

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, JANUARY 22, 2019 TIME: 6:00PM

- 6:00PM – NON PUBLIC SESSION RE: NEGOTIATIONS IN ACCORDANCE WITH RSA 91-A:3, II (a)

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

PRESENTATION

1. Comprehensive Annual Financial Report (CAFR) – Scott McIntire

- V. ACCEPTANCE OF MINUTES – DECEMBER 17, 2018

- VI. PUBLIC COMMENT SESSION

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

- A. Public Hearing – Cable Television Renewal Franchise Agreement

CABLE TELEVISION RENEWAL FRANCHISE AGREEMENT

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

- B. Public Hearing – Zoning Ordinance – Site Development Standards – Off-Street Parking

ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 11 – SITE DEVELOPMENT STANDARDS, SECTION 10.1110 – OFF-STREET PARKING

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

C. **Public Hearing – Zoning Ordinance – Conditional Use Permits**

ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 2 – ADMINISTRATION AND ENFORCEMENT BE AMENDED 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

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

D. First Reading of Proposed Ordinance amending Chapter 10, Article 4, Section 10.421.10 – DISTRICT LOCATION AND BOUNDARIES of the Zoning Ordinance and Portsmouth Zoning Map be amended by rezoning the property located at 290 Gosling Road at Assessor’s Tax Map 213, Lot 1 from Waterfront Industrial (WI) to Office Research (OR) District

E. 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 September 25, 2018 (tabled Indefinitely at the December 17, 2018 City Council meeting)

VIII. **APPROVAL OF GRANTS/DONATIONS**

(There are no items on this section of the agenda)

IX. **CONSENT AGENDA**

(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)

- A. Letter from Lindsay Gilbert, Cystic Fibrosis Foundation, requesting permission to hold the CF Cycle for Life for the 2019 summer season on Saturday, July 13, 2019 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Kathie Lynch, Portsmouth Little League, requesting permission to affix signage in the form of banners to be attached to fences surrounding the outfield and foul lines at Plains and Hislop fields, also; requesting permission to affix the banners to the fences from April 13 [Field Clean-up Day] through the end of October, and; maintain signage to the rear of the Plains scoreboard ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Caroline Piper, Friends of the South End, requesting permission to hold the annual Fairy House Tour event on Saturday, September 21, 2019 and Sunday, September 22, 2019 from 10:00 a.m. – 3:00 p.m. ***(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 Elizabeth Bratter regarding contractors or any builder to appear before the Planning Board to request a Conditional Use Permit regarding parking within their project, also not to include bike share services as a form to reduce the need for parking

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

- 1. Approval of Proposed Employment Agreement for Deputy City Manager Nancy Colbert Puff
- 2. Request for Public Hearing Re: Elderly and Disabled Exemptions
- 3. NH DOT Hampton Branch Trail Management Agreement
- 4. Request for First Reading Re: Accessory Dwelling Units and Garden Cottages
- 5. Presentation and Action Re: Neighborhood Parking Pilot Program

City Manager's Informational Items:

- 1. Report Back Re: Short-Term Rental Regulations in Portsmouth
- 2. Report Back Re: Student Letter on Reusable Bags
- 3. House Inspections Re: Sewer Study

B. MAYOR BLALOCK

- 1. Recommendation for Appointment of Stefany Shaheen Re: Police Commission Vacancy
- 2. Appointment to be Considered:
 - Nathalie Morison to the Conservation Commission
- 3. Appointment to be Voted:
 - Heinz K. Sauk-Schubert appointment to the Historic District Commission as an Alternate

C. COUNCILOR ROBERTS

- 1. Parking and Traffic Safety Committee Action Sheet and Minutes of the January 10, 2019 meeting (*Sample motion – move to accept and approve the action sheet and minutes of the January 10, 2019 Parking and Traffic Safety Committee meeting*)

D. COUNCILOR PEARSON & COUNCILOR PERKINS

- 1. Request for Approval Re: Service of Alcohol for the Worth Lot Demonstration Project

