

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: TUESDAY, FEBRUARY 19, 2019 TIME: 6:30PM

- 6:30PM – NON-PUBLIC SESSION REGARDING DEPUTY FIRE CHIEF PATRICK HOWE WORKING AGREEMENT IN ACCORDANCE WITH RSA 91-A:3, II (a)

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

## PRESENTATION

1. Micro-Transit – Juliet Walker, Planning Director

- V. ACCEPTANCE OF MINUTES – FEBRUARY 4, 2019
- VI. PUBLIC COMMENT SESSION
- VII. PUBLIC HEARINGS & VOTES ON ORDINANCES AND/OR RESOLUTIONS

### A. Public Hearing – Capital Improvement Plan (CIP)

CAPITAL IMPROVEMENT PLAN (CIP) FY 2020-2025

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

### B. Public Hearing – Zoning Ordinance - Accessory Dwelling Units and Garden Cottages

ORDINANCE AMENDING CHAPTER 10 – 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 PRESENTED IN 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

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

- C. Third and Final Reading of Ordinance amending Chapter 10, Article 4, Section 10.421.10 – DISTRICT LOCATION AND BOUNDARIES of the Zoning Ordinance of the City of Portsmouth and the City of Portsmouth Zoning Map be amended by rezoning the property located at 290 Gosling Road at Assessors Tax Map 213, Lot 1 from Waterfront Industrial (WI) to Office Research (OR) District

## 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)***

*(There are no Consent Agenda items this evening)*

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

- A. Email Correspondence ***(Sample motion – move to accept and place on file)***
- B. Letter from R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PA regarding 15 Middle Street, Tax Map 126, Lot 12 (Former Salvation Army Building) request of James McSharry, Owner for Zoning Change from CIVIC District to Character District 4 (CD4) ***(Sample motion – move to refer to the Planning Board for a report back)***

## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### **A. CITY MANAGER**

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

1. Islington Creek Neighborhood Parking Program Re: Pilot
2. Comcast Franchise Renewal Agreement
3. Renewal of Middle Street Baptist Church Parking Contract

#### **City Manager's Informational Items:**

1. Work Session Re: Parking Principles Review and Discussion
2. Great American Food Truck Race
3. McIntyre Project
4. Coalition Communities

### **B. MAYOR BLALOCK**

1. Appointment to be Considered:
  - Jessica Blasko to the Conservation Commission as an Alternate

**C. COUNCILOR PEARSON AND COUNCILOR RAYNOLDS**

1. Four Weekends Experiment (July 2019) with Downtown Pedestrian Zone

**D. COUNCILOR DENTON**

1. Service-Connected Total Disability Tax Credit Resolution (***Sample motion – move to hold a public hearing regarding expanding the Tax Credit for Service-Connected Total Disability from \$2,000.00 up to \$4,000.00 under RSA 72:35 pursuant to RSA 72:27-a***)

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

- A. Legislative Subcommittee Report  
Mayor Blalock, Assistant Mayor Lazenby, Councilor Dwyer and Councilor Denton  
Approval of Legislative Principle on Education Funding

**XIII. ADJOURNMENT**

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

*\* Indicates verbal report*

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, FEBRUARY 4, 2019

PORTSMOUTH, NH  
TIME: 7:00 PM

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At 6:15 p.m. a Public Dialogue Session was held.

### **Public Dialogue Session – One Group**

**PRESENT:** Mayor Blalock, Assistant Mayor Lazenby, Councilors Denton, 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.

Elizabeth Bratter, property owner, explained that business owners have called her regarding employee parking and the fact that some of their workers park in 3 hour parking spaces and then move after 3 hours and also feel that the shuttle system in place every half hour can be unsafe for those who are by themselves at night. She suggested having a meeting to include business owners with a variety of employees to come up with solutions to the parking issues.

City Manager Bohenko explained an RFQ is being put out for a micro-transit system which could be utilized by the hospitality industry employees as an on-demand service. He agreed that previous initiatives haven't been successful, but is hopeful that this will help employees.

Councilor Becksted clarified that there is an employee parking area in the winter months at the Isles of Shoals Steamship Company for \$25.00 a month.

Ms. Bratter stated that many of the employees are college students or only work a couple of days a week so \$25.00 is still a lot of money to them.

Assistant Mayor Lazenby stated that it is clear that employee parking needs to be addressed.

Mayor Blalock stated that the Foundry Garage is also available and at this point we do still have the shuttle program with the CCC Church parking lot.

Planning Director Walker stated that the CCC property is being redeveloped so we are looking at other areas such as the Albacore Museum and we continue to use Fox Run Mall for events. She stated that having the micro-transit option and more robust public transit would be helpful.

Mary Lou McElwain stated that the City should work with businesses for input before setting up a program.

Harold Whitehouse stated he has had people from Hill Street call him regarding the lighting at Foundry Place Garage.

Public Works Director Rice stated that there were 2 areas of concern regarding lighting and they are shutting off the banner lighting in the evenings, which seems to have helped the Hill Street side and regarding the internal lights, they have pulled them up so they are screened by the beams which have also seemed to help. He stated that Dave Allen is the point person on this project and has been meeting with residents.

Beth Danilowski – discussed her concerns with the changes happening in the downtown and south end regarding parking and feels that it is difficult for the Council to understand their concerns if they don't live there. She stated the new parking garage is too far away to help with their issues and she doesn't feel that residents and businesses were taken into consideration with the new parking program. She continued that she doesn't support the "resident only" parking and is concerned with the McIntyre project not being required to provide enough parking for the proposed units.

Councilor Denton stated until recently he lived at State/Middle Street area and there was a lot of overflow parking being done there which he didn't mind. He stated that he feels that parking will stop being an issue in 5-10 years and in 20 years people will wonder why there are so many parking areas.

Mayor Blalock stated that currently we do have a parking shortage and parking does get pushed into the neighborhoods, but agrees that the trend is towards fewer cars and use of services such as Uber, etc. He stated that the south end neighborhood has withdrawn from the Pilot program at this point, but agrees that there needs to be a combined business/resident solution. He stated the Islington Creek Pilot is scheduled to be addressed again on February 19<sup>th</sup>.

Ms. Danilowski stated she owns a building in that area and asked if she will be notified.

Assistant Mayor Lazenby is concerned with the comment regarding the Council not hearing the residents but does understand the issue regarding rates. He stated that there will be a 50 cent per hour reduction for residents in all of the zones with the new phone app which replaces the previously used device that didn't work out well.

Paige Trace stated although she was not a part of the steering committee, she has read the program. She continued that all of the strife and objections in the south end is because this has morphed into something too large and unmanageable, such as guest registration, etc. She continued that a small simple pilot of the Gates Street area would be a good way to start and then add or subtract from there. She stated that having off-street parking has a value and they are assessed on that value so there is an objection to not being able to park on the street. She stated that if guest passes are necessary then it should be kept simple and if people are "cheating" the system, then it should be discontinued. She concluded that although the south end group decided not to go forward with the pilot program, there may be another group that decides they do want it.

Assistant Mayor Lazenby stated he was disappointed for Valerie Fagin who had done a lot of work on this program. He stated he feels that there was a lot of discussion and input but understands that it was a little more complicated than they wanted.

Paige Trace stated that Councilor Roberts deserves a lot of credit and the Parking and Traffic Safety Committee as they did a lot of work on it, but she did not like the net-parking part of it.

Councilor Raynolds stated he heard a lot about this issue during the campaign and thought it was a good process that got off-track. He stated that it seemed that it would exclude people with off-street parking as well as other residents of the city and feels that we need to think of another way to hold all residents equal and find alternatives for employees and tourists from parking in neighborhoods.

Mark Brighton asked if we have looked at other communities. He stated he had heard that people would have to get the VIN # from service providers, such as electricians, to allow them to park.

Mayor Blalock agreed that it did get complicated.

Mike Dater stated that he understands the south end has withdrawn from the pilot program, but prior to that, there was little communication from the city and he didn't understand the net parking portion. He stated there was confusion and hearsay and pitted neighbor against neighbor and residents against businesses. He stated he is glad it is over for the south end at this point but hopes that employee parking continues to be discussed.

Mary Lou McElwain requested that the city look at the use of plastic water bottles at city hall such as at meetings. She stated as an election worker in Ward 5, there were a lot of wasted water bottles left around and feels that plastic bags are not the only issue.

Mayor Blalock closed the Public Dialogue Session at 6:55 p.m.

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## **CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:05 p.m.

### **I. ROLL CALL**

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

ABSENT: Councilor Roberts

### **II. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silence.

### III. PLEDGE OF ALLEGIANCE

Mayor Blalock led the Pledge of Allegiance.

### IV. ACCEPTANCE OF MINUTES – JANUARY 7, 2019 AND JANUARY 22, 2019

**Assistant Mayor Lazenby moved to accept and place on file the minutes of January 7, 2019 and January 22, 2019 City Council meetings. Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**

### V. PUBLIC DIALOGUE SUMMARY

Councilor Denton gave a brief summary of the topics discussed during the Public Dialogue which included lighting at Foundry Place Parking Garage; general parking issues including employee parking and Neighborhood Pilot program; use of plastic water bottles at city meetings.

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

#### A. Public Hearing – Elderly Exemption

RESOLUTION PURSUANT TO RSA 72:39-B THE CITY HEREBY AMENDS THE ELDERLY EXEMPTION FROM PROPERTY TAX, BASED ON ASSESSED VALUE FOR QUALIFIED TAXPAYERS, SUCH THAT THE EXEMPTIONS SHALL BE AVAILABLE ONLY WHEN THE QUALIFYING TAXPAYER(S) HAVE A NET INCOME OF NOT MORE THAN \$42,471.00 FOR A SINGLE TAXPAYER OR \$58,398.00 FOR MARRIED TAXPAYERS, INCLUSIVE OF SOCIAL SECURITY PAYMENTS. THE ELDERLY EXEMPTION SHALL REMAIN UNCHANGED EXCEPT AS AMENDED HEREBY

#### • PUBLIC HEARING SPEAKERS

As there was no presentation or Council questions, Mayor Blalock read the public hearing notice and asked if anyone wished to speak:

Esther Kennedy – stated she was concerned with this when she had been a City Councilor because some people don't receive social security increases and feels that the \$42,471 for a single person is too low and should be raised. She stated we need to help the elderly stay in their homes. She stated she has the same concerns regarding the Disabled Exemption.

