reading should be postponed indefinitely. If that action takes place then we will carefully review the correspondence and legal references from NHCLU, discuss our findings with Attorney Bissonnette and hopefully reach an agreed upon a resolution which will satisfy the City's needs in amending the ordinance without transgressing the First Amendment in the eyes of the NHCLU.

cc: Juliet Walker, Planning Director  
Gilles Bissonnette, Esq.

**Proposed Zoning Ordinance Amendments**  
**Article 12 – Signs**  
**November 27, 2018**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, 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 November 27, 2018.

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:

\_\_\_\_\_  
Jack Blalock, Mayor

ADOPTED BY COUNCIL:

\_\_\_\_\_  
Kelli L. Barnaby, City Clerk

1 Proposed Amendments to Portsmouth Zoning Ordinance  
2 Article 12: Signs  
3 November 27, 2018  
4

5 **Article 12 Signs**  
6

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- 7 **Section 10.1210 Purpose and Intent**  
8 **Section 10.1220 General Sign Regulations**  
9 **Section 10.1230 Sign Districts**  
10 **Section 10.1240 Permitted Sign Types**  
11 **Section 10.1250 Sign Dimensional Standards**  
12 **Section 10.1260 Sign Illumination**  
13 **Section 10.1270 Additional Sign Regulations**  
14 **Section 10.1280 Nonconforming Signs**  
15 **Section 10.1290 Sign Definitions**  
16

17 **Section 10.1210 Purpose and Intent**

- 18 10.1211 The purpose of this Article is to regulate the type, number, location, size  
19 and illumination of signs on private property in order to maintain and  
20 enhance the character of the city’s commercial districts and residential  
21 neighborhoods and to protect the public from hazardous and distracting  
22 displays.  
23
- 24 10.1212 This Article is intended to permit signs only as accessory uses to a  
25 permitted use on the same lot and not as principal uses on a lot. When a  
26 principal commercial use or activity is not open to the public or has been  
27 abandoned, all allowed accessory signs shall be removed regardless of  
28 their content.  
29
- 30 10.1213 This Article is not intended to regulate the content of signs except as  
31 follows:  
32
- 33 10.1213.10 When a sign is allowed because it is necessary to identify a  
34 building address or for safe access to or egress from the lot,  
35 only that relevant message may be presented.  
36
- 37 10.1213.20 A sign that advertises a product or service not available on  
38 the lot (an “off-premise sign”) is not permitted. However,  
39 when a sign is permitted as accessory to a commercial use,  
40 the sign may contain a noncommercial message instead of a  
41 commercial message.  
42

1 Section 10.1220 General Sign Regulations

2 10.1221 Sign Permits

3  
4 10.1221.10 No sign shall be erected without a sign permit issued by the Code  
5 Official except in accordance with the provisions of this Ordinance or a  
6 decision by the Board of Adjustment.

7  
8 10.1221.20 No sign permit will be issued for any premises on which there is an  
9 outstanding violation of any part of this Ordinance.

10  
11 10.1221.30 In the Historic District, a sign that violates any requirement of this Article,  
12 including the design standards set forth in Section 10.1274, shall require a  
13 Certificate of Appropriateness from the Historic District Commission  
14 (HDC) under Section 10.630, in addition to the sign permit issued by the  
15 Code Official.

16  
17 10.1221.40 Any sign located within a public right of way, including a projecting sign  
18 that extends over the public right of way, requires City Council approval  
19 and license in accordance with Chapter 8 of the municipal code.  
20

21 10.1222 Signs Not Requiring A Permit

22  
23 The following signs are permitted without a sign permit and shall not be included in the  
24 calculation for aggregate signage on a lot:

25  
26 10.1222.10 Signs required, or deemed necessary for the public welfare and safety, by a  
27 municipal, state or federal agency, such as traffic control devices

28  
29 10.1222.20 Signs with a sign area up to 4 square feet containing only content of a  
30 general directive or informational nature such as the following:

- 31  
32 (a) Identifying a building address or unit number;  
33 (b) Directing or guiding to entrances, exits or parking areas;  
34 (c) Identifying handicapped parking, no parking, or loading areas;  
35 (d) Identifying or directing to a public service facility or accommodation;  
36 (e) Identifying an official inspection station;  
37 (f) Notices concerning restrictions on access to private property (e.g., no  
38 trespassing, no hunting, etc.).

39  
40 12.1222.21 All such signs shall be located so as not to create a traffic  
41 safety hazard or to block line of sight from a motor vehicle.

42  
43 12.1222.22 A freestanding sign under this provision shall comply with  
44 the height standards for freestanding signs in Section  
45 10.1223.33.  
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12.1222.23 A sign pertaining to public parking in a private parking lot that has been authorized under a permit from the Department of Public Works is exempt regardless of sign area.

10.1222.30 One building identification sign per lot, composed of either (a) unpainted letters carved into, embedded in or embossed on the material of the building wall above the first story with a sign area up to 12 square feet; or (b) a metal plaque affixed to the building wall no more than 5 feet above ground level, with a sign area up to 4 square feet. Such signs are typically used to provide historical information about the building such as the name of the building or the date of its construction.

10.1222.40 Miscellaneous signs mounted on a wall, window or door at a building entrance, provided that (a) there shall be only one group of such signs per entrance; (b) each group of such signs shall not exceed 4 square feet in area (measured as a single sign in accordance with Section 10.1252) and shall be placed within 3 feet of the entrance; (c) no individual sign in the sign group shall exceed one square foot in area; and (d) no letter, character, image or graphic shall be more than 2 inches in height. The intent of this provision is to allow for the provision of information that is not intended to be read from more than 3 feet from the sign, including but not limited to restaurant menus, credit card stickers, hours of operation, owner and contact information, etc.

10.1222.50 Internal signs.

10.1222.60 Illuminated signs more than 3 feet behind any window or opening through which they might be visible from private or public right of way.

10.1222.70 Flags that are either (a) attached to a building or to a pole projecting no more than 6 feet from a building or (b) mounted on a flagpole. These shall be limited in number and size as follows:

10.1222.71 Each lot may have up to 3 flags (free-standing or attached to a building) that are up to 12 sq. ft. in area (per flag) in Sign District 1, up to 24 sq. ft. in Sign Districts 2 and 3, and up to 60 sq. ft. in Sign Districts 4, 5 and 6.

10.1222.72 In addition to the above, each dwelling unit or condominium unit on a lot may have up to one flag not exceeding 6 sq. ft. in area attached to the dwelling unit or condominium unit.

10.1222.80 Signs on registered motor vehicles that are used in the ordinary conduct of a business, but not including signs on vehicles that are parked on, or in view of, a street when the vehicle is not actively being used in the conduct of business.

1 10.1222.90 Low wattage or low voltage temporary decorative lighting and displays  
2 used for holidays, festivals and special events, provided they do not pose a  
3 safety or nuisance problem due to light trespass or glare.  
4

## 5 10.1223 Temporary Signs 6

7 10.1223.10 The following temporary signs are allowed without a sign permit and  
8 shall not be included in the calculation for aggregate signage on a lot:  
9

10 10.1223.11 One temporary sign placed on a lot while the lot (or a  
11 dwelling unit or commercial unit on the lot) is being  
12 offered for sale or lease by a real estate agent or through  
13 advertising in a local newspaper of general circulation, and  
14 for a period of 14 days following the date on which a  
15 contract of sale or lease has been executed.  
16

17 10.1223.12 Temporary signs placed on a lot that is under active  
18 development, to be removed within 14 days after issuance of  
19 the first certificate of occupancy.  
20

21 10.1223.13 Temporary signs placed on a lot for a period of 120 days  
22 prior to, and 14 days after, an election involving candidates  
23 for a federal, state or local office that represents the district  
24 in which the lot is located.  
25

26 10.1223.20 The following temporary signs are allowed with the issuance of a sign  
27 permit:  
28

29 10.1223.21 One temporary sign placed on a lot for more than 90 days  
30 while the lot (or a dwelling unit or commercial unit on the  
31 lot) is being offered for sale or lease.  
32

33 10.1223.22 Temporary signs placed on a lot that is under active  
34 development for more than 14 days after issuance of the first  
35 certificate of occupancy, but not to exceed 60 days after the  
36 issuance of said certificate.  
37

38 10.1223.30 The following provisions apply to all temporary signs whether requiring  
39 a sign permit or allowed without a permit:  
40

41 10.1223.31 The maximum sign area of a temporary sign allowed by  
42 this section shall be as follows:  
43

44 Sign District 1 or 2	6 sq. ft.
45 Sign District 3	16 sq. ft.
46 Sign District 4, 5 or 6	32 sq. ft.

47

1 10.1223.32 The maximum height of a temporary freestanding sign  
2 shall be as follows:

3  
4 Sign District 1, 2 or 3 4 ft.  
5 Sign District 4, 5 or 6 12 ft.  
6

7 10.1223.33 A temporary freestanding sign shall comply with the  
8 required setback for the applicable sign district as set forth  
9 in Section 10.1253. In Sign District 1 a temporary  
10 freestanding sign shall be set back at least 7 feet from any  
11 lot line.  
12

13 10.1223.35 Temporary signs shall not be illuminated in any way.  
14

15 10.1223.36 A property owner may not accept a fee for posting or  
16 maintaining a temporary sign allowed by this Section  
17 10.1223, and any sign that is posted or maintained in  
18 violation of this provision is not authorized.  
19

20 10.1223.40 Special Event Signs  
21

22 In addition to other permanent and temporary signs allowed by this  
23 Article, one sign may be placed on a lot immediately preceding and during  
24 a special event on that lot, subject to the following conditions:  
25

26 10.1223.41 A sign permit for the special event sign shall be obtained  
27 from the Code Official. Only one permit for a special event  
28 sign shall be issued for a lot in any 3-month period.  
29

30 10.1223.42 A lot may have one special event sign for one consecutive  
31 7-day period every 3 months, for a maximum of 4 special  
32 event signs per year. If a special event sign permit is not  
33 used in one quarter it shall not be carried over to the next  
34 quarter.  
35

36 10.1223.43 The special event sign shall not be limited to size or  
37 location, but shall not be placed in such a manner as to create  
38 a traffic safety problem.  
39

40 10.1223.44 The special event sign shall be removed at the end of the  
41 event.  
42

43 10.1224 Signs Prohibited in All Districts  
44

45 The following signs are prohibited in all sign districts:  
46

47 10.1224.10 Animated signs.  
48

49 10.1224.20 Signs that move or flash, or give the appearance of such motion (for  
50 example, by means of traveling lights). Beacons, rotating and flashing



lights are prohibited except where such lighting devices are deemed necessary for the public safety and welfare by federal, state or municipal authorities.

10.1224.30 Banners, pennants or flags (except as permitted by Section 10.1222.70) which are signs under the definition of “sign” herein.

10.1224.40 Balloons or other inflated devices displayed more than one day per month.

10.1224.50 Mobile signs.

10.1224.60 Signs mounted, attached or painted on vehicles, trailers or boats, except as permitted by Section 10.1222.90.

10.1224.70 Any sign emitting sound.

10.1224.80 Any sign projected via illumination on the exterior of any structure, or on or above a surface such as a driveway, sidewalk or street, regardless of the technology used to project the sign. This prohibition shall not apply where the structure or surface on which the sign is projected is within the same lot as the principal use to which the sign is accessory.

10.1224.90 Any sign advertising a product or service not provided on the lot on which the sign is located (“off-premise sign”).

### 10.1225 Maintenance of Signs

10.1225.10 All signs and sign structures shall be properly maintained and kept in a neat and proper state of maintenance and appearance.

10.1225.20 Any sign of any type and located within any district which is found by the Code Official to be in a state of disrepair, illegible or dangerous, shall be repaired or removed.

10.1225.30 Upon failure to comply with an order to repair or remove a sign within thirty days, the Code Official is authorized to cause removal of the sign at the expense of the owner of the property on which the sign is located.

### Section 10.1230 Sign Districts

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.

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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:

<b>Sign Districts</b>	<b>Underlying Zoning Districts</b>
Sign District 1	All Rural and Residential Districts Natural Resource Protection
Sign District 2	Mixed Residential Office Mixed Residential Business Waterfront Business Character District 4-L1 Character District 4-L2
Sign District 3	Character District 4-W Character District 4 Character District 5
Sign District 4	Business Office Research
Sign District 5	General Business Gateway Neighborhood Mixed-Use Corridor Gateway Neighborhood Mixed-Use Center
Sign District 6	Industrial Waterfront Industrial Airport Districts

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10.1233 In order to address the characteristics of a specific area or its surroundings, an area may be changed to a different sign district than specified in Section 10.1232 following the same procedures as for a change in the underlying zoning district. (For example, a portion of the General Business district may be changed from Sign District 5 to Sign District 2 in order to protect an adjacent neighborhood from excessive light.)

10.1234 Any sign not specifically allowed in a sign district is not permitted.

1 **Section 10.1240 Permitted Sign Types**

2 10.1241 The types of signs permitted in each sign district shall be as set forth in  
 3 the following table, except as otherwise provided herein.

4 **Table of Permitted Sign Types**

	Sign District					
	1	2	3	4	5	6
Freestanding sign	N	P	P	P	P	P
Wall sign	P	P	P	P	P	P
Projecting sign	P	P	P	P	P	P
Parapet sign	N	N	N	N	P	P
Roof sign	N	N	N	N	P	P
Awning sign	N	P	P	P	P	P
Marquee sign	N	P	P	P	P	P
Canopy sign	N	N	N	P	P	P
Changeable or animated signs						
Animated sign	N	N	N	N	N	N
Changeable sign	N	P	P	P	P	P

P = Permitted N = Prohibited

5  
 6 10.1242 Each side of a building facing a street may have one parapet sign (if  
 7 permitted by Section 10.1241) or one wall sign above the ground floor.

8  
 9 10.1243 Only one freestanding sign shall be permitted per lot, except that a lot  
 10 with more than one driveway may have one freestanding sign at the  
 11 site's primary driveway and one smaller freestanding sign at each  
 12 additional driveway complying with the area and height standards in  
 13 Section 10.1251.30.

14 **Section 10.1250 Sign Dimensional Standards**

15 **10.1251 Sign Area**

16 10.1251.10 The maximum aggregate sign area shall be as follows:

	Sign District					
	1	2	3	4	5	6
Per linear foot of building frontage per establishment	0.5	1.0	2.0	1.5	1.5	2.0

10.1251.20 The maximum sign area for individual signs shall be as follows:

	Sign District					
	1	2	3	4	5	6
Freestanding sign	n/a	20	20	100	100	150
Wall sign	4	16	40	200	200	100
Projecting sign						
Ground floor use	2	16	12	16	16	16
Upper-floor use	n/a	0	8	8	8	8
Parapet sign	n/a	n/a	n/a	n/a	100	150
Roof sign	n/a	n/a	n/a	n/a	200	100
Awning sign	n/a	16	20	20	20	20
Marquee sign	n/a	16	20	20	20	20
Canopy sign	n/a	n/a	n/a	20	20	20

All dimensions in square feet

n/a = not applicable (sign type not permitted)  
n.r = no requirement

10.1251.30 When a lot has more than one freestanding sign, the freestanding sign at the site's primary driveway shall comply with the maximum sign area specified in Section 10.1251.20 and the maximum sign height specified in Section 10.1253.10; and the freestanding signs at other driveways shall comply with the following standards:

Sign District	On same street as primary driveway		On different street from primary driveway	
	Maximum Sign Area	Maximum Sign Height	Maximum Sign Area	Maximum Sign Height
2	10 sq. ft.	5 ft.	10 sq. ft.	5 ft.
3	10 sq. ft.	5 ft.	20 sq. ft.	5 ft.
4	20 sq. ft.	12 ft.	40 sq. ft.	12 ft.
5	40 sq. ft.	12 ft.	75 sq. ft.	15 ft.
6	40 sq. ft.	12 ft.	75 sq. ft.	15 ft.

10.1251.40 A sign projected via illumination on the exterior of a structure, or on or above a surface such as a driveway, sidewalk or street, shall comply with the sign area requirements for a wall sign.

## 10.1252 Measurement of Sign Area

10.1252.10 Sign area shall be measured in one of the following ways, at the applicant's discretion:

- (a) the area that can be enclosed by one polygon with no more than eight sides; or
- (b) the area that can be enclosed by a circle, oval, triangle or rectangle, or any two such shapes.

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10.1252.20 The sign area of a freestanding sign shall include all structural supports whether or not they contribute through shape, color or otherwise to the sign's message, except as follows:

10.1252.21 The base of a monument sign, up to one foot above the ground, shall not be included in the computation of sign area provided that such base is not illuminated in any way.



**Height of base is less than one foot – Not included in sign area**



**Height of base is one foot – Not included in sign area**



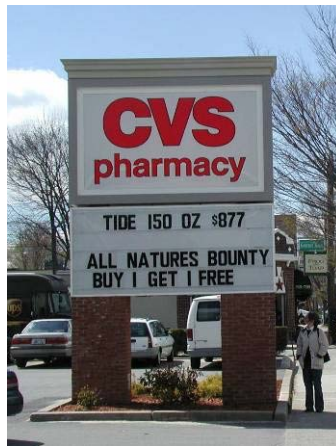
**Height of base is greater than one foot – Included in sign area**

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10.1252.22 The vertical supports of a pole sign shall not be included in the computation of sign area, provided that (1) the total width of all such supports is less than one-third of the width of the sign, and (2) the supports are not illuminated in any way.



**Total width of supports is less than 1/3 of the width of the sign – Not included in sign area**



**Total width of supports is greater than 1/3 of the width of the sign – Included in sign area**



**Width of support is greater than 1/3 of the width of the sign – Included in sign area**



**Width of support is approximately 1/3 of the width of the sign**

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- 10.1252.30 For a sign that is painted or engraved on, or otherwise applied directly to, a building or other structure, the sign area shall include any background of a different color, material or appearance from the remainder of the wall or structure, and shall include all related text, images and graphics.
- 10.1252.40 The sign area of a canopy sign shall include all text and symbols, whether or not illuminated, and all illuminated areas; but shall not include non-illuminated areas that are distinguished from the background only by color stripes.
- 10.1252.50 The sign area of a projecting sign shall not include the area of supporting brackets with no text, images or graphics.
- 10.1252.60 Where a sign has two faces that are parallel or where the interior angle formed by the faces is 45 degrees or less, only one display space shall be measured in computing total sign area.
- 10.1252.70 The sign area of a spherical, free-form, sculptural or otherwise non-planar sign shall be equal to 75 percent of the areas of the 4 vertical sides of the smallest rectangular box that will encompass the sign.
- 10.1252.80 Decorative lighting on a building or structure, including neon and other accent lighting, and any illuminated building panel, shall be considered a wall sign for the purposes of this section, and shall be counted as part of the aggregate sign area allowed.

1            10.1253 Sign Height and Setback

2  
3            10.1253.10    The maximum and minimum heights and minimum setbacks for signs in  
4                            each sign district shall be as set forth in the following table, except as  
5                            otherwise provided herein.

6                            **Table of Sign Height and Setback Requirements**

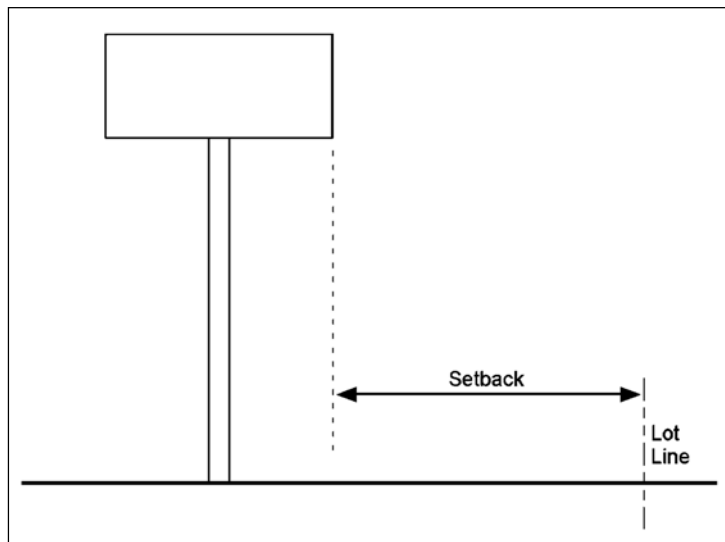
	Sign District					
	1	2	3	4	5	6
Projecting sign						
Minimum clearance (ground to bottom of sign)	7	7	7	7	7	7
Freestanding sign						
Minimum setback from lot line	n/a	5	5	20	10	20
Maximum height (ground to top of sign)	n/a	7	12	20	20	20

7                            All dimensions in feet                            n/a = not applicable (sign type not permitted)

8  
9            10.1253.20    Where a driveway intersects with a street, no sign shall be erected or  
10                            maintained between the heights of 2.5 feet and 10 feet above the edge of  
11                            pavement grades within the area bounded by (a) the side lines of the  
12                            driveway and street and (b) lines joining points along said side lines 20  
13                            feet from the point of intersection.

14  
15            10.1253.30    The height of a freestanding sign shall be measured with respect to the  
16                            elevation of the centerline of the adjacent public right-of-way.

17  
18            10.1253.40    The setback of a sign from a lot line shall be measured as the shortest  
19                            horizontal distance from the lot line to the any part of the sign, whether or  
20                            not such part of the sign is at ground level.



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23

1 10.1253.50 A projecting sign shall project no closer than 1 foot to the edge of the  
2 vehicular travel way, if any.  
3

4 **Section 10.1260 Sign Illumination**

5 **10.1261 Types of Illumination**  
6

7 10.1261.10 Signs may only be illuminated as set forth in the following table, except as  
8 otherwise provided herein.  
9

**Table of Sign Illumination Requirements**

	Sign District					
	1	2	3	4	5	6
External illumination	N	P	P	P	P	P
Halo lettering	N	P	P	P	P	P
Internal illumination						
Freestanding sign	N	P	N	P	P	P
Wall sign	N	P	P	P	P	P
Projecting sign	N	N	N	N	N	N
Parapet sign	n/a	N	N	N	P	P
Roof sign	n/a	N	N	N	P	P
Awning sign	n/a	N	P	N	P	P
Marquee sign	n/a	N	P	N	P	N
Canopy sign	n/a	n/a	n/a	P	P	P
Direct illumination	N	N	P	P	P	P

10 P = Permitted N = Prohibited n/a = not applicable (sign type not permitted)  
11

12 10.1261.20 Temporary signs shall not be illuminated.  
13

14 10.1261.30 Signs in the Historic District shall be illuminated only by external  
15 illumination, notwithstanding anything to the contrary in Section 10.1261.  
16

17 **10.1262 Hours of Illumination**  
18

19 Signs shall not be illuminated between 11:00 p.m. and 6:00 a.m., except that signs may  
20 be illuminated during the operation of a use or activity that is open to customers or the  
21 public, and for not more than one hour after the activity ceases.  
22

23 **10.1263 Illumination Standards**  
24

25 10.1263.10 A light source for external illumination of a sign shall be mounted and  
26 shielded so that said light source is not visible three feet above grade at the  
27 lot line and so that the lighting is confined to the area of the sign.  
28

29 10.1263.20 A light source for internal illumination of a sign constructed of trans-  
30 lucent materials and wholly illuminated from within shall not require  
31 shielding.  
32



- 1 10.1263.30 A sign or its illuminator shall not by reason of its location, shape or color  
2 interfere with pedestrian or vehicular traffic or be confused with or obstruct  
3 the view or effectiveness of any official traffic signal or traffic marking.  
4
- 5 10.1263.40 Illuminance of the sign face shall not exceed the following standards:  
6
- 7 10.1263.41 External illumination: 50 foot-candles as measured on the  
8 sign face.  
9
- 10 10.1263.42 Internal illumination: 5,000 nits (candelas per square  
11 meter) during daylight hours, and 500 nits between dusk and  
12 dawn, as measured at the sign's face.  
13
- 14 10.1263.43 Direct illumination: 5,000 nits during daylight hours, and  
15 500 nits between dusk and dawn, as measured at the sign's  
16 face.  
17
- 18 10.1263.50 Light sources shall utilize energy efficient fixtures to the greatest extent  
19 practicable. Light fixtures including bulbs or tubes used for sign  
20 illumination shall be selected and positioned to achieve the desired  
21 brightness of the sign with the minimum possible wattage, while ensuring  
22 compliance with all applicable requirements of this Ordinance.  
23
- 24 10.1263.60 A sign using direct illumination shall consist only of letters, numbers  
25 and other common typographical characters, all of which shall be in no  
26 more than three colors against a dark background, and the total illuminated  
27 area shall not exceed 30 percent of the total area of the sign.  
28

## 29 Section 10.1270 Additional Sign Regulations

### 30 10.1271 Signs on More Than One Façade of a Building

- 31 10.1271.10 A use in a building with more than one exterior wall facing a street may  
32 have signs on each such wall.  
33
- 34 10.1271.20 An establishment with a public entrance on a side of the building not  
35 facing a street may have signs on that side as well as on the street-facing  
36 wall(s).  
37
- 38 10.1271.30 Regardless of the location of signs, the maximum sign area per  
39 establishment shall be based only on the building frontage as defined in  
40 Section 10.1290.  
41

### 42 10.1272 Roof Signs

- 43 10.1272.10 A roof sign shall be parallel to the main façade of the building on which it  
44 is mounted,  
45  
46  
47

1 10.1272.20 A roof sign on a pitched, hip, gambrel or mansard roof shall not extend  
2 above the elevation midway between the level of the eaves and the highest  
3 point of the roof. A roof sign is not permitted on a flat roof.  
4

5 10.1272.30 The maximum height of a roof sign shall not exceed the lesser of 36  
6 inches or 25% of the vertical height of the roof.  
7

### 8 10.1273 Marquee Signs 9

10 10.1273.10 All text, images and other graphics on a marquee sign shall be displayed  
11 on the outside vertical faces of the marquee, and shall be no more than 1.5  
12 feet tall.  
13

14 10.1273.20 The sign area of a marquee sign shall be included in the maximum  
15 aggregate sign area allowed for the lot.  
16

### 17 10.1274 Relation of Sign to Building Façade in the Historic District 18

19 In the Historic District, a wall sign or projecting sign should align with some  
20 horizontal element on the façade. For example, the top of the sign may align with the top  
21 of the window, the bottom of the sign may align with the bottom of the window, the  
22 bottom of sign may align with the top of the lintel, etc.  
23

### 24 10.1275 Interim Signs 25

26 An interim sign may be erected while awaiting arrival of a permanent sign for which a  
27 sign permit has been issued. -The interim sign shall conform to the same dimensional  
28 and other requirements as the approved permanent sign and shall be allowed only until  
29 the permanent sign is installed or for 60 days, whichever is the shorter period of time. A  
30 sign permit for an interim sign must be obtained from the Code Official.  
31

## 32 Section 10.1280 Nonconforming Signs

33 10.1281 A nonconforming sign or sign structure shall be brought into  
34 conformity with this Ordinance if it is altered, reconstructed, replaced, or  
35 relocated. For the purpose of this provision, the alteration of a sign or sign  
36 structure includes any change in size, shape, materials or technology. A  
37 change in text or graphics is not an alteration or replacement for purposes  
38 of this subsection.  
39

40 10.1282 Nonconforming signs must be maintained in good condition.  
41 Maintenance required by this Subsection shall include replacing or  
42 repairing of worn or damaged parts of a sign or sign structure in order to  
43 return it to its original state, and is not a change or modification prohibited  
44 by Subsection 10.1281.  
45

46 10.1283 A nonconforming sign shall be removed, made conforming, or replaced  
47 with a conforming sign if 50 percent or more of the nonconforming sign

1 is blown down, destroyed, or for any reason or by any means taken down,  
2 altered, or removed.

3  
4 10.1284 A nonconforming sign shall be removed if the use of the  
5 nonconforming sign, or the property on which it is located, has ceased,  
6 become vacant, or been unoccupied for a continuous period of 8 months or  
7 more. An intent to abandon is not required as the basis for removal under  
8 this section.  
9

## 10 Section 10.1290 Sign Definitions

11 Aggregate sign area  
12 See under sign area.

13  
14 Animated sign  
15 A sign that uses movement or a change of lighting to depict action or create a  
16 special effect or scene. See also changeable sign.

17  
18 Awning  
19 A cloth, plastic or other nonstructural covering that either is permanently  
20 attached to a building or can be raised or retracted to a position against the  
21 building when not in use.

22  
23 Awning sign  
24 A sign that is painted on or otherwise applied or attached to an awning. An  
25 internally illuminated awning shall be considered an awning sign whether or  
26 not it contains any text or graphics.

27  
28 Banner sign or banner  
29 A sign that consists of text or other graphic elements on a non-rigid material  
30 either enclosed or not enclosed in a rigid frame and secured or mounted to allow  
31 motion caused by the atmosphere. See also temporary sign.

32  
33 Building frontage  
34 The maximum horizontal width of the ground floor of a building that  
35 approximately parallels and faces a public street or right of way.  
36 (a) Where an individual occupant's main entrance faces a driveway or parking  
37 lot, the width of the occupant's ground floor space facing the occupant's  
38 entrance shall be considered that occupant's separate and distinct building  
39 frontage.  
40 (b) Where two or more uses occupy the ground floor of a building, the portion  
41 of the building frontage occupied by each use will be that use's separate  
42 and distinct building frontage for the purpose of calculating allowed sign  
43 area.  
44 (c) A corner lot or through lot shall be considered to have a separate and  
45 distinct building frontage on each street.  
46 (d) When a building is not parallel to the street, or has a front wall that is  
47 angled or curved, the building frontage shall include any portion of the  
48 front wall that is oriented at an angle of 30 degrees or less from the front lot  
49 line.

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Canopy  
A freestanding structure constructed of rigid materials, providing protective cover over an outside service area.

Canopy sign  
A sign attached to, affixed to or otherwise mounted on a canopy.

Changeable sign  
A sign or portion thereof with characters, letters or symbols that can be changed, whether electronically or manually without altering the face or surface of the sign. A sign on which the message changes more than once per day shall be regulated as an animated sign. A sign on which the only changes are mechanical or electronic indication of time or temperature is not considered a changeable or animated sign.

Direct illumination  
Illumination of a sign by light emitted directly from a lamp, luminary or reflector, and not diffused through translucent materials or reflected or projected from an external source. Examples include, but are not limited to, signs using luminous gas-filled tubes (e.g., neon) or light-emitting diodes (LED). (See also external illumination, externally illuminated sign, internal illumination, internally illuminated sign.)

External illumination  
Illumination of a sign by a source of light not contained within, or on the surface of, the sign itself. (See also direct illumination, externally illuminated sign, internal illumination, internally illuminated sign.)

Externally illuminated sign  
A sign that is illuminated by a light source that is not contained within, or on the surface of, the sign itself

Flag  
A piece of durable fabric or other flexible material containing distinctive colors, patterns, standards, words, or emblems which hangs loose from a staff or pole or is attached directly to a building.

Flagpole  
A permanent, free-standing structure or a structure attached to a building and used for the sole purpose of displaying flags. A free-standing flagpole shall not exceed the maximum building height allowed in the zoning district in which it is located.

Freestanding sign  
A sign that is permanently erected in a fixed location and supported by 1 or more columns, upright poles or braces extended from the ground or from an object on the ground, or that is erected on the ground, where no part of the sign is attached to any part of a building, structure, or other sign. Examples include, but are not limited to, monument signs and pole signs.

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Halo lettering.

An externally illuminated sign in which light sources are placed out of direct view behind opaque sign elements (letters or graphics), creating a glow around the sign elements.

**Halo Lettering**



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9

Internal sign

A sign that is not intended to be viewed from outside the property, and that is located so as not to be visible from any street or from any adjacent lot. Examples include, but are not limited to, signs in the interior areas of shopping centers, non-illuminated signs inside a building and more than 3 feet inside any window or door, and signs located completely within a building and not visible from outside the building.

16  
17

Internal illumination

Illumination of a sign by light that is diffused through a translucent material from a source within the sign. (See also direct illumination, external illumination, externally illuminated sign, internally illuminated sign.)

21  
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Internally illuminated sign

A sign that is illuminated by light from a source within the sign through a translucent material. (See also direct illumination, external illumination, externally illuminated sign, internal illumination, halo lettering.)