E. COUNCILOR DWYER, COUNCILOR ROBERTS & COUNCILOR PERKINS

1. *Update from McIntyre Subcommittee

F. COUNCILOR DENTON

1. Draft Letter Re: Portsmouth City Council Supports HB 102

XII. MISCELLANEOUS/UNFINISHED BUSINESS


XIII. ADJOURNMENT

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

** Indicates verbal report*

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: January 17, 2019
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on January 22, 2019 City Council Agenda

Non-Public Session:

6:00 p.m. Non-Public Session Re: Collective Bargaining in Accordance with RSA 91-A:3 II a

Presentation:

1. **Presentation of Comprehensive Annual Financial Report (CAFR) – Scott McIntire.** On Tuesday evening, Scott McIntire of Melanson, Heath & Company, P.C. will report on the Annual Audit and Financial Statements for the Year Ending June 30, 2018. I have attached copies of the City's Comprehensive Annual Financial Report (CAFR); the Governance Letter and Management Letter; prepared by our auditor; and the Popular Annual Financial Report (PAFR).

Public Hearings & Votes on Ordinances and/or Resolutions:

1. **Public Hearing Re: Cable Television Renewal Franchise Agreement.** The current Cable Television Franchise Agreement with Comcast is due to expire at the end of February 2019. As you know, this non-exclusive agreement allows Comcast to utilize the City's rights-of-way and to provide cable television services to Portsmouth residents who want them. Although the City has little control over programming and pricing, the Franchise Agreement is a necessary part of the regulatory scheme and requires Comcast to carry the City's government channel and the PPMtv channel. Following up on

the presentation by the Deputy City Attorney at the City Council's January 7, 2019 meeting describing the draft Cable Television Franchise Renewal Agreement, tonight is the public hearing on that draft franchise agreement. The [attached draft franchise agreement](#) and supporting materials have been available on the Cable Television and Communication Commission's webpage since December 18, 2018 as well as being available for review in the City Clerk's office and at the public library.

The Cable Television and Communications Commission will meet on January 23, 2019 to review any comments received at the public hearing and make a recommendation to the City Council for action at a City Council meeting in February.

There is no action required regarding this matter.

2. **Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking.** The amendments are being proposed to clarify the off-street parking requirements in the zoning ordinance. Specifically, additional criteria is being proposed for the granting of a conditional use permit by the Planning Board for providing less than the minimum number of off-street parking spaces required or for exceeding the maximum of off-street parking spaces allowed. Three housekeeping amendments are also proposed.

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

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

The City Council passed first reading at the January 7, 2019 meeting. Since that time, Planning Department staff are recommending one minor change to the proposed amendments, which was discussed at Planning Board but inadvertently left out in the version presented to Council for first reading. The change proposes to insert language from the existing Ordinance (10.1112.52) to the new section 10.1112.142 to expand the description of potential measures to off-set parking demand.

I recommend the City Council move to pass second reading as amended and schedule a third and final reading for the February 4, 2019 City Council meeting to amend the Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking as presented in the document titled “Proposed Off-Street Parking Amendments” dated January 16, 2019.

3. **Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 2 – Administration and Enforcement by amending 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.** At the January 7, 2019 City Council meeting, the Council voted to pass first reading and schedule a public hearing and second reading for the January 22, 2019 City Council meeting, regarding the [attached proposed amendment](#) to Chapter 10 – 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.

This amendment would insert a new section into the Zoning Ordinance defining approval criteria and conditions of approval for the granting of non-wetland conditional use permits by the Planning Board. NH RSA 674:21 states that communities that use conditional use permits shall adopt standards to guide the granting of the conditional use permits. Presently, a number of land uses as well as flexible zoning provisions in the City’s Zoning Ordinance require the granting of a conditional use permit by the Planning Board, but the Ordinance lacks consistency in terms of the standards of approval for granting of these. Adding this section to the Ordinance would be consistent with state laws and would also assist with administration of these permits by the Planning Board and City staff.

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

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

I recommend the City Council move to pass second reading and schedule third and final reading for the February 4, 2019 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.

4. **First Reading of Proposed Ordinance Rezoning of 290 Gosling Road.** At the January 7, 2019 City Council meeting, the Council voted to schedule first reading for the January 22, 2019 City Council meeting, regarding the [attached proposed Ordinance](#) for a request to rezone 290 Gosling Road.