Seeing no one else wishing to speak, Mayor Blalock closed the public hearing.

**Councilor Dwyer moved to adopt the Elderly Exemption Resolution, as presented. Seconded by Assistant Mayor Lazenby and voted on an 8-0 roll call.**

**B. Public Hearing – Disabled Exemption**

RESOLUTION PURSUANT TO RSA 72:37-B, CITY HEREBY AMENDS THE DISABLED EXEMPTION FROM PROPERTY TAX, BASED ON ASSESSED VALUE FOR QUALIFIED TAXPAYERS, SUCH THAT THE EXEMPTIONS SHALL BE AVAILABLE ONLY WHEN THE QUALIFYING TAXPAYER(S) HAVE A NET INCOME OF NOT MORE THAN \$42,471.00 FOR A SINGLE TAXPAYER OR \$58,398.00 FOR MARRIED TAXPAYERS, INCLUSIVE OF SOCIAL SECURITY. THE DISABLED EXEMPTION SHALL REMAIN UNCHANGED EXCEPT AS AMENDED HEREBY

**PUBLIC HEARING SPEAKERS**

As there was no presentation or Council questions, Mayor Blalock read the public hearing notice and asked if anyone wished to speak. Seeing no one, Mayor Blalock closed the public hearing.

**Councilor Dwyer moved to adopt the Disabled Exemption Resolution, as presented, seconded by Assistant Mayor Lazenby.**

Councilor Denton asked City Manager Bohenko about expanding the Disabled Veterans Tax Credit as the statute was recently changed raising it to \$4,000.00.

City Manager Bohenko asked City Assessor Lentz to address the issue and she confirmed that the State RSA has been raised from \$2,000.00 to \$4,000.00.

**Motion passed on an 8-0 roll call vote.**

**C. Public Hearing – Zoning Ordinance & Map amended by Rezoning Property located at 290 Gosling Road**

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

**• PRESENTATION**

Planning Director Walker gave a brief presentation and then introduced the petitioner Rob Ciandella who explained their reason for requesting the change in zoning of the area.

**• CITY COUNCIL QUESTIONS**

Councilor Becksted asked if this would be more beneficial in terms of tax revenue if it remained zoned as is.



Planning Director Walker stated that property is generally more beneficial if it can be developed and there hasn't been a lot of interest in the current Waterfront Industrial (WI) zone.

- **PUBLIC HEARING SPEAKERS**

**Mayor Blalock read the legal notice and opened the public hearing:**

Esther Kennedy – stated she pays attention to waterfront property changes as she is concerned with losing it. She stated that this particular area is landlocked and not in use since Sprague Oil Company left. She asked if there were to be another company that wanted to come in, would they need this parcel to be able to use the other waterfront area.

Susan Denenberg – asked if there are parking requirements dependent on the zoning for those who will be working there and if so, that should be required for all parcels in the city with no exceptions.

**Seeing no one else wishing to speak, Mayor Blalock closed the public hearing.**

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Mayor Blalock asked Planning Director Walker to address the question asked by Ms. Denenberg.

Planning Director Walker stated that parking is based on land use so it has to meet minimum requirements and she feels there would be adequate parking in this area.

**Councilor Reynolds moved to pass second reading and schedule a third and final reading for the February 19, 2019 City Council meeting on the request of 290 Gosling Road, 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), seconded by Councilor Perkins.**

Councilor Becksted asked if this would be considered spot-zoning.

City Attorney Sullivan stated he is familiar with this area which was previous a tank farm for Sprague Energy and this would not be spot zoning because it will be in line with other similarly zoned property in the area.

Councilor Becksted asked if the neighboring businesses have been notified about this change and if there may be some effect on those businesses.

Planning Director Walker stated that abutter notices were sent as part of the Planning Board process and they did not hear back from anyone.

**Motion passed on an 8-0 roll call vote.**

D. First Reading of Ordinance amending Chapter 10 – Zoning Ordinance – Accessory Dwelling Units and Garden Cottages

**Councilor Becksted moved to pass first reading as amended and schedule second reading and a public hearing for the February 19, 2019 City Council meeting to amend the Zoning Ordinance by deleting existing Section 10.814 – Accessory Dwelling Units and 10.815 as presented on the document titled “Proposed Dwelling Units and 10.815 – Garden Cottages” dated January 29, 2019 and amending related terms in Article 15 - Definitions, Section 10.1530 – Terms of General Applicability, seconded by Councilor Dwyer.**

Councilor Becksted stated he has some concerns with the language because there are certain code requirements that have to be met to separate the units, otherwise it becomes a commercial property.

**Motion passed on an 8-0 roll call vote.**

**Councilor Becksted moved to suspend the rules to move up on the Agenda Item XI.C.1 – McIntyre Subcommittee Update. Seconded by Councilor Denton and passed on an 8-0 roll call vote.**

**XI.C. COUNCILOR ROBERTS, COUNCILOR DWYER, COUNCILOR PERKINS**

1. McIntyre Subcommittee Update

Councilor Dwyer stated they are working to respond to the request for an opportunity for the public to meet with the architects on March 5, 2019 with location to be determined. She stated the 3-D model and physical model should be ready as well. She stated they want to hold it on a non-Council meeting night so that all of the time is devoted to that subject. She stated she would like to have break-out groups after a brief presentation.

Councilor Perkins stated that the sub-committee recently submitted a letter to the editor in which they hope they addressed some of the concerns that have been expressed.

Councilor Becksted asked if this will be televised and if there will be minutes taken in the groups.

Councilor Dwyer stated the presentation will be televised and when the groups come back together at the end.

E. Third and Final Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking (Proposed Amendments dated 1/29/2019)

**Assistant Mayor Lazenby moved to suspend the rules in order to amend the Ordinance at third reading. Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**

**Assistant Mayor Lazenby moved to amend the Ordinance as presented in the City Manager’s Comments dated January 31, 2019, seconded by Councilor Pearson.**

Councilor Becksted asked if this will affect any other project in this district other than the McIntyre Project.

Planning Director Walker stated the specific aspect of this ordinance that will affect projects is the change to allow the projects to go to the Planning Board for a Conditional Use Permit to either increase or decrease their parking requirement. The other change is related to residential uses which currently in the downtown overlay district is 1.3 spaces per residential unit and this will make it the same as other areas of the city which is based on unit size. She stated the only project impacted currently would be the McIntyre Project but there will be others in the future. She stated an analysis of the past 2-3 years showed that the residential projects in the downtown district all met the current requirements and would also meet these requirements and that this is market driven.

Councilor Dwyer addressed the proposed amendments which came from a citizens concern as well as her own which she discussed with Deputy City Manager Colbert Puff:

10.1112.141 An application for a conditional use permit under this section shall include a parking demand analysis, **which shall be reviewed by the City's Technical Advisory Committee prior to submission to the Planning Board**, demonstrating that the proposed number of off-street parking spaces is sufficient for the proposed use.

b. In order to better clarify the types of measures the Planning Board can consider for offsetting parking demand, staff is recommending a modification as follows (inserted text **bolded**, deleted text stricken):

10.1112.142 An application for a conditional use permit under this section shall identify permanent **evidence-based** measures to reduce parking demand, including but not limited to provision of rideshare/**microtransit** services or bikeshare station(s) servicing the property, proximity to public transit, **car/van-pool incentives**, **alternative transit subsidies**, **provisions for teleworking**, and shared parking on a separate lot subject to the requirements of 10.1112.62.

Once a conditional use permit is granted, any conditions placed on an approval by the Planning Board as well as any measures included in the conditional use permit application are subject to monitoring and enforcement by City staff. Monitoring and enforcement of these conditions, is one of the many tasks carried out by the Planning Department's land use compliance staff.

Assistant Mayor Lazenby stated he appreciates the amendment but is concerned with the provision for "tele-working" stating he feels this is open-ended and may be a loophole.

Councilor Dwyer stated this will be up to the Planning Board to determine.

Councilor Becksted stated he is still concerned with the review process because the Technical Advisory Committee is only advisory whereas the Zoning Board of Adjustment has the 5 criteria that must be met. He stated that the parking requirement has also changed since the first McIntyre Proposal and feels that we should be using this as a bargaining chip, such as to keep the post office onsite.

**Motion to amend passed on an 8-0 roll call vote.**

**Councilor Becksted moved to postpone third reading temporarily, seconded by Councilor Denton.**

Councilor Denton stated that there is a short-fall of parking currently but feels that in the future there won't be as much of a need and doesn't want to impose more than what is needed for the future.

Councilor Dwyer doesn't see the need to postpone stating that the Board of Adjustment has been more likely to reduce parking than the Planning Board has.

Councilor Pearson stated she agrees with Councilor Denton regarding not needing as much parking in the future and also doesn't feel that this should be tied to the McIntyre project.

**Motion FAILED on a 1-7 roll call vote, Councilor Becksted voted in favor.**

**Councilor Raynolds moved to pass third and final reading, as amended, seconded by Councilor Dwyer.**

Councilor Becksted stated he will not support this because we are elected to represent the people today not in the future.

Assistant Mayor Lazenby stated he doesn't see this as a way to lower the parking requirements for McIntyre project but is meant to make it consistent with other parts of downtown.

**Motion passed on a 7-1 roll call vote, Councilor Becksted voted opposed.**

- F. Third and Final Reading of 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

**Councilor Denton moved to pass third and final reading of the proposed 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 Councilor Raynolds.**

Councilor Becksted stated he will not support this ordinance.

Councilor Raynolds stated this will add specificity and consistency.

Councilor Pearson stated that part of the reason for streamlining this is to cut the hassle and costs of new projects and the Economic Development Commission supported this as well.

**Motion passed on a 7-1 roll call vote, Councilor Becksted voted opposed.**

- G. 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 January 15, 2019 (*Postponed until February 4, 2019 City Council meeting*)

**Councilor Dwyer moved to pass third and final reading of the proposed Ordinance, as amended, seconded by Assistant Mayor Lazenby.**

Planning Director Walker reviewed a handout explaining the changes and answering questions brought up at the 2<sup>nd</sup> reading.

Discussion ensued regarding the requirement of a 7’ setback for temporary free-standing signs as many south end homes don’t have that much of a setback.