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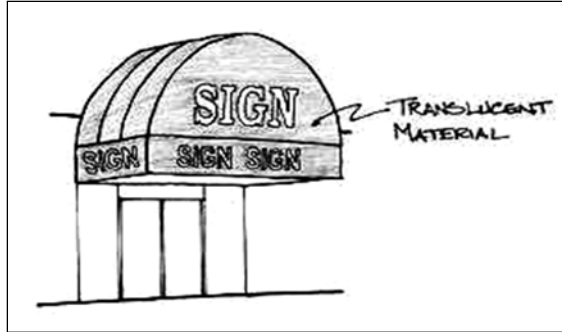
Examples of internally illuminated signs include:

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(a) Internally illuminated translucent sign, which may have opaque surfaces with translucent letters or translucent surfaces with opaque letters. An opaque surface with translucent letters is preferred to a translucent surface with opaque lettering.

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(b) Internally illuminated awning signs.



(c) Internally illuminated channel letters.



Marquee

A structure other than a roof that is attached to, supported by and projecting from a building, and that provides shelter for pedestrians.

Marquee sign

A wall sign that is mounted on or attached to a marquee.

Mobile sign

A sign on a trailer or other wheeled apparatus, whether or not self-propelled, that is not permanently affixed to the ground. (See also: temporary sign.)

Monument sign

A freestanding sign constructed of a solid material and mounted on a solid base that is placed directly on the ground.

Nit

A unit of luminance, equal to one candela per square meter.

Parapet

An extension of a vertical building wall above the line of the structural roof.

Parapet sign

A wall sign attached to the face of a parapet.

Pennant sign or pennant

See banner sign.

Parapet sign

A sign attached to a parapet wall, with its face parallel to the plane of the parapet wall and extending no more than 18 inches from such wall.

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- Pole sign  
A freestanding sign that is permanently supported in a fixed location by a structure of poles, uprights or braces from the ground and not supported by a building or base structure.
- Projecting sign  
A sign attached to and projecting from the wall of a building with the face of the sign at an interior angle of more than 45 degrees to the building wall to which it is attached.
- Roof sign  
A sign that is located:
  - (a) above the level of the eaves on pitched or gambrel roofs;
  - (b) above the roof deck of a building with a flat roof; or
  - (c) above the top of the vertical wall of a building with a mansard roof.
- Sign  
Any symbol, design or device used to identify or advertise any place, business, product, activity, service, person, idea or statement. Any representation that is illuminated and consisting wholly or in part, of text, images or graphics shall be considered a sign. Signs need not include text, and may consist of stripes, spots, or other recognizable designs, shapes or colors. Displays comprising of merchandise, figurines, mannequins, decorations and other similar articles, arranged inside a building and visible outside of a window, shall not be considered a sign.
- Sign area  
The total surface area of a sign display, including all text, images and graphics, and any distinctive surface, board, frame or shape on or within which the text, images and graphics are displayed.
- Aggregate sign area  
The total sign area of all signs on a lot or building, as indicated by the context, excluding the area of freestanding signs allowed by Article 12.
- Sign band  
A painted stripe or otherwise distinct scheme which indicates the establishment's logo by use of certain colors or patterns.
- Temporary sign  
A sign, other than a mobile sign, that is not permanently affixed to a building or structure or permanently mounted in the ground, and that pertains to an activity or event of limited duration. (See also mobile sign.)

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Wall sign

A sign attached to, erected against or hanging from the wall of a building, with the face in a parallel plane to the plane of the building wall, and extending no more than 18 inches from such wall. A wall sign may also be inside of a building if it is illuminated and visible through the window from a private of public right of way.



Article 12 – Signs  
Comparison of Proposed Amendments with Existing Ordinance  
November 27, 2018

**Article 12 Signs**

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<b>Section 10.1210</b>	<b>Purpose and Intent</b>
<b>Section 10.1220</b>	<b>General Sign Regulations</b>
<b>Section 10.1230</b>	<b>Sign Districts</b>
<b>Section 10.1240</b>	<b>Permitted Sign Types</b>
<b>Section 10.1250</b>	<b>Sign Dimensional Standards</b>
<b>Section 10.1260</b>	<b>Sign Illumination</b>
<b>Section 10.1270</b>	<b>Additional Sign Regulations</b>
<b>Section 10.1280</b>	<b>Nonconforming Signs</b>
<b>Section 10.1290</b>	<b>Sign Definitions</b>

**Section 10.1210 Purpose and Intent**

10.1211 The purpose of this Article is to regulate the type, number, location, size and illumination of signs on private property in order to maintain and enhance the character of the city’s commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays.

10.1212 This Article is intended to permit signs only as accessory uses to a permitted use on the same lot and not as principal uses on a lot. When a principal commercial use or activity is not open to the public or has been abandoned, all allowed accessory signs shall be removed regardless of their content.

10.1213 This Article is not intended to regulate the content of signs except as follows:

10.1213.10 When a sign is allowed because it is necessary to identify a building address or for safe access to or egress from the lot, only that relevant message may be presented.

10.1213.20 A sign that advertises a product or service not available on the lot (an “off-premise sign”) is not permitted. However, when a sign is permitted as accessory to a commercial use, the sign may contain a noncommercial message instead of a commercial message.

1 Section 10.1220 General Sign Regulations

2 10.1221 Sign Permits

3  
4 10.1221.10 No sign shall be erected without a sign permit issued by the Code  
5 Official except in accordance with the provisions of this Ordinance or a  
6 decision by the Board of Adjustment.

7  
8 10.1221.20 No sign permit will be issued for any premises on which there is an  
9 outstanding violation of any part of this Ordinance.

10  
11 10.1221.30 In the Historic District, a sign that violates any requirement of this Article,  
12 including the design standards set forth in Section 10.1274, shall require a  
13 Certificate of Appropriateness from the Historic District Commission  
14 (HDC) under Section 10.630, in addition to the sign permit issued by the  
15 Code Official.

16  
17 10.1221.40 Any sign located within a public right of way, including a projecting sign  
18 that extends over the public right of way, requires City Council approval  
19 and license in accordance with Chapter 8 of the municipal code.  
20

21 10.1222 Signs Not Requiring A Permit

22  
23 The following signs are permitted without a sign permit and shall not be included in the  
24 calculation for aggregate signage on a lot:

25  
26 10.1222.10 Signs required, or deemed necessary for the public welfare and safety, by a  
27 municipal, state or federal agency, such as traffic control devices ~~and~~  
28 ~~directional signs.~~

29  
30 10.1222.20 ~~Directional signs or information signs~~ Signs with a sign area up to 4  
31 square feet ~~containing only content of a general directive or informational~~  
32 ~~nature such as the following:~~

- 33  
34 (a) Identifying a building address or unit number;  
35 (b) Directing or guiding to entrances, exits or parking areas;  
36 (c) Identifying handicapped parking, no parking, or loading areas;  
37 (d) Identifying or directing to a public service facility or accommodation;  
38 (e) Identifying an official inspection station;  
39 (f) Notices concerning restrictions on access to private property (e.g., no  
40 trespassing, no hunting, etc.).

41  
42 12.1222.21 All such signs shall be located so as not to create a traffic  
43 safety hazard or to block line of sight from a motor vehicle.

44  
45 12.1222.22 A freestanding sign under this provision shall comply with  
46 the height standards for freestanding signs in Section  
47 10.1223.33.  
48

1 12.1222.23 A ~~directional or information~~ sign pertaining to public  
2 parking in a private parking lot that has been authorized  
3 under a permit from the Department of Public Works is  
4 exempt regardless of sign area.  
5

6 10.1222.30 ~~A building marker~~ One building identification sign per lot, composed of  
7 either (a) unpainted letters carved into, embedded in or embossed on ~~a the~~  
8 material of the building wall above the first story with a sign area up to  
9 12 square feet; or (b) a metal plaque affixed to the building wall no more  
10 than 5 feet above ground level, with a sign area up to 4 square feet. Such  
11 signs are typically used to provide historical information about the  
12 building such as the name of the building or the date of its construction.  
13

14 10.1222.40 Miscellaneous ~~business~~ signs mounted on a wall, window or door at a  
15 building entrance, provided that (a) there shall be only one group of  
16 ~~miscellaneous business such~~ signs per entrance; (b) each group of such  
17 signs shall not exceed 4 square feet in area (measured as a single sign in  
18 accordance with Section 10.1252) and shall be placed within 3 feet of the  
19 entrance; (c) no individual sign in the sign group shall exceed one square  
20 foot in area; and (d) no letter, character, image or graphic shall be more  
21 than 2 inches in height. The intent of this provision is to allow for the  
22 provision of ~~common business~~ information that is not intended to be read  
23 from more than 3 feet from the sign, such as including but not limited to  
24 restaurant menus, credit card stickers, hours of operation, owner and  
25 contact information, etc.  
26

27 10.1222.50 Internal signs.  
28

29 10.1222.60 Illuminated signs more than 3 feet behind any window or opening through  
30 which they might be visible from private or public right of way.  
31

32 ~~10.1222.70 Signs for historical associations and historical monuments up to 8 square~~  
33 ~~feet per lot.~~  
34

35 ~~10.1222.80 Temporary signs as follows:~~  
36

37 ~~10.1222.81 Real estate signs providing information concerning the~~  
38 ~~availability of the property for sale or for lease, up to 8~~  
39 ~~square feet in residential districts and 32 square feet in all~~  
40 ~~other districts.~~  
41

42 ~~10.1222.82 Site development signs up to 16 square feet per sign in~~  
43 ~~residential districts and 32 square feet per sign in all other~~  
44 ~~districts.~~  
45

46 10.1222.70 Flags that are either (a) attached to a building or to a pole projecting no  
47 more than 6 feet from a building or (b) mounted on a flagpole. These shall  
48 be limited in number and size as follows:  
49

1 10.1222.71 Each lot may have up to 3 flags (free-standing or attached to  
2 a building) that are up to 12 sq. ft. in area (per flag) in Sign  
3 District 1,- up to 24 sq. ft. in Sign Districts 2 and 3, and up to  
4 60 sq. ft. in Sign Districts 4, 5 and 6.

5  
6 10.1222.72 In addition to the above, each dwelling unit or  
7 condominium unit on a lot may have up to one flag not  
8 exceeding 6 sq. ft. in area attached to the dwelling unit or  
9 condominium unit.

10  
11 10.1222.980 Signs on registered motor vehicles that are used in the ordinary conduct of  
12 a business, but not including signs on vehicles that are parked on, or in  
13 view of, a street when the vehicle is not actively being used in the conduct  
14 of business.

15  
16 10.1222.90 Low wattage or low voltage temporary decorative lighting and displays  
17 used for holidays, festivals and special events, provided they do not pose a  
18 safety or nuisance problem due to light trespass or glare.

## 19 20 10.1223 Temporary Signs

21  
22 10.1223.10 The following temporary signs are allowed without a sign permit and  
23 shall not be included in the calculation for aggregate signage on a lot:

24  
25 10.1223.11 One temporary sign placed on a lot while the lot (or a  
26 dwelling unit or commercial unit on the lot) is being  
27 offered for sale or lease by a real estate agent or through  
28 advertising in a local newspaper of general circulation, and  
29 for a period of 14 days following the date on which a  
30 contract of sale or lease has been executed.

31  
32 10.1223.12 Temporary signs placed on a lot that is under active  
33 development, to be removed within 14 days after issuance of  
34 the first certificate of occupancy.

35  
36 10.1223.13 Temporary signs placed on a lot for a period of 120 days  
37 prior to, and 14 days after, an election involving candidates  
38 for a federal, state or local office that represents the district  
39 in which the lot is located.

40  
41 10.1223.20 The following temporary signs are allowed with the issuance of a sign  
42 permit:

43  
44 10.1223.21 One temporary sign placed on a lot for more than 90 days  
45 while the lot (or a dwelling unit or commercial unit on the  
46 lot) is being offered for sale or lease.

47  
48 10.1223.22 Temporary signs placed on a lot that is under active  
49 development for more than 14 days after issuance of the first

1 certificate of occupancy, but not to exceed 60 days after the  
2 issuance of said certificate.

3  
4 10.1223.30 The following provisions apply to all temporary signs whether requiring  
5 a sign permit or allowed without a permit:

6  
7 10.1223.31 The maximum sign area of a temporary sign allowed by  
8 this section shall be as follows:

9

<u>Sign District 1 or 2</u>	<u>6 sq. ft.</u>
<u>Sign District 3</u>	<u>16 sq. ft.</u>
<u>Sign District 4, 5 or 6</u>	<u>32 sq. ft.</u>

10  
11  
12  
13

14 10.1223.32 The maximum height of a temporary freestanding sign  
15 shall be as follows:

16

<u>Sign District 1, 2 or 3</u>	<u>4 ft.</u>
<u>Sign District 4, 5 or 6</u>	<u>12 ft.</u>

17  
18  
19

20 10.1223.33 A temporary freestanding sign shall comply with the  
21 required setback for the applicable sign district as set forth  
22 in Section 10.1253. In Sign District 1 a temporary  
23 freestanding sign shall be set back at least 7 feet from any  
24 lot line.

25  
26 10.1223.35 Temporary signs shall not be illuminated in any way.

27  
28 10.1223.36 A property owner may not accept a fee for posting or  
29 maintaining a temporary sign allowed by this Section  
30 10.1223, and any sign that is posted or maintained in  
31 violation of this provision is not authorized.

32  
33 10.1223.40 Special Event Signs

34  
35 ~~Special event sign permits shall be issued.~~ In addition to other permanent  
36 and temporary signs allowed by this Article, one sign may be placed on a  
37 lot immediately preceding and during a special event on that lot, subject to  
38 provided that all the following conditions are met:

39  
40 10.1223.41 A sign permit ~~for the special event sign~~ shall be obtained  
41 ~~for the special event sign~~ from the Code Official. Only one  
42 permit for a special event sign shall be issued for a lot in any  
43 3-month period.

44  
45 10.1223.42 A lot may have one special event sign for one consecutive  
46 7-day period every 3 months, for a maximum of 4 special  
47 event signs per year. If a special event sign permit is not  
48 used in one quarter it shall not be carried over to the next  
49 quarter.  
50

1 10.1223.43 The special event sign shall not be limited to size or  
2 location, but shall not be placed in such a manner as to create  
3 a traffic safety problem.  
4

5 10.1223.44 The special event sign shall be removed at the end of the  
6 event.  
7

## 8 10.12234 Signs Prohibited in All Districts

9

10 The following signs are prohibited in all sign districts:

11  
12 10.12234.10 Animated signs.

13  
14 10.12234.20 Signs that move or flash, or give the appearance of such motion (for  
15 example, by means of traveling lights). Beacons, rotating and flashing  
16 lights are prohibited except where such lighting devices are deemed  
17 necessary for the public safety and welfare by federal, state or municipal  
18 authorities.  
19

20 10.12234.30 Banners, pennants or flags (except as permitted by Section 10.1222.70)  
21 which are signs under the definition of “sign” herein, ~~except as~~  
22 ~~temporary signs allowed under Section 10.1275.~~  
23

24 10.12234.40 Balloons or other inflated devices displayed more than one day per month.  
25

26 10.12234.50 Mobile signs.  
27

28 10.12234.60 Signs mounted, attached or painted on vehicles, trailers or boats, except as  
29 permitted by Section 10.1222.90.  
30

31 10.12234.70 Any sign emitting sound.  
32

33 10.1224.80 Any sign projected via illumination on the exterior of any structure, or  
34 on or above a surface such as a driveway, sidewalk or street, regardless  
35 of the technology used to project the sign. This prohibition shall not apply  
36 where the structure or surface on which the sign is projected is within the  
37 same lot as the principal use to which the sign is accessory.  
38

39 10.1224.90 Any sign advertising a product or service not provided on the lot on which  
40 the sign is located (“off-premise sign”).  
41

## 42 10.12245 Maintenance of Signs

43

44 10.12245.10 All signs and sign structures shall be properly maintained and kept in a  
45 neat and proper state of maintenance and appearance.  
46

47 10.12245.20 Any sign of any type and located within any district which is found by the  
48 Code Official to be in a state of disrepair, illegible or ~~are considered~~  
49 dangerous, shall be repaired or removed.  
50

1 10.122~~4~~<sup>5</sup>.30 Upon failure to comply with an order to repair or remove a sign within  
2 thirty days, the Code Official is authorized to cause removal of the sign at  
3 the expense of the owner of the property on which the sign is located.  
4

5 **Section 10.1230 Sign Districts**

6 10.1231 The City is hereby divided into sign districts for the purpose of establishing  
7 standards for the number, type, size, location and illumination of signs.  
8 These sign districts are overlay districts. A property shall be subject to  
9 the regulations of both the sign district and the underlying zoning district.  
10

11 10.1232 Unless otherwise specified by ordinance, the sign districts shall correspond  
12 to underlying zoning districts as follows:  
13

<b>Sign Districts</b>	<b>Underlying Zoning Districts</b>
Sign District 1	All Rural and Residential Districts <del>Municipal</del> Natural Resource Protection
Sign District 2	Mixed Residential Office Mixed Residential Business Waterfront Business Character District 4-L1 Character District 4-L2
Sign District 3	Character District 4-W Character District 4 Character District 5
Sign District 4	Business Office Research
Sign District 5	General Business Gateway <u>Neighborhood Mixed-Use Corridor</u> <u>Gateway Neighborhood Mixed-Use Center</u>
Sign District 6	Industrial Waterfront Industrial Airport Districts

14  
15  
16 10.1233 In order to address the characteristics of a specific area or its surroundings,  
17 an area may be changed to a different sign district than specified in Section  
18 10.1232 following the same procedures as for a change in the underlying  
19 zoning district. (For example, a portion of the General Business district  
20 may be changed from Sign District 5 to Sign District 2 in order to protect  
21 an adjacent neighborhood from excessive light.)  
22

23 10.1234 Any sign not specifically allowed in a sign district is not permitted.  
24

1 Section 10.1240 Permitted Sign Types

2 10.1241 The types of signs permitted in each sign district shall be as set forth in  
 3 the following table, except as otherwise provided herein.

4 Table of Permitted Sign Types

	Sign District					
	1	2	3	4	5	6
Freestanding sign	N	P	P	P	P	P
Wall sign	P	P	P	P	P	P
Projecting sign	P	P	P	P	P	P
Parapet sign	N	N	N	N	P	P
Roof sign	N	N	N	N	P	P
Awning sign	N	P	P	P	P	P
Marquee sign	N	P	P	P	P	P
Canopy sign	N	N	N	P	P	P
Changeable or animated signs						
Animated sign	N	N	N	N	N	N
Changeable sign	N	P	P	P	P	P

P = Permitted N = Prohibited

5  
 6 10.1242 ~~Each side of a building facing a street may have one parapet sign (if~~  
 7 ~~permitted by Section 10.1241); or one wall sign above the first ground~~  
 8 ~~floor, may be allowed for each street façade, provided that the use is~~  
 9 ~~primarily above the first floor. The parapet sign or wall sign shall not be~~  
 10 ~~placed on a floor higher than the highest floor occupied by the applicable~~  
 11 ~~use.~~

12  
 13 10.1243 Only one freestanding sign shall be permitted per lot, except that a  
 14 ~~shopping center lot with more than one driveway~~ may have one  
 15 freestanding sign at the site's primary driveway and one smaller  
 16 freestanding sign at each additional driveway ~~not on the same street~~  
 17 complying with the area and height standards in Section 10.1251.30.

18  
 19 Section 10.1250 Sign Dimensional Standards

20 10.1251 Sign Area

21  
 22 10.1251.10 The maximum aggregate sign area shall be as follows:

	Sign District					
	1	2	3	4	5	6
Per linear foot of building frontage per establishment	0.5	1.0	2.0	1.5	1.5	2.0



10.1251.20 The maximum sign area for individual signs shall be as follows:

	Sign District					
	1	2	3	4	5	6
Freestanding sign	n/a	20	20	100	100	150
Wall sign	4	16	40	200	200	100
Projecting sign						
Ground floor use	2	16	12	16	16	16
Upper-floor use	n/a	0	8	8	8	8
Parapet sign	n/a	n/a	n/a	n/a	100	150
Roof sign	n/a	n/a	n/a	n/a	200	100
Awning sign	n/a	16	20	20	20	20
Marquee sign	n/a	16	20	20	20	20
Canopy sign	n/a	n/a	n/a	20	20	20

All dimensions in square feet

n/a = not applicable (sign type not permitted)  
n.r = no requirement

10.1251.30 When a ~~shopping center lot~~ has more than one freestanding sign, the freestanding sign at the site's primary driveway shall comply with the maximum sign area specified in Section 10.1251.20 and the maximum sign height specified in Section 10.1253.10; and the ~~other~~ freestanding signs at other driveways shall not exceed 75 square feet in area. comply with the following standards:

Sign District	On same street as primary driveway		On different street from primary driveway	
	Maximum Sign Area	Maximum Sign Height	Maximum Sign Area	Maximum Sign Height
<u>2</u>	<u>10 sq. ft.</u>	<u>5 ft.</u>	<u>10 sq. ft.</u>	<u>5 ft.</u>
<u>3</u>	<u>10 sq. ft.</u>	<u>5 ft.</u>	<u>20 sq. ft.</u>	<u>5 ft.</u>
<u>4</u>	<u>20 sq. ft.</u>	<u>12 ft.</u>	<u>40 sq. ft.</u>	<u>12 ft.</u>
<u>5</u>	<u>40 sq. ft.</u>	<u>12 ft.</u>	<u>75 sq. ft.</u>	<u>15 ft.</u>
<u>6</u>	<u>40 sq. ft.</u>	<u>12 ft.</u>	<u>75 sq. ft.</u>	<u>15 ft.</u>

10.1251.40 A sign projected via illumination on the exterior of a structure, or on or above a surface such as a driveway, sidewalk or street, shall comply with the sign area requirements for a wall sign.

## 10.1252 Measurement of Sign Area

10.1252.10 Sign area shall be measured in one of the following ways, at the applicant's discretion:

- (a) the area that can be enclosed by one polygon with no more than eight sides; or
- (b) the area that can be enclosed by a circle, oval, triangle or rectangle, or any two such shapes.

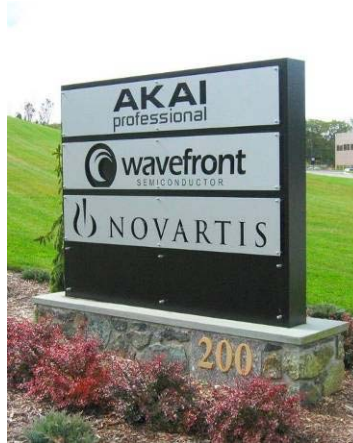
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9

10.1252.20 The sign area of a freestanding sign shall include all structural supports whether or not they contribute through shape, color or otherwise to the sign's message, except as follows:

10.1252.21 The base of a monument sign, up to one foot above the ground, shall not be included in the computation of sign area provided that such base is not illuminated in any way ~~and contains no information other than the street number.~~



Height of base is less than one foot – Not included in sign area



Height of base is one foot – Not included in sign area



Height of base is greater than one foot – Included in sign area

10.1252.22 The vertical supports of a pole sign shall not be included in the computation of sign area, provided that (1) the total width of all such supports is less than one-third of the width of the sign, and (2) the supports are not illuminated in any way.

10  
11  
12  
13  
14  
15  
16



Total width of supports is less than 1/3 of the width of the sign – Not included in sign area



Total width of supports is greater than 1/3 of the width of the sign – Included in sign area



Width of support is greater than 1/3 of the width of the sign – Included in sign area



**Width of support is approximately 1/3 of the width of the sign**

1  
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27

- 10.1252.30 For a sign that is painted or engraved on, or otherwise applied directly to, a building or other structure, the sign area shall include any background of a different color, material or appearance from the remainder of the wall or structure, and shall include all related text, images and graphics.
- 10.1252.40 The sign area of a canopy sign shall include all text and symbols, whether or not illuminated, and all illuminated areas; but shall not include non-illuminated areas that are distinguished from the background only by color stripes.
- 10.1252.50 The sign area of a projecting sign shall not include the area of supporting brackets with no text, images or graphics.
- 10.1252.60 Where a sign has two faces that are parallel or where the interior angle formed by the faces is 45 degrees or less, only one display space shall be measured in computing total sign area.
- 10.1252.70 The sign area of a spherical, free-form, sculptural or otherwise non-planar sign shall be equal to 75 percent of the areas of the 4 vertical sides of the smallest rectangular box that will encompass the sign.
- 10.1252.80 Decorative lighting on a building or structure, including neon and other accent lighting, and any illuminated building panel, shall be considered a wall sign for the purposes of this section, and shall be counted as part of the aggregate sign area allowed.

1            10.1253 Sign Height and Setback

2  
3            10.1253.10    The maximum and minimum heights and minimum setbacks for signs in  
4                            each sign district shall be as set forth in the following table, except as  
5                            otherwise provided herein.

6                            **Table of Sign Height and Setback Requirements**

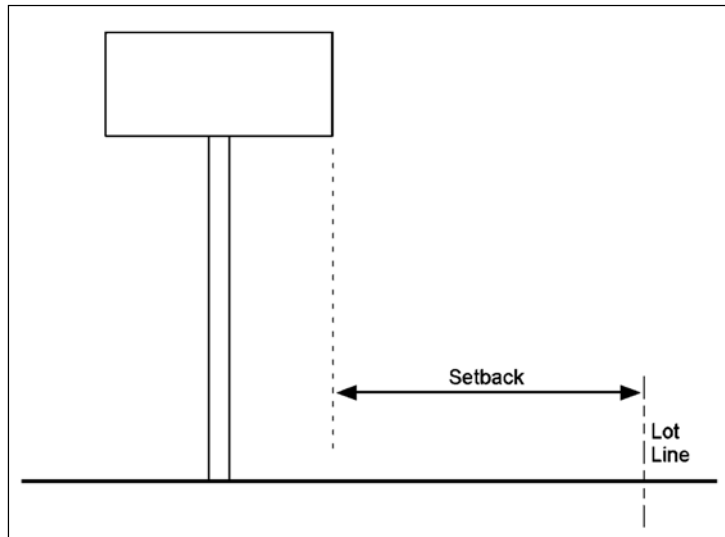
	Sign District					
	1	2	3	4	5	6
Projecting sign						
Minimum clearance (ground to bottom of sign)	7	7	7	7	7	7
Freestanding sign						
Minimum setback from lot line	<del>5</del> n/a	5	5	20	10	20
Maximum height (ground to top of sign)	<del>7</del> n/a	7	12	20	20	20
<del>Temporary freestanding sign</del>	<del>4</del>	<del>4</del>	<del>8</del>	<del>12</del>	<del>12</del>	<del>20</del>

7                            All dimensions in feet                            n/a = not applicable (sign type not permitted)

8  
9            10.1253.20    Where a driveway intersects with a street, no sign shall be erected or  
10                            maintained between the heights of 2.5 feet and 10 feet above the edge of  
11                            pavement grades within the area bounded by (a) the side lines of the  
12                            driveway and street and (b) lines joining points along said side lines 20  
13                            feet from the point of intersection.

14  
15            10.1253.30    The height of a freestanding sign shall be measured with respect to the  
16                            elevation of the centerline of the adjacent public right-of-way.

17  
18            10.1253.40    The setback of a sign from a lot line shall be measured as the shortest  
19                            horizontal distance from the lot line to the any part of the sign, whether or  
20                            not such part of the sign is at ground level.



1 10.1253.50 A projecting sign shall project no closer than 1 foot to the edge of the  
2 vehicular travel way, if any.  
3

4 **Section 10.1260 Sign Illumination**

5 **10.1261 Types of Illumination**  
6

7 10.1261.10 Signs may only be illuminated as set forth in the following table, except as  
8 otherwise provided herein.  
9

**Table of Sign Illumination Requirements**

	Sign District					
	1	2	3	4	5	6
External illumination	N	P	P	P	P	P
Halo lettering	N	P	P	P	P	P
Internal illumination						
Freestanding sign	N	P	N	P	P	P
Wall sign	N	P	P	P	P	P
Projecting sign	N	N	N	N	N	N
Parapet sign	n/a	N	N	N	P	P
Roof sign	n/a	N	N	N	P	P
Awning sign	n/a	N	P	N	P	P
Marquee sign	n/a	N	P	N	P	N
Canopy sign	n/a	n/a	n/a	P	P	P
Direct illumination	N	N	P	P	P	P

10 P = Permitted N = Prohibited n/a = not applicable (sign type not permitted)  
11

12 10.1261.20 Temporary signs shall not be illuminated.  
13

14 10.1261.30 Signs in the Historic District shall be illuminated only by external  
15 illumination, notwithstanding anything to the contrary in Section 10.1261.  
16

17 **10.1262 Hours of Illumination**  
18

19 Signs shall not be illuminated between 11:00 p.m. and 6:00 a.m., except that signs may  
20 be illuminated during the operation of a use or activity that is open to customers or the  
21 public, and for not more than one hour after the activity ceases.  
22

23 **10.1263 Illumination Standards**  
24

25 10.1263.10 A light source for external illumination of a sign shall be mounted and  
26 shielded so that said light source is not visible three feet above grade at the  
27 lot line and so that the lighting is confined to the area of the sign.  
28

29 10.1263.20 A light source for internal illumination of a sign constructed of trans-  
30 lucent materials and wholly illuminated from within shall not require  
31 shielding.  
32

- 1 10.1263.30 A sign or its illuminator shall not by reason of its location, shape or color  
2 interfere with pedestrian or vehicular traffic or be confused with or obstruct  
3 the view or effectiveness of any official traffic signal or traffic marking.  
4
- 5 10.1263.40 Illuminance of the sign face shall not exceed the following standards:  
6
- 7 10.1263.41 External illumination: 50 foot-candles as measured on the  
8 sign face.  
9
- 10 10.1263.42 Internal illumination: 5,000 nits (candelas per square  
11 meter) during daylight hours, and 500 nits between dusk and  
12 dawn, as measured at the sign's face.  
13
- 14 10.1263.43 Direct illumination: 5,000 nits during daylight hours, and  
15 500 nits between dusk and dawn, as measured at the sign's  
16 face.  
17
- 18 10.1263.50 Light sources shall utilize energy efficient fixtures to the greatest extent  
19 practicable. Light fixtures including bulbs or tubes used for sign  
20 illumination shall be selected and positioned to achieve the desired  
21 brightness of the sign with the minimum possible wattage, while ensuring  
22 compliance with all applicable requirements of this Ordinance.  
23
- 24 10.1263.60 A sign using direct illumination shall consist only of letters, numbers  
25 and other common typographical characters, all of which shall be in no  
26 more than three colors against a dark background, and the total illuminated  
27 area shall not exceed 30 percent of the total area of the sign.  
28

## 29 Section 10.1270 Additional Sign Regulations

### 30 10.1271 Signs on More Than One Façade of a Building

- 31
- 32 10.1271.10 A use in a building with more than one exterior wall facing a street may  
33 have signs on each such wall, ~~up to the maximum sign area per linear~~  
34 ~~foot of building frontage per establishment.~~
- 35
- 36 10.1271.20 ~~A store~~ An establishment with a public entrance on a side of the building  
37 not facing a street may have signs on that side as well as on the street-  
38 facing wall(s), ~~up to the maximum sign area per business.~~
- 39
- 40 10.1271.30 Regardless of the location of signs, the maximum sign area per  
41 establishment shall be based only on the building frontage as defined in  
42 Section 10.1290.
- 43
- 44 ~~10.1271.30 A non-illuminated sign that is not visible from a public right of way, such~~  
45 ~~as drive-through menu signs and car wash menus, shall not be counted in~~  
46 ~~the maximum aggregate sign area for the business or lot.~~  
47

1           10.1272 Roof Signs

- 2
- 3           10.1272.10   A roof sign shall be parallel to the main façade of the building on which it
- 4                           is mounted,
- 5
- 6           10.1272.20   A roof sign on a pitched, hip, gambrel or mansard roof shall not extend
- 7                           above the elevation midway between the level of the eaves and the highest
- 8                           point of the roof. A roof sign is not permitted on a flat roof.
- 9
- 10          10.1272.30   The maximum height of a roof sign shall not exceed the lesser of 36
- 11                           inches or 25% of the vertical height of the roof.
- 12

13           10.1273 Marquee Signs

- 14
- 15          10.1273.10   All text, images and other graphics on a marquee sign shall be displayed
- 16                           on the outside vertical faces of the marquee, and shall be no more than 1.5
- 17                           feet tall.
- 18
- 19          10.1273.20   The sign area of a marquee sign shall be included in the maximum
- 20                           aggregate sign area allowed for ~~said property~~the lot.
- 21

22           10.1274 Relation of Sign to Building Façade in the Historic District

23

24           In the Historic District, a ~~hanging-wall sign~~ or projecting sign should align with some

25           horizontal element on the façade. For example, the top of the sign may align with the top

26           of the window, the bottom of the sign may align with the bottom of the window, the

27           bottom of sign may align with the top of the lintel, etc.