On November 28, 2018, Attorney Ciandella submitted the [attached letter](#) to the City Council on behalf of his client, 290 Gosling Rd, LLC, requesting that the property with the address of 290 Gosling Road (Map 213, Lot 1) be re-zoned from Waterfront Industrial (WI) to Office Research (OR).

At the December 3, 2018 City Council meeting, the Council voted to refer this request to the Planning Board for a recommendation. The Planning Board conducted a public hearing

on this proposed zoning amendment at its December 20, 2018 meeting and voted to recommend approval to the City Council.

I recommend City Council move to pass first reading and schedule a second reading and public hearing for the February 4, 2019 City Council meeting on the request of 290 Gosling Rd, LLC the property with the address of 290 Gosling Road (Map 213, Lot 1) be re-zoned from Waterfront Industrial (WI) to Office Research (OR).

5. **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 September 25, 2018 (Tabled Indefinitely at the December 17, 2018 City Council meeting).** The amendments are being proposed primarily to bring the City’s sign regulations into compliance with legal requirements for content neutrality. In the case *Reed et al. v. Town of Gilbert, Arizona, et al. (2015)*, the U.S. Supreme Court ruled that regulations that categorize signs based on the type of information they convey and then apply different standards to each category are content-based regulations of speech and are not allowed under the First Amendment protections of the United States Constitution. Additional changes include updating the regulations regarding prohibited signs and temporary signs, clarifying sign area, and other housekeeping amendments.

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

The City Council passed First Reading at the October 15, 2018 meeting and held a public hearing on November 19, 2018. After the public hearing on the 19th, Councilors discussed potential revisions to the proposed amendments regarding regulations of flags and the time period for election signs. The Council voted to continue Second Reading to the December 3, 2018 meeting in order to have staff report back with potential revisions to the proposed amendments. The Council passed Second Reading with amendments as proposed on December 3, 2018. Prior to Third Reading, the NHCLU raised a number of potential issues regarding the constitutionality of the ordinance. As a result, the City staff recommended postponing Third Reading indefinitely in order to enable staff and the NHCLU to meet to discuss the concerns. The City Council voted to postpone Third Reading at the December 17, 2018 meeting.

After a productive dialogue between the City Attorney, the Planning Director, and the NHCLU staff, NHCLU requested a few minor amendments to the zoning ordinance as proposed. The [attached draft](#) reflects these changes, which staff recommends be incorporated by a vote of the City Council prior to passing Third and Final Reading. In summary, the amendments are as follows:

- Section 10.1223.13 – remove the specific reference to the type of election time period during which temporary signs may be placed on a lot

- 10.1223.14 – Allow temporary signs of a certain size to be placed on a lot without a sign permit
- 10.1223.31 – Increase the size threshold for which temporary signs would require a sign permit
- 10.1223.35 – Remove the requirement that temporary signs not be illuminated
- Definition of Sign Area – Clarify that a double-sided sign is treated the same as a single-sided sign as to the calculation of sign area
- Definition of Temporary Sign – remove reference to an activity or event of limited duration

I recommend the City Council move the following motions:

- 1) *Suspend the rules to take off the table;*
- 2) *Suspend the rules to allow amendment at third reading;*
- 3) *Amend the Ordinance, as presented; and,*
- 4) *Pass third reading, as amended.*

City Manager's Items Which Require Action:

1. **Approval of Proposed Employment Agreement for Deputy City Manager Nancy Colbert Puff.** Subsequent to the City Council non-public session on January 7, 2019, I have attached a proposed five-year Employment Agreement for Nancy Colbert Puff who has been the Deputy City Manager since April of 2016. For the past two and a half years, Nancy has worked on very high profile projects and has done an outstanding job. She has become an integral part of the City's organization.

As part of succession planning and future retirement of other key City staff, I think it is important that Nancy be part of the organization well into the future to ensure continuity. Her leadership skills have been invaluable to me in working with department heads on difficult issues. In the next two years, there will be changes in the organization that will require Nancy's steady leadership.