Planning Director Walker explained that was actually a part of the current ordinance and was not a proposed amendment. She stated that it is more of a guideline and provides protective measures if it becomes a problem. She stated that we didn’t have provisions previously for elections and now there will be.

City Manager Bohenko stated the city does not become involved with election signs unless they obstruct sight lines. He stated this is meant to clean up the ordinance and enforcement is based on using common sense and if there are any issues, it can come back to the Council.

**Councilor Dwyer moved to amend by removing the 7’ setback requirement for temporary freestanding signs from any property line. Seconded by Councilor Becksted and passed on an 8-0 roll call vote.**

**Councilor Dwyer moved to pass third and final reading of the proposed amendment, as amended, seconded by Assistant Mayor Lazenby.**

Councilor Becksted stated he will not support this because it encroaches on the 1<sup>st</sup> amendment and also because we don’t really enforce it.

**Motion passed on a 7-1 roll call vote, Councilor Becksted voted opposed.**

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

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

## **IX. CONSENT AGENDA**

**Assistant Mayor Lazenby moved to adopt the Consent Agenda as presented. Seconded by Councilor Perkins and passed on a 7-0 roll call vote, Councilor Dwyer out of Chambers.**

- A. Request for License to Install Projecting Sign for Shi Bo Lin, LLC owner of Pink Bamboo Hot Pot Café for property located at 128 Penhallow 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. Request for License to Install Projecting Sign for Justin Finn owner of Finn Wealth Advisors for property located at 23 High Street, Unit C ***(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. Letter from Kate Corriveau, Alzheimer's Association requesting permission to hold the 2019 Annual Seacoast Walk to End Alzheimer's on Sunday, September 22, 2019 ***(Anticipated action – move to refer to the City Manager with power)***

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

- A. Email Correspondence

**Councilor Perkins moved to accept and place on file. Seconded by Assistant Mayor Lazenby and passed on a 7-0 roll call vote, Councilor Dwyer out of Chambers.**

## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

1. 201 Kearsarge Way Access Easement

**Assistant Mayor Lazenby moved to accept an access easement to 201 Kearsarge Way, as presented. Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**

2. 1179 Sagamore Avenue Water Services Access Easement

**Assistant Mayor Lazenby moved to accept the easement regarding 1179 Sagamore Avenue, as presented. Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**

3. Report Back Re: Request to Rezone Properties on Pinehurst Road

**Assistant Mayor Lazenby moved to place on file the citizen request to re-zone the properties along Pinehurst Road from General Residence A (GRA) to Single Residence B (SRB). Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**

4. Work Session Re: Parking Principles Review and Discussion

City Manager Bohenko explained that he would like to set the date for this Work Session for either March 11<sup>th</sup> or March 25<sup>th</sup> at the Levenson Room of the Public Library so that it is a more informal setting.

Councilor Dwyer stated she and Councilor Roberts met with city staff regarding who should be invited to attend the meeting in terms of other Boards and Commissions and feel that Planning Board, Zoning Board, Parking and Traffic Safety Committee and Economic Development Commission. She stated she would like to break out into smaller groups after a brief presentation and then come back together at the end.

Mayor Blalock suggested inviting the Chairs of the Commissions and have them invite their members.

Councilor Becksted stated he would like the meeting to be video recorded and feels that the Historic District Commission should be included as well.

Councilor Reynolds agrees stating the more the merrier.

Councilor Denton suggested also inviting business leaders.

Councilor Dwyer stated anyone will be welcome to come and observe, but feels the discussion should be with the board members first and then the Economic Development Commission can host a separate meeting with businesses.

Mayor Blalock agreed stating this should be a policy discussion and then bring it to the Chamber of Commerce after.

**Councilor Becksted moved to set a Work Session Re: Parking Principles Review and Discussion for Monday, March 25, 2019 at 6:30 p.m. in the Levenson Room of the Public Library. Seconded by Councilor Dwyer and passed on an 8-0 roll call vote.**

**City Manager's Informational Items:**

1. Neighborhood Parking Program Re: Pilot

City Manager Bohenko stated that they have received a letter from the South End neighborhood group removing themselves from the Pilot Program so the next meeting will be dealing only with the Islington Creek Neighborhood petition. He stated that the comments and suggestions of the Council were included in the packet and to let him know if there are any further comments.

Assistant Mayor Lazenby stated he didn't see his additional questions included. He stated he is wondering if there is more printed data available regarding current usage as it relates to best practices and secondly, are there any legal risks or concerns.

City Manager Bohenko stated he has made contact with NHMA and there is no law on this yet and therefore no information regarding challenges.

Assistany Mayor Lazenby asked what the cost estimate for implementation will be. City Manager Bohenko stated \$70,000, but will be less without the South End.

Councilor Dwyer stated that we have received notification that the South End is not going to continue but there may be another group that comes forward. She stated the issue of notification needs to be addressed.

City Manager Bohenko stated we are depending on our local newspaper to work with us and feels that we should go forward with the West End Pilot first, if the Council decides to do so, and then go from there. He stated that this came from the residents on the west end originally. He stated he will get the information requested out to the Council.

2. Reminder Re: Short Term Rentals Joint Work Session
3. Draft Comcast Franchise Renewal Agreement

**B. MAYOR BLALOCK**

1. Appointment to be Voted:
  - Nathalie Morison to the Conservation Commission

**Councilor Denton moved to approve the appointment of Nathalie Morison as a regular member to the Conservation Commission with term to expire April 1, 2020 (filling unexpired term). Seconded by Councilor Perkins and passed on an 8-0 roll call vote.**



**C. COUNCILOR ROBERTS, COUNCILOR DWYER, COUNCILOR PERKINS**

1. McIntyre Subcommittee Update (Previously addressed)

**D. COUNCILOR DENTON**

1. Proposed Charter Amendment – Section 4.6 – Compensation of City Councilors

Each City Councilor shall be compensated at a rate of Seventy-Five (\$75.00) Dollars for each Council meeting in which that person is in actual attendance. ~~However, no City Councilor except the Mayor shall receive more than Fifteen Hundred (\$1,500) Dollars during any calendar year.~~

**Councilor Denton moved to refer to the City Manager to begin the procedures under RSA 49-B:5 to have November’s municipal election ballot include a Charter Amendment that would strike the second sentence of Section 4.6, seconded by Assistant Mayor Lazenby.**

Councilor Denton explained that removing the cap on the amount the City Council receives annually could potentially lead to a more diverse Council. He explained that the Council usually doesn’t get paid for the months of November and December. He stated he is looking to start the discussion and bring it to the voters in November.

Councilor Becksted stated he is willing to take it to the next step but does not serve on the City Council for the money.

Mayor Blalock stated he agrees that being paid for 20 of the 22 meetings a year has always seemed odd to him and this would eliminate the “free” meetings.

**Motion passed on an 8-0 roll call vote.**

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Becksted stated that the Council voted at the last meeting on a 5-year contract for Deputy City Manager Colbert Puff and the information provided by staff was that there were other employees with 5 year contracts. He stated he has since learned that only Police Chief Merner has a 5 year contract and the others that were mentioned, had 3 year contracts.

City Manager Bohenko stated that there were one year extensions on the other contracts but still feels that the 5 year contract was appropriate for Deputy City Manager Colbert Puff.

**XIII. ADJOURNMENT**

**Assistant Mayor Lazenby moved to adjourn at 9:05 p.m., seconded and passed unanimously.**

Valerie A. French, Deputy City Clerk

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the Portsmouth City Council on Tuesday, February 19, 2019 at 7:00 p.m., at the Portsmouth Municipal Complex in the Eileen Dondero Foley Council Chambers, Portsmouth, NH, on the Proposed CAPITAL IMPROVEMENT PLAN. The Complete Capital Improvement Plan is on file in the Office of the City Clerk during regular business hours and is also available on the city website.

### CITY OF PORTSMOUTH, NH

#### Capital Plan Summary '20

##### Description

|      |                                |              |
|------|--------------------------------|--------------|
| I.   | EQUIPMENT AND VEHICLE SCHEDULE | \$ 245,000   |
| II.  | BUILDING AND INFRASTRUCTURE    | \$ 6,320,000 |
| III. | INFORMATION MANAGEMENT SYSTEMS | \$ 1,013,428 |
| IV.  | TRANSPORTATION MANAGEMENT PLAN | \$13,909,000 |
|      | CAPITAL CONTINGENCY            | \$ 100,000   |
|      |                                |              |
|      | SUBTOTALS                      | \$21,587,428 |
|      |                                |              |
| V.   | ENTERPRISE FUNDS TOTAL         | \$11,168,000 |
|      |                                |              |
|      | GRAND TOTAL                    | \$32,755,428 |

\*\$1,810,000 is proposed to be funded from FY20 General Fund Capital Outlay

<https://cityofportsmouth.com/planportsmouth/capital-improvement-plan>

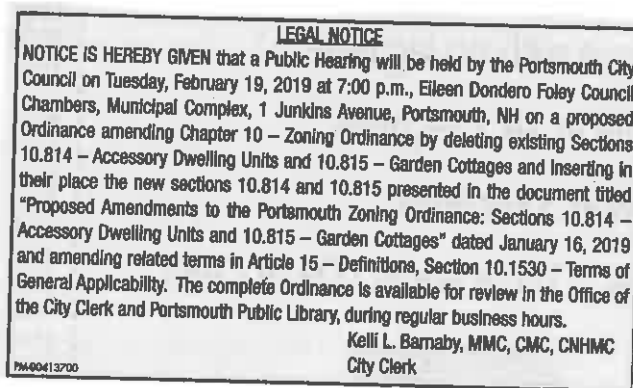
KELLI L. BARNABY, MMC, CMC, CNHMC  
CITY CLERK

| <b>LEGAL NOTICE</b>  |               |
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| NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the Portsmouth City Council on Tuesday, February 19, 2019 at 7:00 p.m., at the Portsmouth Municipal Complex in the Eileen Dondero Foley Council Chambers, Portsmouth, NH, on the Proposed CAPITAL IMPROVEMENT PLAN. The Complete Capital Improvement Plan is on file in the Office of the City Clerk during regular business hours and is also available on the city website. |               |
| CITY OF PORTSMOUTH, NH   |               |
| Capital Plan Summary '20   |               |
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| *\$1,810,000 is proposed to be funded from FY20 General Fund Capital Outlay  |               |
| <a href="https://cityofportsmouth.com/planportsmouth/capital-improvement-plan">https://cityofportsmouth.com/planportsmouth/capital-improvement-plan</a>  |               |
| KELLI L. BARNABY, MMC, CMC, CNHMC<br>CITY CLERK  |               |

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Tuesday, February 19, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a proposed Ordinance amending Chapter 10 – 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 presented in 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. The complete Ordinance 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



**Proposed Zoning Ordinance Amendments  
Accessory Dwelling Units and Garden Cottages  
Version 1/29/2019**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

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

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A. In Article 8 – Supplemental Use Standards, delete existing Sections 10.814 – Accessory Dwelling Units and 10.815 – Garden Cottages and insert 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 15, 2019.