28

29           ~~10.1275 Temporary Signs~~

30

31           ~~10.1275.10~~    New BusinessInterim Signs

32

33           An ~~temporary new business interim~~ sign may be erected while awaiting arrival of a

34           permanent sign for which a sign permit has been issued. ~~A new business~~ The interim

35           sign shall conform to the same dimensional and other requirements as the approved

36           permanent sign and shall be allowed only until the permanent sign is installed or for 60

37           days, whichever is the shorter period of time. A sign permit ~~must be obtained~~ for an new

38           ~~business interim~~ sign must be obtained from the Code Official.

39

40           Section 10.1280 Nonconforming Signs

- 41          10.1281           A nonconforming sign or sign structure shall be brought into
- 42                           conformity with this Ordinance if it is altered, reconstructed, replaced, or
- 43                           relocated. For the purpose of this provision, the alteration of a sign or sign
- 44                           structure includes any change in size, shape, materials or technology. A
- 45                           change in text or graphics is not an alteration or replacement for purposes
- 46                           of this subsection.
- 47

1 10.1282 Nonconforming signs must be maintained in good condition.  
2 Maintenance required by this Subsection shall include replacing or  
3 repairing of worn or damaged parts of a sign or sign structure in order to  
4 return it to its original state, and is not a change or modification prohibited  
5 by Subsection 10.1281.  
6

7 10.1283 A nonconforming sign shall be removed, made conforming, or replaced  
8 with a conforming sign ~~in either of the following situations: if~~

9  
10 ~~(a)~~ 50 percent or more of the nonconforming sign is blown down, destroyed,  
11 or for any reason or by any means taken down, altered, or removed.  
12

13 ~~10.1284 A nonconforming sign shall be removed if (b)~~ The use of the  
14 nonconforming sign, or the property on which it is located, has ceased,  
15 become vacant, or been unoccupied for a continuous period of 8 months or  
16 more. An intent to abandon is not required as the basis for removal under  
17 this section.  
18

## 19 Section 10.1290 Sign Definitions

20 Aggregate sign area  
21 See under sign area.  
22

23 Animated sign  
24 A sign that uses movement or a change of lighting to depict action or create a  
25 special effect or scene. See also changeable sign.  
26

27 Awning  
28 A cloth, plastic or other nonstructural covering that either is permanently  
29 attached to a building or can be raised or retracted to a position against the  
30 building when not in use.  
31

32 Awning sign  
33 A sign that is painted on or otherwise applied or attached to an awning. An  
34 internally illuminated awning shall be considered an awning sign whether or  
35 not it contains any text or graphics.  
36

37 Banner sign or banner  
38 A sign that consists of text or other graphic elements on a non-rigid material  
39 either enclosed or not enclosed in a rigid frame and secured or mounted to allow  
40 motion caused by the atmosphere. See also temporary sign.  
41

42 Building frontage  
43 The maximum horizontal width of the ground floor of a building that  
44 approximately parallels and faces a public street or right of way.  
45 (a) Where an individual occupant's main entrance faces a driveway or parking  
46 lot, the width of the occupant's ground floor space facing the occupant's  
47 entrance shall be considered that occupant's separate and distinct building  
48 frontage.



- 1 (b) Where two or more uses occupy the ground floor of a building, the portion  
2 of the building frontage occupied by each use will be that use's separate  
3 and distinct building frontage for the purpose of calculating allowed sign  
4 area.  
5 (c) A corner lot or through lot shall be considered to have a separate and  
6 distinct building frontage on each street.  
7 (d) When a building is not parallel to the street, or has a front wall that is  
8 angled or curved, the building frontage shall include any portion of the  
9 front wall that is oriented at an angle of 30 degrees or less from the front lot  
10 line.

11  
12 ~~Building marker sign~~

13 ~~A sign indicating the name of a building, the date of its construction, and/or~~  
14 ~~incidental information about its history. One per site, maximum area of 2 square~~  
15 ~~feet, not included in the maximum sign area.~~

16  
17 Canopy

18 A freestanding structure constructed of rigid materials, providing protective  
19 cover over an outside service area.

20  
21 Canopy sign

22 A sign attached to, affixed to or otherwise mounted on a canopy.

23  
24 Changeable sign

25 A sign or portion thereof with characters, letters or symbols that can be changed,  
26 whether electronically or manually without altering the face or surface of the  
27 sign. A sign on which the message changes more than once per day shall be  
28 regulated as an animated sign. A sign on which the only changes are  
29 mechanical or electronic indication of time or temperature is not considered a  
30 changeable or animated sign.

31  
32 Direct illumination

33 Illumination of a sign by light emitted directly from a lamp, luminary or  
34 reflector, and not diffused through translucent materials or reflected or projected  
35 from an external source. Examples include, but are not limited to, signs using  
36 luminous gas-filled tubes (e.g., neon) or light-emitting diodes (LED). (See also  
37 external illumination, externally illuminated sign, internal illumination,  
38 internally illuminated sign.)

39  
40 ~~Directional sign~~

41 ~~A sign directing or guiding vehicles or people to entrances, exits or parking.~~

42  
43 ~~Directory sign~~

44 ~~A sign that lists businesses in a multi-tenant building, office park, or industrial~~  
45 ~~park.~~

46  
47 External illumination

48 Illumination of a sign by a source of light not contained within, or on the surface  
49 of, the sign itself. (See also direct illumination, externally illuminated sign,  
50 internal illumination, internally illuminated sign.)

1  
2 Externally illuminated sign

3 A sign that is illuminated by a light source that is not contained within, or on the  
4 surface of, the sign itself

5  
6 Flag

7 A piece of durable fabric or other flexible material containing distinctive colors,  
8 patterns, standards, words, or emblems which hangs loose from a staff or pole or  
9 is attached directly to a building.

10  
11 Flagpole

12 A permanent, free-standing structure or a structure attached to a building and  
13 used for the sole purpose of displaying flags. A free-standing flagpole shall not  
14 exceed the maximum building height allowed in the zoning district in which it is  
15 located.

16  
17 Freestanding sign

18 A sign that is permanently erected in a fixed location and supported by 1 or more  
19 columns, upright poles or braces extended from the ground or from an object on  
20 the ground, or that is erected on the ground, where no part of the sign is attached  
21 to any part of a building, structure, or other sign. Examples include, but are not  
22 limited to, monument signs and pole signs.

23  
24 Halo lettering.

25 An externally illuminated sign in which light sources are placed out of direct  
26 view behind opaque sign elements (letters or graphics), creating a glow around  
27 the sign elements.

28 **Halo Lettering**



29  
30  
31 Information sign

32 A sign that does not exceed 4 square feet of sign area and includes only  
33 information of a general directive or informational nature such as the following:

- 34 (a) Handicapped parking, no parking, loading area;  
35 (b) To give direction to a public service facility or accommodation; an official  
36 inspection station;  
37 (c) Building address or unit number;  
38 (d) No trespassing, no hunting, etc.  
39

1 Internal sign

2 A sign that is not intended to be viewed from outside the property, and that is  
3 located so as not to be visible from any street or from any adjacent lot.  
4 Examples include, but are not limited to, signs in the interior areas of shopping  
5 centers, ~~and~~ non-illuminated signs inside a building and more than 3 feet inside  
6 any window or door, and signs located completely within a building and not  
7 visible from outside the building.  
8

9 Internal illumination

10 Illumination of a sign by light that is diffused through a translucent material  
11 from a source within the sign. (See also direct illumination, external  
12 illumination, externally illuminated sign, internally illuminated sign.)  
13

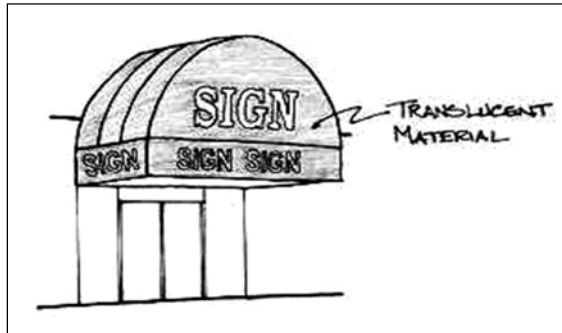
14 Internally illuminated sign

15 A sign that is illuminated by light from a source within the sign through a  
16 translucent material. (See also direct illumination, external illumination,  
17 externally illuminated sign, internal illumination, halo lettering.)  
18

19 Examples of internally illuminated signs include:

20  
21 (a) Internally illuminated translucent sign, which may have opaque surfaces  
22 with translucent letters or translucent surfaces with opaque letters. An opaque  
23 surface with translucent letters is preferred to a translucent surface with  
24 opaque lettering.  
25

26 (b) Internally illuminated awning signs.



27  
28  
29 (c) Internally illuminated channel letters.



30 Marquee

31 A structure other than a roof that is attached to, supported by and projecting  
32 from a building, and that provides shelter for pedestrians.  
33  
34

35 Marquee sign

36 A wall sign that is mounted on or attached to a marquee.  
37

1  
2 Mobile sign

3 A sign on a trailer or other wheeled apparatus, whether or not self-propelled, that  
4 is not permanently affixed to the ground. (See also: temporary sign.)  
5

6 Monument sign

7 A freestanding sign constructed of a solid material and mounted on a solid base  
8 that is placed directly on the ground.  
9

10 ~~New business sign~~

11 ~~A temporary sign that is erected or installed while awaiting installation of a~~  
12 ~~permanent sign for which a sign permit has been issued.~~  
13

14 Nit

15 A unit of luminance, equal to one candela per square meter.  
16

17 Parapet

18 An extension of a vertical building wall above the line of the structural roof.  
19

20 Parapet sign

21 A wall sign attached to the face of a parapet.  
22

23 Pennant sign or pennant

24 See banner sign.  
25

26 Parapet sign

27 A sign attached to a parapet wall, with its face parallel to the plane of the  
28 parapet wall and extending no more than 18 inches from such wall.  
29

30 Pole sign

31 A freestanding sign that is permanently supported in a fixed location by a  
32 structure of poles, uprights or braces from the ground and not supported by a  
33 building or base structure.  
34

35 Projecting sign

36 A sign attached to and projecting from the wall of a building with the face of the  
37 sign at an interior angle of more than 45 degrees to the building wall to which it  
38 is attached.  
39

40 ~~Real estate sign~~

41 ~~A temporary sign that advertises the availability of the property for sale or~~  
42 ~~lease.~~  
43

44 Roof sign

45 A sign that is located:

46 (a) above the level of the eaves on pitched or gambrel roofs;

47 (b) above the roof deck of a building with a flat roof; or

48 (c) above the top of the vertical wall of a building with a mansard roof.  
49

1 Sign

2 Any symbol, design or device used to identify or advertise any place, business,  
3 product, activity, service, person, idea or statement. Any representation that is  
4 illuminated and consisting wholly or in part, of text, images or graphics shall be  
5 considered a sign. Signs need not include text, and may consist of stripes, spots,  
6 or other recognizable designs, shapes or colors. Displays comprising of  
7 merchandise, figurines, mannequins, decorations and other similar articles,  
8 arranged inside a building and visible outside of a window, shall not be  
9 considered a sign.

10 Sign area

11 The total surface area of a sign display, including all text, images and graphics,  
12 and any distinctive surface, board, frame or shape on or within which the text,  
13 images and graphics are displayed.

14 Aggregate sign area

15 The total sign area of all signs on a lot or building, as indicated by the  
16 context, excluding the area of freestanding signs allowed by Article  
17 12.

18 Sign band

19 A painted stripe or otherwise distinct scheme which indicates the  
20 establishment's logo by use of certain colors or patterns.

21 ~~Site development sign~~

22 ~~A temporary sign that identifies a development which is under construction~~  
23 ~~and/or the owners, architects, contractors, real estate agents and lenders involved~~  
24 ~~with the development; and that may include sales and leasing information.~~

25 ~~Special event sign~~

26 ~~A temporary sign limited to one consecutive 7 day period every 3 months, for a~~  
27 ~~total of 4 events per year. If a sign is not used in a quarter it shall not be carried~~  
28 ~~over to the next quarter.~~

29 Temporary sign

30 A sign, other than a mobile sign, that is not permanently affixed to a building  
31 or structure or permanently mounted in the ground, and that pertains to an  
32 activity or event of limited duration. ~~Examples of temporary signs include, but~~  
33 ~~are not limited to, new business sign, site development sign, and special~~  
34 ~~event sign. A temporary sign, when permitted, shall not be included in the~~  
35 ~~calculation of aggregate sign area on a lot.~~ (See also mobile sign.)

36 Wall sign

37 A sign attached to, erected against or hanging from the wall of a building, with  
38 the face in a parallel plane to the plane of the building wall, and extending no  
39 more than 18 inches from such wall. A wall sign may also be inside of a  
40 building if it is illuminated and visible through the window from a private of  
41 public right of way.  
42  
43  
44  
45  
46  
47  
48  
49

**PORTSMOUTH POLICE DEPARTMENT**

**MEMORANDUM**

RECEIVED

DATE: DECEMBER 7<sup>TH</sup>, 2018  
TO: JOHN P. BOHENKO, CITY MANAGER  
FROM: ROBERT M. MERNER, CHIEF OF POLICE  
RE: VIOLENCE AGAINST WOMEN ACT GRANT FUNDING

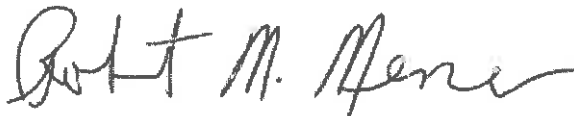
**DEC 10 2018**  
CITY MANAGER  
PORTSMOUTH, NH

In the absence of a sitting Police Commission, I am forwarding the attached Violence Against Women Act Grant to the City Council for action at their upcoming meeting on Monday, December 17<sup>th</sup>, 2018.

The grant award in the amount of \$30,000 from the New Hampshire Department of Justice will enable the Police Department to retain the advocate position which would otherwise be lost due to lack of funding.

We submit the information to you pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their next meeting. We respectfully request this item be placed on the City Council meeting agenda for the December 17<sup>th</sup>, 2018 regular City Council meeting.

Respectfully submitted,



Robert M. Merner, Chief of Police

Attachments: Violence Against Women Act Grant Filing

copies: Board of Police Commissioners  
Finance Director Judie Belanger

Admin. Mgr. Karen Senecal  
Business Asst. Tammie Perez



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 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 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.

## Non-supplanting Certification

### Supplanting defined

Federal funds must be used to supplement existing funds for program activities and must not replace those funds that have been appropriated for the same purpose. Supplanting shall be the subject of application review, as well as pre-award review, post-award monitoring, and audit. If there is a potential presence of supplanting, the applicant or grantee will be required to supply documentation demonstrating that the reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds. For certain programs, a written certification may be requested by the awarding agency or recipient agency stating that Federal funds will not be used to supplant State or local funds. See the OJP Financial Guide (Part II, Chapter 3). <http://www.ojp.usdoj.gov/financialguide/part2/part2chap3.htm>.

### Supplanting and job retention

A grantee may use federal funds to retain jobs that, without the use of the federal money, would be lost. If the grantee is planning on using federal funds to retain jobs, it must be able to substantiate that, without the funds, the jobs would be lost. Substantiation can be, but is not limited to, one of the following forms: an official memorandum, official minutes of a county or municipal board meeting or any documentation, that is usual and customarily produced when making determinations about employment. The documentation must describe the terminated positions and that the termination is because of lack of the availability of State or local funds.

---

The \_\_\_\_\_ (Applicant) certifies that any funds awarded through **grant number** \_\_\_\_\_ shall be used to supplement existing funds for program activities and will not replace (supplant) nonfederal funds that have been appropriated for the purposes and goals of the grant.

The \_\_\_\_\_ (Applicant) understands that supplanting violations may result in a range of penalties, including but not limited to suspension of future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under this grant, and civil and/or criminal penalties.

Printed Name and Title: \_\_\_\_\_

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

## VAWA PROGRAM GUIDELINES AND CONDITIONS

### Exhibit C

#### State of New Hampshire Grant Agreement

I, the below-named individual, on behalf of the below-named agency (hereinafter referred to as “subrecipient”), am legally authorized to submit and accept grants on behalf of the applicant agency, and hereby certify that the grant program outlined in this application package, if funded by STOP Violence Against Women formula grant funds, will adhere to the following guidelines and conditions:

1. The subrecipient agrees to comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirements in 2 CFR Part 200, as adopted and supplemented by the Department of Justice (DOJ) in 2 CFR Part 2800 (together with Part 200 Uniform Requirements), and the current edition of the DOJ Grants Financial Guide as posted on the OVW website, including any updated version that may be posted during the period of performance. The subrecipient also agrees that all financial records pertinent to this award, including the general accounting ledger and all supporting documents, are subject to agency review throughout the life of the award, during the close-out process, and the three years after submission of the final Federal Financial Report (SF-425) or as long as the records are retained, whichever is longer, pursuant to 2 C.F.R. 200.333, 200.336.

2. The subrecipient agrees to implement this project within ninety (90) days following the grant award date or provide a letter to this office outlining their reasons for delay. Grant programs not started within (90) days of the original grant award date are subject to automatic cancellation of their grant funding.

3. The subrecipient assures that federal funds received for this grant program will not be used to supplant State and local funds that would otherwise be available for the program’s purpose. The subrecipient further assures that the Violence Against Women Program grant funds will be expended only for purposes and activities covered within the subrecipients approved application.

4. The subrecipient, at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting of requirements, where applicable) governing the use of federal funds for expenses related to conferences (as the term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences. Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears on the OVW website at <http://www.justice.gov/ovw/conference-planning>.

5. The subrecipient understands and agrees that any training or training materials developed or delivered with funding provided under the award must adhere to the OVW Training Guiding Principles for Grantees and Subgrantees, available at <http://www.justice.gov/ovw/grantees#resources>.

6. If the subrecipient currently has other active awards of federal funds, or if the subrecipient received any other award of federal funds during the periods of performance for this award, the subrecipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the subrecipient must promptly notify the NH Department of Justice Grants Management Unit in writing of the potential duplication, and, if so requested by the NH Dept. of Justice, must seek a budget-modification to eliminate any inappropriate duplication of funding.

## VAWA PROGRAM GUIDELINES AND CONDITIONS

7. The subrecipient authorizes representatives from the United States Department of Justice and the New Hampshire Department of Justice to access and examine all records, books, papers, and/or documents (paper or electronic) related to this Violence Against Women Program. Further, the subrecipient agrees to submit to performance monitoring visits by the New Hampshire Department of Justice and/or the United States Department of Justice on a periodic basis to ensure that materials and products (written, visual, or sound) developed with the OVW formula grant program funding fall within the scope of the grant program and do not compromise victim safety.

8. The subrecipient agrees to maintain detailed time and attendance records for personnel positions funded with Violence Against Women grant program funding.

9. The subrecipient agrees that all Violence Against Women Program grant and match funds will be expended only on program allowable activities. The subrecipient must obtain prior written approval from the New Hampshire Department of Justice in order to make any changes in program activities or budget changes or the subgrant start and/or ending dates, which were set forth in the subrecipient's application.

10. The subrecipient agrees that the federal share of a subgrant made under the STOP Formula Program may not exceed 75 percent of the total costs of the total projects described in the application. The subrecipient also agrees to the following:

- a) Victim Service providers receiving STOP grants will not be required by the state to provide matching dollars.
- b) The subrecipient will provide no less than 25 percent matching funds for subgrants awarded to victim services providers under any allocation other than victim services unless granted a waiver or partial waiver by OVW.

11. Equipment purchased with Violence Against Women Program grant funds shall be inventoried by the subrecipient. The inventory must include the item description, serial number, cost, location, and percentage of federal Violence Against Women Program grant funds expended on the item.

12. The subrecipient agrees that the title to any equipment purchased with Violence Against Women Program funds will revert back to the New Hampshire Department of Justice, Grants Management Unit, when it is no longer being used for the intended purposes for which it was acquired.

13. The subrecipient agrees that grant funds will not be used to conduct public awareness or community education campaigns or related activities to broadly address domestic violence, dating violence, sexual assault, or stalking without specific prior approval from the NH Department of Justice Grants Management Unit. However, grant funds may be used to support, inform, and provide outreach to victims regarding available services.

14. The subrecipient at any tier shall comply with USDOJ regulations pertaining to civil rights and nondiscrimination under 28 CFR Part 42, specifically including any applicable requirements in Subpart E of 28 CFR Part 42 that relates to an equal employment opportunity program.

15. The subrecipient assures that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination within the three years prior to the receipt of the federal financial assistance and after a due process hearing against the subrecipient on the grounds of race, color, religion,

## VAWA PROGRAM GUIDELINES AND CONDITIONS

national origin, sex, age, or disability, a copy of the finding will be submitted to the New Hampshire Department of Justice, Grants Management Unit and to the U.S. Department of Justice, Office for Civil Rights, Office of Justice Programs, 810 7th Street, NW, Washington, D.C. 20531. For additional information regarding your obligations under civil rights please reference the state website at <https://www.doj.nh.gov/grants-management/civil-rights.htm> and understand if you are awarded funding from this office, civil rights compliance will be monitored by this office, and the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

16. The recipient and any subrecipient (“subgrantee”) at any tier must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to the nondiscrimination on the basis of sex in certain “education programs.

17. Any subrecipient at any tier, must comply with all applicable requirements of C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to the subrecipient (“subgrantee”) organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

18. The subrecipient agrees to comply with all relevant statutory requirements, which may include, among other relevant authorities the Violence Against Women Act of 1994, P.L. 103-322, the Violence Against Women Act of 2000, P.L. 106-386, the Omnibus Crime Control and Safe Streets Act of 1968. 34 U.S.C. §§ 10101 et seq., the Violence Against Women and Department of Justice Reauthorization Act of 2005, P.L. 109-162, the Violence Against Women Reauthorization of 2013, P.L.113-114 and OVW’s implementation regulations at 28 CFR Part 90.

19. The subrecipient must certify that Limited English Proficiency persons have meaningful access to any services provided by this program. National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with these requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov). (Executive Order: 13166)

## VAWA PROGRAM GUIDELINES AND CONDITIONS

20. The subrecipient agrees to complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I-9). This form is to be used by the subrecipient to verify that persons employed by the subrecipient are eligible to work in the U.S. <https://www.uscis.gov/i-9>

21. In general, as a matter of federal law, federal funds may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, in order to avoid violation of 18 U.S.C. § 1913. The recipient, or any subrecipient ("subgrantee") may, however, use federal funds to collaborate with and provide information to federal, state, local, tribal and territorial public officials and agencies to develop and implement domestic violence, dating violence, sexual assault, and stalking (as those terms are defined in 34 U.S.C § 12291 (a)) when such collaboration and Provision of information is consistent with the activities otherwise authorized under the grant program.

Federal law generally prohibits federal funds awarded by OVW being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modify any such award. See 31 U.S.C. § 1352. Certain expectation to this law will apply, including an expectation that applies to Indian tribes and tribal organizations.

Should any questions arise as to whether a particular use of the federal funds by a subrecipient would or might fall within the scope of the these prohibitions, the subrecipient is to contact the OVW for guidance, and may not proceed without the express prior written approval of OVW.

22. Grants are funded for the grant award period noted on the grant award document. No guarantee is given or implied of subsequent funding in future years.

23. Repayment of this grant may be required if the subrecipient receives a state or federal forfeiture, which exceeds the amount of the grant award.

24. Pursuant to 23 USC §§402, 403 and 29 USC §668, the subrecipient agrees to encourage on-the-job seat belt policies and programs for their employees and contractors when operating company-owned, rented, or personally owned vehicles. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging while Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("Subgrantees") to adopt and enforce policies banning employees from texting messaging while driving any vehicle during the course of performing work funded by this award, and to establish workforce safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

25. In regard to the Publication Disclaimer for Stop Formula subrecipients, all materials and publications (written, web-based, visual, or audio) resulting from subaward activities shall contain the following statements:

"This project was supported by subgrant No. \_\_\_\_\_ awarded by the state administrating office for the Office on Violence Against Women, U.S. Department of Justice's STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice."

Any subrecipient, at any tier, must comply with this condition.

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26. The subrecipient (“subgrantees”) at any tier agrees to comply with the provisions of 34 U.S.C. § 12291 (b)(2), nondisclosure of confidential or private information, which includes creating and maintaining documentation of compliance, such as policies and procedures for release of victim information.

27. The subrecipient agency agrees that, should they employ a former member of the NH Department of Justice (NHDOJ), that employee or their relative shall not perform work on or be billed to any federal or state subgrant or monetary award that the employee directly managed or supervised while at the NHDOJ for the life of the subgrant without the express approval of the NH Department of Justice.

28. The Hatch Act restricts the political activity of individuals principally employed by state or local executive agencies that work in connection with programs financed in whole or part by federal loans or grants. The Hatch Act prohibits a grant-funded person from becoming a candidate for public office in a partisan election. For further information please refer to U.S.C. Title 5 Sections 1501-1508 and Title 5 of the Code of Federal Regulations part 151.

29. State or local prosecution, law enforcement, and courts must have consulted with their local victim service programs during the course of developing their grant applications in order to ensure that proposed services, activities and equipment acquisitions are designed to promote the safety, confidentiality, and economic independence of victims of domestic violence, sexual assault, stalking, and dating violence.

30. No charges to the victim shall be allowed by any organization or agency that receives funding from this federal grant program. No program income shall be generated.

31. The subrecipient agrees that grant funds will not be used to support the development or presentation of a domestic violence, sexual assault, dating violence, and/or stalking curriculum for primary or secondary schools. The subrecipient further agrees that grant funds will not be used to teach primary or secondary school students from an already existing curriculum.

32. All 501(c)(3) organization (“except churches”) doing business in New Hampshire must be registered with the NH Charitable Trust Unit at the NH Department of Justice and may have additional requirements to register with the NH Secretary of State's office dependent upon the structure of your organization. See <http://doj.nh.gov/site-map/charities.htm>

33. The subrecipient acknowledges that 34 U.S.C. § 12291 (b)(13) prohibits subrecipients of OVW awards from excluding, denying benefits to, or discriminating against any person on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in any program or activity funded in whole or in part by OVW. The subrecipients agree that it will comply with this provision. The recipient also agrees to ensure that any subrecipients (“subgrantees”) at any tier will comply with the provision.

34. The subrecipient acknowledges that consultants paid with award funds generally may not be paid at a rate in excess of \$81.25 per hour and not to exceed \$650.00 per day. To exceed this specific maximum rate, recipients must submit to the Office of Violence Against Women a detailed justification and have such justification approved by the Office of Violence Against Women prior to the obligation or expenditure of such funds. Issuance of this award or approval of the award budget alone does not indicate approval of any consultant rates in excess of \$81.25 per hour and not to exceed \$650.00 per day. Although prior approval is not

## VAWA PROGRAM GUIDELINES AND CONDITIONS

required for consultant rates below this specified maximum rate, subrecipients are required to maintain documentation to support all daily or hourly consultant rates.

35. The subrecipient agrees that grant funds will not support activities that compromise victim safety and recovery, such as: procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived sex, age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or sex of their children, procedures or policies that compromise the confidentiality of information and privacy or persons receiving OVM-funded services (e.g., seek an order of protection, receive counseling, participate in couples' counseling or mediation, report to law enforcement, seek civil or criminal remedies, etc.); procedure or policies that fail to ensure services providers conduct safety planning and victims; project design and budgets that fail to account for the access needs of participants with disabilities and participant who have limited English proficiency or are deaf or hard of hearing; or any other activities outlined in the solicitation under which the approved application was submitted.

36. The subrecipient agrees that the legal assistance eligibility requirements, as set forth below, are a continuing obligation on the part of the grantee. The legal assistance eligibility requirements are: (1) any person providing legal assistance through a program funded under this Grant Program (A) has demonstrated expertise in providing legal assistance to victims of domestic violence, dating violence, sexual assault, or stalking in the targeted population; or (B) (i) is partnered with an entity or person that has demonstrated expertise described in subparagraph (A); and (ii) has completed or will complete training in connection with domestic violence, dating violence, stalking or sexual assault and related legal issues, including training on evidence-based risk factors for domestic and dating violence homicide; (2) any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a State, local, territorial, or tribal domestic violence, dating violence, sexual assault or stalking victim service provider or coalition, as well as appropriate State, local, territorial and tribal law enforcement officials; (3) any person or organization providing legal assistance through this grant program has informed and will continue to inform State, local, territorial or tribal domestic violence, dating violence, stalking or sexual assault programs and coalitions, as well as appropriate State and local law enforcement officials of their work; and (4) the subrecipient's organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, dating violence, domestic violence, stalking or child sexual abuse is an issue.

37. The subrecipient agrees that grant funds will be used only for the purposes described in the subrecipient's approved application. The subrecipient must not undertake any work or activities that are not described in the grant application, and must not use staff, equipment, or other goods or services paid for with grants funds for such work or activities, without prior approval. The subrecipient must submit all proposals of changes in work or activities that are not described in the grant application to the NHDOJ Grants Management Unit. Subrecipients are not to follow through any changes until prior written approval from the NHDOJ Grants Management Unit.

38. The subrecipient understands and agrees that misuse of award funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment of federal grants, recoupment of money provided under an award, and civil and/or criminal penalties.

39. The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) and the NH Department of Justice any credible evidence that a principal, employee,



## VAWA PROGRAM GUIDELINES AND CONDITIONS

agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse or misconduct involving or relating to funds under this reward should also be reported to the OIG by (1) mail directed to: Office of Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 2053; and/or (2) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (Phone) or (202) 616-9881 (fax). Additional information is available from the DOJ OIG website at <https://OIG.justice.gov/hotline.com>

40. No recipient or subrecipient (“subgrantee”) under this award, or entity that receives a procurement contract or subcontract with any funds under the award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance to law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

41. The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information. 2If the NHDOJ and or the USDOJ learns or is notified that the subrecipient (“subgrantees”) at any tier, including recipients of “subawards” and procurement contracts granted by subrecipients, is or has been requiring its employees or contractors or subcontractors to execute confidentiality agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by the agency.

42. Subrecipient at any tier must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under the specified circumstances, discrimination against an employee as reprisal for the employee’s disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, and abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The subrecipient must inform their employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 US.C. 4712 to this award, the subrecipient can contact the NHDOJ Grants Management Unit for guidance.

43. The recipient and subrecipients at any tier agrees to follow the applicable set of general terms and conditions that are available at <http://www.justice.gov/ovw/grantees#award-conditions>. These do not supersede any specific conditions in the award document.

44. Any subrecipient (“subgrantee”) at any tier must comply with all applicable restrictions on the use of federal funds set out in the federal appropriations statutes. Pertinent restrictions, for each fiscal year, are set out at <http://www.justice.gov/ovw/award-conditions> (Award Conditions: General Appropriation-Law restrictions on use of federal award funds), and are incorporated by reference here. Should a question arise as to whether a particular use of federal funds by a subrecipient should or might fall within the scope of an appropriations-law

## VAWA PROGRAM GUIDELINES AND CONDITIONS

restriction, the subrecipient is to contact the NHDOJ Grants Management Unit for guidance. The NH DOJ Grants Management Unit will contact OVW and request permission for the subrecipient to proceed. The subrecipient, at any tier, may not proceed without prior notification of approval by the NHDOJ Grants Management Unit.

45. The subrecipient (“subgrantee”) at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of subrecipients (subgrantees”), or individuals defined (for purposes of this conditions) as “employees” of a subrecipient. The details obligation related to prohibited conduct related to trafficking in persons are posted on the OVW website at <http://www.justice.gov/ovw/award-conditions> (Award Conditions: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OVW authority to terminate award)), and are incorporated by reference here.

46. In pursuant to 2 C.F.R. 200.315 (b), the State of New Hampshire may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this award. OVW reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work, in whole or in part (including in the creation of derivative works), for federal purposes, and to authorize others to do so. OVW reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, in the whole of in part (including in the creation of derivative works), any work developed by a subrecipient (“subgrantee”) of this award, for federal purposes, and to authorize others to do so.