Therefore, I am recommending that the City Council approve a five-year employment agreement with Nancy. This is the standard agreement between the City and the Police Chief, the Fire Chief, and the Deputy Chiefs. Please note that all benefits are in line with the Professional Management Association Agreement.

I recommend the City Council move to approve a five-year Employment Agreement with Deputy City Manager Nancy Colbert Puff.

2. **Request for First Reading Re: Elderly and Disabled Exemptions.** Annually, the City of Portsmouth reviews income and asset levels for both the Elderly and Disabled Exemptions and makes recommendations as to these levels pursuant to RSA 72:39-b and RSA 72.37-b .

Last year, the City Council adopted resolutions #2-2018 and #3-2018 which increased the income levels for both the elderly and disabled. The current elderly and disabled exemption income levels are \$41,314 for a single taxpayer, \$56,807 for married taxpayers; the current asset limit is \$175,000.

If qualified, for elderly taxpayers, the exemption off the assessed value of the property is as follows:

- Age 65 to 74 \$125,000
- Age 75-79 \$175,000
- Age 80 + \$225,000

If qualified, for disabled taxpayers the exemption off the assessed value of the property is \$100,000.

This year the 2019 increase for Social Security recipients is 2.8%.

If the City Council wishes to adjust the income level for both the elderly and disabled taxpayers by the Social Security cost-of-living increase, this would increase the limits as follows ([see attached proposed Resolutions](#)):

- Single \$ 42,471 increase of \$1,157
- Married \$ 58,398 increase of \$1,591

Any adjustment if approved would be for assessments as of April 1, 2019 for Tax Year 2019 (FY20).

The Assessor's office mails a notification annually to all elderly and disabled persons who currently receive this exemption to update their applications. All new applicants must submit an application and required documentation by April 15th of each year.

On the following page is the estimated tax impact of the elderly and disabled exemptions for FY20 and a Town/City comparison indicating what other City and neighboring communities' income and assets limits are for the elderly exemption.

Estimated Elderly & Disabled Exemption Impact				
Exemption Type	Exemption Amount	Number Currently Receiving Exemption	Value Loss	Revenue Loss
65 through 74	\$ 125,000.00	31	\$ 3,875,000.00	\$ 61,380.00
75 through 79	\$ 175,000.00	22	\$ 3,850,000.00	\$ 60,984.00
80 and over	\$ 225,000.00	57	\$ 12,825,000.00	\$ 203,148.00
Disabled	\$ 100,000.00	7	\$ 700,000.00	\$ 11,088.00
Totals		117	\$ 21,250,000.00	\$ 336,600.00

Note: The current tax rate of \$15.84 would be decreased to a difference of approximately 6 cents on the current tax rate if the elderly and disabled exemptions were not granted.

Elderly Exemption Comparison Single Income							
	Single Income:	Married Income:	Single Assets:	Married Assets:	Exemption 65-74 years old	Exemption 75-79 years old	Exemption 80+ years old
Nashua	\$50,000	\$50,000	\$150,000	\$150,000	\$192,000	\$224,000	\$280,000
Dover	\$42,000	\$57,000	\$169,800	\$169,800	\$115,000	\$162,000	\$207,000
Portsmouth	\$41,314	\$56,807	\$175,000	\$175,000	\$125,000	\$175,000	\$225,000
North Hampton	\$40,800	\$59,000	\$190,000	\$190,000	\$125,000	\$165,000	\$200,000
New Castle	\$40,000	\$55,000	\$150,000	\$150,000	\$125,000	\$175,000	\$225,000
Rye	\$40,000	\$59,900	\$199,000	\$199,000	\$75,000	\$90,000	\$105,000
Hampton	\$38,000	\$58,000	\$250,000	\$250,000	\$125,000	\$160,000	\$200,000
Manchester	\$37,000	\$50,000	\$90,000	\$115,000	\$109,500	\$148,500	\$195,500
Greenland	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000
Stratham	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000
Rochester	\$35,000	\$50,000	\$100,000	\$100,000	\$75,000	\$100,000	\$125,000
Concord	\$33,400	\$45,800	\$90,000	\$90,000	\$72,818	\$118,420	\$202,124
Somersworth	\$32,000	\$50,000	\$100,000	\$100,000	\$50,000	\$65,000	\$75,000