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B. In Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, amend existing definitions and insert new terms and definitions as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

Accessory building or structure

A subordinate building located on the same lot with the principal building, occupied by or devoted to an accessory use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building. **For the purpose of this Ordinance, a detached accessory dwelling unit is not an accessory building or structure.**

Accessory dwelling unit (ADU)

A dwelling unit that is constructed on the same lot as a single-family dwelling and complies with the standards for accessory dwelling units set forth in this Ordinance.

Attached accessory dwelling unit (AADU)

An accessory dwelling unit that is constructed within or attached to a single-family dwelling. For the purpose of this definition, “attached” means ~~sharing a common wall for at least 25 percent of the length of the side of the single-family dwelling.~~

**(a) located within the dwelling and separated from the principal dwelling unit either horizontally or vertically, or**

1 (b) sharing a common wall for at least 25 percent of the length of the  
2 side of the single-family dwelling.  
3 “Attached” does not include connection to the single-family dwelling  
4 solely by an unenclosed structure (such as a breezeway) or by an  
5 enclosed but unconditioned space.  
6

7 Detached accessory dwelling unit (DADU)  
8 An accessory dwelling unit that is constructed within an accessory building  
9 on a lot containing one single-family dwelling. **A detached accessory**  
10 **dwelling unit may be connected to the single-family dwelling by an**  
11 **unenclosed structure (such as a breezeway) or by an unconditioned**  
12 **space.**  
13

14 **Dwelling, principal**  
15 **A single-family dwelling on a lot on which an accessory dwelling unit or a**  
16 **garden cottage is allowed.**  
17

18 **Dwelling unit, principal**  
19 **A dwelling unit in a single-family dwelling that is not an attached accessory**  
20 **dwelling unit or a garden cottage.**  
21

22 Principal building  
23 The primary building on a lot **which includes one or more principal uses.**  
24

---

25  
26  
27 The City Clerk shall properly alphabetize and/or re-number the ordinances as  
28 necessary in accordance with this amendment.  
29

30 All ordinances or parts of ordinances inconsistent herewith are hereby deleted.  
31

32 This ordinance shall take effect upon its passage.  
33  
34

35 APPROVED:  
36  
37  
38  
39 \_\_\_\_\_  
40 Jack Blalock, Mayor

40 ADOPTED BY COUNCIL:  
41  
42  
43 \_\_\_\_\_  
44 Kelli L. Barnaby, City Clerk

1 Proposed Amendments to the Portsmouth Zoning Ordinance: Sections 10.814 –  
2 Accessory Dwelling Units and 10.815 – Garden Cottages  
3 *January 29, 2019*  
4

5 10.814 Accessory Dwelling Units  
6

7 10.814.10 One, and only one, accessory dwelling unit shall be allowed on any lot containing a  
8 single-family dwelling. An accessory dwelling unit shall not be allowed under this  
9 Section 10.814 on a lot that contains more than one dwelling unit.  
10

11 10.814.20 Except as provided elsewhere in this Section 10.814, in order for a lot to be eligible for an  
12 accessory dwelling unit, the lot and all proposed structures and additions to existing  
13 structures shall conform to all zoning regulations as follows:  
14

15 10.814.21 Any municipal regulation applicable to single-family dwellings shall also  
16 apply to the combination of a principal dwelling unit and an accessory  
17 dwelling unit including, but not limited to, lot area, yards, open space,  
18 off-street parking, building coverage, and building height.  
19

20 10.814.22 An attached accessory dwelling unit is permitted on existing  
21 nonconforming lots and within existing nonconforming buildings as long  
22 as there is no increase in building height or building footprint for any  
23 portion of the existing building and no increase to the nonconformity.  
24

25 10.814.23 A detached accessory dwelling unit is not an accessory building or  
26 structure for the purposes of this Ordinance, and therefore shall be  
27 governed by the applicable minimum yard dimensions in Section 10.521 for  
28 a principal building or structure and not by the side yard and rear yard  
29 standards applicable to an accessory building.  
30

31 10.814.30 All accessory dwelling units shall comply with the following standards:  
32

33 10.814.31 The principal dwelling unit and the accessory dwelling unit shall not be  
34 separated in ownership (including by condominium ownership).  
35

36 10.814.32 Either the principal dwelling unit or the accessory dwelling unit shall be  
37 occupied by the owner of the dwelling as his or her principal place of  
38 residence. The owner shall provide documentation demonstrating to the  
39 satisfaction of the City that one of the units is his or her principal place of  
40 residence.  
41

42 10.814.321 When the property is owned by one or more trusts, one of the  
43 dwelling units shall be the principal place of residence of the  
44 beneficiary(ies) of the trust(s).  
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10.814.33 Neither the principal dwelling unit nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

10.814.34 Electric, gas, water and sewer utilities for the accessory dwelling unit shall be on the same meters as the principal dwelling unit and shall not be billed separately from the principal dwelling unit.

10.814.35 Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

10.814.40 An attached accessory dwelling unit (AADU) shall comply with the following additional standards:

10.814.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.

10.814.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit.

10.814.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.

10.814.44 No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.

10.814.45 An AADU that is attached to the single-family dwelling (i.e., created by an expansion of the existing structure) shall comply with the following:

10.814.451 An exterior wall of the AADU that faces a street on which the lot has frontage shall comprise no more than 40 percent of the total visible façade area of the dwelling as seen from that street.

10.814.452 The addition to or expansion of the existing single-family dwelling may include an increase in building height only as an upward expansion of the existing principal building with no increase in building footprint.

10.814.453 The building height of any addition or expansion that includes an increase in building footprint shall be less than the building height of the existing principal building.

- 1                                    10.814.453    The AADU shall be architecturally consistent with the existing
- 2    principal dwelling through the use of similar materials,
- 3    detailing, roof pitch, and other building design elements.
- 4
- 5    10.814.50    A detached accessory dwelling unit (DADU) shall comply with the following
- 6                                    additional standards:
- 7
- 8                                    10.814.51    In a General Residence district, the combination of the principal dwelling
- 9    and the DADU shall comply with the minimum lot area per dwelling unit
- 10    specified for the district. (For example, the required lot area for a single-
- 11    family dwelling with a DADU in the GRA district is 7,500 sq. ft. per
- 12    dwelling unit multiplied by 2 dwelling units, or 15,000 sq. ft.) In a Single
- 13    Residence or Rural district, a lot with a DADU shall comply with the
- 14    minimum lot area for the district, but need not comply with the minimum
- 15    lot area per dwelling unit.
- 16
- 17                                    10.814.52    The DADU shall not have more than two bedrooms and shall not be larger
- 18    than 750 sq. ft. gross floor area; except that the maximum gross floor area
- 19    shall be 1,000 sq. ft. if the lot area is 2 acres or more.
- 20
- 21                                    10.814.53    The DADU shall be clearly subordinate to the principal single-family
- 22    dwelling in scale, height and appearance.
- 23
- 24    10.814.531    The façade area of the DADU that faces a street on which the
- 25    lot has frontage shall be no more than 40 percent of the
- 26    combined visible façade areas of the principal single-family
- 27    dwelling and the DADU facing the same street.
- 28
- 29    10.814.532    The building height of the DADU shall be less than the
- 30    building height of the principal single-family dwelling.
- 31
- 32    10.814.533    The DADU shall be architecturally consistent with the
- 33    principal dwelling through the use of similar materials,
- 34    detailing, and other building design elements.
- 35
- 36                                    10.814.54    The DADU shall be separated from the single-family dwelling by at least 20
- 37    feet.
- 38
- 39                                    10.814.55    The front wall of the DADU shall be set back at least 10 feet further from
- 40    the front lot line than the existing front wall of the single-family dwelling.
- 41
- 42                                    10.814.56    No portion of the DADU shall be located in any required front yard,
- 43    regardless of the location of the single-family dwelling.
- 44
- 45    10.814.60    Before granting a conditional use permit for an attached or detached ADU, the Planning
- 46                                    Board shall make the following findings:
- 47
- 48                                    10.814.61    Exterior design of the ADU is consistent with the existing principal dwelling
- 49    on the lot.
- 50



1 10.814.62 The site plan provides adequate and appropriate open space, landscaping  
2 and off-street parking for both the ADU and the primary dwelling.  
3

4 10.814.63 The ADU will maintain a compatible relationship to adjacent properties in  
5 terms of location, design, and off-street parking layout, and will not  
6 significantly reduce the privacy of adjacent properties.  
7

8 10.814.64 The ADU will not result in excessive noise, traffic or parking congestion.  
9

10 10.814.70 In granting a conditional use permit for an accessory dwelling unit, the Planning Board  
11 may modify a specific standard set forth in Sections 10.814.40 or 10.814.52 through  
12 10.814.56, including requiring additional or reconfigured off-street parking spaces,  
13 provided that the Board finds such modification will be consistent with the required  
14 findings in Section 10.814.60.  
15

16 10.814.80 Documentation of the conditional use permit approval shall be recorded at the Rockingham  
17 County Registry of Deeds.  
18

19 10.814.90 A certificate of use issued by the Planning Department is required to verify compliance  
20 with the standards of this Section, including the owner-occupancy and principal residency  
21 requirements. Said certificate shall be issued by the Planning Department upon issuance of  
22 a certificate of occupancy by the Inspection Department and shall be renewed annually  
23 upon submission of such documentation as the Planning Department may require to verify  
24 compliance. A certificate of use shall not be issued prior to recording of documentation as  
25 required by 10.814.80.  
26

## 27 10.815 Garden Cottages 28

29 An accessory building existing on the effective date of this ordinance may be converted to a  
30 garden cottage through a conditional use permit granted by the Planning Board, subject to the  
31 following provisions and limitations.  
32

33 10.815.10 One garden cottage, and only one, shall be allowed on any lot containing a single-  
34 family dwelling.  
35

36 10.815.20 Relationship to other provisions of this Ordinance:  
37

38 10.815.21 No garden cottage shall be allowed on the same lot as an accessory  
39 dwelling unit authorized under this Ordinance.  
40

41 10.815.22 The establishment of a garden cottage results in two dwelling units on the  
42 property and thus makes the property ineligible to establish an accessory  
43 dwelling unit under RSA 674:72-73 and this Ordinance. As a condition of  
44 receiving a conditional use permit for a garden cottage, the property owner  
45 shall waive all rights under RSA 674:72 and RSA 674:73.  
46

47 10.815.23 A garden cottage that complies with the standards of this section is exempt  
48 from the residential density standards of the Zoning Ordinance. A second  
49 dwelling unit on a lot that does not comply with the standards of this  
50 section shall be considered to be either a second primary dwelling or an

1 accessory dwelling unit and shall comply with the applicable standards  
2 and provisions of the Ordinance.