A recipient (or subrecipient, contractor, or subcontractor of this award at any tier) must obtain advance written approval from the NHDOJ, and must comply with all conditions specified by the program manager in connections with that approval, before 1) using award funds to purchase ownership of, or a license to use, a copyrighted work; or 2) incorporating any copyrighted work, or portion thereof, into a new work developed under this award.

It is the responsibility of the subrecipient, contractor, or subcontractor as applicable) to ensure that this condition is included in any subaward, contract or subcontract under this award.

47. The subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <http://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.

The details of the recipient and subrecipient obligations related to SAM and to the unique entity identifiers are posted on the OVW Website at <http://www.justice.gov/ovw/award-conditions> (Award Conditions: requirements related to system for Award Management (SAM) and unique entity identifiers), and are incorporated by references here.

48. The recipient and subrecipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OVW award or any other grant cooperative agreement, or procurement contract from the federal government. Under certain circumstances, subrecipients of OVW awards are required to report information about such proceedings, through the federal System for Award Management (known as “SAM”), to the designated federal integrity and performance system (Currently, “FAPIS”).

## VAWA PROGRAM GUIDELINES AND CONDITIONS

The details of the subrecipient's obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to FAPIIS within SAM are posted on the OVW website at: <http://www.justice.gov/ovw/grantees#award-conditions> (Award Condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

49. The subrecipients agrees that compliance with the statutory certification requirements is an ongoing responsibility during the award period and that, at a minimum, a hold may be placed on the subrecipient's funds for noncompliance with any of the requirements of 34 U.S.C. §10449 (regarding rape exam payments), 34 U.S.C. § 10449 (e) (regarding judicial notification), 34 U.S.C §10450 (regarding certain fees and costs), and 34 U.S.C. § 10451 (regarding polygraphing of sexual assault victims). Non-compliance with any of the foregoing may also result in termination or suspension of the grant or other remedial measures, in accordance with applicable laws and regulations.

50. The subrecipient understands and agrees that the DOJ awarding agency (OJP, OVW, and or NHDOJ as appropriate) may withhold award funds, or may impose other related requirements, if the subrecipient does not satisfactorily and promptly address outstanding issues from the audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connections with audits, investigations, or reviews of DOJ awards.

51. The subrecipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP, OVW, and or NHDOJ as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

52. The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the subrecipient that relates to the conduct during the period of performance also is a material requirement of this award.

Failure to comply with any one or more of these award requirements, whether a condition set out in full above, or a certification or assurance related to conduct during the award period, may result in the Office on Violence Against Women ("OVW") and or the NHDOJ taking appropriate actions with respect to the subrecipient and the award. Among other things, OVW or the NHDOJ Grants Management Unit may withhold award funds, disallow costs, or suspended or terminate the award. OVW and or the NHDOJ may take other legal actions as appropriate.

Any false material, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of material fact) may be the subject to criminal prosecution (including under 18 U.S.C 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 379-3730 and 3801-3812)

Any provision of the requirement of this award is held to be invalid or enforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum affect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable; such provisions shall be deemed severable from this award.

53. The director of OVW, upon a finding that there has been substantial failure by the subrecipient to comply with applicable laws, regulations, and/or the terms and conditions of the award or relevant solicitation, will terminate or suspend until the Director is satisfied that there is no longer such failure, all or part of the award, in accordance with the provisions of 28 C.F.R. Part 18, as applicable.

**VAWA PROGRAM GUIDELINES AND CONDITIONS**

54. The subrecipient at any tier must have written procedures in place to respond in the event of an actual or imminent breach (as defined in OMB M-17-12) if it 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.79) within the scope of an OVW grant-funded program or activity, or 2) uses or operates a Federal information system (as defined in OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OVW Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Address of Agency

**NEW HAMPSHIRE DEPARTMENT OF JUSTICE**



**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice ("Department") determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by 31 U.S.C. § 1352, as implemented by 28 C.F.R. Part 69, the Applicant certifies and assures (to the extent applicable) the following:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If the Applicant's request for Federal funds is in excess of \$100,000, and any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative agreement, the Applicant shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its (and any DOJ awarding agency's) instructions; and

(c) The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352.

**2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

A. Pursuant to Department regulations on nonprocurement debarment and suspension implemented at 2 C.F.R. Part 2867, and to other related requirements, the Applicant certifies,

with respect to prospective participants in a primary tier “covered transaction,” as defined at 2 C.F.R. § 2867.20(a), that neither it nor any of its principals—

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) has within a three-year period preceding this application been convicted of a felony criminal violation under any Federal law, or been convicted or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, tribal, or local) transaction or private agreement or transaction;

violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects its (or its principals’) present responsibility;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, tribal, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and/or

(d) has within a three-year period preceding this application had one or more public transactions (Federal, State, tribal, or local) terminated for cause or default.

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application. Where the Applicant or any of its principals was convicted, within a three-year period preceding this application, of a felony criminal violation under any Federal law, the Applicant also must disclose such felony criminal conviction in writing to the Department (for OJP Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov); or for COPS Applicants, to COPS at [AskCOPSRC@usdoj.gov](mailto:AskCOPSRC@usdoj.gov)), unless such disclosure has already been made.

### 3. FEDERAL TAXES

A. If the Applicant is a corporation, it certifies either that (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to the Department (for OJP Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov); or for COPS Applicants, to COPS at [AskCOPSRC@usdoj.gov](mailto:AskCOPSRC@usdoj.gov)).

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application.

#### 4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, as implemented at 28 C.F.R. Part 83, Subpart F, for grantees, as defined at 28 C.F.R. §§ 83.620 and 83.650:

A. The Applicant certifies and assures that it will, or will continue to, provide a drug-free workplace by—

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about—
  - (1) The dangers of drug abuse in the workplace;
  - (2) The Applicant's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will—
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of the employee's conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the Department, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of any such convicted employee to the Department, as follows:  
  
For COPS award recipients - COPS Office, 145 N Street, NE, Washington, DC, 20530;  
For OJP and OVW award recipients - U.S. Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531.  
Notice shall include the identification number(s) of each affected award;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

If you are unable to sign this certification, you must attach an explanation to this certification.

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Name and Title of Head of Agency

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Signature

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Date

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Name and Address of Agency





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## **Acknowledgement of Notice of Statutory Requirement to Comply with the Confidentiality and Privacy Provisions of the Violence Against Women Act, as Amended**

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Under section 40002(b)(2) of the Violence Against Women Act, as amended (42 U.S.C. 13925(b)(2)), grantees and subgrantees with funding from the Office on Violence Against Women (OVW) are required to meet the following terms with regard to nondisclosure of confidential or private information and to document their compliance. By signature on this form, applicants for grants from OVW are acknowledging that they have notice that, if awarded funds, they will be required to comply with this provision, and will mandate that subgrantees, if any, comply with this provision, and will create and maintain documentation of compliance, such as policies and procedures for release of victim information, and will mandate that subgrantees, if any, will do so as well.

### **(A) In general**

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this subchapter shall protect the confidentiality and privacy of persons receiving services.

### **(B) Nondisclosure**

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

- (i) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; or
- (ii) disclose, reveal, or release individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor.

If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

**(C) Release**

If release of information described in subparagraph (B) is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

**(D) Information sharing**

(i) Grantees and subgrantees may share—

(I) nonpersonally identifying data in the aggregate regarding services to their clients and nonpersonally identifying demographic information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements;

(II) court-generated information and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes; and

(III) law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.

(ii) In no circumstances may—

(I) an adult, youth, or child victim of domestic violence, dating violence, sexual assault, or stalking be required to provide a consent to release his or her personally identifying information as a condition of eligibility for the services provided by the grantee or subgrantee;

(II) any personally identifying information be shared in order to comply with Federal, tribal, or State reporting, evaluation, or data collection requirements, whether for this program or any other Federal, tribal, or State grant program.

**(E) Statutorily mandated reports of abuse or neglect**

Nothing in this section prohibits a grantee or subgrantee from reporting suspected abuse or neglect, as those terms are defined and specifically mandated by the State or tribe involved.

**(F) Oversight**

Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

**(G) Confidentiality assessment and assurances**

Grantees and subgrantees must document their compliance with the confidentiality and privacy provisions required under this section.

As the duly authorized representative of the applicant, I hereby acknowledge that the applicant has received notice of that if awarded funding they will comply with the above statutory requirements. This acknowledgement shall be treated as a material representation of fact upon which the Department of Justice will rely if it determines to award the covered transaction, grant, or cooperative agreement.

\_\_\_\_\_  
Typed Name of Authorized Representative Title

Telephone Number \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date Signed

\_\_\_\_\_  
Agency Name

**Public Reporting Burden Paperwork Reduction Act Notice.** Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete and file this form is 60 minutes per form. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Office on Violence Against Women, U.S. Department of Justice, 145 N Street, NE, 10<sup>th</sup> Floor, Washington, DC 20530.

## EEOP Reporting

I, \_\_\_\_\_ [responsible official], certify that

\_\_\_\_\_ [recipient] has completed the EEO reporting tool certification

form at: [https://ojp.gov/about/ocr/faq\\_eeop.htm](https://ojp.gov/about/ocr/faq_eeop.htm) on \_\_\_\_\_ [Date]

And that \_\_\_\_\_ [responsible official] has completed the EEOP training at <https://ojp.gov/about/ocr/ocr-training-videos/video-ocr-training.htm> on: \_\_\_\_\_ [date]

I further certify that: \_\_\_\_\_ [recipient] will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Signature: \_\_\_\_\_

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

## EXHIBIT A

### -SCOPE OF SERVICES-

1. The Portsmouth Police Department as Subrecipient shall receive a grant from the New Hampshire Department of Justice (DOJ) for expenses incurred for services provided to victims of domestic and sexual violence, stalking and dating violence in compliance with the terms, conditions, specifications, and scope of work as outlined in the Subrecipient's application under the 2019 Services, Training, Officer, Prosecutors for the Violence Against Women Formula Grant Program state solicitation.
  
2. The Subrecipient shall be reimbursed by the DOJ based on budgeted expenditures described in Exhibit B. The Subrecipient shall submit incurred expenses for reimbursement on the state approved expenditure reporting form as provided. Expenditure reports shall be submitted on a quarterly basis, within fifteen (15) days following the end of the current quarterly activities. Expenditure reports submitted later than thirty (30) days following the end of the quarter will be considered late and out of compliance. *For example, with an award that begins on January 1, the first quarterly report is due on April 15<sup>th</sup> or 15 days after the close of the first quarter ending on March 31.*
  
3. Subrecipient is required to maintain supporting documentation for all grant expenses both state funds and match if provided and to produce those documents upon request of this office or any other state or federal audit authority. Grant project supporting documentation should be maintained for at least 5 years after the close of the project.
  
4. Subrecipient shall be required to submit an annual application to the DOJ for review and compliance.
  
5. Subrecipient shall be subject to periodic desk audits and program reviews by DOJ. Such desk audits and program reviews shall be scheduled with Subrecipient and every attempt shall be made by Subrecipient to accommodate the schedule.
  
6. All correspondence and submittals shall be directed to:  
NH Department of Justice  
Grants Management Unit  
33 Capitol Street  
Concord, NH 03301  
603-271-8091 or Travis.Teeboom@doj.nh.gov

**EXHIBIT B**

-SCHEDULE/TERMS OF PAYMENT-

1. The Subrecipient shall receive reimbursement in exchange for approved expenditure reports as described in EXHIBIT A.
  
2. The Subrecipient shall be reimbursed within thirty (30) days following the DOJ's approval of expenditures. Said payment shall be made to the Subrecipient's account receivables address per the Financial System of the State of New Hampshire.
  
3. The State's obligation to compensate the Subrecipient under this Agreement shall not exceed the price limitation set forth in form P-37 section 1.8.

3a. The Subrecipient shall be awarded an amount not to exceed \$30,000 of the total Grant Limitation from 1/1/2019 through 12/31/2019, with approved expenditure reports. This shall be contingent on continued federal funding and program performance.

Subrecipient Initials \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT C**

**-SPECIAL PROVISIONS-**

1. Subrecipients shall also be compliant at all times with the terms, conditions and specifications detailed in the VAWA Federal Grant Program Rule and Special Conditions as Appendix 1 which is subject to annual review.



# RUNNER'S ALLEY

*Supporting Your Every Step*

received  
12/3/18

November 27, 2018

Dear Mayor Blalock/City Council,

Plans for the 22nd Annual Runner's Alley/Cisco Brewers Memorial 5k are underway and once again we look for your approval to hold the race. This year's race is scheduled for May 26, 2019 at 11:00AM. All the logistics remain the same with the start and finish continuing to be at Cisco Brewers of Portsmouth, formerly Redhook Brewery. One hundred percent of the proceeds from the race will be donated to Krempels Center, based out of the Community Campus here in Portsmouth. If you are not familiar with Krempels Center, I urge you to visit their website for a truly moving picture of what they are all about ([www.krempelscenter.org](http://www.krempelscenter.org)).

We look forward to your support once more, with almost 1600 runners last year as well as hundreds of supporters and volunteers, we're very excited for an even better year! Voted as one of New England's top 100 races by New England Runner Magazine this race attracts runners and visitors from all over New England making it a wonderful asset to the entire Portsmouth community. Please consider granting us your permission to conduct another successful event, while raising seriously needed funds for an incredibly inspiring nonprofit organization, Krempels Center. The Runner's Alley/Cisco Brewers of Portsmouth Race has always given 100% of its proceeds to charity and will continue to do so. As always we will work closely with the police department and the PDA to ensure we are abiding by all necessary rules and regulations.

Thank you for your time and consideration, wishing you and the City of Portsmouth a wonderful Holiday Season!

Sincerely,

  
Jeanine Sylvester

Runner's Alley

[Jeanine@runnersalley.com](mailto:Jeanine@runnersalley.com)



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# M E M O R A N D U M

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**TO:** John Bohenko, City Manager

**FROM:** Juliet T. H. Walker, Planning Director *JTW*

**DATE:** December 6, 2018

**RE:** City Council Referral – Projecting Sign  
Address: 56 State Street  
Business Name: Regina Piantedosi  
Business Owner: Regina Piantedosi

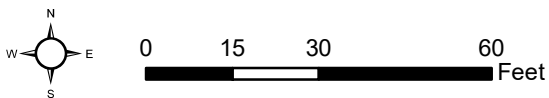
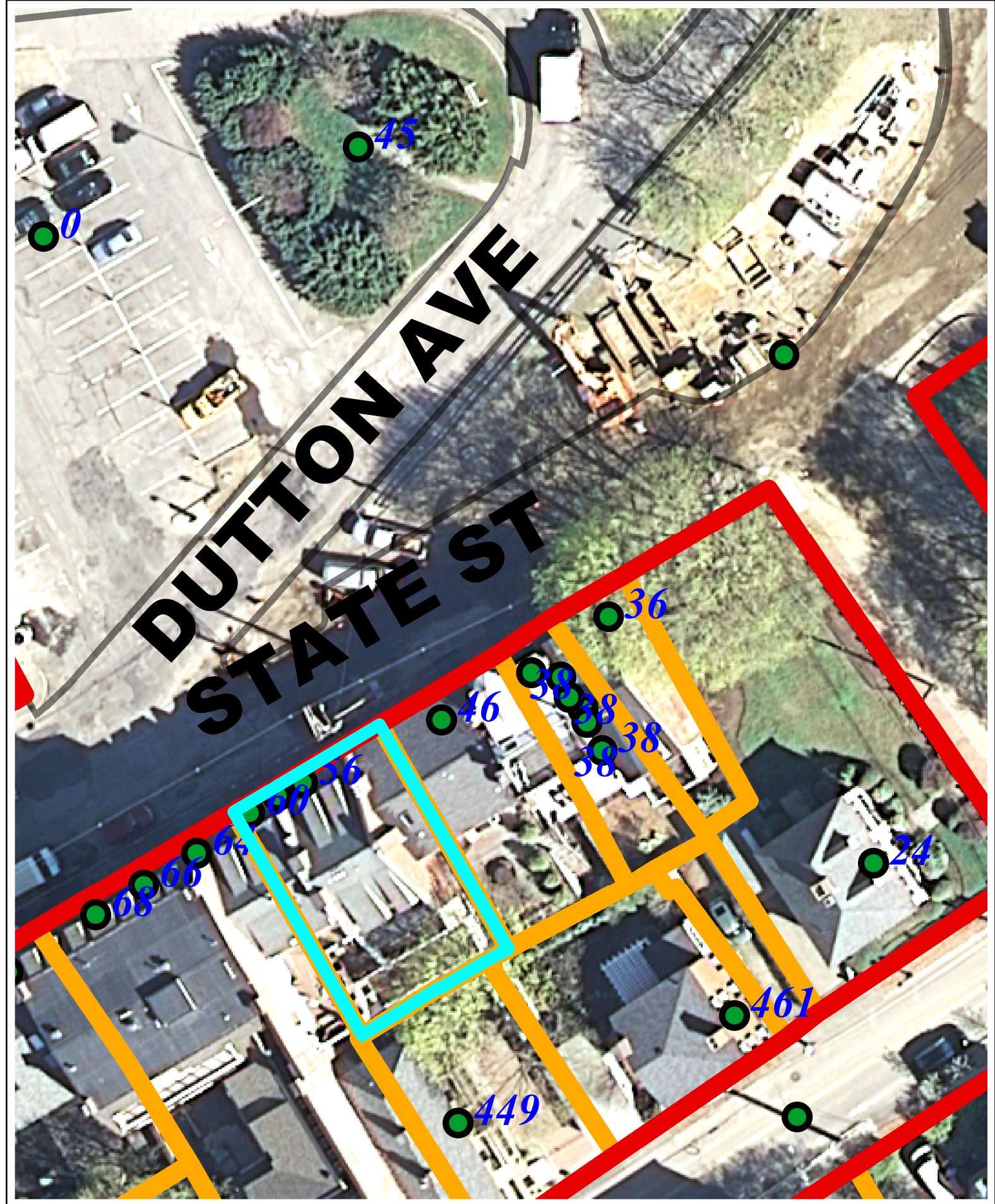
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Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 32" x 29"  
Sign area: sq. ft. 6.4

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the 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 sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



**Request for license  
56 State Street**



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# MEMORANDUM

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**TO:** John Bohenko, City Manager

**FROM:** Juliet T. H. Walker, Planning Director *JTW*

**DATE:** December 12, 2018

**RE:** City Council Referral – Projecting Sign  
Address: 32 Daniel Street  
Business Name: Riverrun Bookstore, Inc.  
Business Owner: Tom Holbrook

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Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 6" x 36"  
Sign area: 1.5 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the 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 sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



THE  
GIP  
JOINT  
Barbers

ART GALLERY



BOOKSTORE

December 5, 2018

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

Dear Mayor Blalock and the Portsmouth City Council,

**Big Brothers Big Sisters of New Hampshire would like to respectfully request approval to close Pleasant Street on Saturday, June 15, 2019 from 1pm – 4pm for our annual *Stiletto Sprint*. We further request to reserve the following Sunday, June 16, 2019 for a rain date.**

Our Young Philanthropists for Mentoring (YP4M) Committee is excited to begin organizing the Stiletto Sprint for 2019. The YP4M Committee is a group of young professionals who help raise financial support and awareness for our mission to provide children facing adversity with strong and enduring, professionally supported, one-to-one relationships that change their lives for the better, forever.

Once again, this year's Stiletto Sprint was our most successful to date, raising funds for our mentoring programs while garnering positive media coverage for the City and awareness of the agency. All proceeds from this event will support Big Brothers Big Sisters' efforts in the community.

Big Brothers Big Sisters of New Hampshire will work with your Council and the Fire and Police Departments to make this a successful and minimally disruptive event. We will require every participant to sign a release of liability waiver as well carrying a Certificate of Insurance for the event.

If you have any questions regarding this proposal, please contact me at [kstanton@bbbsnh.org](mailto:kstanton@bbbsnh.org) or 603-430-1140 x 1001. We look forward to continued collaboration with the City of Portsmouth.

Sincerely,

Kaitly Stanton  
Special Events Manager





December 12, 2018

Portsmouth NH City Council  
C/o City Manager's Office  
1 Junkins Ave  
Portsmouth NH 03801

Dear Mr. Bohenko,


My name is Jennie Halstead. I am the Executive Director of My Breast Cancer Support and the Race Director of the Celebrate Pink 5k Walk & Run.

I am writing this letter to ask the City Council consider approval of our 11<sup>th</sup> Annual race which we propose take place on Sunday September 15<sup>th</sup> 2019. Registration for the race begins at 7.30 am and the race will commence at 9 AM at Portsmouth Middle School.

Thank you for your consideration, as well as the support you have provided for this event over the last 10 years.

Best Regards,

**Jennie Halstead**

Jennie Halstead  
Executive Director, Survivor 

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PO Box 1576, Portsmouth, NH 03802-1576 \* 603.759.5640 \* [info@mybreastcancersupport.org](mailto:info@mybreastcancersupport.org)

My Breast Cancer Support is an independent NH 501C3 non-profit organization  
with no affiliation to any national organizations. TAX ID: 43-2072206

CITY COUNCIL E-MAILS

December 4 – December 13, 2018 (9:00 a.m.)

DECEMBER 17, 2018 CITY COUNCIL MEETING

Below is the result of your feedback form. It was submitted by Patty O'Neil ([peoneil@me.com](mailto:peoneil@me.com)) on Tuesday, December 4, 2018 at 16:48:05

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address: 98 Dennett St

comments: Have to throw in my vote to please try to remedy the brightness of the lighting in the new garage. I am directly across the pond from the garage, and the lights are really truly too much. Thank goodness the ugly Granite State Minerals building is there to block some of the lights, but it is truly the brightest thing around. I'd like to hear the explanation why they need to be so much brighter than the High Hanover. I can only imagine when the rest of the block gets built out the light pollution. Please try to find a mitigating solution. Thank you.

includeInRecords: on  
Engage: Submit

-----  
Below is the result of your feedback form. It was submitted by Douglas MacNair ([dkplus@comcast.net](mailto:dkplus@comcast.net)) on Wednesday, December 5, 2018 at 17:15:16

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address: 346 Dennett St

comments: Ask a resident living across the pond from the new garage I need to add my protest to the crazy amount of light that the garage puts off.

While I applaud the erection of the second garage to give parking relief downtown, I see the current level of light emission well beyond what is required to ensure public safety and that the design clearly failed to take into account that with zero obstructions to the light it has a magnified impact well beyond what the designers accounted for. It strikes me as a simple thing to simply replace the existing elements with lower wattage and perhaps selectively decommission fixtures that are not directly required for safety.

includeInRecords: on  
Engage: Submit

-----  
Below is the result of your feedback form. It was submitted by petar ramadanovic ([petarr@unh.edu](mailto:petarr@unh.edu)) on Sunday, December 9, 2018 at 14:17:29

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address: 393 Union Street

comments: During my run today at Creek Farm, I saw a hunter with a shotgun. Apparently, hunting is allowed in the Little Harbor Rd. area. Dogs are, for the most part, not allowed there. I hope you can do something to change that. The area is too close to houses and recreation spots that it seems senseless to continue allowing hunting. On the other hand, more and more of us who live in Portsmouth have dogs and want to enjoy nature with them. Please, do what you can to reverse the two policies.

thanks in advance,  
petar

includeInRecords: on

Below is the result of your feedback form. It was submitted by Barbara Jenny ([brjenny@comcast.net](mailto:brjenny@comcast.net)) on Wednesday, December 12, 2018 at 14:15:32

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address: 81 Lincoln Ave

comments: For December 17, 2018 Councilor Packet and Public Record

Dear Councilors:

I am pleased that the Council has re-opened the door to considerations and discussions of short-term rentals (STRs) in the City.

As you probably know, my husband and I appealed a cease-and-desist order before the ZBA and the State Superior Court. A further appeal has been accepted by the NH State Supreme Court. The basis of our persistence—which supports the broader ideological arguments regarding private property rights and modes of enforcement (ie. selective)—is the problem with this particular term, “transient,” in the Zoning Ordinance.

The crux of our argument in Superior Court—and this is an insufficient summary—was that the term as used in the Ordinance refers specifically to “hotels, motels, rooming, and boarding houses” as detailed in same ordinance. We also argued that the “Administrative Memo” that the Planning Department and Bob Sullivan had previously emphasized was irrelevant: it is simply not Ordinance.

While Judge Schulman agreed that the Administrative Memo is not Ordinance, he sided with the City in deciding that the term “transient” should be used in its most general meaning, so that any and all transient uses in the GRA are prohibited.

We have multiple arguments for our appeal at the NH Supreme Court that I will not present to you here, but there is a very important repercussion that the Council does need to consider now: “all transient uses in the GRA are prohibited” means your Aunt Gertrude can’t visit for the weekend, your college kid’s friends can’t stay over the winter break, and if you go on a trip to Europe for the month of July, your sister and her family can’t vacation in your house while you’re away. All of these transient uses are now confirmed as prohibited by the NH State Superior Court. It matters not if there is payment or no payment, swap or barter, friends or family. What’s more, any month-to-month renter is now prohibited...or even a summer renter, and well, even a one-year renter.... What about a two-year owner? (I’ve known more than one.) Who exactly is not transient? You see the problem.

Add to this conundrum the fact that STRs are still happening in multitudes in the City; that the current enforcement system reacts to complaints of any nature, including ideological—which includes racism; and that there is at least one out-of-state property owner renting multiple properties as STRs in the West End—a ‘class’ of STRs that many residents have cited as a truly egregious flaunting of the vague Ordinance and an unwanted situation in any re-regulation.

The City Council needs to take up this issue once again. The State has completed its STR study and passed a few RSAs into law. Given that the Council put aside zoning ordinance amendments in 2015 pending these State-level decisions which concluded last year, the effort is now past due. You now have enabling legislation which allows you to address the current vague Ordinance, and draft amendments that directly, explicitly, and fairly regulate STRs.

-Barbara Jenny  
81 Lincoln Ave  
Portsmouth

includeInRecords: on

Engage: Submit

Mayor's Office  
1 Junkins Ave  
Portsmouth, NH 03801

November 27, 2018

Dear Mayor Blalock:

Our names are Gabby Rothstein and Coco Barton. We are 8th grade students at Portsmouth Middle School. This year in our science class, we were asked to come up with a solution to the growing issue of plastic pollution. We immediately thought of plastic grocery and shopping bags. Through our research, we learned that plastic bags have a large and negative effect on all ecosystems on the seacoast. 100 billion plastic bags are used each year by Americans alone. That means 12 million gallons of oil, one of our precious natural resources, is used on just plastic bag production each year. The thing with plastic bags is that everyone has used them at some point in their lives. They need to be totally removed for the use of these bags to decline.

While researching we found that Portsmouth has tried to pass a law to prohibit plastic bags, so we thought instead of trying to eliminate them, we could offer an alternative. Our solution to this is to provide reusable bags to each household of Portsmouth. Since the city already supplies residents with recycling bins, we thought, why not do the same with reusable bags. With the availability and encouragement to use the reusable bags, we may be able to help the Earth and all of its organisms- specifically in the seacoast area. Our goal is to raise enough money to provide two bags for every Portsmouth household. The estimated cost per bag ranges from ninety nine cents to three dollars. We realized that we can not raise that amount of money on our own in a reasonable time period. We would like to ask for money from the public works department to fund the purchase of these bags. [www.reusethisbag.com](http://www.reusethisbag.com) is a website that sells washable and durable reusable bags. For 5,000 bags it costs \$1.09. They also provide the option to customize them with a logo so we could put the city stamp on them. We appreciate your help and consideration of our ideas.

Sincerely,




Coco Barton



Gabby Rothstein

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** December 13, 2018  
**To:** Honorable Mayor Jack Blalock and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on December 17, 2018 City Council Agenda

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***Non-Public Session:***

6:15 p.m. *Non-Public Session Re: RSA 91-A:3 II (e) – Litigation Regarding James G. Boyle As Trustee, et als*

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***Presentations:***

1. **Holiday Music Performed by the Portsmouth High School Band.** The Portsmouth High School Holiday Ensemble will perform at Monday's City Council meeting.
2. **McIntyre Project Re: Financial Plan.** Representatives from Redgate/Kane will give a presentation to the Council on the Financial Plan component of the Historic Monument Program application.

***Public Hearings & Votes on Ordinances and/or Resolutions:***

1. **Public Hearings Re: Use of Bond Premium – Municipal Complex Improvements; Sewer Line Replacement; and Water Line Replacement.** At the December 3, 2018 City Council meeting, the City Council voted to schedule a public hearing regarding the Use of Bond Premiums. 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  
These improvements will include upgrades to the slate roof, drainage upgrades to address basement flooding in the records rooms of the 1895 building and electrical upgrades at the municipal complex.

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 adopt the following Resolutions:*

- A. *Resolution appropriating the sum of One Million Two Hundred Eight-Six Thousand One Hundred Fourteen Dollars and Twenty-Eight Cents (\$1,286,114.28) for the Municipal Complex Improvements.*
  - B. *Resolution appropriating the sum of Seven Hundred Five Thousand Two Hundred Seventy-Seven Dollars and Forty Cents (\$705,277.40) for the Annual Sewer Line Replacement.*
  - C. *Resolution appropriating the sum of Three Hundred Eighty-Two Thousand Six Hundred Eighty-Nine Dollars and Forty-Three Cents (\$382,689.43) for the Annual Water Line Replacement.*
2. **Third and Final 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 November 27, 2018.** At the December 3, 2018 City Council meeting, the Council voted to pass second reading and schedule third and final reading of the [attached proposed amendments to Chapter 10 – Zoning Ordinance, Article 12 Signs](#).

[Attached is a memorandum from City Attorney Robert Sullivan](#) notifying the City Council that the City has received correspondence from Attorney Gilles Bissonnette of the New Hampshire Civil Liberties Union (NHCLU) concerning the proposed amendments. NHCLU has raised a number of potential issues regarding the constitutionality of the ordinance. These concerns arise under the First Amendment, primarily due to the suggestion that the amendments as drafted may impermissibly regulate the content of signs. This would particularly be true in the case of political signs where First Amendment analysis is conducted with heightened intensity. The City Attorney’s memorandum highlights a brief listing of the NHCLU concerns regarding this matter.

In light of the NHCLU concerns, City Attorney Sullivan and Planning Director Juliet Walker recommend that third reading should be postponed indefinitely.

*I recommend the City Council move to table this item indefinitely.*

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

1. **Acceptance of Grant - Portsmouth Police Department.** [Attached is a memorandum, dated December 7, 2018 from Chief Police Robert M. Merner. In the absence of a sitting Police Commission, Chief Merner forwarded the attached Violence Against Women Act Grant to the City Council for action at the Monday, December 17, 2018 meeting.](#)

The grant award in the amount of \$30,000 from the New Hampshire Department of Justice will enable the Police Department to retain the advocate position which would otherwise be lost due to lack of funding.

The Office of the Police Chief submits the information to the City Council pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at this evening's City Council meeting.

*I recommend the City Council move to accept and approve the grant to the Portsmouth Police Department, as presented.*

### ***Consent Agenda:***

1. **Request for License to Install Projecting Signs.** Attached is a request for a projecting sign licenses (see attached memorandums from Juliet Walker, Planning Director):
  - Regina Piantedosi, owner of Regina Piantedosi for property located at 56 State Street.
  - Tom Holbrook, owner of Riverrun Bookstore, Inc. for property located at 32 Daniel Street.

*I recommend the City Council move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director and, further, authorize the City Manager to execute the License Agreements for these requests.*

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

1. **Request to Establish Work Sessions Re: CIP and Budget.** As you are aware, at the November 28<sup>th</sup> Budget Work Session, there was a request to move up the Capital Improvement Plan (CIP) Work Session with the Council before the final budget guidance numbers are established by the City Council. In order to do this, we have moved up the action required by the Planning Board to be completed at their December 20<sup>th</sup> meeting. In discussing this matter with the Mayor, we have picked Monday, January 14, 2019 as a Work Session with the City Council on the FY20-25 Capital Improvement Plan. In addition, the Mayor would like to have a Budget Work Session on developing guidelines on Wednesday, January 16, 2019 at 6:30 p.m. City Council action is required to establish the aforementioned Work Sessions.