Elderly Exemption Comparison Married Income							
	Single Income:	Married Income:	Single Assets:	Married Assets:	Exemption 65-74 years old	Exemption 75-79 years old	Exemption 80+ years old
Concord	\$33,400	\$45,800	\$90,000	\$90,000	\$72,818	\$118,420	\$202,124
Nashua	\$50,000	\$50,000	\$150,000	\$150,000	\$192,000	\$224,000	\$280,000
Manchester	\$37,000	\$50,000	\$90,000	\$115,000	\$109,500	\$148,500	\$195,500
Rochester	\$35,000	\$50,000	\$100,000	\$100,000	\$75,000	\$100,000	\$125,000
Somersworth	\$32,000	\$50,000	\$100,000	\$100,000	\$50,000	\$65,000	\$75,000
New Castle	\$40,000	\$55,000	\$150,000	\$150,000	\$125,000	\$175,000	\$225,000
Portsmouth	\$41,314	\$56,807	\$175,000	\$175,000	\$125,000	\$175,000	\$225,000
Dover	\$42,000	\$57,000	\$169,800	\$169,800	\$115,000	\$162,000	\$207,000
Hampton	\$38,000	\$58,000	\$250,000	\$250,000	\$125,000	\$160,000	\$200,000
North Hampton	\$40,800	\$59,000	\$190,000	\$190,000	\$125,000	\$165,000	\$200,000
Rye	\$40,000	\$59,900	\$199,000	\$199,000	\$75,000	\$90,000	\$105,000
Greenland	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000
Stratham	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000

Elderly Exemption Married Asset Comparison							
	Single Income:	Married Income:	Single Assets:	Married Assets:	Exemption 65-74 years old	Exemption 75-79 years old	Exemption 80+ years old
Greenland	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000
Stratham	\$36,000	\$60,000	\$75,000	\$75,000	\$60,000	\$80,000	\$100,000
Concord	\$33,400	\$45,800	\$90,000	\$90,000	\$72,818	\$118,420	\$202,124
Rochester	\$35,000	\$50,000	\$100,000	\$100,000	\$75,000	\$100,000	\$125,000
Somersworth	\$32,000	\$50,000	\$100,000	\$100,000	\$50,000	\$65,000	\$75,000
Manchester	\$37,000	\$50,000	\$90,000	\$115,000	\$109,500	\$148,500	\$195,500
Nashua	\$50,000	\$50,000	\$150,000	\$150,000	\$192,000	\$224,000	\$280,000
New Castle	\$40,000	\$55,000	\$150,000	\$150,000	\$125,000	\$175,000	\$225,000
Dover	\$42,000	\$57,000	\$169,800	\$169,800	\$115,000	\$162,000	\$207,000
Portsmouth	\$41,314	\$56,807	\$175,000	\$175,000	\$125,000	\$175,000	\$225,000
North Hampton	\$40,800	\$59,000	\$190,000	\$190,000	\$125,000	\$165,000	\$200,000
Rye	\$40,000	\$59,900	\$199,000	\$199,000	\$75,000	\$90,000	\$105,000
Hampton	\$38,000	\$58,000	\$250,000	\$250,000	\$125,000	\$160,000	\$200,000

I recommend the City Council move schedule a public hearing for the February 4, 2019 City Council meeting.

3. **NH DOT Hampton Branch Trail Management Agreement.** On December 11, 2018, the New Hampshire Department of Transportation (NHDOT) Commission and staff held a meeting at Portsmouth City Hall with Administrators, Managers, and staff from each of the communities that contain a portion of the proposed Hampton-Branch Rail Trail (otherwise known as the NH Seacoast Greenway). The purpose of the meeting was to review a draft Trail Management Agreement to be entered into between each of the communities and NHDOT to formalize responsibilities related to the maintenance of the proposed Trail. The NHDOT has received federal Congestion Mitigation and Air Quality funding for acquisition and construction of the 12 mile portion of trail between Portsmouth and Hampton. In Portsmouth, the proposed trail will extend from Barberry Lane 3.6 miles south to the Greenland town line. After a number of years of negotiations, the NHDOT staff have indicated they are close to agreeing on a final acquisition price for the abandoned rail corridor from the current owner (PanAm Railways).