3  
4 10.815.30 Garden cottages shall comply with the following standards:

5  
6 10.815.31 The existing accessory building shall not be expanded either vertically or  
7 horizontally, other than through the addition of a front entry not to exceed 50  
8 sq. ft., or a side or rear deck not to exceed 300 sq. ft.

9  
10 10.815.32 A garden cottage shall not be larger than 600 sq. ft. gross floor area.

11  
12 10.815.33 A garden cottage that is within a required yard for the zoning district shall  
13 not have any windows or doors higher than eight feet above grade facing the  
14 adjacent property.

15  
16 10.815.34 The principal dwelling unit and the garden cottage shall not be separated  
17 in ownership (including by condominium ownership); and either the  
18 principal dwelling unit or the garden cottage shall be occupied by the  
19 owner of the property. The owner shall provide documentation  
20 demonstrating to the satisfaction of the City that one of the units is his or her  
21 principal place of residence.

22  
23 10.815.341 When the property is owned by one or more living trusts, one  
24 of the dwelling units shall be the principal place of residence  
25 of the beneficiary(ies) of the trust(s).

26  
27 10.815.35 Electric, gas, water and sewer utilities for the garden cottage shall be on  
28 the same meters as the principal dwelling unit and shall not be billed  
29 separately from the principal dwelling unit.

30  
31 10.815.36 Where municipal sewer service is not provided, the septic system shall meet  
32 NH Water Supply and Pollution Control Division requirements for the  
33 combined system demand for total occupancy of the premises.

34  
35 10.815.40 Before granting a conditional use permit for a garden cottage, the Planning Board shall  
36 make the following findings:

37  
38 10.815.41 Exterior design of the garden cottage is consistent with the existing single-  
39 family dwelling on the lot.

40  
41 10.815.42 The site plan provides adequate and appropriate open space, landscaping,  
42 and off-street parking for both the garden cottage and the primary  
43 dwelling.

44  
45 10.815.43 The garden cottage will maintain a compatible relationship to adjacent  
46 properties in terms of location and design, and will not significantly reduce  
47 the privacy of adjacent properties.

48  
49 10.815.44 The garden cottage will not result in excessive noise, traffic or parking  
50 congestion.

- 1  
2 10.815.50 In granting a conditional use permit for a garden cottage, the Planning Board may modify  
3 a specific dimensional or parking standard set forth in Section 10.815.30, including  
4 requiring additional or reconfigured off-street parking spaces, provided that the Board  
5 finds such modification will be consistent with the required findings in Section 10.815.40.  
6
- 7 10.815.60 Documentation of the conditional use permit approval shall be recorded at the Rockingham  
8 County Registry of Deeds.  
9
- 10 10.815.70 A certificate of use issued by the Planning Department is required to verify compliance  
11 with the standards of this Section, including the owner-occupancy and principal residency  
12 requirements. Said certificate shall be issued by the Planning Department upon issuance of  
13 a certificate of occupancy by the Inspection Department and shall be renewed annually  
14 upon submission of such documentation as the Planning Department may require to verify  
15 compliance. A certificate of use shall not be issued prior to recording of documentation as  
16 required by 10.815.60.  
17

1                                    Accessory Dwelling Units and Garden Apartments:  
2                                    Comparison of Proposed Amendments with Existing Ordinance  
3                                    Revised DRAFT 1/29/2019  
4

5    10.814    Accessory Dwelling Units

6  
7    10.814.10    One, and only one, accessory dwelling unit shall be allowed on any lot containing a  
8                    single-family dwelling. An accessory dwelling unit shall not be allowed under this  
9                    Section 10.814 on a lot that contains more than one dwelling unit.

10  
11    10.814.20    Except as provided ~~in~~ elsewhere in this Section 10.814, ~~all land use regulations applicable~~  
12                    ~~to a single family dwelling shall also apply to the combination of a principal dwelling~~  
13                    ~~unit and in order for a lot to be eligible for an accessory dwelling unit, the lot and all~~  
14                    ~~proposed structures and additions to existing structures shall conform to all zoning~~  
15                    ~~regulations as follows:~~

16  
17                    10.814.21    Any municipal regulation applicable to single-family dwellings shall also  
18                    apply to the combination of a principal dwelling unit and an accessory  
19                    dwelling unit including, but not limited to, lot area, yards, open space,  
20                    off-street parking, building coverage, and building height.

21  
22                    10.814.22    An attached accessory dwelling unit is permitted on existing  
23                    nonconforming lots and within existing nonconforming buildings as long  
24                    as there is no increase in building height or building footprint for any  
25                    portion of the existing building and no increase to the nonconformity.

26  
27                    10.814.223    A detached accessory dwelling unit is not an accessory building or  
28                    structure for the purposes of this Ordinance, and therefore shall be  
29                    governed by the applicable minimum yard dimensions in Section 10.521 for  
30                    a principal building or structure and not by the side yard and rear yard  
31                    standards applicable to an accessory building.

32  
33    10.814.30    All accessory dwelling units shall comply with the following standards:

34  
35                    10.814.31    The principal dwelling unit and the accessory dwelling unit shall not be  
36                    separated in ownership (including by condominium ownership).

37  
38                    10.814.32    Either the principal dwelling unit or the accessory dwelling unit shall be  
39                    occupied by the owner of the dwelling; ~~as his or her principal place of~~  
40                    ~~residence.~~ The owner shall provide documentation demonstrating to the  
41                    satisfaction of the City that one of the units is his or her principal place of  
42                    residence.

43  
44                    10.814.321    When the property is owned by one or more living trusts, one  
45                    of the dwelling units shall be the principal place of residence  
46                    of the beneficiary(ies) of the trust(s).

47  
48                    10.814.322    When the property is owned by a limited liability corporation,  
49                    one of the dwelling units shall be the principal place of

residence of a person or persons holding at least 80 percent of the ownership of the corporation.

10.814.33 Neither the principal dwelling unit nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

10.814.34 Electric, gas, water and sewer utilities for the accessory dwelling unit shall be on the same meters as the principal dwelling unit and shall not be billed separately from the principal dwelling unit.

10.814.35 Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

10.814.40 An attached accessory dwelling unit (AADU) shall comply with the following additional standards:

10.814.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.

10.814.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit.

10.814.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall ~~clearly~~ be designed as the principal entrance and the ~~others~~ other doors shall be designed to appear to be secondary.

10.814.44 No portion of the AADU shall be closer to the front lot line than the existing front wall of the principal dwelling unit.

10.814.45 An AADU that is attached to the single-family dwelling (i.e., created by an expansion of the existing structure) shall comply with the following:

10.814.451 An exterior wall of the AADU that faces a street on which the lot has frontage shall comprise no more than 40 percent of the total visible façade area of the dwelling as seen from that street.

10.814.452 The addition to or expansion of the existing single-family dwelling may include an increase in building height only as an upward expansion of the existing principal building with no increase in building footprint shall not include any increase in building height of the existing principal building.

1 10.814.453 The building height of any addition or expansion that  
2 includes an increase in building footprint shall be less than  
3 the building height of the existing principal building.

4  
5 10.814.453 The AADU shall be architecturally consistent with the existing  
6 principal dwelling through the use of similar materials,  
7 detailing, roof pitch, and other building design elements.

8  
9 10.814.50 A detached accessory dwelling unit (DADU) shall comply with the following  
10 additional standards:

11  
12 10.814.51 In a General Residence district, the combination of the principal dwelling  
13 and the DADU shall comply with the minimum lot area per dwelling unit  
14 specified for the district. (For example, the required lot area for a single-  
15 family dwelling with a DADU in the GRA district is 7,500 sq. ft. per  
16 dwelling unit multiplied by 2 dwelling units, or 15,000 sq. ft.) In a Single  
17 Residence or Rural district, a lot with a DADU shall comply with the  
18 minimum lot area for the district, but need not comply with the minimum  
19 lot area per dwelling unit.

20  
21 10.814.52 The DADU shall not have more than two bedrooms and shall not be larger  
22 than 750 sq. ft. gross floor area; except that the maximum gross floor area  
23 shall be 1,000 sq. ft. if the lot area is 2 acres or more.

24  
25 10.814.53 The DADU shall be ~~separated from~~ clearly subordinate to the principal  
26 single-family dwelling by at least 20 feet in scale, height and appearance.

27  
28 10.814.531 The façade area of the DADU that faces a street on which the  
29 lot has frontage shall be no more than 40 percent of the  
30 combined visible façade areas of the principal single-family  
31 dwelling and the DADU facing the same street.

32  
33 10.814.532 The building height of the DADU shall be less than the  
34 building height of the principal single-family dwelling.

35  
36 10.814.533 The DADU shall be architecturally consistent with the  
37 principal dwelling through the use of similar materials,  
38 detailing, and other building design elements.

39  
40 10.814.54 The DADU shall be separated from the single-family dwelling by at least 20  
41 feet.

42  
43 10.814.55 The front wall of the DADU shall be set back at least 10 feet further from  
44 the front lot line than the existing front wall of the single-family dwelling.

45  
46 10.814.56 No portion of the DADU shall be located in any required front yard,  
47 regardless of the location of the single-family dwelling.