*I recommend the City Council move to establish the City Council Work Sessions, as presented.*



2. **Comcast Agreement.** The Cable Commission is requesting that the City Council take two actions at this meeting. The first action is to authorize an additional two-month extension of the existing Cable Television Franchise Agreement with Comcast to February 28, 2019. The second action is to set up a presentation and public hearing for a City Council meeting in January on a proposed Renewal of the Franchise Agreement.

The current 10 year Cable Television Franchise Agreement with Comcast was set to expire October 31, 2018. By mutual agreement, it was extended to December 31, 2018 to allow the Cable Commission additional time to continue its negotiations with Comcast. In order to allow Comcast to continue to serve its customers until a renewal Cable Television Franchise Agreement is in place, an additional two-month extension of the contract until February 28, 2019 is requested.

*Motion: Authorize the City Manager to enter into an extension of the current franchise agreement with Comcast for cable television services to February 28, 2019.*

The Cable Commission has been negotiating for over six months with Comcast. The Commission is not entirely satisfied with the current draft renewal contract. That stated, the Cable Commission may not be able to achieve a more satisfactory result and believes it would be in the interest of the City Council and the public to have a presentation and a public hearing on the current proposal. **Attached is a copy of the draft renewal.** Also, **attached is a summary** of some of the key terms and background information on regulatory authority.

Neither the existing franchise agreement with Comcast nor the proposed future agreement provide Comcast with any exclusive rights to serve Portsmouth. Other cable companies are permitted to enter the market subject to the negotiation of a franchise agreement.

*Motion: Schedule a presentation and public hearing on the draft Cable Television Renewal Franchise agreement on January 7, 2019.*

3. **Acceptance of Construction Project Re: Middle Street/Lafayette Road Bike Route Project.** The Middle Street / Lafayette Road Bike Route project was completed on October 26, 2018. A total of \$180,407 of federal funds have been awarded for the construction phase of this project. In order for the final reimbursement to be issued to the City, the federal Safe Routes to School Program requires that the City Council vote to accept the constructed project. The project has been inspected and approved by Eric Eby, Parking & Transportation Engineer, as well as the City's construction manager for this project, Greenman-Pedersen, Inc.

*I recommend the City Council move to accept the final constructed project of the Middle Street / Lafayette Road Bike Route.*

## ***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. **Greenland Breakfast Hill Area Waterline Study.** [Attached is a memorandum](#) from Deputy Public Works Director Brian Goetz regarding the Greenland Breakfast Hill Area Waterline Study. In addition, [attached is a Technical Memorandum](#) from Keith A. Pratt, P.E. and Timothy K. Noble, E.I.T. from Underwood Engineers.
3. **Lead Water Quality Sampling Update.** [Attached is a memorandum](#) from Deputy Director of Public Works Brian Goetz and Water Supply Operations Manager Al Pratt, regarding the City's water quality sampling program for lead.
4. **Short-Term Rentals.** At the December 3, 2018 City Council meeting, the Council requested a report back from City staff about the regulation of short-term rentals in the City of Portsmouth and for clarification on related state laws. City staff will plan to prepare a report back for January 2019. The Planning Board will also be taking up this topic after the New Year, to discuss potential zoning amendments regarding short-term rentals in the City.
5. **City Hall Hours Re: Christmas and New Year's Holidays.** For your information, below are the City Hall Hours due to the Christmas and New Year's Holidays:

Monday, December 24<sup>th</sup> - Closed  
Tuesday, December 25<sup>th</sup> - Closed  
Wednesday, December 26<sup>th</sup> - 8:00 a.m. to 6:00 p.m.  
Thursday, December 27<sup>th</sup> - 8:00 a.m. to 4:30 p.m.  
Friday, December 28<sup>th</sup> - 8:00 a.m. to 4:30 p.m.

Monday, December 31<sup>st</sup> - Closed  
Tuesday, January 1<sup>st</sup> - Closed  
Wednesday, January 2<sup>nd</sup> - 8:00 a.m. to 6:00 p.m.  
Thursday, January 3<sup>rd</sup> - 8:00 a.m. to 4:30 p.m.  
Friday, January 4<sup>th</sup> - 8:00 a.m. to 1:00 p.m.

## Background

State and Federal law set the boundaries in which municipalities can regulate a cable company such as Comcast. The City is not authorized to regulate programming and rates. The City also lacks the authorization regulate the internet and voice portions of the typical Comcast package. The City does have authority to regulate use of the rights of way that Comcast uses to provide its service. The City can collect a franchise fee (up to 5% of gross annual revenues from Portsmouth subscribers) for that use. Public access channels (PEG), such as the one used for the City's government channel and the one used for PPMTv, are also subjects for negotiation.

## Key Provisions

- ❖ The City will continue to receive quarterly 5% of the Gross Annual Revenues generated from Portsmouth subscribers. This is the maximum percentage the City can receive under the law. Last fiscal year (FY 18) the City received \$512,407.00. The City records the first \$360,000 in the General Fund and the remainder goes to a trust for the benefit of PPMTv operations. (Note that FY 17 revenue was \$533,407 so we saw a drop for the first time FY18. The first two quarterly franchise fee payments in FY 19 total only \$243,597.04 suggesting total FY 19 may be lower than FY 18).
- ❖ Comcast will continue to provide two channels for public access, one which supports the Government Channel and the second which is used by PPMTv.
- ❖ Comcast has agreed to maintain a customer service office "conveniently located" in the Seacoast. The Cable Commission sought a commitment to maintain a customer service office in Portsmouth but that was rejected. Although Comcast indicated it has no current plans to close the Portsmouth office, it refused to commit to maintain an office in Portsmouth throughout the term of the agreement.
- ❖ With regard to system performance, Comcast would commit to provide 750 MHz only fed by means of its hybrid fiber-optic/coaxial cable network. This is the current performance standard in the existing contract. The Cable Commission vigorously requested a higher standard of performance, preferring a standard of 1,2 GHz passive RF, but Comcast rejected a higher standard.
- ❖ The city will continue to receive free cable drops to its municipals buildings.
- ❖ The term of this proposed agreement is five (5) years.
- ❖ This agreement does not preclude the entry of another cable television provider into the Portsmouth market.

CABLE TELEVISION RENEWAL FRANCHISE

GRANTED TO

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

MARCH 1, 2019

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**AGREEMENT**

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2019, between the City of Portsmouth, as statutory Franchising Authority pursuant to RSA: 53-C, and Comcast of Maine/New Hampshire, Inc. ("Comcast").

**WITNESSETH**

WHEREAS, the City of Portsmouth, New Hampshire, as Franchising Authority pursuant to RSA Chapter 53-C, is authorized to grant one or more nonexclusive, revocable cable television renewal franchises to construct, upgrade, operate and maintain a cable television system within the City of Portsmouth; and

WHEREAS, the Portsmouth City Council has duly appointed members to its Cable Television and Communications Commission, a commission established by Portsmouth Ordinance to assist with cable franchise matters;

WHEREAS in accord with its duties the Cable Television and Communications Commission has conducted a subscriber survey, reviewed Comcast performance data, met with school and city officials and other stakeholders, explored opportunities for community broadband and took other action to investigate Comcast performance and opportunities;

WHEREAS, the Cable Television and Communications Commission conducted a public hearing, pursuant to Section 626(a) of the Cable Act, on March 6, 2018, to (1) ascertain the future cable-related community needs and interests of Portsmouth, and (2) review the performance of Comcast, during its then current franchise term; and

WHEREAS, the Franchising Authority and Comcast did engage in good faith negotiations and did agree on proposals in connection with the renewal in Portsmouth;

WHEREAS the Portsmouth City Council held a public hearing on \_\_\_\_\_ and voted to approve this Agreement for Franchise Renewal on \_\_\_\_\_.

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

## ARTICLE 1 – DEFINITIONS

### Section 1.1---Definitions

For the purpose of this Renewal Franchise, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

- (1) **Access Channel:** A video channel which the Franchisee shall make available to the Franchising Authority and/or its designees, without charge, for the purpose of transmitting programming by members of the public, City departments and agencies, public schools, educational, institutional and similar organizations (PEG).
- (2) **Access Corporation:** means the entity designated by the Franchising Authority, currently PPMTv, responsible for transmitting programming by members of the public, public schools, education, institutional and similar organizations.
- (3) **Affiliate or Affiliated Person:** When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- (4) **Basic Service:** Any service tier which includes the retransmission of local television broadcast signals.
- (5) **Cable Act:** Public Law No. 98-549, 98 Stat. 2779 (1984) (the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992), as further amended by Public Law No. 104- 458, 110 Stat. 110 (1996) (the Telecommunications Act of 1996).
- (6) **Cable Service:** The one-way transmission to Subscribers of Video Programming or other Programming services, together with Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming services, which the Franchisee may make available to Subscribers generally.
- (7) **Cable Television System or Cable System:** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of

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the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (D) an open video system that complies with Section 653 of the Communications Act, or (E) any facilities of any electric utility used solely for operating its electric utility systems.

- (8) City: The City of Portsmouth, New Hampshire.
- (9) City Attorney: The City Attorney of the City of Portsmouth, New Hampshire.
- (10) Commercial Subscriber: A commercial, non-residential Subscriber to Cable Television Service.
- (11) Complaint: Any written or verbal contact with the Franchisee in connection with subscription in which a Person expresses dissatisfaction with an act, omission, product or service that is within the Franchisee's control.
- (12) Converter: Any device changing the frequency of a Signal. A Subscriber Converter may expand reception capacity and/or unscramble coded Signals distributed over the Cable System.
- (13) Digital Terminal Adapter ("DTA"): A set-top box deployed by the Franchisee that converts digital service to analog to support video to analog television sets. The DTA can also deliver digital video distribution to digital television sets via the cable input. The DTA does not support Video on Demand services, Digital Video Recorder (DVR) or Premium Services.
- (14) Downstream Channel: A channel over which Signals travel from the Cable System Headend to an authorized recipient of Programming.
- (15) Drop: The coaxial cable that connects each home or building to the feeder line of the Cable System.
- (16) Educational Access Channel: A specific channel(s) on the Cable System which is made available for use by, among others, educational institutions and/or educators wishing to present non-commercial educational programming and/or information to the public.
- (17) Effective Date of Renewal Franchise (the "Effective Date"): March 1, 2019.
- (18) FCC: The Federal Communications Commission, or any successor agency.
- (19) Franchise Fee: The payments to be made by the Franchisee to the City, which shall have the meaning as set forth in Section 622(g) of the Cable Act.
- (20) Franchisee: Comcast of Maine/New Hampshire, Inc., or any successor or transferee in accordance with the terms and conditions in this Renewal Franchise

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(21) Franchising Authority: City of Portsmouth, New Hampshire acting through its City Council and Cable Television and Communications Commission.

(22) Government Access Channel: A specific channel(s) on the Cable System which is made available for use by the Franchising Authority and/or its designee(s) wishing to present non-commercial government Programming and/or information to the public.

(23) Gross Annual Revenues: All revenues derived by the Franchisee and/or its Affiliates, calculated in accordance with Generally Accepted Accounting Principles ("GAAP"), from the operation of the Cable Television System for the provision of Cable Service(s) over the Cable Television System including, without limitation: the distribution of any Service over the Cable System; Basic Service monthly fees and all other Service fees; any and all Cable Service fees and/or charges received from Subscribers; installation, reconnection, downgrade, upgrade and any similar fees; all digital Cable Service revenues; interest collected on Subscriber fees and/or charges; fees paid on all Subscriber fees ("Fee-on-Fee"); all Commercial Subscriber revenues; all Pay Cable, Pay-Per-View revenues; any other services now or in the future deemed to be lawful for purposes of computing Gross Annual Revenues by a court or forum of appropriate jurisdiction; video-on-demand Cable Services; fees paid for channels designated for commercial use; home-shopping revenues; Converter, remote control and other cable-related equipment rentals and/or leases and/or sales; and advertising revenues. In the event that an Affiliate and/or any other Person is responsible for advertising, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues, paid to the Cable System by an Affiliate or such other Person for the Affiliate's or other Person's use of the Cable System for the carriage of advertising. Gross Annual Revenues shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the operation of the Cable System to the extent that such revenue is received, through a means which has the effect of avoiding payment of Franchise Fees to the City that would otherwise be paid herein. It is the intention of the parties hereto that Gross Annual Revenues shall only include such revenue of such Affiliates and/or Persons relating to Signal carriage over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to such Signal carriage. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with GAAP; provided, however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in Gross Annual Revenues in the period so collected. For purposes of this section, the term "Cable Services" shall include any other services now or in the future that the Licensee agrees shall be deemed to be lawful for purposes of computing Gross Annual Revenues resulting from a decision by a court or forum of appropriate jurisdiction.

(24) Headend: The electronic center of the Cable System containing equipment that receives, amplifies, filters and converts incoming Signals for distribution over the Cable System.

(25) Hub or Hub Site: A sub-Headend, generally located within a cable television community, used for the purpose of either (i) Signal processing or switching, or (ii) placement of a fiber node, microwave link or transportation super trunk.

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- (26) **Leased Channel or Leased Access:** A video channel which the Franchisee shall make available pursuant to Section 612 of the Cable Act.
- (27) **Normal Business Hours:** Those hours during which most similar businesses in the City are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and some weekend hours.
- (28) **Origination Capability:** An activated cable and connection to an Upstream Channel, which allows User(s) to transmit a Signal(s) upstream to a designated location.
- (29) **Outlet:** An interior receptacle, generally mounted in a wall that connects a Subscriber's or User's equipment to the Cable System.
- (30) **Pay Cable or Pay Service(s):** Programming delivered for a fee or charge to Subscribers on a per-channel or group-of-channels basis.
- (31) **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or per-event basis.
- (32) **PEG:** The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.
- (33) **Pedestal:** An environmental protection unit used in housing Cable Television System equipment and/or amplifiers.
- (34) **Person:** An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- (35) **Prime Rate:** The prime rate of interest at Bank of America, or its successor.
- (36) **Programming or Video Programming:** Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (37) **Public Access Channel:** A specific channel(s) on the Cable System which is made available for use by, among others, Portsmouth individuals and/or organizations wishing to present non-commercial programming and/or information to the public.
- (38) **Public Way or Street:** The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements, and public grounds or waters and all other publicly owned real property within or belonging to the City, now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for

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any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

(39) **Renewal Franchise:** The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.

(40) **Scrambling/encoding:** The electronic distortion of a Signal(s) in order to render it unintelligible or unreceivable without the use of a Converter or other decoding device.

(41) **Service:** Any Basic Service, any Pay Service, or any other Cable Service offered over the Cable Television System, which is offered to any Subscriber in conjunction with, or which is distributed over, the Cable Television System.

(42) **Signal:** Any transmission of electromagnetic or optical energy which carries information from one location to another.

(43) **State:** The State of New Hampshire.

(44) **Subscriber:** Any Person, firm, corporation or other entity in the City who or which elects to subscribe to, for any purpose, a Service provided by the Franchisee by means of, or in connection with, the Cable Television System.

(45) **Subscriber Network:** The Cable System that is owned and operated and maintained by the Franchisee, over which Signals can be transmitted to Subscribers.

(46) **Transfer:** The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of ownership resulting in a change of control of the Cable System or of this Renewal Franchise, to a Person or a group of Persons.

(47) **Trunk and Distribution System:** That portion of the Cable System for the delivery of Signals, but not including Drops to Subscriber's residences.

(48) **Upstream Channel:** A channel over which Signals travel from an authorized location to the System Headend.

(49) **User:** A Person utilizing the Cable Television System, including all related facilities for purposes of production and/or transmission of electronic or other Signals as opposed to utilization solely as a Subscriber.

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**ARTICLE 2 – GRANT OF RENEWAL FRANCHISE**

**Section 2.1 Grant of Renewal Franchise**

Pursuant to the authority of RSA Chapter 53-C of the laws of the State of New Hampshire, and subject to the terms and conditions set forth herein, the City Council of the City of Portsmouth, New Hampshire, as the Franchising Authority of the City, hereby grants a non-exclusive Cable Television Renewal Franchise to the Franchisee, authorizing and permitting the Franchisee to upgrade, install, operate and maintain a Cable Television System within the corporate limits of the City of Portsmouth.

This Renewal Franchise is subject to the terms and conditions contained in Chapter 53-C of the Laws of New Hampshire; the Cable Act; the regulations of the FCC; and all City, State and federal statutes and ordinances of general application, all as may be amended during the term of this Renewal Franchise.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee, the right to construct, upgrade, install, operate and maintain a Cable Television System in, under, over, along, across or upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the City of Portsmouth within the municipal boundaries and subsequent additions thereto, including property over which the City has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Signals in accordance with the laws of the United States of America, the State of New Hampshire and the City of Portsmouth. In exercising rights pursuant to this Renewal Franchise, the Franchisee shall not endanger or interfere with the lives of Persons, interfere with any installations of the City, any public utility serving the City or any other Persons permitted to use Public Ways and places.

Grant of this Renewal Franchise does not establish priority for use over other present or future permit holders or the City's own use of Public Way and places. Any references herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

**Section 2.2 Term of Renewal Franchise**

The term of this Renewal Franchise shall be for five (5) years, commencing on March 1, 2019, and expiring on February 29, 2024, unless sooner terminated as provided herein.



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**Section 2.3 Non-Exclusivity of the Renewal Franchise**

(a) This Renewal Franchise shall not affect the right of the Franchising Authority to grant to any other Person a franchise or right to occupy or use the Public Ways or streets, or portions thereof, for the construction, installation, operation or maintenance of a Cable Television System within the City of Portsmouth; or the right of the Franchising Authority to permit the use of the Public Ways and places of the City for any lawful purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses.

(b) Pursuant to RSA Chapter 53-C: 3-b(I), the grant of any additional Cable Television franchise(s) shall not be on terms more favorable or less burdensome than those contained in this Renewal Franchise.

**Section 2.4 Police and Regulatory Powers**

By executing this Renewal Franchise, the Franchisee acknowledges that its rights are subject to the powers of the City to adopt and enforce general by-laws necessary to the safety and welfare of the public. The Franchisee shall comply with all generally applicable Department of Public Works policies and practices and any ordinances enacted by the City. Any conflict between the terms of this Renewal Franchise and any present or future lawful exercise of the City's police and generally applicable regulatory powers shall be resolved in a court of appropriate jurisdiction.

**Section 2.5 Removal or Abandonment**

Upon termination of this Renewal Franchise by passage of time or otherwise, and unless (1) the Franchisee renews its franchise for another term or (2) the Franchisee Transfers the Cable Television System to a transferee approved by the Franchising Authority, the Franchisee shall remove all of its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the Public Ways and places and shall restore the areas, as close as possible, to their original condition. If such removal is not complete within six (6) months after such termination, the Franchising Authority may deem any property not removed as having been abandoned and may dispose of any such property in any way or manner it deems appropriate.

**Section 2.6 Amendment by Mutual Agreement**

This Renewal Franchise may only be amended by the mutual agreement of the Franchising Authority and the Franchisee, in writing, duly executed and signed by both parties, and attached hereto and made a part of this Renewal Franchise.

### **ARTICLE 3 – TRANSFER AND ASSIGNMENT OF RENEWAL FRANCHISE**

#### **Section 3.1 Transfer of the Renewal Franchise**

(a) Subject to applicable law and compliance with the provisions in this Section 3.1, neither this Renewal Franchise, nor control thereof, nor any right thereto, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any Person, company and/or other entity holding such Renewal Franchise to any other Person, company and/or other entity, without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. Such consent shall be given upon a written application therefor on forms prescribed by the FCC.

(b) The application for consent to a Transfer or assignment shall be signed by the Franchisee and by the proposed transferee or assignee or by their representatives, evidence of whose authority shall be submitted with the application.

(c) The Franchisee shall submit to the Franchising Authority an original and five (5) copies, unless otherwise directed, of its FCC Form 394 (or such other or successor form used to request consent to any such Transfer or assignment). The request for approval of Transfer or assignment shall also contain all reasonably appropriate documentation and such additional information as the Franchising Authority may reasonably require.

(d) The Franchising Authority shall complete review of the request for Transfer and make a decision no later than one hundred twenty (120) days after receipt of the request for Transfer. If the Franchising Authority fails to render a final decision on such request within 120 days, such request shall be deemed granted unless both parties hereto agree to an extension of time.

(e) For purposes of determining whether it shall consent to any such change of control and ownership, the Franchising Authority shall consider the legal, financial and technical qualifications of the prospective controlling or owning Person, and any other criteria allowable under State and/or federal law(s).

(f) Any proposed controlling or owning Person or transferee approved by the Franchising Authority shall be subject to all of the terms and conditions contained in this Renewal Franchise.

#### **Section 3.2 Effect of Unauthorized Action**

(a) The taking of any action in violation of Section 3.1 shall be null and void, and shall be deemed a material breach of this Renewal Franchise.

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(b) If the Franchising Authority denies its consent to any such action and a Transfer has nevertheless occurred, the Franchising Authority may revoke and terminate this Renewal Franchise.

(c) The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City.

**Section 3.3 No Waiver of Rights**

The consent or approval of the Franchising Authority to any assignment, lease, Transfer or sublease of the Renewal Franchise granted to the Franchisee shall not constitute a waiver or release of the rights of the City in and to the streets and Public Ways or any other rights of the City under this Renewal Franchise, and any such Transfer shall, by its terms, be expressly subordinate to the terms and conditions of the Renewal Franchise.

## **ARTICLE 4 – SYSTEM DESIGN**

### **Section 4.1 Subscriber Network**

- (a) The Franchisee shall continue to operate, maintain and make available to all residents of the City a Subscriber Network of at least 750 MHz, fed by means of a hybrid fiber-optic/coaxial cable network.
- (b) The Franchisee shall transmit all of its Signals to Subscribers in stereo, provided that such Signals are delivered to the Franchisee in stereo.
- (c) The system design of the Cable Television System shall conform to all applicable FCC technical specifications.

### **Section 4.2 Emergency Alert System**

The Subscriber Network shall be in compliance with the FCC's Emergency Alert System ("EAS") regulations and in accordance with applicable New Hampshire laws and/or regulations.

### **Section 4.3 Emergency Power**

The Cable System shall incorporate equipment capable of providing standby powering of the headend for a minimum of four (4) hours upon failure of the power furnished by the electric utility company, unless for reasons of Force Majeure.

## **ARTICLE 5 – CONSTRUCTION, INSTALLATION AND MAINTENANCE STANDARDS**

### **Section 5.1 Service Availability**

(a) **Standard Installation.** The Franchisee shall make available Cable Service within seven (7) days of a resident’s request provided that the residence is located not more than two hundred (200) feet from the Trunk and Distribution System and the requirements of subsection (c). Franchisee may charge a standard installation rate in accord with applicable federal and state laws.

(b) **Non-Standard Installation.** Non-Standard Installations are those in excess of 200 feet from the Trunk and Distribution System or installations that are requested to be underground.

For underground installation of less than 200 feet from the Trunk and Distribution System, the Franchisee shall have thirty (30) days to survey, design and provide a cost estimate. Franchisee shall have sixty (60) days after receipt of any required deposit or payment to complete the work.

For installations of between 200 feet and 1,000 feet (whether aerial or underground) from the Trunk and Distribution System, the Franchisee shall have thirty (45) days to survey, design and provide a cost estimate. Franchisee shall have sixty (60) days after receipt of any required deposit or payment to complete the work.

For all other installations, Franchisee shall have up to 180 days to complete all survey, design, cost- estimating and installation work provided that any deposit or payment required is received within thirty days of the request.

Non-standard installation charges shall be fair and reasonable and in accord with applicable law.

(c) All installations are conditioned upon the Franchisee obtaining any easements, agreements and permits necessary to complete the installation. The Franchisee shall make every reasonable effort to obtain such easements, permits, agreements and permits in order to make Cable Service available. All installations are subject to weather conditions and force majeure.

### **Section 5.2 Location of Cable Television System**

The Franchisee shall operate and maintain the Cable Television System within the City of Portsmouth. Poles, towers and other obstructions shall be erected so as not to interfere with vehicular (bicycle included) or pedestrian traffic over Public Ways and places. The erection and location of all poles, towers and any other obstructions shall be in accordance with applicable City ordinances, regulations and State laws.

### **Section 5.3     Underground Facilities**

(a)     In the areas of the City having telephone lines and electric utility lines underground, whether required by law or not, all of the Franchisee's lines, cables and wires shall be underground. At such time as these facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the City, the Franchisee shall likewise place its facilities underground at its sole cost and expense.

(b)     Underground cable lines shall be placed beneath the pavement subgrade in compliance with applicable City ordinances, rules, regulations and/or standards. It is the policy of the City that existing poles for electric and communication purposes shall be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

### **Section 5.4     Tree Trimming**

In the installation of amplifiers, poles, other appliances or equipment and in stringing of cables and/or wires as authorized herein, the Franchisee shall avoid all unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, Public Ways and places, and private property in the City. The Franchisee shall comply with all generally applicable rules and/or regulations established by the Franchising Authority or its designee during the term of this Renewal Franchise regarding tree and/or root trimming and/or pruning.

### **Section 5.5     Restoration to Prior Condition**

Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any Public Way or place, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable. If the Franchisee fails to make such restoration within a reasonable time, the Franchising Authority may fix a reasonable time for such restoration and repairs and shall notify the Franchisee in writing of the restoration and repairs required and the time fixed for performance thereof. Upon failure of the Franchisee to comply within the specified time period, the Franchising Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

### **Section 5.6     Temporary Relocation**

The Franchisee shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person holding a building moving permit issued by the City. The

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expense of such raising or lowering shall be paid by the party requesting such move. The Franchisee shall be given reasonable notice necessary to maintain continuity of service.

**Section 5.7 Disconnection and Relocation**

The Franchisee shall, without charge to the Franchising Authority and/or the City, protect, support, temporarily disconnect, relocate in the same street, or other Public Way and place, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any City department acting in a governmental capacity.

**Section 5.8 Safety Standards**

The Franchisee shall construct, upgrade, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electric Code, the National Electrical Safety Code, the rules and regulations of the Commission and the FCC, all applicable building codes and land use restrictions as the same exist or may be amended hereafter.

**Section 5.9 Pedestals**

In any cases in which Pedestals housing passive devices are to be utilized, in City Public Ways or within the City public lay-out, such equipment must be installed in accordance with applicable regulations of the City; provided, however, that the Franchisee may place active devices (amplifiers, line extenders, power supplies, etc.) in a low-profile electronic control box at City approved locations to be determined when the Franchisee applies for a permit. All such equipment shall be shown on the Cable System maps submitted to the City. In the event that the Franchisee is no longer using any such Pedestals for the provision of Cable Service(s), the Franchisee shall expeditiously remove any such Pedestals and accompanying Cable Service infrastructure from the Public Way(s) expeditiously.

**Section 5.10 Private Property**

The Franchisee shall be subject to all generally applicable Laws, and regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Television System in the City. The Franchisee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the

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construction, upgrade, installation, operation or maintenance of the Cable Television System without charge to the Franchising Authority or the affected Subscriber(s).

**Section 5.11 Right to Inspection of Construction**

(a) The Franchising Authority and/or its designee(s) shall have the right to inspect all construction and installation work performed subject to the provisions of this Renewal Franchise in order to ensure compliance with the terms and conditions of this Renewal Franchise and all other applicable law. Any such inspection shall not interfere with the Franchisee's operations, except in emergency situations.

(b) Any inspections conducted by the Franchising Authority and/or its designee(s) shall be at the sole cost and expense of the City and shall have the prior written approval of the Franchisee, which approval shall be given in a timely manner and which approval shall not be unreasonably denied or withheld. Unless otherwise mutually agreed upon, the City shall give at least fourteen (14) days prior notification to the Franchisee of its intention to conduct any inspection. The Franchisee shall be afforded the opportunity to be present during all such inspections.

**Section 5.12 Cable System Maps**

(a) Upon written request, the Franchisee shall provide the Franchising Authority strand maps of the Cable System plant. Strand maps shall include the routing of the Cable System, including all underground and aerial plant.

(b) Upon written request, the Franchisee shall make available to the Franchising Authority for inspection "as-built" maps of all Cable System plant at a mutually-agreeable location in Portsmouth.

**Section 5.13 Commercial Establishments**

The Franchisee shall make Cable Service(s) available to any commercial establishments in the City provided that the establishment(s) agrees to pay for installation and monthly subscription costs as lawfully established by the Franchisee, in accordance with applicable law(s) and/or regulation(s).

**Section 5.14 Local permitting**

The Franchisee shall comply with all local flagging, encumbrance, excavation and like permitting.



**Section 5.15 Residential Exterior Wiring**

The Franchisee shall adhere to Subscribers’ reasonable requests for location of entry and shall in other respects observe standard specifications for Drop connections into the residence. Each Drop shall be grounded at each Subscriber’s residence at the time of initial installation of Cable Service or during the next scheduled in-house servicing that is performed.

**Section 5.16 Make Ready and Pole Transfers**

If requested by the Franchising Authority, and in coordination with any pole owner, Franchisee shall move its lines and equipment within forty-five (45) days of written notice from the Franchising Authority for nonemergency, standard transfers of lines and equipment on poles or for making the pole ready for new attachments. Nothing herein shall alleviate Franchisee from making any transfers of lines and equipment in a shorter period of time if required by other contractual commitments or licensing obligations.

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## **ARTICLE 6 – SERVICES AND PROGRAMMING**

### **Section 6.1 Basic Service**

The Franchisee shall provide a Basic Service which shall include all Signals which are required to be carried by a Cable System serving the City pursuant to applicable statute or regulation.

### **Section 6.2 Programming**

- (a) Pursuant to Section 624 of the Cable Act, the Franchisee shall maintain the mix, quality and broad categories of Programming set forth in Exhibit 1 attached hereto and made a part hereof.
- (b) The Franchisee shall provide the Franchising Authority and all Subscribers with thirty (30) days advance written notice of any change in its Portsmouth Programming line-up, if the change is within the control of the Franchisee.

### **Section 6.3 Leased Channels for Commercial Use**

Pursuant to Section 612 (b)(1)(B) of the Cable Act, the Franchisee shall make available channel capacity for commercial use by Persons unaffiliated with the Franchisee.

### **Section 6.4 Cable Compatibility**

The Franchisee shall continue to maintain equipment compatibility in accordance with applicable law and regulation.

### **Section 6.5 Continuity of Service**

It shall be the right of all Subscribers to receive Service insofar as their financial and other obligations to the Franchisee are honored. The Franchisee shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When necessary Service interruptions can be anticipated, the Franchisee shall notify Subscribers in advance.

#### **Section 6.6 Service Interruption**

Except where there exists an emergency situation necessitating a more expeditious procedure, the Franchisee may interrupt service for the purpose of repairing or testing the Cable Television System, only during periods of minimal use and, if practical, only after a minimum of twenty-four (24) hours' notice to all affected Subscribers.

#### **Section 6.7 Parental Control Capacity**

The Franchisee shall provide, upon request, Subscribers with the capability to control the reception of any channels being received on their television sets, at a cost, if any, pursuant to applicable law(s).

#### **Section 6.8 Free Connections and Monthly Service to Public Buildings and Schools**

(a) The Franchisee shall provide, install and maintain free Subscriber Cable Drops and Outlets and monthly Basic Service to all police and fire stations, public schools, public libraries and other public buildings along the Cable System Trunk and Distribution System included in Exhibit 2, attached and made a part hereof, and any other public buildings and schools along the Cable System Trunk and Distribution System as designated by the Franchising Authority. The Franchisee shall coordinate the location of each Drop and Outlet with the Franchising Authority. There shall be no cost to the City for the standard installation and provision of monthly Basic Service and related maintenance.

(b) The Franchisee shall supply one (1) digital Converter for each Outlet, if necessary, without charge to the City, for the reception of monthly Basic Service. The Franchisee shall maintain such Outlets and Converters for normal wear and tear, at its sole cost and expense; provided, however, that the City shall be responsible for repairs and/or replacement necessitated by any acts of vandalism or theft.

(c) The Franchisee shall provide installation of such Drops and/or Outlets within sixty (60) days of any such requests from the Franchising Authority, subject to Force Majeure.

**ARTICLE 7 – PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS**

**Section 7.1 PEG Access Programming**

The Franchising Authority and/or its designee(s) shall be responsible for the provision of PEG Access Programming to Subscribers in the City.