Once the acquisition has been completed, NHDOT is planning to use the remaining available funding to construct a dirt or stone dust trail. At this time, no additional local construction funding is anticipated unless the individual community decides to do additional improvements to the trail such as providing a paved surface. The trail agreement establishes the roles and responsibilities for ongoing maintenance and use of the trail once the trail is constructed. The trail corridor will continue to remain in NHDOT ownership, but the local municipalities will be responsible for routine ongoing maintenance.

The NHDOT would like initial commitment to the agreement from all of the corridor communities prior to final acquisition of the corridor from PanAm. However, each municipality will ultimately sign a version of this agreement with the geographic descriptions specific to their portion of the trail.

The [attached draft of the Agreement](#) has been revised in response to the comments from the December 11th meeting.

I recommend the City Council move to authorize the City Manager to negotiate and execute a Trail Management Agreement with NHDOT for the Portsmouth portion of the Hampton Branch Rail Trail (NH Seacoast Greenway) that is covered by the Hampton-Portsmouth CMAQ project.

4. **Request for First Reading Re: Accessory Dwelling Units and Garden Cottages.** The [attached proposed amendments](#) were initially presented at the November 15, 2018 Planning Board meeting and a public hearing was held. Based on discussion and comments from Planning Board members, feedback from the public, and additional review by the City's Legal Department, the Planning Department staff made additional revisions and the Planning Board voted to recommend the updated amendments at the December 20, 2018 meeting. The version in front of City Council reflects additional changes that Planning Board discussed at the December 20, 2018.

I recommend the City Council move to schedule a first reading for the February 4, 2019 City Council meeting to amend the Zoning Ordinance by deleting existing Sections 10.814

– Accessory Dwelling Units and 10.815 – Garden Cottages and inserting in their place the new Sections 10.814 and 10.815 as presented on the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Sections 10.814 – Accessory Dwelling Units and 10.815 – Garden Cottages” dated January 16, 2019 and amending related terms in Article 15 – Definitions, Section 10.1530 – Terms of General Applicability.

5. **Presentation and Action Re: Neighborhood Parking Pilot Program.** Parking Director Benjamin Fletcher will update the City Council regarding the Neighborhood Parking Program. [Attached is a copy of the PowerPoint Presentation.](#) The Parking and Traffic Safety Committee voted to recommend approval for this pilot program.

I recommend the City Council move to authorize the City Manager to implement this Neighborhood Parking Pilot Program.

Informational Items:

1. **Report Back Re: Short-Term Rental Regulations in Portsmouth.** The City Council has schedule a joint work session with the Planning Board for February 11th at 6:30pm regarding short-term rentals in Portsmouth. The purpose of this memo is to provide a brief overview of the current regulations regarding short-term rentals in the City and related state laws.

City Regulations

In general, the City allows for short-term rentals of dwelling units only in very limited circumstances. The Zoning Ordinance definition of dwelling unit states, “This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses”. The City has interpreted this limitation to exclude short-term rental arrangements such as those offered by Air BnB, VRBO, or HomeAway. In Portsmouth, we consider a short-term rental as a rental of a dwelling unit for a period of less than 30 consecutive days.

The only provisions in our Ordinance that allow for short-term rental of a dwelling unit is the operation of a bed and breakfast or inn. These uses are allowed by right in some districts, by special exception (with authorization from the Zoning Board of Adjustment) in others, and are prohibited in other districts. In general, bed and breakfasts are allowed in more districts than inns. A bed and breakfast use as defined in our Ordinance requires that the unit be owner-occupied, so a short-term rental of an entire house would be considered an inn, rather than a bed and breakfast use.

In summary, in Portsmouth:

- A short-term rental is the transient occupancy of a dwelling unit for a period of less than 30 consecutive days;
- A short-term rental is prohibited unless it has been authorized as a lodging use of a dwelling unit (such as a bed and breakfast or inn) that has received all required land use approvals.