1 10.814.60 Before granting a conditional use permit for an attached or detached ADU, the Planning  
2 Board shall make the following findings:

3  
4 10.814.61 Exterior design of the ADU is ~~compatible~~consistent with the existing  
5 ~~residence~~principal dwelling on the lot ~~through architectural use of building~~  
6 ~~forms, scale and construction materials.~~

7  
8 10.814.62 The site plan provides adequate and appropriate open space ~~and,~~  
9 landscaping that is useful and off-street parking for both the ADU and the  
10 primary dwelling.

11  
12 10.814.63 The ADU will maintain a compatible relationship to adjacent properties in  
13 terms of location ~~and,~~ design, and off-street parking layout, and will not  
14 significantly reduce the privacy of adjacent properties.

15  
16 10.814.64 The ADU will not result in excessive noise, traffic or parking congestion.

17  
18 ~~10.814.70 A certificate of use issued by the Planning Department is required to verify compliance~~  
19 ~~with the standards of this Section, including the owner occupancy requirement. Said~~  
20 ~~certificate shall be renewed annually.~~

21  
22 ~~10.814.80~~10.814.70 In granting a conditional use permit for an accessory dwelling unit, the  
23 Planning Board may modify a specific ~~dimensional or parking~~ standard set forth in ~~this~~  
24 Sections 10.814.40 or 10.814.52 through 10.814.56, including requiring additional or  
25 reconfigured off-street parking spaces, provided that the Board finds such modification  
26 will be consistent with the required findings in Section 10.814.60.

27  
28 10.814.80 Documentation of the conditional use permit approval shall be recorded at the Rockingham  
29 County Registry of Deeds.

30  
31 10.814.90 A certificate of use issued by the Planning Department is required to verify compliance  
32 with the standards of this Section, including the owner-occupancy and principal residency  
33 requirements. Said certificate shall be issued by the Planning Department upon issuance of  
34 a certificate of occupancy by the Inspection Department and shall be renewed annually  
35 upon submission of such documentation as the Planning Department may require to verify  
36 compliance. A certificate of use shall not be issued prior to recording of documentation as  
37 required by 10.814.80.

## 38 39 40 10.815 Garden Cottages

41  
42 An accessory building existing on the effective date of this ordinance may be converted to a  
43 garden cottage through a conditional use permit granted by the Planning Board, subject to the  
44 following provisions and limitations.

45  
46 10.815.10 One garden cottage, and only one, shall be allowed on any lot containing a single-  
47 family dwelling.  
48

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- 10.815.20 Relationship to other provisions of this Ordinance:
- 10.815.21 No garden cottage shall be allowed on the same lot as an accessory dwelling unit authorized under this Ordinance.
- 10.815.22 The establishment of a garden cottage results in two dwelling units on the property and thus makes the property ineligible to establish an accessory dwelling unit under RSA 674:72-73 and this Ordinance. As a condition of receiving a conditional use permit for a garden cottage, the property owner shall waive all rights under RSA 674:72 and RSA 674:73.
- 10.815.23 A garden cottage that complies with the standards of this section is exempt from the residential density standards of the Zoning Ordinance. A second dwelling unit on a lot that does not comply with the standards of this section shall be considered to be either a second primary dwelling or an accessory dwelling unit and shall comply with the applicable standards and provisions of the Ordinance.
- 10.815.30 Garden cottages shall comply with the following standards:
  - 10.815.31 The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.
  - 10.815.32 A garden cottage shall not be larger than 600 sq. ft. gross floor area.
  - 10.815.33 A garden cottage that is within a required yard for the zoning district shall not have any windows or doors higher than eight feet above grade facing the adjacent property.
  - 10.815.34 The principal dwelling unit and the garden cottage shall not be separated in ownership (including by condominium ownership); and either the principal dwelling unit or the garden cottage shall be occupied by the owner of the property. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.
    - ~~10.815.341 When the property is owned by one or more living trusts, one of the dwelling units shall be the principal place of residence of the beneficiary(ies) of the trust(s).~~
    - ~~10.815.342 When the property is owned by a limited liability corporation, one of the dwelling units shall be the principal place of residence of a person or persons holding at least 80 percent of the ownership of the corporation.~~
  - 10.815.35 Electric, gas, water and sewer utilities for the garden cottage shall be on the same meters as the principal dwelling unit and shall not be billed separately from the principal dwelling unit.



1 10.815.36 Where municipal sewer service is not provided, the septic system shall meet  
2 NH Water Supply and Pollution Control Division requirements for the  
3 combined system demand for total occupancy of the premises.  
4

5 10.815.40 Before granting a conditional use permit for a garden cottage, the Planning Board shall  
6 make the following findings:  
7

8 10.815.41 Exterior design of the garden cottage is ~~compatible~~consistent with the  
9 existing ~~residences~~single-family dwelling on the lot ~~through architectural~~  
10 ~~use of building forms, scale and construction materials.~~

11  
12 10.815.42 The site plan provides adequate and appropriate open space ~~and,~~  
13 landscaping ~~that is useful, and off-street parking~~ for both the garden  
14 cottage and the primary dwelling.  
15

16 10.815.43 The garden cottage will maintain a compatible relationship to adjacent  
17 properties in terms of location and design, and will not significantly reduce  
18 the privacy of adjacent properties.  
19

20 10.815.44 The garden cottage will not result in excessive noise, traffic or parking  
21 congestion.  
22

23 ~~10.815.50~~ ~~A certificate of use issued by the Planning Department is required to verify compliance~~  
24 ~~with the standards of this Section, including the owner-occupancy requirement. Said~~  
25 ~~certificate shall be renewed annually.~~  
26

27 ~~10.815.60~~10.815.50 In granting a conditional use permit for a garden cottage, the Planning Board  
28 may modify a specific dimensional or parking standard set forth in ~~this~~ Section 10.815.30,  
29 including requiring additional or reconfigured off-street parking spaces, provided that the  
30 Board finds such modification will be consistent with the required findings in Section  
31 10.815.40.  
32

33 10.815.60 Documentation of the conditional use permit approval shall be recorded at the Rockingham  
34 County Registry of Deeds.  
35

36 10.815.70 A certificate of use issued by the Planning Department is required to verify compliance  
37 with the standards of this Section, including the owner-occupancy and principal residency  
38 requirements. Said certificate shall be issued by the Planning Department upon issuance of  
39 a certificate of occupancy by the Inspection Department and shall be renewed annually  
40 upon submission of such documentation as the Planning Department may require to verify  
41 compliance. A certificate of use shall not be issued prior to recording of documentation as  
42 required by 10.815.60.  
43

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 10, Article 4, Section 10.421.10 – **DISTRICT LOCATION AND BOUNDARIES** of the zoning ordinance of the City of Portsmouth and the City of Portsmouth Zoning Map be amended by rezoning the property located at 290 Gosling Road at Assessors Tax Map 213, Lot 1 from Waterfront Industrial (WI) to Office Research (OR) District (see attached Exhibit 1).

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.

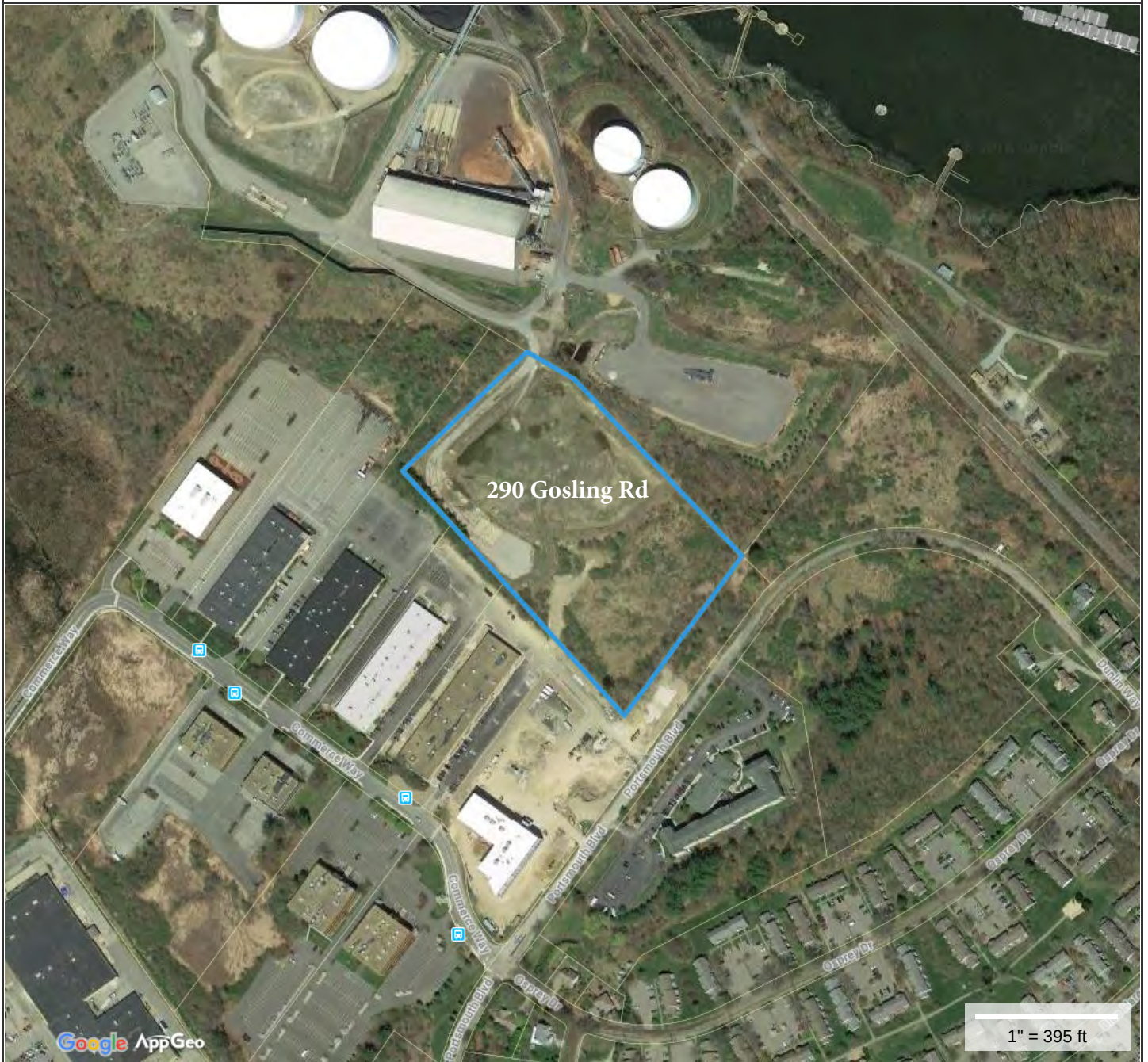
This ordinance shall take effect upon its passage.