**Section 7.2 Peg Access Channels**

(a) The Franchisee shall continue to make available at no cost to the Franchising Authority or Access Corporation one (1) downstream Access Channel for Governmental Access programming, to be programmed by the City and/or the Access Corporation.

(b) The Franchisee shall continue to make available at no cost to the Franchising Authority or Access Corporation one (1) additional downstream Access Channel to be programmed by the Franchising Authority, its School Department and/or the Access Corporation.

(c) The Franchisee shall, upon written request from the Franchising Authority, make available one (1) additional downstream Access Channel to be programmed by the Franchising Authority, its School Department and/or Access Corporation conditioned upon the following:

The second channel, pursuant to paragraph (b) above, is being substantially programmed. Substantially programmed shall mean that the second channel is carrying locally-produced, non-character generated programming between the hours of 5:00 p.m. and 10:00 p.m., Monday through Friday, at least seventy percent (70%) of the time for the twelve (12) week period immediately preceding or the twelve week period preceding the Franchising Authority's written request for a third channel under paragraph (h) below, as may be applicable. Of the 70% described above, at least thirty percent (30%) of the programming shall be new, non-duplicative programming during that six week period.

The Franchisee shall have six (6) months from the receipt of such written notification to activate the Access Channel requested.

(d) The first two Access Channels shall be included as part of the Basic Service available to all Subscribers. The third channel may, at the option of the Franchisee, be made available in the digital tiers only.

(e) The Franchisee shall not move or otherwise relocate the channel location(s) of the Access Channel(s), once established, without the advance, written notice to the Franchising Authority and the Access Corporation; such notice shall be at least sixty (60) days. The Franchisee shall use its best efforts, in good faith, to minimize any Access Channel(s) relocations. The Franchisee shall provide at least thirty (30) days to Subscribers of the relocation. Access Channels shall be located together whenever reasonably possible.

(f) The City and/or the Access Corporation shall be responsible for the picture quality of all Access Programming at the input of the modulators which is the demarcation point between the

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video origination equipment owned, operated and maintained by the Franchisee and the City's and/or Access Corporation's end-user equipment. The Franchisee may require access to the modulator(s) for the purpose of testing, maintaining, and/or adjusting output levels of the modulator, and the Franchisee shall test and adjust the levels of such output as reasonably needed to ensure good picture quality. The Franchisee may require the City or the Access Corporation to first test and determine if end-user equipment is the source of any apparent signal problems.

(g) Modulators or equivalent technology at origination locations shall be owned and maintained by the Franchising Authority.

(h) The Franchising Authority agrees that neither the second nor the third Access Channel shall be utilized solely to carry character-generated messages; provided, however, that the Franchising Authority and/or Access Corporation may use character-generated messages along with new programming. The Franchising Authority and/or its designee(s) shall be responsible for providing the Access Channel signal(s) in a standard definition format to the demarcation point at the designated point of origination for the PEG Access Channel(s). The Franchisee shall distribute the Access Channels Signal(s) on its Cable System in standard definition format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend.

### **Section 7.3 Access Channel Maintenance**

The Franchisee shall monitor the Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming. Upon written request, the Franchisee shall make available a copy of its most recent annual performance tests.

### **Section 7.4 PEG Studio Move**

Should the Access Corporation decide to relocate its studio facilities from its current location, as of the Effective Date of this Renewal Franchise, the Franchisee shall provide origination Capability to the new studio as follows:

(a) The Franchisee shall provide a written estimate of the cost of providing such video origination Capability within forty-five (45) days of receipt of a request from the Franchising Authority;

(b) The Franchisee shall be responsible for the first Forty Thousand Dollars (\$40,000.00) of such new Drop and origination Capability relocation costs; any relocation costs in excess of \$40,000.00 shall be paid by the Franchising Authority and/or the Access Corporation;

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- (c) Within forty-five (45) days of the Franchising Authority's receipt of the written estimate from the Franchisee, the Franchising Authority and/or the Access Corporation shall issue a payment, if such estimate exceeds \$ 40,000.00;
- (d) Upon receipt of the payment from the Franchising Authority, no later than forty- five (45) days of the Franchising Authority's receipt of the written estimate from the Franchisee (if such costs are \$40,000.00 or less), the Franchisee shall order equipment and begin the construction process; and
- (e) No later than thirty (30) days of the timelines established in Section 7.4(d) above for an aerial Drop and within ninety (90) days for an underground Drop, the Franchisee shall construct, install and provide such origination Capability Drop to the new PEG Access Studio, subject to Force Majeure.

**Section 7.5 Censorship**

The Franchisee shall not engage in any program censorship or any other control of the content of Access Channel programming on the Cable System, except as otherwise required or permitted by applicable law.

## **ARTICLE 8 – FRANCHISE FEES**

### **Section 8.1 Franchise Fee Payments**

- (a) The Franchisee shall pay to the Franchising Authority, throughout the term of this Renewal Franchise, a Franchise Fee equal to five percent (5%) of the Franchisee's Gross Annual Revenues, as defined in Section 1.1(23) supra, derived during each year of this Renewal Franchise. The Franchisee shall not be liable for Franchise Fees in excess of five percent (5%) of its Gross Annual Revenues; provided, however, the five percent (5%) cap shall not include
- (i) any interest due herein to the Franchising Authority and/or its designee(s) because of late payments; and/or any damages.
- (b) Payments shall be made on a quarterly basis throughout the term of this Renewal Franchise not later than forty-five (45) days after the end of each 3 month period (by Feb 15<sup>th</sup>, May 15, August 15<sup>th</sup> and November 15<sup>th</sup>). Payments shall be made payable to the City of Portsmouth.
- (c) The Franchisee shall file with each such payment a statement, prepared by a financial representative of the Franchisee, documenting, in detail, the total of all Gross Annual Revenues of the Franchisee during the preceding year. The Franchisee shall also complete and submit to the Franchising Authority, on a quarterly basis, a Gross Annual Revenues Reporting Form substantially and materially consistent with that which is attached hereto as Exhibit 3.
- (d) Nothing in the Cable Act or this Renewal License shall be construed to limit any authority of the Franchising Authority to impose a tax, fee or other assessment of any kind otherwise permitted by law with respect to Cable Service.

### **Section 8.2 Other Payment Obligations and Exclusions**

The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Franchisee or any Affiliated Person shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee payments all of which shall be separate and distinct obligations of the Franchisee and each Affiliated Person.

### **Section 8.3 Late Payment**

In the event that the fees herein required are not tendered on or before the dates fixed in Section 8.1 above, interest due on such fee shall accrue from the date due at the rate of two percent (2%) above the Prime Rate. Any payments to the City pursuant to this Section 8.3 shall not be deemed to be part of the Franchise Fees to be paid to the City pursuant to Section 8.1

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hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the franchise pursuant to Section 622(g)(2)(D) of the Cable Act.

**Section 8.4    Re-computation**

(a)    Tender or acceptance of any payment required shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the City may have for additional sums including interest payable under this Section 8.3. All amounts paid shall be subject to audit and re-computation by the Franchising Authority and shall occur in no event later than two (2) years after each quarterly Franchise Fee is tendered with respect to such fiscal year.

(b)    If the Franchising Authority has reason to believe that any such payment(s) are incorrect, the Franchising Authority shall notify the Franchisee of such belief in writing and the Franchisee shall have thirty (30) days from receipt of such written notification to provide the Franchising Authority with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Franchising Authority does not believe that such documentation supports the accuracy of such payment(s), the Franchising Authority may conduct an audit of such payment(s). If, after such audit and re-computation, an additional fee is owed to the Franchising Authority, such fee shall be paid within thirty (30) days after such audit and re-computation and the Franchisee shall contribute to the costs of such audit in an amount not to exceed Three Thousand Dollars. The interest on such additional fee shall be charged from the due date at the rate of two percent (2%) above the Prime Rate during the period that such additional amount is owed.



## **ARTICLE 9 – RATES AND CHARGES**

### **Section 9.1 Rate Regulation**

The Franchising Authority reserves the right to regulate the Franchisee's rates and charges to the extent allowable under applicable federal law.

### **Section 9.2 Notification of Rates and Charges**

(a) The Franchisee shall make all rates and charges of any kind and all terms or conditions related to Subscriber Services: (1) available in writing at the Franchisee's business office; (2) accessible electronically through publication on Franchisee's website; and as required in writing under Section 13.5.

(b) The Franchisee shall provide annually to both the Franchising Authority and to all Subscribers written schedules which shall describe all Services offered by the Franchisee, all rates and charges of any kind, and all terms or conditions relating thereto. If the Subscriber has opted for electronic communications schedules may be distributed by electronic mail.

(c) The Franchisee shall notify all Subscribers and the Franchising Authority in writing of any impending rate increases no later than thirty (30) days prior to such increase(s) and provide each Subscriber with a schedule describing existing and proposed rates for each service offered; provided, however, that this Section 9.2 shall not prohibit the Franchisee from offering or discontinuing promotional discounts upon less than thirty (30) days' notice. No rates or charges shall be effective except as they appear on a schedule timely provided to the Franchising Authority and Subscribers.

(d) At the time of initial solicitation of Service, the Franchisee shall also provide each Subscriber with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate Cable Service. Subscribers shall have at least thirty (30) days from receipt of notification of any rate increase to either downgrade Service or terminate Service altogether without any additional charge.

(e) During the term of this Renewal Franchise, whenever a Subscriber contacts the Franchisee to inquire about Basic Service rates, the Franchisee shall clearly inform all Subscribers and potential Subscribers about the availability and price of the lowest cost of Cable Service.

### **Section 9.3 Credit for Service Interruption**

In the event that the Franchisee's Service to any Subscriber is interrupted for twenty-four (24) or more consecutive hours, provided that the interruption is not caused by the Subscriber, the Franchisee shall grant such Subscriber a pro rata credit or rebate in compliance with applicable law.

## ARTICLE 10 – INSURANCE AND BONDS

### Section 10.1 Insurance

From the Effective Date and at all other times during the term of the Renewal Franchise, including the time for removal of facilities, the Franchisee shall obtain, pay all premiums for, and file with the Franchising Authority, on an annual basis, copies of the certificates of insurance for the following policies:

- (1) A commercial general liability policy naming the Franchising Authority, the City, its officers, boards, committees, commissions, and employees as additional insured on a primary and noncontributory basis for all claims on account of injury to or death of a Person or Persons occasioned by the construction, installation, maintenance or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of One Million Dollars (\$1,000,000.00) for injury or death or property damage in any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000.00) in umbrella form. Overall limits of liability may be met through any combination of primary and excess liability insurance policies.
- (2) Automobile liability insurance for owned automobiles, non-owned automobiles and/or rented automobiles in the amount of:
  - (a) One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, consequent death and property damage per occurrence;
- (3) Worker's Compensation and Employer's Liability in the minimum amount of:
  - (a) Statutory limit for Worker's Compensation; and
- (4) The following conditions shall apply to the insurance policies required herein:
  - (a) Such insurance shall commence no later than the Effective Date of this Renewal Franchise.
  - (b) Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.
  - (c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in New Hampshire.
  - (d) The Franchisee's failure to obtain to procure or maintain the required insurance shall constitute a material breach of this Renewal Franchise under which the City

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may immediately suspend operations under this Renewal Franchise, subject to the provisions of Section 12.1 herein.

**Section 10.2 Performance Bond**

(a) The Franchisee shall obtain and maintain at its sole cost and expense throughout the entire term of the Renewal Franchise a faithful performance bond running to the City, with good and sufficient surety Franchised to do business in the State of New Hampshire in the sum of Twenty Five Thousand Dollars (\$25,000.00). The bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by the Renewal Franchise.

(b) The performance bond shall be effective throughout the term of the Renewal Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Franchisee shall fail to comply with any one or more provisions of the Renewal Franchise, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the City having jurisdiction over its acts, or to pay any claims, liens or taxes due the City which arise by reason of the construction, maintenance, operation or removal of the Cable Television System, the City shall recover from the surety of such bond all damages suffered by the City.

(c) The performance bond shall be a continuing obligation of this Renewal Franchise. In the event that the City recovers from the surety, the Franchisee shall take immediate steps to reinstate the performance bond to the \$100,000.00 required coverage herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Franchisee under the Renewal Franchise.

**Section 10.3 Reporting**

The Franchisee shall submit to the Franchising Authority, upon request, copies of all current certificates regarding (i) all insurance policies, and (ii) the performance bond.

**Section 10.4 Indemnification**

The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the Franchising Authority, the City, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Franchisee, its employees, officers or agents arising out of the construction, installation, maintenance, operation and/or removal of the Cable Television System under the Renewal Franchise, including without limitation, damage to Persons or property, both real and personal, caused by the construction, installation, operation, maintenance and/or removal of any structure, equipment, wire or cable installed. Indemnified expenses shall include all reasonable attorneys' fees and costs incurred up

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to such time that the Franchisee assumes defense of any action hereunder. The Franchising Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchising Authority. Any settlement requiring City remuneration must be with the advance, written consent of the Franchising Authority, which shall not be unreasonably denied

**Section 10.5 Notice of Cancellation or Reduction of Coverage**

The insurance policies and performance bond required herein shall each contain an endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Franchisee under the terms of this Renewal Franchise and shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy (or performance bond) shall not be cancelled, materially changed or the amount of coverage thereof reduced until thirty (30) days after receipt by the Franchising Authority by certified mail of one (1) copy of a written notice of such intent to cancel, materially change or reduce the coverage required herein.

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## **ARTICLE 11 – ADMINISTRATION AND REGULATION**

### **Section 11.1 Regulatory Authority**

The Franchising Authority and/or its designee(s) shall be responsible for the monitoring and oversight of the Cable Television System including enforcement and compliance.

### **Section 11.2 Performance Evaluation Hearings**

(a) The Franchising Authority may hold a performance evaluation hearing during each year of this Renewal Franchise. The Franchisee shall be provided timely notice of any such hearing. All such evaluation hearings shall be open to the public. The purpose of such evaluation hearing shall be to, among other things, (i) review the Franchisee's compliance with the terms and conditions of this Renewal Franchise, customer service and Complaint response, and Access Channels, facilities and support; and (ii) hear comments, suggestions and/or Complaints from the public. The Franchising Authority shall provide the Franchisee with reasonable, advance notice regarding the hearing date and compliance matters.

(b) The Franchising Authority shall have the right to question the Franchisee on any aspect of this Renewal Franchise including, but not limited to, the operation, maintenance and/or removal of the Cable Television System. During review and evaluation by the Franchising Authority, the Franchisee shall cooperate fully with the Franchising Authority and/or its designee(s), and produce such documents or other materials as are reasonably requested from the City. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the Franchising Authority.

(c) Within sixty (60) days after the conclusion of such review hearing(s), the Franchising Authority shall issue a written report with respect to the adequacy of Cable System performance and quality of Service. If inadequacies are found which result in a violation of any of the provisions of this Renewal Franchise, the Franchising Authority shall notify the Franchisee in writing of any instance of non-compliance. The Franchisee shall subsequently respond and propose a plan for implementing any changes or improvements necessary.

### **Section 11.3 Emergency Removal of Plant**

If, in case of fire or disaster in the City at any time, it shall become necessary in the reasonable judgment of the Franchising Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the City shall have the right to do so at the sole cost and expense of the Franchisee.

**Section 11.4 Removal and Relocation**

The Franchising Authority shall have the authority at any time to order and require the Franchisee to remove or relocate any pole, wire, cable or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the authority to remove or relocate the same, which cost the Franchisee shall reimburse to the City.

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## **ARTICLE 12 – BREACH, LIQUIDATED DAMAGES, FRANCHISE REVOCATION**

### **Section 12.1 Determination of Breach**

(a) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Renewal Franchise, except as excused by Force Majeure, the Franchising Authority shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(b) Respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support the Franchisee's position; or

(c) Cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure the default and diligently continue such efforts until the default is cured. The Franchisee shall report to the Franchising Authority, in writing, by certified mail, at twenty-one (21) day intervals as to the Franchisee's efforts, indicating the steps taken by the Franchisee to cure any such default and reporting the Franchisee's progress until any such default is cured.

(d) In the event that (i) the Franchisee fails to respond to such notice of default; (ii) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; and/or (iii) the Franchising Authority is not satisfied with the Franchisee's response(s) or the Franchisee's efforts to cure, the Franchising Authority shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to the Franchisee. The Franchisee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing. Within thirty (30) days after the public hearing, the Franchising Authority shall determine whether or not the Franchisee is in default of any provision of this Renewal Franchise.

(e) In the event that the Franchising Authority, after such hearing, determines that the Franchisee is in default, the Franchising Authority may determine to pursue any of the following remedies, by written notice to the Franchisee:

- (i) assess liquidated damages in accordance with the schedule set forth in Section 12.2 below;
- (ii) seek specific performance of any provision of the Renewal Franchise which reasonably lends itself to such remedy as an alternative to damages;
- (iii) commence an action at law for monetary damages;
- (iv) foreclose on all or any appropriate part of the security provided pursuant to Article 10;

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- (v) declare the Renewal Franchise to be revoked subject to Section 12.3 below and applicable law;
- (vi) invoke any other remedy available to the City.

**Section 12.2 Liquidated Damages**

(a) For the violation of any of the following provisions of this Renewal Franchise, liquidated damages shall be paid by the Franchisee to the Franchising Authority, subject to Section 12.1 above. Any such liquidated damages shall be assessed as of the date that the Franchisee receives written notice, by certified mail, of the provision or provision(s) which the Franchising Authority believes are in default, provided the Franchising Authority made a determination of default pursuant to Section 12.1 (d) above.

- (i) For failure to fully activate, operate, maintain the Subscriber Network, in accordance with Article 4, Five Hundred Dollars (\$500.00) per day, for each day that such non-compliance continues.
- (ii) For failure to obtain the advance, written approval of the Franchising Authority for any transfer of this Renewal Franchise in accordance with Article 3, Two Hundred Fifty Dollars (\$250.00) per day, for each day that such non-compliance continues.
- (iii) For failure to comply with the PEG requirements of Article 7 including maintenance of origination locations, Five Hundred Fifty Dollars (\$500.00) for each day that any such non-compliance continues.
- (iv) For failure to comply with the Subscriber and consumer protections in accordance with Article 13, One Hundred Fifty Dollars (\$150.00) for each day that any such non-compliance continues.
- (v) For failure to provide, install and/or fully activate the Subscriber Network and/or Outlets in accordance with Section 6.6 herein and/or Exhibit 2, Fifty Dollars (\$50.00) per day that any such non-compliance continues.
- (vi) For failure to timely submit any requested reports pursuant to Article 14, Fifty Dollars (\$50.00) per day that reports are not submitted as required.

(b) Such liquidated damages shall be in addition to, and not a limitation upon, any other provisions of this Renewal Franchise and applicable law, including penalties or revocation, or any other statutorily or judicially imposed penalties or remedies; provided, however, that in the event that the Franchising Authority collects liquidated damages for a specific breach for a specific period of timer, pursuant to Section 12.2 above, the collection of such liquidated damages shall be deemed to be the exclusive remedy for the specific breach for such specific period of time only.

(c) Each of the above-mentioned cases of non-compliance shall result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult to ascertain. The Franchisee agrees that the liquidated damages in the amounts set forth above are fair and



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reasonable compensation for such damage. The Franchisee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act.

**Section 12.3 Revocation of the Renewal Franchise**

In the event that the Franchisee fails to comply with any material provision of this Renewal Franchise, the Franchising Authority may revoke the Renewal Franchise granted herein, subject to the procedures of Section 12.1 above and applicable law.

**Section 12.4 Termination**

The termination of this Renewal Franchise and the Franchisee's rights shall become effective upon the earliest to occur of: (i) the revocation of the Renewal Franchise by action of the Franchising Authority, pursuant to Section 12.1 and 12.3 above; (ii) the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or (iii) the expiration of the term of this Renewal Franchise, unless the Franchisee is otherwise permitted to continue operating the Cable System pursuant to applicable law(s).

**Section 12.5 Notice To Other Party of Legal Action**

In the event that either party intends to take legal action against the other party for any reason, such moving party shall first, except where injunctive relief is sought, (i) give the other party at least forty-five (45) days' notice that an action will be filed, (ii) meet with the other party before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party.

**Section 12.6 Non-Exclusivity of Remedy**

No decision by the Franchising Authority or the City to invoke any remedy under the Renewal Franchise or under any statute, law or ordinance shall preclude the availability of any other such remedy.

**Section 12.7 No Waiver-Cumulative Remedies**

(a) The rights and remedies provided are cumulative and not exclusive of any remedies provided by law.

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(b) A waiver of any right or remedy by the Franchising Authority at any one time shall not affect the exercise of such right or remedy or any other right or remedy by the Franchising Authority at any other time. In order for any waiver of the Franchising Authority to be effective, it shall be in writing. The failure of the Franchising Authority to take any action in the event of any breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Franchising Authority to take any action permitted by this Renewal Franchise at any other time in the event that such breach has not been cured, or with respect to any other breach by the Franchisee.

(c) Acceptance of the terms and conditions of this Renewal Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or implied, by the Franchisee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions.

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## **ARTICLE 13 –SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

### **Section 13.1 Customer Service Office**

(a) For the term of this Renewal Franchise, the Franchisee shall continue to maintain, operate and staff a conveniently located customer service office in the Seacoast.

The customer service office shall be open for walk-in business during Normal Business Hours for the purpose of, among other things, exchanging/replacing customer equipment; receiving customer payments, inquiries and Complaints, made in person, including without limitation, those regarding billing, Service, installation, equipment malfunctions and answering general inquiries.

(b) The Franchisee shall periodically notify its Subscribers of the location.

### **Section 13.2 Customer Service Call Center**

(a) The Franchisee shall maintain and operate its customer service call center twenty-four (24) hours a day, seven (7) days a week, including holidays. The Franchisee reserves the right to modify its business operations with regard to such customer service call center. The Franchisee shall comply with all State and federal requirements pertaining to the hours of operation of such customer service call center.

(b) In the event that the Franchisee does not maintain and operate its customer service call center twenty-four (24) hours a day, seven (7) days a week, the Franchisee shall maintain a telephone answering service to handle Subscriber inquiries, Complaints and emergencies, and provide proper referral regarding billing and other Subscriber information. The Franchisee shall log all such after-hours calls. Any answering service shall (i) forward all inquiries and/or Complaints to the Franchisee the morning of the next business day and (ii) inform each Subscriber calling that his or her Complaint will be referred to the Franchisee's Customer Service Department for response. If requested, or reasonably warranted by the reported nature of the Subscriber's problem or inquiry, the Franchisee shall promptly contact each individual Subscriber to follow-up on their individual problem and/or inquiry.

### **Section 13.3 Installation Visits-Service Calls-Response Time**

(a) The Franchisee shall provide Cable Service for new installations as set forth in Section 5.1 of this Renewal Franchise.

(b) When arranging appointments with Subscribers, the Franchisee shall specify in advance whether such will occur in the morning or afternoon, or a narrower interval, if possible, and the

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Franchisee shall make reasonable efforts to install at times convenient to Subscribers (including times other than 9:00 a.m. to 5:00 p.m. weekdays).

(c) A Subscriber Complaint or request for Service received after Normal Business Hours shall be responded to the next business day.

(d) The Franchisee shall ensure that there are stand-by technician(s) on-call at all times after Normal Business Hours. The answering service shall be required to notify the stand-by technician(s) of (i) any emergency situations, (ii) an unusual number of calls and/or (iii) a number of similar Complaint calls or a number of calls coming from the same area.

(e) System outages shall be responded to within 24 hours by technical personnel. For purposes of the section, an outage shall be considered to occur when three (3) or more calls are received from an area sharing the same node, or when the Franchisee has reason to know of such an outage.

(f) The Franchisee shall remove all Subscriber Drop Cables, within seven (7) days of receiving a request from a Subscriber to do so.

#### **Section 13.4 FCC Customer Service Obligations**

The Franchisee shall comply with the FCC's Customer Service Obligations, codified at 47 U.S.C. Section 76.309.

#### **Section 13.5 Notices to Subscribers**

The Franchisee shall provide in writing by mail annually to all Subscribers the following:

- (a) Schedule of all rates and charges;
- (b) Description of all tiers and programming packages with a listing of channels or Services;
- (c) Summary of all billing policies, procedures and dispute mechanisms;
- (d) Notice of the availability of detailed information on parental lockout controls;
- (e) Franchisee's privacy policies;
- (f) Consumer Protection Notices as set forth in 13.6 of this Agreement; and
- (g) All other notices required by State and Federal law.

The Franchisee shall make the above-listed information available at all times 1) in writing at the Franchisee's business office and (2) accessible electronically through publication on Franchisee's website.

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Prospective Subscribers shall be provided the above-listed information in hard copy form upon request and new Subscribers shall be provided the above-listed information by mail within thirty (30) days of the start of service.

**Section 13.6 Notice to Subscribers Regarding Quality of Service**

As set forth in R.S.A. 53-C: 3-d, annually, the Franchisee shall mail to each of its Subscribers a notice which:

- (a) Informs Subscribers how to communicate their views to the Franchisee and to the Office of the Solicitor General, Consumer Protection and Antitrust Bureau; and
- (b) States the responsibility of the Office of the Solicitor General, Consumer Protection and Antitrust Bureau to receive and act on consumer complaints.

Such notice shall be in non-technical language, understandable by the general public, and in a convenient format. On or before January 30 of each year, the Franchisee shall certify to the Franchising Authority and to the Office of the Solicitor General, Consumer Protection and Antitrust Bureau that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

**Section 13.7 Complaint Resolution Procedures**

- (a) The Franchisee shall establish a procedure for resolution of Complaints by Subscribers.
- (b) Upon reasonable notice, the Franchisee shall expeditiously investigate and resolve all Complaints regarding the quality of Service, equipment malfunctions and similar matters. In the event that a Subscriber is aggrieved, the Franchising Authority or its designee(s) shall be responsible for receiving and acting upon such Subscriber Complaints/inquiries, as follows:
  - (i) Upon the written request of the Franchising Authority or its designee(s), the Franchisee shall, within ten (10) business days after receiving such request, send a written report to the Franchising Authority with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps taken by the Franchisee.
  - (ii) Should a Subscriber have an unresolved Complaint regarding cable television operations, the Subscriber shall be entitled to file his or her Complaint with the Franchising Authority or its designee(s), who shall have primary responsibility for the continuing administration of the Renewal Franchise and the implementation of Complaint procedures. Thereafter, if the Subscriber wishes to participate in further processing of the Complaint, the Subscriber shall meet jointly with the Franchising Authority or its designee(s) and a representative of the Franchisee, within thirty (30) days of the Subscriber's filing of his or her Complaint, in order to fully discuss and attempt to resolve

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such matter. The Franchisee shall notify each new Subscriber, at the time of initial installation of Cable Service, of the procedures for reporting and resolving all of such Complaints, and annually to all Subscribers.

(c) Notwithstanding the foregoing, if the Franchising Authority or its designee(s) determines it to be in the public interest, the Franchising Authority or its designee(s) may investigate any Complaints or disputes brought by Subscribers arising from the operations of the Franchisee.

(d) In the event that the Franchising Authority or its designee(s) finds a pattern of multiple unresolved Subscriber Complaints, the Franchising Authority or its designee(s) and the Franchisee shall discuss, in good faith, possible amendments to the Franchisee's procedures for the resolution of Complaints.

### **Section 13.9 Billing Practices Information and Procedures**

Billing procedures shall be as follows:

(a) The Franchisee shall bill all Subscribers to its Cable Television System in a uniform, non-discriminatory manner, regardless of a Subscriber's level of Service(s). The bill shall have an explicit due date.

(b) The Franchisee shall provide all Subscribers with itemized bills that contain the information required by federal law and/or regulation.

(c) Late charges, if applied, shall in no case be imposed earlier than thirty (30) days after the bill date, unless otherwise required by applicable law(s).

(d) Subscribers shall have at least thirty (30) days from the due date of a bill in which to register a complaint or dispute concerning their bill.

(e) In the event that a bona fide billing dispute arises, the Franchisee shall respond to each Complaint within fifteen (15) days of receiving a written notification of the dispute from the Subscriber and shall make its best efforts to resolve each dispute within forty-five (45) days of receiving Subscriber's written notification of the dispute. If the dispute cannot be settled within the forty-five (45) day period and/or the results of the Franchisee's investigation into the dispute are unacceptable to the Subscriber, the Franchisee shall notify, and deliver to, the affected Subscriber its proposed resolution of the dispute within one day of expiration of the forty-five (45) day period.

(f) The affected Subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall the Franchisee, prior to the resolution of a billing dispute, disconnect, assess a late payment charge or require payment of a late payment charge from the Subscriber for failure to pay bona fide disputed bills, or portions thereof, provided the Subscriber notifies the Franchisee of the dispute within thirty (30) days following the beginning of the billing period for which service was rendered under the disputed bill.

### **Section 13.10 Disconnection and Termination of Cable Services**

The Franchisee shall not disconnect a Subscriber's Cable Service for nonpayment unless (1) the Subscriber is delinquent, (2) the Franchisee has given Subscriber written notice of such past due amount in a clear and conspicuous manner; and (3) Subscriber has been given a second notice of delinquency, which may be as part of a monthly bill. Disconnection and/or termination of Cable Services shall be subject to applicable federal and/or State law(s) and regulation(s).

### **Section 13.11 Change of Service**

Upon Subscriber's notification to disconnect or downgrade Service, the Franchisee shall cease and/or adjust Subscriber's monthly Service charges immediately or as of the Subscriber's specified disconnect or downgrade date. In no case shall Subscriber be charged for Service(s) requested to be changed after the Franchisee is notified of the change(s). Franchisee's charges, if any, shall comply with applicable federal law and regulation.

### **Section 13.12 Subscriber Equipment/Wiring**

The Franchisee shall not cut, modify, or otherwise interfere with any coaxial, telephony, data, or electrical wiring in any Subscriber's residence or place of business without the express permission of the Subscriber or his agent, unless it presents an immediate danger to life or safety. Any such modification must be disclosed to the subscriber immediately.

### **Section 13.13 Employee and Agent Identification Cards**

All of the Franchisee's employees and agents entering upon private property, in connection with the construction, installation, maintenance and operation of the Cable System, including repair and sales personnel, shall be required to carry an employee picture identification card issued by the Franchisee.

### **Section 13.14 Protection of Subscriber Privacy**

(a) The Franchisee shall respect the rights of privacy of every Subscriber and/or User of the Cable Television System and, pursuant to applicable federal law, shall not violate such rights through the use of any device or Signal associated with the Cable Television System, and as hereafter provided.

City of Portsmouth Cable Television Renewal Franchise –  
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(b) The Franchisee shall comply with all privacy provisions contained in this Article 13 and all other applicable federal and State laws including, but not limited to, the provisions of Section 631 of the Cable Act.

(c) The Franchisee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.

(d) Subject to Section 631 of the Cable Act, the Franchisee shall notify all third parties who offer Cable Services in conjunction with the Franchisee, or independently over the Cable Television System, of the subscriber privacy requirements contained in this Renewal Franchise.

### **Section 13.15 Monitoring**

(a) In accordance with applicable federal law, the Franchisee shall not use the Cable System to collect personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned. The Franchisee may use the Cable System to collect such information in order to (A) obtain information necessary to render a Cable Service or other service provided by the Franchisee to the Subscriber; or (B) detect unauthorized reception of cable communications.

(b) Pursuant to Section 631(e) of the Cable Act, the Franchisee shall not record or retain any information transmitted between a Subscriber or User and any third party, except as required for lawful business purposes and the Franchisee shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information pursuant to a request from a Subscriber or pursuant to a court order.

### **Section 13.16 Distribution of Subscriber Information**

(a) Except as provided in paragraph (b) below, the Franchisee shall not personally identifiable information concerning any Subscriber without the prior written or electronic consent of the Subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a Person other than the Subscriber or the Licensee.

(b) The Licensee may disclose such information if the disclosure is--

- (i) necessary to render, or conduct a legitimate business activity related to, a Cable Service or other service provided by the Franchisee to the Subscriber;
- (ii) subject to subsection (h) of 47 USC 551, made pursuant to a court order authorizing such disclosure, if the Subscriber is notified of such order by the Person to whom the order is directed; or



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- (iii) a disclosure of the names and addresses of Subscribers to any Cable Service or other service, if—
  - a. the Franchisee has provided the Subscriber the opportunity to prohibit or limit such disclosure, and
  - b. the disclosure does not reveal, directly or indirectly, the--
    - (1) extent of any viewing or other use by the Subscriber of a Cable Service or other service provided by the Licensee, or
    - (2) the nature of any transaction made by the Subscriber over the Cable System.