State Statutes

Short term rentals are addressed in two State statutes, RSA 48-A and RSA 78-A. The plain language of these two statutes do not indicate the State has preempted the regulation of the field of short-term rentals, nor does the plain language indicate municipalities cannot regulate short-term rentals through zoning.

RSA 48-A authorizes municipalities to enact housing standards to address dilapidated and unhealthy dwellings. RSA 48-A:2 provides that a municipality may not impose stricter, or additional housing standards through "...ordinances, codes, bylaws, licenses or certificates, or other restrictions..." on short term rentals than it does on other dwellings. The definition of short term rentals in RSA 48-A:1, V clearly and unambiguously states "for purposes of this Chapter..." That means that the prohibition against additional ordinances applies to housing standard ordinances only, not zoning ordinances.

Further, RSA 78-A:3, XX defines short-term rental as the "rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days." Every operator of a short term rental must apply for a meals and rooms license (RSA 78-A:4, I) and the license number must be included in any advertisement for the short term rental. RSA 78-A:4-a. The statute also provides "[n]othing in this section shall be construed to change or alter the nature of the use of a property for purpose of determining compliance with local zoning ordinance." RSA 78-A:4-a.

Because the plain language of both statutes limit their application to the Chapters they reference, namely the Housing Standards and the Tax on Meals and Rooms, there is no language in either statute to suggest that the state has preempted the issue of short term rentals or that these statutes act as a state-wide amendment to the City's current zoning regulations.

Superior Court Case

The City's recent superior court case addressing short term rentals was decided on the facts presented and the plain language of the City's Zoning Ordinance. An unoccupied single family dwelling in the GRA district was being used as a short term rental. The Rockingham County Superior Court, in the matter of Working Stiff Partners, LLC v. City of Portsmouth, Docket No. 218-2017-CV-01450, reviewed the City's Zoning Ordinance, specifically the definition of "dwelling unit". Chapter 10, Article 15 defines dwelling unit as "a building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses." Based on that definition and the facts of that case, the Court concluded that the Plaintiff, Working Stiff, LLC, was not primarily using its property as a permitted dwelling but was using its property as a prohibited "transient occupancy" in the GRA district. This decision has been appealed to the New Hampshire Supreme Court.

2. **Report Back Re: Student Letter on Reusable Bags.** City Council received a letter from two 8th grade students trying to come up with a solution to plastic pollution. Their suggested goal is to provide two reusable bags for every Portsmouth household at a cost of \$1.09 per bag. This initiative is in alignment with a pilot effort currently underway with City staff. Working with the Sustainability Committee, [the City has created a customized Eco-Municipality logo to stamp on reusable shopping bags \(see attached\)](#). The City currently has a purchase order to buy 750 reusable bags for distribution to interested residents. The reusable bags are crafted from 100% recycled plastic material.

In response to the letter City Council received, staff have investigated the cost to provide two reusable bags for every Portsmouth household at a cost of \$1.09 per bag as suggested. If there are approximately 7,000 households in Portsmouth, it would cost the City \$15,260 to provide each with two reusable bags. The \$15,260 to purchase the reusable bags does not include any additional cost for transportation or distribution of the bags to residents. Should City Council decide it is in the City's best interest to purchase reusable bags for every household, additional money would need to be added to the budget for fiscal year 2020.

3. **House Inspections Re: Sewer Study.** For your information, the City's consultants will be moving forward with house inspections in selected areas of the City as part of the Infiltration/Inflow Sewer Study. A press release will not be distributed for this work because it impacts a very limited area of the City.

[Attached are the maps highlighting the specific homes to be inspected.](#) The inspections will be conducted in an area of the Woodlands (focus is sump pumps), Gosling Meadows (general focus on all fixtures) and a section of the Lincoln Sewer Separation (to confirm how many homes are using drain services put in during sewer separation).

In addition, [attached is a copy of the notice](#) that will be distributed to each individual property. The distribution of the notices is planned for Friday, January 18, 2019 and inspections are planned to begin on Tuesday, January 22, 2019.

A city staff member will be with the inspection crew from Flow Assessment Services during the inspections. Deputy Public Works Director Brian Goetz will be contacting Portsmouth Housing Executive Director Craig Welch in advance to discuss the inspections in Gosling Meadows.