APPROVED:

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

ADOPTED BY COUNCIL:

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



**Property Information**

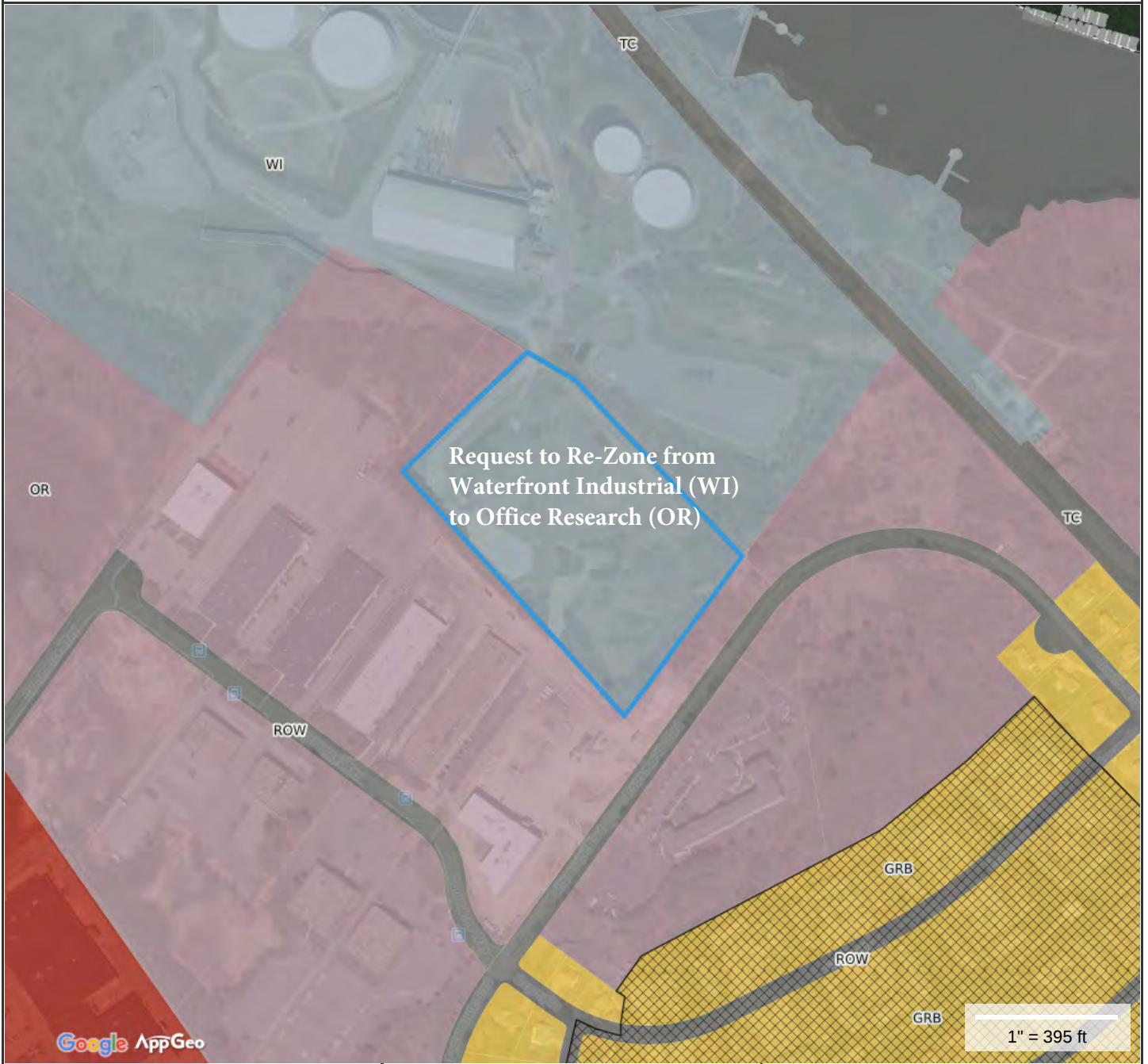
**Property ID** 0213-0001-0000  
**Location** GOSLING ROAD  
**Owner** 290 GOSLING RD LLC



**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/30/2018  
Data updated 11/19/2018



**Property Information**

**Property ID** 0213-0001-0000  
**Location** GOSLING ROAD  
**Owner** 290 GOSLING RD LLC



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Geometry updated 11/30/2018  
Data updated 11/19/2018



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

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JOHN J. RATIGAN  
DENISE A. POULOS  
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HEIDI J. BARRETT-KITCHEN  
JUSTIN L. PASAY  
ERIC A. MAHER  
AMELIA G. SRETER  
AUSTIN M. MIKOLAITIES  
BRENDAN A. O'DONNELL

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SENIOR COUNSEL  
MICHAEL J. DONAHUE

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RETIRED  
CHARLES F. TUCKER  
NICHOLAS R. AESCHLIMAN

December 12, 2018

**VIA HAND DELIVERY**

Juliet T. H. Walker, AICP - Planning Director  
Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Request of 290 Gosling Road, LLC for Zoning Change from Waterfront Industrial (WI) to Office Research (OR) for property located at Gosling Road, Tax Map 213, Lot 1 (the "Parcel")

Dear Juliet:

**I. Introduction:**

This supplements our letter of 28 November to the Mayor and City Council (a copy of which is attached hereto as Exhibit A) and supports our request to rezone the Parcel referenced above from the Waterfront Industrial District to the Office Research District. Immediately below we summarize why the Planning Board should support and recommend our request to the City Council. Further below we explain why our request is supported by the legal framework governing rezoning and why the facts on the ground make compelling our request to rezone the Parcel.

**II. Executive Summary**

The Parcel to be rezoned is Waterfront Industrial in name only. The Parcel is isolated from the water, separated by another parcel of land which abuts the river and separated also by a railroad corridor which bisects that parcel and the subject Parcel. In addition, the Parcel has no access from the existing road network. Thus the Parcel sits isolated from the river and without roadway access but, importantly, the Parcel sits adjacent to and contiguous to an existing office park, the Portsmouth Office Park, which extends along Portsmouth Boulevard and Commerce Way. The requested rezoning will facilitate a major development, construction of a 175,000 square foot office building which will become a signature and prominent element of the

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111 Maplewood Avenue, Suite D, Portsmouth, NH 03801  
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

Portsmouth Office Park. Access will be provided through the existing road network which services Portsmouth Office Park.

In sum, this request to rezone is legally and factually compelling. We ask that the Planning Board support our request and report to the City Council its recommendation that the zoning ordinance be amended to change the zoning of Tax Map 213, Lot 1 from Waterfront Industrial (WI) to Office Research (OR).

### **III. Legal and Factual Framework**

The City of Portsmouth permits its zoning ordinance to be amended for rezoning purposes in accordance with the provisions of State law. See Portsmouth Zoning Ordinances, § 10.151. New Hampshire law permits the legislative body of a city to adopt or amend zoning ordinances for the purpose of “promoting the health, safety, or the general welfare of the community.” RSA 674:16. This authority includes adopting or amending zoning ordinances that regulate and restrict the “location and use of buildings, structures and land used for business industrial, residential, or other purposes.” Id.

In the context of rezoning, changing the zoning boundary to extend an existing use to nearby similar, surrounding land constitutes permissible rezoning. See Miller v. Town of Tilton, 139 N.H. 429, 431-32 (1995). A zoning amendment to rezone property is prohibited only when it “spot zones” an area by singling it out for treatment different from that of similar, surrounding land, and for which there is no justification based on health, safety, morals or general welfare of the community and which rezoning is not in accordance with a comprehensive plan. Id. at 431. Spot zoning occurs when an area is unjustly singled out for treatment different from that of similar, surrounding land. The mere fact that an area is small and is zoned at the request of a single owner does not make it spot zoning. Persons challenging a rezoning have the burden to demonstrate that the change is unreasonable or unlawful. (See Miller v. Town of Tilton, 139 N.H. 429, 655 A.2d 409 [1995 ]).

Here, we are seeking to have the Parcel rezoned from Waterfront Industrial, for which the Parcel is ill-suited, to Office Research, for which the Parcel is particularly well-suited. Furthermore, this rezoning will not create an incongruous district or a “spot” zoned differently from surrounding properties. Rather, as explained below, this rezoning will only be a tailored readjustment of the boundary of the Office Research District and the Waterfront Industrial District.

According to the City’s Zoning Ordinances, the purpose of “Waterfront Industrial” property is to “provide for industrial and related uses that depend on direct access to the Piscataqua River.” (emphasis supplied) Portsmouth Zoning Ordinances, §10.410. The Parcel is not compatible for use as Waterfront Industrial Property. The Parcel does not have direct access to the Piscataqua River. Rather, the Parcel is isolated from the river, separated from the river by both another lot and a rail line. Moreover, the Parcel is isolated from the existing road network,

and has no road access to the river. Thus, although the Parcel is currently zoned Waterfront Industrial property, its location and lack of access to the Piscataqua River make the Parcel ill-suited to “provide for industrial and related uses that depend on direct access to the Piscataqua River.” Id.

Conversely, the Parcel is well-suited to be zoned and used as Office Research property. The purpose of “Office Research” property is to “provide for campus-style development of offices buildings, research and development facilities, and complementary uses.” Id. Here, the Parcel is adjacent to and contiguous to an existing office park, and the intended use of the Parcel, if rezoned, is to build a 175,000 square foot office building which will be integrated into that office park. Thus, rezoning the Parcel to Office Research would only constitute a minor change in the boundary between the zoning districts, and it would change the Parcel from a use for which the Parcel is ill-suited (Waterfront Industrial) to the congruous use for which similar adjacent property is being used (Office Research). See e.g. Portsmouth Advocates v. Portsmouth, 133 N.H. 876, 881 (1991) (affirming the City Council’s adjustment of historic district boundaries to remove buildings lacking historical significance).