**Section 13.17 Information With Respect to Viewing Habits and Subscription Decisions**

Except as permitted by Section 631 of the Cable Act and other applicable law, the Franchisee shall not make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber, without a Subscriber's prior authorization. If a court authorizes or orders such disclosure, the Franchisee shall notify the Subscriber as soon as practicable, unless such notification is otherwise prohibited by applicable law or the court.

**Section 13.18 Subscriber's Right to Inspect and Verify Information**

- (a) The Franchisee shall make available for inspection by a Subscriber, at a reasonable time and place, all personal subscriber information that the Franchisee maintains regarding Subscriber.
- (b) A Subscriber may obtain from the Franchisee a copy of any or all of the personal subscriber information regarding him or her maintained by the Franchisee. The Franchisee may require a reasonable fee for making the copy.
- (c) A Subscriber may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information shall be directed to the Franchisee's General Manager.

**Section 13.19 Remote Control Devices**

The Franchisee shall allow its Subscribers to purchase, from legal and authorized parties other than the Franchisee, own, utilize and program remote control devices. The Franchisee takes no responsibility for changes in its equipment which might make inoperable the remote control devices acquired by Subscriber.

## **ARTICLE 14 – REPORTS, AUDITS AND PERFORMANCE TESTS**

### **Section 14.1 General**

(a) Upon the written request of the Franchising Authority, the Franchisee shall promptly submit to the City any information regarding the Franchisee, its business and operations, or any Affiliated Person, with respect to the Cable System, any Service, in such form and containing such detail as may be specified by the City pertaining to the subject matter of this Renewal Franchise which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Renewal Franchise.

(b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information, then the Franchisee shall submit the information to its counsel, who shall confer with the City Attorney for a determination of the validity of the Franchisee's claim of a proprietary interest. If the City Attorney agrees that the material is of a proprietary nature, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient for both parties. The Franchisee may require the Franchising Authority and/or its representatives to execute a confidentiality agreement before making any such information available. In the event of a disagreement, the parties may submit the matter to the appropriate appellate entity.

### **Section 14.2 Financial Reports**

Upon written request, the Franchisee shall furnish the Franchising Authority and/or its designee(s), no later than one hundred and twenty (120) days after the end of the Franchisee's Fiscal Year, a Statement of Income upon which the annual Franchise Fee is based, including: all Subscriber Revenues, including but not limited to, regular Basic Service charges, Pay Cable charges, Pay-Per-View revenues, installation revenues (including reconnection, second set, etc.), Leased Access revenues.

### **Section 14.3 Cable System Information**

Upon written request but not more than once per year, the Franchisee shall file with the Franchising Authority a statistical summary of the operations of the Cable System. The report shall include, but not be limited to, (i) the number of Basic Service Subscribers, (ii) the number of dwelling units passed, and (iii) the number of plant miles in construction/upgrade or completed.

#### **Section 14.4 Reports of Subscriber Contact**

To establish the Franchisee's compliance with the requirements set forth in Article 13, the Franchisee shall provide to the Franchising Authority, upon written request of the Franchising Authority, such reports of Subscriber contact with the Franchisee as may be reasonably requested. Such reports specially include, without limitation, call center reports developed by Franchisee tracking Subscriber contact by subject matter.

#### **Section 14.5 Subscriber Complaint Log**

- (a) In accordance with RSA 53-C:3-e as it may be amended, the Franchisee shall keep a record or log of all Complaints received regarding quality of Service, equipment malfunctions, billing procedures, employee relations with Subscribers and similar matters. Such records shall be maintained by the Franchisee for a period of two (2) years and shall be available to the Franchising Authority upon request.
- (b) The Franchisee shall, within ten (10) business days after receiving a written request from the Franchising Authority, send a written report to the Franchising Authority with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken, as allowed by applicable law.

#### **Section 14.7 Annual Performance Tests**

Upon request of the Franchising Authority, the Franchisee shall provide copies of its Cable System performance tests for the Portsmouth area including, as may be applicable to Cable System, those tests set out in 47 C.F.R. Section 76.601 et seq and including without limitation performance tests arising from the Franchisee's obligations under 47 C.F.R. Section 76.640, Support for Unidirectional Cable Products Digital Systems.

#### **Section 14.8 Quality of Service**

Where there exists evidence which, in the reasonable judgment of the Franchising Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Franchising Authority shall cite specific facts which casts such doubt(s), in a notice to the Franchisee. The Franchisee shall submit a written report to the Franchising Authority, within thirty (30) days of receipt of any such notice from the Franchising Authority, setting forth in detail its explanation of the problem(s).

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**Section 14.9 Dual Filings**

- (a) Upon written request, the Franchisee shall make available to the Franchising Authority, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.
- (b) In the event that either the Franchising Authority or the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion pertaining to any material aspect of the Cable System operation hereunder, it shall immediately notify the other party in writing of the request, petition or waiver.

**Section 14.10 Additional Information**

At any time during the term of this Renewal Franchise, upon the reasonable written request of the Franchising Authority, the Franchisee shall not unreasonably deny any requests for further information which may be required to establish the Franchisee's compliance with its obligations pursuant to the Renewal Franchise.

**Section 14.11 Investigation**

The Franchisee and any Affiliated Person(s) shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Franchising Authority or City.

## **ARTICLE 15 – MISCELLANEOUS PROVISIONS**

### **Section 15.1 Entire Agreement**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

### **Section 15.2 Captions**

The captions to sections throughout this Renewal Franchise are intended solely to facilitate reading and reference to the sections and provisions of the Renewal Franchise. Such captions shall not affect the meaning or interpretation of the Renewal Franchise.

### **Section 15.3 Separability**

If any section, sentence, paragraph, term or provision of this Renewal Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Renewal Franchise.

### **Section 15.4 Acts or Omissions of Affiliates**

During the term of this Renewal Franchise, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly in the construction, upgrade, maintenance or operation of the Cable System for the provision of Service as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

### **Section 15.5 Renewal Franchise Exhibits**

The Exhibits to this Renewal Franchise, attached hereto, and all portions thereof, are incorporated herein by this reference and expressly made a part of this Renewal Franchise.

### **Section 15.6 Warranties**

The Franchisee warrants, represents and acknowledges, that, as of the Effective Date of this Renewal Franchise:

City of Portsmouth Cable Television Renewal Franchise –  
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- (a) The Franchisee is duly organized, validly existing and in good standing under the laws of the State of New Hampshire;
- (b) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Renewal Franchise, to enter into and legally bind the Franchisee to this Renewal Franchise and to take all actions necessary to perform all of its obligations pursuant to this Renewal Franchise; and
- (c) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Renewal Franchise.

**Section 15.7 Force Majeure**

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, that party shall not in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivision, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; hazardous safety conditions; and unavailability of essential equipment and/or materials beyond the control of the Franchisee, the Franchising Authority and/or the City.

**Section 15.8 Nondiscrimination**

The Franchisee shall not discriminate against any Person in its solicitation, Service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the City, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations, relating to nondiscrimination through the term of the Renewal Franchise.

**Section 15.9 Applicability of Renewal Franchise**

All of the provisions in this Renewal Franchise shall apply to, and are enforceable against, the Franchising Authority, the Franchisee, and their respective successors and assignees.

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**Section 15.10 Notices**

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by first class or certified mail (postage prepaid) to

- (i) Office of the City Manager  
Portsmouth City Hall,  
1 Junkins Avenue,  
Portsmouth, New Hampshire 03801

With copies to:

- (ii) City Attorney  
Portsmouth City Hall  
1 Junkins Avenue,  
Portsmouth, New Hampshire 03801

or such other address(es) as the Franchising Authority may specify in writing to the Franchisee. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(b) Every notice served upon the Franchisee shall be delivered or sent by certified mail (postage prepaid) to:

- (i) Comcast Cable Communications, Inc. Attn: Government Affairs  
181 Ballardvale Street  
Suite 203  
Wilmington, MA 01887

With copies to:

- (ii) Comcast Cable Communications, Inc.  
Attn: Vice President, Government Affairs  
676 Island Pond Road  
Manchester, New Hampshire 03109
- (iii) Comcast Cable Communications Attn: Government Relations  
1701 JFK Boulevard  
Philadelphia, Pennsylvania 19103

or such other address(es) as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(c) All required notices shall be in writing.

#### **Section 15.11 City's Right of Intervention**

The City hereby reserves to itself, and the Franchisee acknowledges the City's right as authorized by applicable law or regulation to intervene in any suit, action or proceeding involving this Renewal Franchise, or any provision in this Renewal Franchise.

#### **Section 15.12 No Recourse Against the Franchising Authority**

Pursuant to Section 635A(a) of the Cable Act, in any court proceeding involving any claim against the Franchising Authority or other governmental entity or any official, member, employee, or agent of the Franchising Authority or such governmental entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Renewal Franchise, any relief, to the extent such relief is required by any other provision of federal, State or local law, shall be limited to injunctive relief and declaratory relief.

#### **Section 15.13 Term**

All obligations of the Franchisee and the Franchising Authority set forth in the Renewal Franchise shall commence upon the execution of this Renewal Franchise and shall continue for the term of the Renewal Franchise except as expressly provided for herein.

#### **Section 15.14 Jurisdiction**

Jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of New Hampshire and the parties by this instrument subject themselves to the personal jurisdiction of the court for the entry of any such judgment and for the resolution of any dispute, action, or suit.



**EXHIBITS**

DRAFT

**EXHIBIT 1 – PROGRAMMING AND INITIAL SIGNAL CARRIAGE**

The Franchisee shall provide, at a minimum, the following broad categories of Programming:

- News Programming;
- Sports Programming;
- Public Affairs Programming;
- Children's Programming;
- Entertainment Programming;
- Foreign Language Programming; and
- Local Programming.

DRAFT

City of Portsmouth Cable Television Renewal Franchise –  
March 1, 2019 – February 29, 2024

**EXHIBIT 2 – FREE CONNECTIONS AND MONTHLY SERVICE TO PUBLIC BUILDINGS  
AND SCHOOLS**

The following schools and public buildings shall receive Drops and the monthly Basic Cable Service at no charge \*.

The Franchisee shall supply the same number of DTA's listed below and up to three (3) DTA's at each location not showing any DTA's. Buildings listed below shall receive the number of DTA's as listed and highlighted.

1. City Hall/School Department Central Office, 1 Junkins Avenue, Portsmouth
2. Police Dept, 3 Junkins Avenue, Portsmouth
3. Library, 175 Parrott Avenue, Portsmouth
4. Department of Public Works, 680 Peverly Hill Road, Portsmouth
5. Portsmouth Fire Station 1, 170 Court Street, Portsmouth
6. Portsmouth Fire Station 2, 3010 Lafayette Road, Portsmouth
7. Portsmouth High School, 50 Alumni Circle, Portsmouth
8. Portsmouth Middle School, 155 Parrott Avenue, Portsmouth
9. Little Harbour School, 50 Clough Drive, Portsmouth
10. New Franklin School, 1 Frankin Drive, Portsmouth
11. Dondero School, 32 Van Buren Avenue, Portsmouth, NH 03801
12. Portsmouth Alternative Secondary School, 35 Sherburne Road, Portsmouth
13. Spinnaker Point Recreation Center, 30 Spinnaker Way, Portsmouth
14. Connie Bean Recreation Center, 155 Parrott Avenue, Portsmouth
15. Pierce Island Wastewater Treatment Facility, Peirce Island Road, Portsmouth
16. Doble Center, 125 Cottage Street, Portsmouth  
(property being converted to senior and community center)
17. Foundry Place Garage (under construction) Parking Office, Portsmouth
18. Madbury Water Treatment Plant, 60 Freshet Road, Madbury

In the event that Comcast serves International Drive at Pease, Fire Station 3, at 127 International Drive, Portsmouth NH

\* and, subject to Section 6.8 supra, any and all new municipal and/or Portsmouth Public School buildings that are constructed and/or put into use during the term of this Renewal Franchise.

City of Portsmouth Cable Television Renewal Franchise -  
March 1, 2019 - February 29, 2024

**EXHIBIT 3 – GROSS ANNUAL REVENUES QUARTERLY REPORTING FORM**

DRAFT

**EXHIBIT 4 – ASCI TELECOMMUNICATIONS REPORT OF 2017**

DRAFT

City of Portsmouth Cable Television Renewal Franchise –  
March 1, 2019 – February 29, 2024

**SIGNATURE PAGE**

In Witness Whereof, this Renewal Franchise is hereby issued by the City Council of the City of Portsmouth, New Hampshire, as Franchising Authority, and all terms and conditions are hereby agreed to by Comcast of Maine/New Hampshire, Inc., this \_\_\_\_ day of March 2019.

THE CITY OF PORTSMOUTH

\_\_\_\_\_  
By: John P. Bohenko  
Title: City Manager

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

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

## Portsmouth CM-OFFICE, City of Portsmouth - Community Events

Mon Dec 31, 2018

### 4pm - 12am Pro Portsmouth's First Night 2019

**Where:** Market Square

**Description:**

Contact: Barbara Massar, Executive Director 3:00 p.m. to 1:00 a.m. Free parking at Foundry Place Garage, or \$5 flat fee rate to park at Hanover Garage 4:00 p.m. to 1:00 a.m. Free parking shuttle service will be running between the CCC lot and Hanover Garage.

Sun Mar 24, 2019

### All day Eastern States 20 Mile

Sun Mar 24, 2019

**Description:** Contact: Donald Allison

Sat Apr 13, 2019

### 9:30am - 11:30am New Castle 10K

**Where:** Starts and finishes at Great Island Common New Castle

**Description:**

- <https://www.newcastlenh10k.com/> - Contact: Nick Diana (603) 498-8539 or [nick@newcastlenh10k.com](mailto:nick@newcastlenh10k.com)

Sun May 5, 2019

### 8:30am - 9:30am American Lung - Cycle the Seacoast

**Where:** Cisco Brewers Portsmouth

**Description:**

This event will be held at Cisco Brewers (formerly Redhook) Portsmouth. The first rider will leave Cisco Brewers at 7:00 a.m. and the last rider will be in around 3:30 p.m. Contact is Melissa Walden, Associate of Development.

### 12pm - 4pm Children's Day - Pro Portsmouth

**Where:** Market Square

**Description:** Contact: Barbara Massar, Executive Director

Sat May 11, 2019

### 3pm - 8pm Summit Indie Festival

**Where:** Portsmouth Book & Bar, 40 Pleasant St, Portsmouth, NH 03801, USA

**Description:** Contact: Joel Greer

## Portsmouth CM-OFFICE, City of Portsmouth - Community Events

Sun May 26, 2019

**12:30pm - 2:30pm Race to Educate**

**Where:** Portsmouth Indoor Pool and Portsmouth High School

**Description:** Contact: Lilia Potter-Schwartz

Sat Jun 8, 2019

**9am - 4pm Market Square Day Festival & 10K Road Race - Pro Portsmouth**

**Where:** Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Event: 9:00 a.m. to 4:00 p.m. -

Street closures - downtown streets from 4:00 a.m. to 6:00 p.m. - Race course 9:00 a.m. roving closures.

Sat Jun 29, 2019

**5pm - 9:30pm Summer in the Streets - Pro Portsmouth**

**Where:** Pleasant Street, Porter Street to Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Street Closures: (4:00 p.m. set up to 9:30 p.m. clean up) Pleasant Street - Porter Street to Market Square.

Sat Jul 6, 2019

**5pm - 9:30pm Summer in the Streets - Pro Portsmouth**

**Where:** Pleasant Street, Porter Street to Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Street Closures: (4:00 p.m. set up to 9:30 p.m. clean up) Pleasant Street - Porter Street to Market Square.

Sat Jul 13, 2019

**5pm - 9:30pm Summer in the Streets - Pro Portsmouth**

**Where:** Pleasant Street, Porter Street to Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Street Closures: (4:00 p.m. set up to 9:30 p.m. clean up) Pleasant Street - Porter Street to Market Square.

Sat Jul 20, 2019

**5pm - 9:30pm Summer in the Streets - Pro Portsmouth**

**Where:** Pleasant Street, Porter Street to Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Street Closures: (4:00 p.m. set up to 9:30 p.m. clean up) Pleasant Street - Porter Street to Market Square.



# Portsmouth CM-OFFICE, City of Portsmouth - Community Events

Sat Jul 27, 2019

## 5pm - 9:30pm Summer in the Streets - Pro Portsmouth

**Where:** Pleasant Street, Porter Street to Market Square

**Description:**

Contact: Barbara Massar, Executive Director - Street Closures: (4:00 p.m. set up to 9:30 p.m. clean up) Pleasant Street - Porter Street to Market Square.

# City of Portsmouth

*Department of Public Works*



## MEMORANDUM

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TO: John P. Bohenko, City Manager

FROM: Brian Goetz, Deputy Director of Public Works

DATE: December 11, 2018

SUBJECT: Greenland Breakfast Hill Area Waterline Study

---

Attached is a memorandum from Underwood Engineers regarding their analysis and preliminary design of an expansion of the Portsmouth water system to service the Breakfast Hill area of Greenland, New Hampshire.

According to their findings, the water demand for serving all the current properties in this area would average 40,000 gallons per day. This is an increase of about one percent for an average day. Peak days would be 290,000 gallons per day due to anticipated irrigation demands, an increase of nearly four percent for a peak day.

Underwood also analyzed the potential infrastructure options necessary to provide the proper flow, storage and pressure to this area. Their current recommendation would include 9,000 feet of twelve-inch transmission pipe from Post Road to Lafayette Road together with a new elevated storage tank to maintain pressure. Retrofits of the Greenland well and additional booster pumps to feed Portsmouth water to this area would be necessary. Piping configurations and cost estimates for the various neighborhoods will be divided into phases. Underwood is currently finalizing their assessments and will provide an update in their final report which we anticipate receiving by the end of the year.

At this point there is no commitment from the Portsmouth water system to build or service this area of Greenland. Discussions will continue with the town as this study and design progresses. It is our understanding that the Town of Greenland's Board of Selectmen will be meeting in early 2019 to review this information and potentially move forward with a warrant article to fund additional design work. I will continue to provide updates when that occurs.



25 Vaughan Mall  
Portsmouth, NH, 03801-4012  
Tel: 603-436-6192 Fax: 603-431-4733

## Technical Memorandum

To: Brian Goetz, Deputy Director of Public Works, City of Portsmouth  
From: Keith A. Pratt, P.E. and Timothy K. Noble, E.I.T.  
Date: December 11, 2018  
Subject: **Initial Findings**  
**Breakfast Hill Road Water Main Extension**  
Master Plan Supplement

---

This memorandum provides a status of work completed to date as well as initial findings. Additional work is still pending prior to issuing a draft report, but the below provides a summary of the conclusions and recommendations so far.

The purpose of this project is to evaluate the ability of and improvements needed to the Portsmouth Water System if municipal water service was extended to the Breakfast Hill area in Greenland (see Figure E-1). The work is being done at the request of the Town of Greenland due to concerns related to groundwater contaminants around the Coakley Landfill area. The final report (when issued) will act as a supplement to the *2013 Portsmouth Water System Master Plan* by Tighe & Bond (2013 Master Plan).

The 2013 Master Plan evaluated the growth of the existing Greenland water service area, but the Breakfast Hill service area was not part of the estimated demands. This technical memorandum considers the added area in Greenland, which includes the following:

- ~ 785 acres
- 240 residential properties
- 5 commercial properties

Water demands added by the current Breakfast Hill Area properties are as follows:

- Estimated 2018 Average Day Demands = 0.04 MGD
- Estimated 2018 Max Day Demands = 0.29 MGD

The total updated Greenland demands (including Breakfast Hill) are as follows:

- Estimated 2018 Average Day Demands = 0.20 MGD
- Estimated 2018 Max Day Demands = 0.54 MGD

Additional growth of undeveloped land was not considered in this assessment, but all improved lots were assumed to connect. The high estimated maximum day demands are due to significant irrigation use in the area if it were to be part of the consumption. The added demands due to the Breakfast Hill area represent approximately 0.8% increase to

2018 Portsmouth system wide average day demands (3.8% increase to 2018 Portsmouth system wide maximum day demands). Portsmouth's water supply will be evaluated further to determine its ability to meet increased current day demands and 2040 projected demands from the Breakfast Hill Area after additional meeting with the City of Portsmouth.

Three (3) distribution system pipeline scenarios were evaluated for extending water to the study area. The scenario of just looping the water main from Post Road to the City's line on Lafayette Road did not work due to limited pressure and inadequate fire flows. Similarly, the scenario of connecting to the Pease system with the higher hydraulic grade line did not work either since the demand center on Breakfast Hill was so far away, fire flows were too low, and storage was limited.

Therefore, Scenario #2 would be the recommended option which also raises the hydraulic grade line of all of Greenland to an HGL of 230-feet (see Figure E-2). This is an increase in pressure of 59 feet (~25 psi). This scenario includes the following:

- 9,000 feet of 12" transmission main extension from Post Road to Lafayette Road
- 28,000 feet of 8" piping to serve the neighborhoods.
- 500,000-gallon, 91-foot elevated water storage tank. One potential location is on Breakfast Hill Road on land owned by the Town of Greenland. Other locations may be considered.
- New booster pump station (and PRV) near Grafton Road/Greenland Road intersection – Alternative location at Ocean Road
- Pease interconnection for emergency on Grafton Road (normally off). The Greenland pressure zone will match the Pease pressure zone.
- Pressure Reducing Valve on Ocean Road to allow water flow into Portsmouth.
- Upgrade to the Greenland Well Pump. Replacing the 10" main from the pump is not included.

An opinions of cost for Scenario #2 is being developed and will be provided shortly.

The Pease interconnect will provide storage to be used for either zone (Pease or Greenland) in the event of an emergency. The booster pumping station provides redundancy in the event the Greenland well is down or is off-line due to groundwater management goals.

The hydraulic model of the City's water distribution system was used to evaluate the pressure and fire flow. Scenario #2 was the best option of those considered that meets the goals of providing the following:

- A minimum static pressure of 35 psi at the street. Note, the static pressure in the Breakfast Hill with a HGL of 230 would range from 39 psi to 74 psi.
- Minimal impacts to the existing Portsmouth service areas in terms of pressure reduction or fire flow reduction.

Select areas within the City were evaluated and it was found that fire flows remained within 10% of what they are existing. Additional evaluation is needed to further confirm residual pressures and fire flows as well as look at impacts if alternative tank site and pumping station locations are considered.

Compared to existing conditions, an extended time water age evaluation on Scenario #2 suggests that water age decreases in some areas of the system and increases in others. The increases and decreases depend on how the system is operated. When Scenario #2 is complete, the water age of the system can be managed with coordinated use of the Greenland well, new booster pumping station and controlled tank drawdowns. A technical memorandum summarizing the extended time water age evaluation and additional recommendations will be provided as part of the updated Master Plan.

It would be proposed to be completed in phases. Phase I would be the backbone of the system as follows:

- 9,000 feet of 12" transmission main from Post Road to Lafayette Road
- 500,000 gallon elevated water storage tank on Breakfast Hill Rd. (or other location).
- Booster pump station near Grafton and Greenland Road or other location.
- Pease interconnection (1,700 feet) for emergency on Grafton Road (normally off).
- Pressure Reducing Valve pit on Ocean Road
- Upgrade to the Greenland Well Pump
- Connections to properties along Breakfast Hill Road

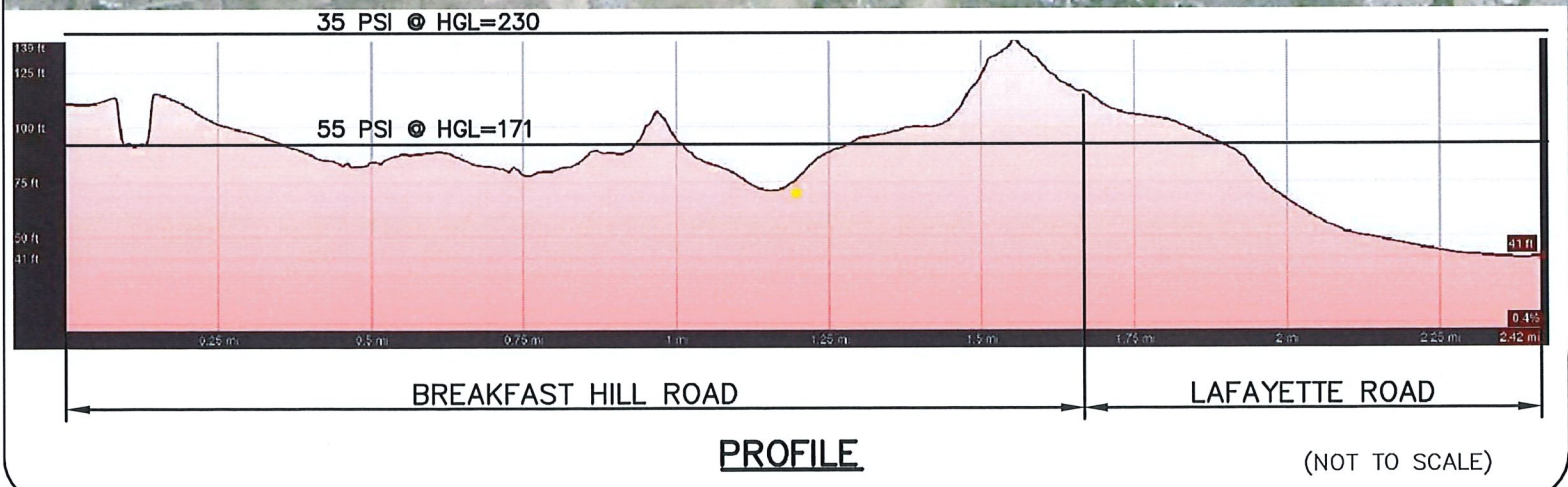
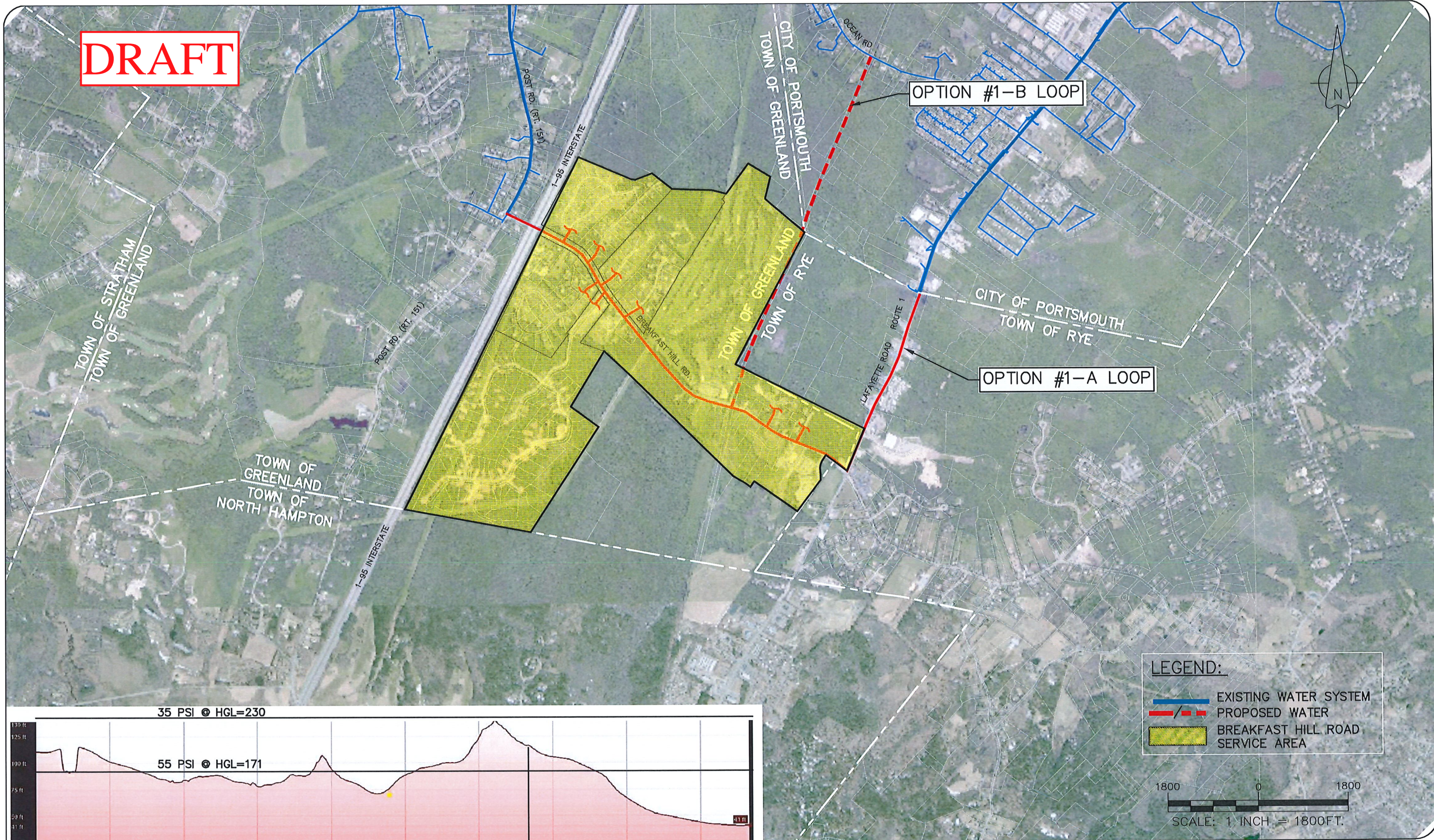
Future projects would serve the abutting neighborhoods including the following:

- Maple Drive/Sunnyside Drive Neighborhood (6,000 LF, 63 connections)
- Coombs Farm Road/Windsor Green Road Neighborhood (2,500 LF, 25 connections)
- Stone Meadow Way/Berry Farm Lane Neighborhood (1,600 LF, 14 connections)
- September Drive/October Drive Neighborhood (4,100 LF, 26 connections)
- Falls Way Neighborhood (12,400 LF, 77 connections)

The following would be necessary as next steps in design:

- Pursue Scenario No. 2, Standalone Greenland Pressure Zone by advancing final design of Phase I. The recommended budget for design of Phase 1 is being developed and will be provided shortly.
- Refine locations of booster pumping stations and tank locations.
- Additional design could be completed as part of the first project on neighborhoods that Greenland would like to serve.
- Meet with the NHDES to discuss further funding through the Trust Funds and/or Settlement Funds.
- Coordinate with Greenland for advancement of the next steps.

**DRAFT**



DATE  
DEC 2018

PROJECT  
2303

**UNDERWOOD**  
engineers

25 Vaughan Mall, Portsmouth, N.H. 03801  
Tel. 603-436-6192 Fax. 603-431-4733

ATTACHMENT "A" – SCENARIO #1  
BREAKFAST HILL AREA  
WATER MAIN EXTENSION  
TOWN OF GREENLAND, NH

FIG.  
E-1

H:\Real Numbers\Portsmouth\2303-Portsmouth Breakfast Hill Water Main HydraulicDrawings\2303 Interconnect Figures 11-2016.dwg, 2303 FIG 1, 12/10/2018 3:21:10 PM, mah

**DRAFT**



**NEWINGTON**

**PORTSMOUTH**

**PEASE  
INTERCONNECT**

**PROPOSED  
PRV/PUMPING  
STATION**

**PROPOSED  
PRV**

**UPGRADE TO  
GREENLAND WELL**

**FUTURE  
LOOP**

**PROPOSED WATER  
STORAGE TANK  
(HGL=230)**

**LEGEND:**  
- - - - - PROPOSED  
GREENLAND  
PRESSURE ZONE

**STRATHAM**

TOWN OF STRATHAM  
TOWN OF GREENLAND

CITY OF PORTSMOUTH  
TOWN OF GREENLAND

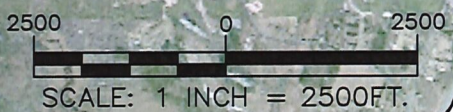
TOWN OF GREENLAND  
TOWN OF RYE

**RYE**

CITY OF PORTSMOUTH  
TOWN OF RYE

TOWN OF GREENLAND  
TOWN OF  
NORTH HAMPTON

**NORTH HAMPTON**



**DATE**  
DEC 2018  
**PROJECT**  
2303

**UNDERWOOD**  
engineers  
25 Vaughan Mall, Portsmouth, N.H. 03801  
Tel. 603-436-6192 Fax. 603-431-4733

**ATTACHMENT "B" SCENARIO No. 2  
BREAKFAST HILL AREA  
WATER MAIN EXTENSION  
TOWN OF GREENLAND, NH**

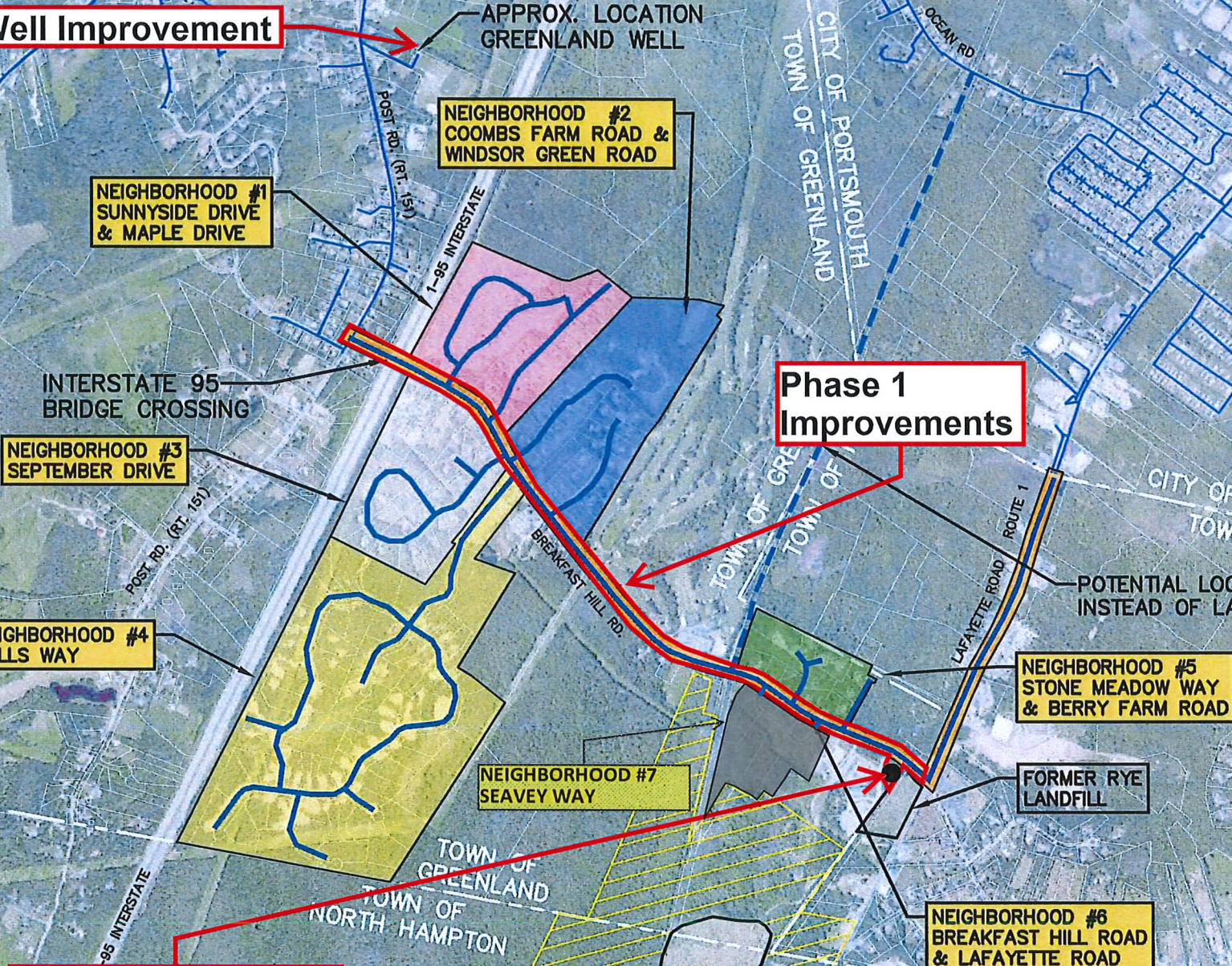
**FIG.**  
E-2



**Phase 1: Greenland Well Improvement**

- Phase 1 Improvements also Include:
- PRV on Ocean Road
  - Booster Pump Station
  - Pease Interconnect

Note: Later phases will include water main distribution improvements to the labeled neighborhoods.



**Phase 1: Elevated Storage Tank**

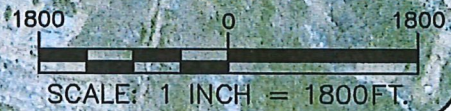
**LEGEND:**

- EXISTING CITY OF PORTSMOUTH WATER MAIN
- PROPOSED WATER MAIN EXTENSION

**NOTES:**

1. FOR THE PURPOSES OF THIS EVALUATION, A 12" WATER MAIN WAS ASSUMED FOR BREAKFAST HILL ROAD AND LAFAYETTE ROAD. THE NEIGHBORHOOD AREA ASSUMED TO BE 8".

**DRAFT**



DATE  
DEC 2018

PROJECT  
2303

**UNDERWOOD**  
engineers

25 Vaughan Mall, Portsmouth, N.H. 03801  
Tel. 603-436-6192 Fax. 603-431-4733

ATTACHMENT "L"  
BREAKFAST HILL AREA  
PORTSMOUTH WATER MAIN EXTENSION  
TOWN OF GREENLAND, NH

FIG.  
E-3

# City of Portsmouth

*Department of Public Works*



## MEMORANDUM

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TO: John P. Bohenko, City Manager

FROM: Brian Goetz, Deputy Director of Public Works  
Al Pratt, PE, Water Supply Operations Manager

DATE: December 11, 2018

SUBJECT: Lead Water Quality Sampling Update

---

Attached is an update posted on the City's website yesterday and issued as a press release regarding the City's water quality sampling program for Lead. The results of 123 samples taken at customer taps show the continued success of the water system's corrosion control program which has been in place to reduce the corrosion potential of water serving our customers. Only one sample exceeded the EPA's action level of 15 parts per billion and 87 percent of the overall samples taken were non-detect (less than 1 part per billion). We recently received notice from the New Hampshire Department of Environmental Services that we are in compliance with the Lead and Copper regulations, thus, we will be on a reduced monitoring frequency starting in 2019 to sample annually at 30 customer locations.

# LEAD & COPPER CORROSION CONTROL PROGRAM UPDATE

December 10, 2018

## Portsmouth water remains in compliance with quality requirements for lead

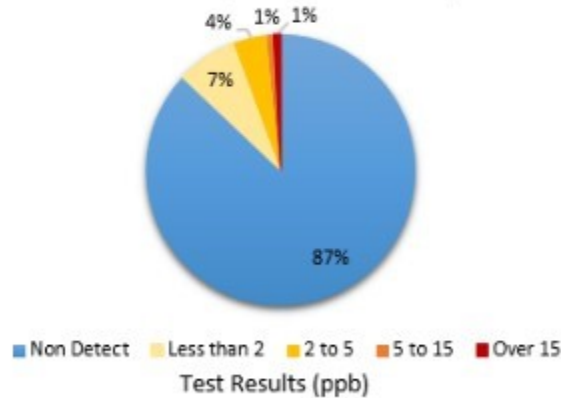
The City of Portsmouth completed its recent round of sampling under the Lead & Copper monitoring program and is pleased to report that the water system remains in compliance with the current lead and copper regulations. This sampling is required by the U.S Environmental Protection Agency (EPA) under the Safe Drinking Water Act (SDWA) and is administered by NH Department of Environmental Services (NHDES) through the Lead and Copper Rule (LCR). It was accomplished through a collaboration between Portsmouth Public Works Water Department and our customers. While eliminating all lead in the system is the overall goal, recent sample results show the continued success of the water system's corrosion control program which is actively monitored to ensure water reaching our customers taps is safe to drink.

The program has been in place since 1993. The City's low calculated averages of lead through the initial years of sampling data enabled the City to go on a reduced monitoring schedule in 2007. Since then, the City has been required to conduct this sampling program on a triennial basis requiring 30 samples per round. However, due to an upgrade at our Greenland Well facility in 2017, our sampling schedule was adjusted, requiring two rounds of 60 samples be collected in 2018. The first round

took place April into June, the second in August through November of this year. Of the 123 samples taken at 84 different customer locations 87 percent were “non detect” (less than one parts-per-billion (ppb)) for lead.

The following graphic and table summarizes these test results:

**2018 Lead & Copper Monitoring Results (Rounds 1 & 2)**



2018 Results	Round 1 April to June		Round 2 August to November		Total 2018 Sampling	
	# of Samples	Percent	# of Samples	Percent	# of Samples	Percent
Non Detect	55	89%	52	85%	107	87%
Less than 2	4	6%	5	8%	9	7%
2 to 5	3	5%	2	3%	5	4%
5 to 15	0	0%	1	2%	1	1%
Over 15	0	0%	1	2%	1	1%
Total(s)	62	-	61	-	123	-

When a water sample contains detectable levels of lead, we offer follow-up sampling to the homeowner in order to verify the original result was valid, help determine if flushing for a period of time would be effective at reducing the lead concentration, and to help identify the potential source areas in the house i.e., kitchen versus the bathroom tap. We work with the property owner to assess their plumbing and find ways for them to reduce potential exposure, like changing out suspected plumbing, pipes or other fixtures that might contain lead, flushing prior to using water for consumption, or checking to ensure your home electrical system is grounded properly.

All water used for these tests is taken by the homeowner following the sample guidelines. The samples are then collected by the City's water operations staff and analyzed by a state certified laboratory. Beginning in 2019, the City will be required to conduct this sampling program on an annual basis, requiring 30 samples per round.

## Background

Health impacts due to the consumption of lead or copper via drinking water have been well documented. Lead exposure is known to cause internal organ damage, behavioral disorders, an increased risk of heart disease, and an interference with physical development of infants. Copper has the potential to cause gastrointestinal disturbance from short-term exposure and liver or kidney damage from long-term exposure. In response to these health impacts, the EPA set maximum levels to protect public health at 15 parts-per-billion (ppb) for lead and 1.3 parts-per-million (ppm) for copper, respectively at the 90th percentile of samples.

The City of Portsmouth implemented a Lead & Copper Corrosion Control Program in 2003 and has been in compliance requirements since its inception. The general purpose of the Lead & Copper Corrosion Control Program is to minimize the potential for water supplied by the City to leach potentially harmful metals such as lead and copper from pipes, fixtures and solder containing lead. The primary source of lead and copper in drinking water is plumbing systems in houses and other privately owned buildings. The City of Portsmouth water supply sources do not contain measureable quantities of lead or copper.

The following is a summary of the lead and copper compliance testing results and sampling schedule since the Corrosion Control Program has been in place:

**Date:** 2018

**Sampling Frequency:** Twice per year

**Lead 90th percentile (ppb):** 1

**Copper 90th percentile (ppm):** 0.162

**Date:** 2016

**Sampling Frequency:** Triennial (once every 3 yrs.)

**Lead 90th percentile (ppb):** 7

**Copper 90th percentile (ppm):** 0.135

**Date:** 2013

**Sampling Frequency:** Triennial (once every 3 yrs.)

**Lead 90th percentile (ppb):** 1

**Copper 90th percentile (ppm):** 0.110

**Date:** 2010

**Sampling Frequency:** Triennial (once every 3 yrs.)

**Lead 90th percentile (ppb):** 1

**Copper 90th percentile (ppm):** 0.130

**Date:** 2007

**Sampling Frequency:** Annual

**Lead 90th percentile (ppb):** 5

**Copper 90th percentile (ppm):** 0.185

**Date:** 2006

**Sampling Frequency:** Annual

**Lead 90th percentile (ppb):** 5

**Copper 90th percentile (ppm):** 0.194

**Date:** 2005

**Sampling Frequency:** Annual

**Lead 90th percentile (ppb):** 13

**Copper 90th percentile (ppm):** 0.239

**Date:** July 2004

**Sampling Frequency:** Semi-Annual

**Lead 90th percentile (ppb):** 5

**Copper 90th percentile (ppm):** 0.261

**Date:** January 2004

**Sampling Frequency:** Semi-Annual

**Lead 90th percentile (ppb):** 13

**Copper 90th percentile (ppm):** 0.291

**Date:** July 2003

**Sampling Frequency:** Semi-Annual

**Lead 90th percentile (ppb):** 16

**Copper 90th percentile (ppm):** 0.296

**Date:** January 2003

**Sampling Frequency:** Semi-Annual

**Lead 90th percentile (ppb):** 12

**Copper 90th percentile (ppm):** 0.252

## Corrosion Control Inhibitor

To reduce the potential for City water to leach lead and copper from plumbing systems, a corrosion control inhibitor is added to the water supply. The corrosion inhibitor used by the City of Portsmouth is an orthophosphate/polyphosphate blended chemical that is a National Sanitation Foundation (NSF) Standard 60 additive approved for drinking water. The inhibitor creates a coating on the walls of distribution pipes and house plumbing to minimize the potential for metals (including lead and copper) to leach from pipes into the drinking water. It adds no noticeable taste to water. The optimized concentration in the Portsmouth water distribution system is 1 mg/L – as orthophosphate.

## Ongoing Monitoring

Portsmouth Water Treatment Operators continuously monitor the concentration of orthophosphate in the system. Automated analyzers, field measurements and laboratory verification samples are analyzed to ensure optimized concentrations are maintained in the system. Water quality parameters that are factors in the corrosivity of water include alkalinity, hardness, dissolved solids, and pH. These parameters are monitored bi-weekly from the supply sources and selected locations throughout the distribution system.

## Compliance Sampling

As part of the Corrosion Control Program development, locations of representative residential household sampling sites were identified based on the three tier priority ranking defined by the New Hampshire Department of Environmental Services (NHDES). Of the 60 sites identified, routine sampling of 30 of these residential sites is required. The tiered priorities are based upon the following site characteristics:

1. Single-family structures containing copper pipes with lead solder installed after 1982 but before 1988, or containing lead pipes, or are served by lead service lines.
2. Buildings including multiple-family structures containing copper pipes with lead solder installed after 1982 but before 1988, or are service by lead service lines.
3. Single-family structures containing copper pipes with lead solder installed before 1983.

During the first two years of the Corrosion Control Program, lead and copper compliance samples were collected two times per year at the 30 selected sampling sites. Upon confirmation of the effectiveness of the Corrosion Control Program, sampling was reduced to annually from 2005 through 2007, and to every three years thereafter. In 2018, due to the upgrade at our Greenland Well facility, the City of Portsmouth is required to sample 60 residences for lead and copper twice in 2018 (January to June and July to December). This sampling requirement is due only to regulations associated with new sources, not that there is any expectation of a change in the water quality. Therefore, the first round of testing took place April



into June, the second in August through November of this year. Of the 123 samples taken at 84 different customer locations 87 percent were “non detect” (less than one parts-per-billion (ppb)) for lead. No sites were above the 15 ppb action level set by the EPA.

## Public Outreach

All of the participants in the residential compliance sampling program receive results of the lead and copper analyses with an explanation. Lead and copper results are available on the NHDES OneStop website:

<http://des.nh.gov/onestop/index.htm>

Information about Portsmouth’s Corrosion Control Program has been distributed annually since its inception. Lead and copper information is summarized on the Portsmouth Water Division Annual Water Quality Reports: <https://www.cityofportsmouth.com/publicworks/water/drinking-water-quality>

Additional information about lead and copper corrosion control is available from the

NHDES: <http://des.nh.gov/organization/divisions/water/dwgb/lead-copper/index.htm>

And from the EPA: <http://www.epa.gov/dwreginfo/lead-and-copper-rule#additional-resources>

## Testing Lead in Drinking Water in Schools and Daycares

Senate Bill 247 was signed into law on February 8, 2018. This law requires, among other actions, that all schools and licensed childcare facilities test lead in drinking water at all locations where water is available for consumption by children. The first round of testing is required to be completed by July 1, 2019, and every 5 years thereafter, until at least 3 rounds are below the standard. Any locations showing 15 ppb or higher must be remediated.

City of Portsmouth water staff have previously assisted the City's school department in a sampling effort performed in 2016. All Portsmouth schools had their water tested and any with detections were evaluated for plumbing replacements. Tests done for the presence of lead in the water at all city schools came back below the federal drinking water regulatory limit. In an April 26, 2016 Portsmouth Herald article, Superintendent Stephen Zadravec acknowledged tests did reveal the presence of lead below the limit of 15 parts per billion at one sink and two classroom bubblers. He noted that those locations were taken out of service and the plumbing was replaced.

[City of PORTSMOUTH Home >](#)

[Department of Public Works >](#)



# WATER

**Facility** 680 Peverly Hill Rd, Portsmouth, NH 03801

**Hours** Mon – Fri 7:30 AM – 3:30 PM

**Phone** (603) 427-1530

**Fax** (603) 427-1539

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Current alternate applying to become Regular member



# CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

## APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.

**RECEIVED**  
DEC 05 2018  
Initial applicant  
By \_\_\_\_\_

Committee: HDC

Name: Cyrus Beer Telephone: 617-276-6788

Could you be contacted at work?  YES/ NO If so, telephone # Same

Street address: 64 Mt. Vernon St Portsmouth NH 03801

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): cyrusbeer@hotmail.com

How long have you been a resident of Portsmouth? 6 years

Occupational background:

Software Engineer currently. I was  
a carpenter for 6 years

Please list experience you have in respect to this Board/Commission:

Carpenter in Boston for 6 years



Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to serve: I have been an alternate for > 1 year, and I have enjoyed my time on the Commission

Please list any organizations, groups, or other committees you are involved in:

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

1) Eric Spear Mt. Vernon St 603-828-2521  
Name, address, telephone number

2) Brendan Cooney Mt. Vernon St 603-682-8908  
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: [Signature] Date: 12/5/18

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes  No

**Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801**  
6/27/2012



CITY OF PORTSMOUTH, N.H.  
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.

RECEIVED  
NOV 30 2018  
Initial applicant  
By \_\_\_\_\_

Committee: Historic District Commission

Name: Margot Doering Telephone: 603-828-4477

Could you be contacted at work?  YES  NO If so, telephone # 603-828-4477

Street address: 300 Jones Avenue

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): doering03801@gmail.com

How long have you been a resident of Portsmouth? 14 yrs

Occupational background:

Business Consultant - Ceruban Consulting

Inn Owner - Martin Hill Inn

Commercial Lender - Bank of Boston

Please list experience you have in respect to this Board/Commission:

Past President Board of Wentworth Lear Historic Houses  
overseeing care and operations. Owning and maintaining two  
buildings within the HDC district. Attending and participating  
in city forums including the McIntyre project.

OVER  
➔

Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to serve: See attached

Please list any organizations, groups, or other committees you are involved in:

Dover Quakers, Wentworth Lear Historic Houses,  
PMAC, Piscataqua Savings Bank Board of  
Corporators

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

1) Eric Spear 603-436-8060 Mt Vernon st, Ports.  
Name, address, telephone number

2) Karen Bouffard, Richards Ave Ports, 603-969-4311  
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Margt Davis Date: 11/28/18

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes X No     

**Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801**

### **Preservation of Character in Architecture:**

For 14 years I have enjoyed the eclectic mix of architecture throughout Portsmouth, not just downtown, but also in the wide variety of neighborhoods not covered by the HDC. To me, the importance of the HDC is to preserve the character that the architecture and/or building imparts to an area. Sometimes it is the uniformity of style that creates the character, sometimes it is the dis-similarity.

The styles of architecture throughout our city reflect close to 400 years of change in building technique, materials, design sensibility, whimsy and practicality. As we seek to preserve that history, we need to remember that history is not confined to the distant past. History is a century ago, a decade ago, or yesterday. As such, new architecture is as important as the old, whether in new construction or "young" historic buildings.

### **Architecture Contributes:**

I am fascinated with how buildings contribute to, or detract from, the "feel" of a physical area. What is it about the combination of buildings in Market Square that makes people want to congregate there? Why do people love to stroll through Commercial Alley? Why don't people hang out in Vaughn Mall? I believe the work of the HDC can have a profound effect in this area. I would like to be part of how we keep our town vital through architecture.

### **Give Back:**

Moving here was the best thing I ever did. I'd like to say thanks by giving back, paying forward, and/or helping out where I can.



**Margot Doering**  
**300 Jones Avenue**  
**Portsmouth, NH 03801**  
**Doering03801@gmail.com**  
**603-828-4477**

### **Professional Profile**

Experienced business manager with strong financial skills including budgeting and planning. Track record of problem solving in finance, customer service and project management.

### **Work Experience**

**Cerulean Consulting** **Principal** **2014 - Present**

Providing financial management services, business analysis, budget writing, project modeling, treasury operations and senior management consulting to private businesses and entrepreneurs.

### **Selected Assignments & Accomplishments**

- Manufacturing company (\$3.5MM+): Aligned company operations to match the owner's 10 year goals. Researched and implemented new software systems to support sales and operational growth. Provide strategic thinking partnership for the owner, helping to plan and execute staff changes needed to support 10 year plan. Manage equipment leasing contracts and maintenance plans.
- Service Company (\$3.7MM+): Redesigned chart of accounts to measure service productivity. Learned and installed new estimating and operations software from leading industry provider. Train management and staff in usage. Manage highly season cash flow challenges.
- Artisan Manufacturer: Improved financial reporting to reflect key cost factors, identified overhead costing shortfall, wrote cash flow forecast, prepared annual budget.
- Market Research Firm (\$3.2MM+): Simplified and focused company chart of accounts on metrics useful to management. Reduced A/R on hand from 90 to 23 days and past due A/R from 32% to 4% in four months. Established orderly billing schedules to meet contract terms. Upgraded payroll system, transferred 401K plan to new provider, managed merchant services relationship.

**Martin Hill Inn, Portsmouth, NH** **General Manager/Owner** **2004 – 2013**

#### **Selected Accomplishments:**

- Multi-year maintenance of two early 19<sup>th</sup> century buildings within Portsmouth's Historic District
- Finances: arranged purchase financing, seasonal cash flow management, bookkeeping and payroll
- Management of operating and project budgets, work contracts and insurance coverage
- Website, marketing and amenity improvements yielded revenue growth and net profit annually
- Hiring and management of staff in a seasonal business

## Margot Doering

**BankBoston/Bank of America** 1986 - 2004

Asset Recovery Division Vice President 2001 - 2004

- Analysis of complex problem loans to determine company viability, probability of loss and strategy for recovery or bankruptcy. Portfolio size varied from 8 to 15 loans in amounts from \$2 to \$300 million.
- Negotiated loan resolution strategy with borrower, monitor for compliance and amend as needed
- Coordinate multi-party loan resolutions negotiating among parties with competing interests
- Portfolio management of Latin American exposure covering 5 countries and over 30 loan officers

**BankBoston/Bank of America**

Commercial Lending Divisions: 1993 - 2001

- Relationship Manager for a portfolio of loans totaling up to \$400 million for 15 to 20 customers
- Analysis and underwriting of multi-year loans often with multiple banks
- Responsible for documentation of loans, security filings, and regulatory compliance
- Selling of bank products to companies within the portfolio and new prospects
- Regular reporting to management and regulators on loan quality and performance
- Work in team environment including mentoring of junior loan officers

**BankBoston/Bank of America**

Administration & Operations Areas: 1986 - 1992

- Administrative support for team of six loan officers and over 30 customers
- Provide superior customer service for bank clients by identifying and solving root causes to problems
- Coordinate customer service responses among product divisions bank-wide
- Process large volume letter of credit transactions
- Design complex profitability reporting for specialized department

### Volunteer Experience

Piscataqua Savings Bank	Board of Corporators	2017 - Present
Dover Friends Meeting (Quakers)	Finance & Recording Clerk	2014 - Present
Wentworth Lear Historic Houses	Finance Committee	2008 – Present
Wentworth Lear Historic Houses	Board President & Treasurer	2008 – 2014

### Education

Cello Studies	Portsmouth Music & Arts	2016 to Present
Mediation Training	University of Southern Maine	2014
Loan Officer Training Program	Bank of Boston	1993
Bachelor of Arts	Hamilton College	1986



RECEIVED  
SEP 19 2018

CITY OF PORTSMOUTH, N.H.  
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information.  
Please submit resume' along with this application.

Committee: Planning Board Initial applicant

Name: Polly Henkel Telephone: 603-988-3207

Could you be contacted at work? YES/NO If so, telephone # N/A - retired

Street address: 8 Moebius Terrace, Portsmouth NH

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): polly@pollyhenkel.com

How long have you been a resident of Portsmouth? 22 years

Occupational background:  
Please see attachment

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list experience you have in respect to this Board/Commission:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OVER

Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to serve: Please see attachment

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list any organizations, groups, or other committees you are involved in:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list two character references not related to you or city staff members:  
*(Portsmouth references preferred)*

1) Dexter Legg, 4 Meebus Tenace, Portsmouth NH, 617.910.7220  
Name, address, telephone number

2) Mary Anker, 34 Salter Street, Portsmouth NH, 603.828.6925  
Name, address, telephone number

**BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:**

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: [Handwritten Signature] Date: 9/19/2018

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes  No  *\* Depends on Board/Commission*

**Occupational background:**

**Weyland Capital Management LLC, Portsmouth NH - Co-founder/owner** **1995-2016**

Weyland Capital Management, an investment management firm managing close to \$200 million at its peak, was founded by my late husband and me in 1996 in our home at 65 Wentworth Street in the South End. As we grew, we moved to an office at 135 Market Street and eventually settled into an office at 22 Deer Street. Over the course of our 20 years in business, we employed five people and served approximately 160 clients.

**JPMorgan, New York City – Assistant Treasurer** **1993-1995**

Controller for domestic and global custody operations

**Price Waterhouse, New York City, London – Senior Manager** **1985-1993**

Financial Services practice auditor responsible for managing some of the company's largest clients: JPMorgan, Chase Manhattan Bank, Barclays Bank.

**Certified Public Accountant (no longer practicing)** **since 1986**

**Please list experience you have in respect to this Board/Commission**

- Chief compliance officer in federally regulated business, experienced in reviewing, understanding and applying government rules/regulations
- Lead auditor with Price Waterhouse responsible for reviewing compliance with GAAP and federal banking regulations for major US and British banks
- Over two decades as Portsmouth resident
- Home owner in Pleasant Point neighborhood currently and for past ten years
- Home owner in the Historic District for twelve years
- Extensively renovated property in historic district, familiar with HDC process
- Small business owner and local employer in Portsmouth 1996-2016
- Commercial lessee downtown on Deer Street for eight years
- Commercial lessee downtown on Market Street for seven years

**Reasons for wishing to serve:**

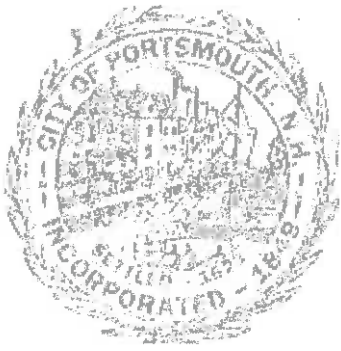
I have lived in Portsmouth for over twenty years and I can say with authority that the City just gets better every year. I'd like to be a part of the ongoing team of smart and forward-thinking citizens who help make that happen.

When my family moved here in 1996 we had one toddler and a second child on the way. We took advantage of all the city had to offer a family with young children: The Children's Museum, Prescott Park and its arts festival, Seacoast Rep, the rec department's many playgrounds and programs, and even watching the salt piles get scooped from tanker to truck (yep, I have two sons). And all of this within walking distance from my home! As time passed and finances allowed, we were able to add in The Music Hall and the City's many fine restaurants -- again, within walking distance of our home. So, I have been an avid "consumer" of the city's largesse and now it's time to do my part to give back.

I find myself in a position of early retirement - with a surplus of time and energy for the first time in my adult life. I also find that without the daily journey into my office in town I am becoming increasingly disconnected from the community. I will selfishly admit that in addition to wanting to participate in the City's ongoing development and success, I also see serving on the Planning Board as a way to get myself back into the community in a meaningful way.

**Please list any organizations, groups, or other committees you are involved in:**

Raising my sons and working full-time in my expanding business really consumed all of my time and energy. Just as things were beginning to lighten up as my children got older, sadly, my husband was diagnosed with terminal cancer in 2010 and he died in 2013. I spent the ensuing few years getting my sons off to college, stabilizing our business and then selling it in late 2016. So, other than contributing financially to The Music Hall, The Portsmouth/Dover Children's Museum, Strawberry Banke and the Warner House, I have not been terribly involved in civic organizations in the City. However, as mentioned above, I now have the time, energy, and desire to get involved and do my part to help the City continue to grow and thrive.



# CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

## APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information  
Please submit resume along with this application



Committee: PLANNING BOARD

Name: COLBY GAMESTER Telephone: Cell - 603-401-0500

Could you be contacted at work? YES NO - If so, telephone # 603-427-0000

Street address: 1207 SOUTH STREET

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): Colby@gamesterlaw.com

How long have you been a resident of Portsmouth? 34 years

Occupational background:

Lawyer

Previously, landscaping

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: Enjoy the Planning Board and generally volunteering ... civic duty



Please list any organizations, groups, or other committees you are involved in:

United Way Board of Directors

PLAN Board of Directors

Please list two character references not related to you or city staff members:

*(Portsmouth references preferred)*

1) Peter Weeks, (Dennett Street), PO Box 673, Portsmouth 603-674-5264  
Name, address, telephone number

2) Michael Singer, 53 McNabb Ct, Portsmouth 603-430-8671  
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature:  Date: 12/6/2018

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 12/31/2021

Annual Number of Meetings: 19 (2017) Number of Meetings Absent: 0

Date of Original Appointment: 3/4/2013

**Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801**



To: Vincent Lombardi

Hi Vince, Sue and I are having a wonderful time exploring the USA in our RV. Our plan is to be home for the holidays and then hit the road again for the winter and spring. With that, I find it best that you accept my resignation. I want to free up my position for some other HDC interested, Portsmouth resident. The road is calling us! Maybe for a few more years. I enjoyed my time on the HDC. I will always be interested in what happens to Portsmouth. Please feel free to call on me for some help behind the scenes if needed.

Best,  
Rick Shea

# CITY OF PORTSMOUTH PORTSMOUTH, NH 03801

**DATE:** December 12, 2018  
**TO:** Honorable Mayor Blalock and City Council Members  
**FROM:** Councilors Rebecca Perkins and Nancy Pearson  
**RE:** Worth Lot Demonstration Project

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In November 2017, the City Council voted to adopt the final report and recommendations of the Vaughan-Worth-Bridge Strategic Revitalization Committee. That Vision developed by the Blue Ribbon Committee assigned to look at this strategic area between Market Square and the new Parking Garage, recommended the City “transform the surface parking at the Bridge Street and Worth Lot as well as the Vaughan Mall to extend the vibrant downtown fabric emanating from Market Square into new and renewed public spaces to create more opportunity for Portsmouth’s civic life to grow”.

The Vision was clear in that transformation of these spaces is a goal which is likely to take place over time. However, one of the recommendations included “that the City Manager invite and cooperate with community-led (or City-led) initiatives to illustrate the concepts of the proposed future uses through demonstration projects...” (Recommendation #4 on page 6, of the final report found at Planning Department’s *Projects* page on the City’s website). We believe the development of demonstration projects is a good and cost effective way to test concepts in the Vision. In addition, the FY 2019 Capital Improvement Plan specifically calls out demonstration projects for the Vaughan-Worth-Bridge area as a way to move forward.

Following-up on the recommendation above, we request the City Manager to actively pursue a partnership for a demonstration project in the spirit of the Vision and CIP item described above. The Music Hall has expressed an interest in a demonstration project for the Worth lot that would include a vibrant one-day event that would activate the Worth parking lot. Based on the City’s successful partnership with The Music Hall, which we believe can serve as a model for joint ventures with other community organizations that can lead to meaningful transformation of public space in the City (Chestnut Streetscape Improvement project, we would recommend the City Manager work closely with The Music Hall to move forward with an event in Worth lot in 2019.

Motion: To request the City Manager pursue a partnership for a demonstration project with The Music Hall for an event activating the Worth Lot in 2019 in accordance with the vision in the Vaughan Worth-Bridge Strategic Revitalization Committee report.