In addition and finally, in Portsmouth’s 2017 Master Plan, the City recognized that there is a lack of available office space in the City. See 2017 Portsmouth Master Plan, Page 16. Thus, rezoning the Parcel to Office Research to create an opportunity for a 175,000 square foot office building is consistent with the City’s Master Plan.

#### **IV. Closing**

This concludes our supplemental correspondence. We stand ready to answer any questions the Planning Board may have in connection with this matter.

Yours truly,

**DONAHUE TUCKER & CIANDELLA, PLLC**

Robert D. Ciandella  
[rciandella@DTCLawyers.com](mailto:rciandella@DTCLawyers.com)

RDC:lmh

Enclosures

cc: John Bohenko, City Manager  
Robert P. Sullivan, City Attorney  
290 Gosling Road, LLC  
Patrick Crimmins, P.E.  
Justin L. Pasay, Esquire  
Stephanie Carty, Paralegal



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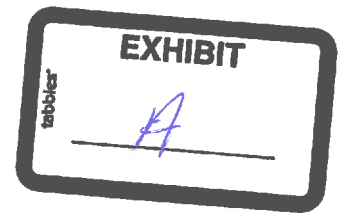
SENIOR COUNSEL  
MICHAEL J. DONAHUE

RETIRED  
CHARLES F. TUCKER  
NICHOLAS R. AESCHLIMAN

November 28, 2018

VIA HAND DELIVERY

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



Re: Request of 290 Gosling Road, LLC for Zoning Change from Waterfront Industrial (WI) to Office Research (OR) for property located at Gosling Road, Tax Map 213, Lot 1

Dear Mayor Blalock and City Councilors:

I write on behalf of 290 Gosling Road, LLC seeking rezoning of the parcel referenced above from the Waterfront Industrial District to the Office Research District. We ask that the City Council refer this request to the Planning Board.

We look forward to presenting the merits supporting our request to the Planning Board. Notwithstanding, to inform the City Council of the location of the parcel which is the subject of our request, we have attached a portion of the City of Portsmouth Zoning Map which depicts the property and the zoning districts implicated by our request. In addition, we have attached a topographical plan for the parcel and relevant portions of the tax maps of the City.

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83 Clinton Street, Concord, NH 03301



Honorable Jack Blalock, Mayor  
Portsmouth City Council  
Page Two  
November 28, 2018

Thank you for your attention. Once again, we look forward to presenting the merits supporting our request at the Planning Board and to completing the established City process governing rezoning before the City Council following review and action by the Planning Board.

Yours truly,

**DONAHUE TUCKER & CIANDELLA, PLLC**



Robert D. Ciandella  
[rciandella@DTCLawyers.com](mailto:rciandella@DTCLawyers.com)

RDC:lmh  
Enclosures

cc: John Bohenko, City Manager  
Robert P. Sullivan, City Attorney  
Juliet T.H. Walker, AICP Planning Director  
290 Gosling Road, LLC  
Patrick Crimmins, P.E.  
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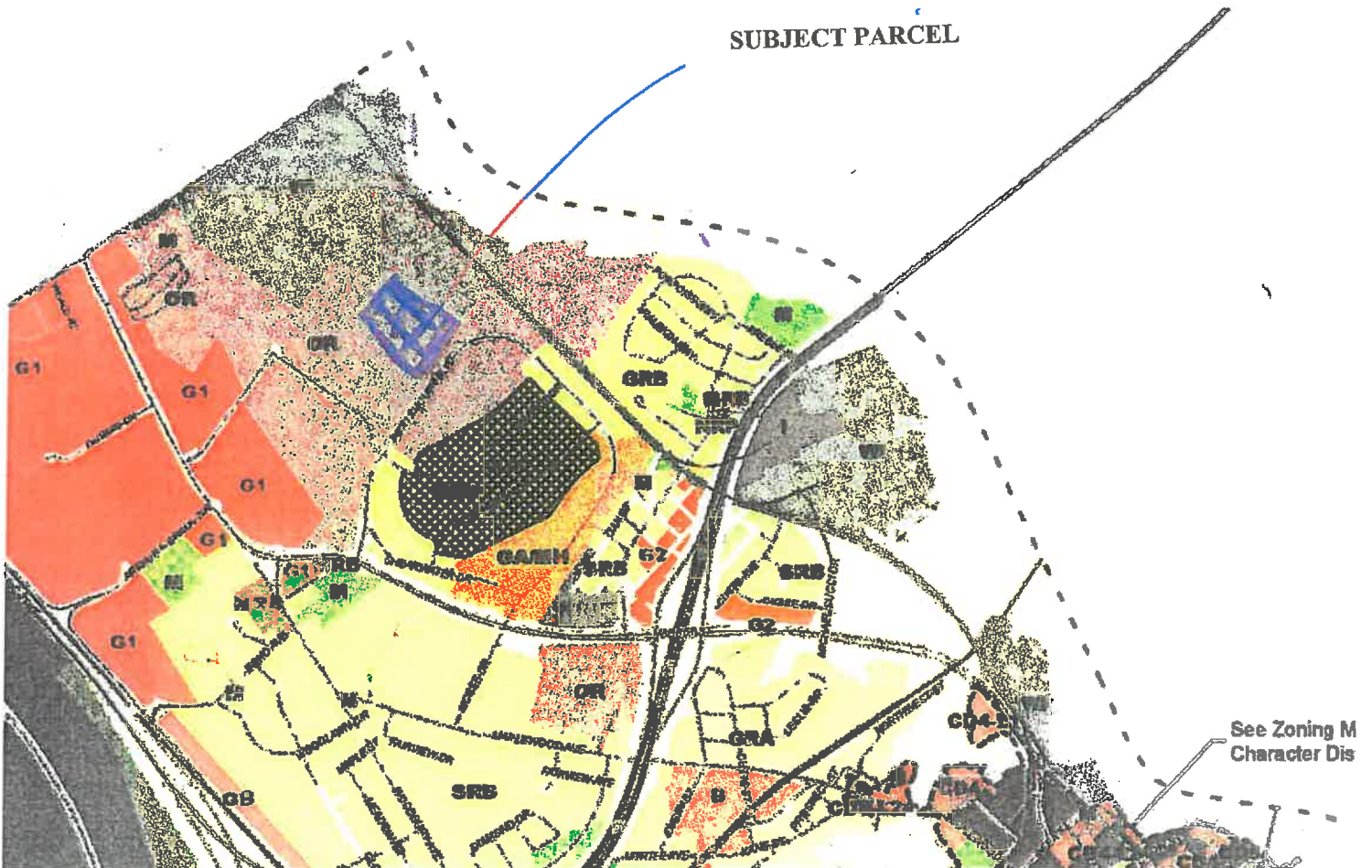
S:\ARM-RZ\RW Norfolk LLC\Sprague Parcel\2018 11 27 COP letter re rezoning.docx

ZONING MAP EXCERPT

# City of Portsmouth 2

## Sheet 1 of 2

SUBJECT PARCEL



See Zoning M  
Character Dis

CITY COUNCIL E-MAILS

February 4, 2019 – February 14, 2019 (9:00 a.m.)

FEBRUARY 19, 2019 CITY COUNCIL MEETING

UPDATED 02/19/2019 THROUGH 3:00 PM

New content begins Page 5

Below is the result of your feedback form. It was submitted by Peter A Whelan for South End Neighborhood parking committee ([pawhelan@comcast.net](mailto:pawhelan@comcast.net)) on Monday, February 4, 2019 at 16:00:31

-----  
address: 100 Gates Street

comments: This letter is a result of a meeting held on Friday am of the South End Neighborhood Parking Committee concerning next steps. Unfortunately we all decided to step aside and discontinue our efforts . . . Please see the attached Letter

Dear South End Residents,

There has been much discussion and controversy about a TRIAL South End Neighborhood Parking Program (NPP) which started two years ago. The revised small trial program was designed to help all residents in the South End while gathering data and feedback before implementing anything permanently. The current NPP steering committee feels it is best not to proceed on any trial program in the South End at this time. It was never meant to be a divisive program in any form pitting neighbor against neighbor. Residents need to get involved in a positive constructive thoughtful way which was clearly not happening for whatever reason. We as a steering committee have decided to step aside and let others step up if they desire to work on this project. There still maybe a future opportunity for the South End to become one of the trial neighborhoods. We thank Councilor Doug Roberts who recognizes that something must be done in the South End and for working with us.

Clearly, some in the community and in the City of Portsmouth have a vested interest in seeing the status quo parking drama continue in the South End. We think as a community of concerned and caring residents this is unacceptable and there needs to be change. This community of the South End with its narrow streets was built before cars. It is a unique place which has some historic constraints in terms of parking which must be recognized and managed.

The program, which was designed by the city, would need 75% of the affected residents to sign the final petition in order to go into effect. This would require many amendments and changes which most residents want, along with members of this committee.

Itâ€™s probably best for everyone to live with another summer of parking drama in the South End. This might foster some new thinking and change attitudes among the residents. There clearly is not the will at this time for any resident parking program, even a small trial program which would benefit all the residents of the South End.

The South End Parking Steering Committee

includeInRecords: on

Engage: Submit

-----  
Below is the result of your feedback form. It was submitted by Eliza Rakaseder ([elizaraka@gmail.com](mailto:elizaraka@gmail.com)) on Saturday, February 9, 2019 at 12:33:27

-----  
address: 93 Thaxter Rd

comments: To whom it may concern:

My name is Eliza Rakaseder and I am a senior at Portsmouth High School. A sea of students are taking part in climate strikes around the world, and on March 15, young activists in the U.S. and around the world will add their voices to the escalating Fridays For Future movement. I am interested in organizing my own strike here in Portsmouth. I was wondering if I could establish a meeting to gain consent for this event to happen.

Below is the result of your feedback form. It was submitted by Rosemarie Golini ([Rogolini@gmail.com](mailto:Rogolini@gmail.com)) on Sunday, February 10, 2019 at 10:25:11

-----  
address: 2 Moebus Terrace

comments: Dear all,

Thank you for taking the time to read my letter.

It is a copy of a letter I wrote to the city council 4 yrs ago. It is still very much a current letter as the STR situation is much the same as it was 4 yrs ago. The big difference would be that the number of STR's in the city has grown and the potential loss of revenue to our city and state, should they not be regulated appropriately, has grown immensely! The numbers stated here in my letter are very low.

My Ultimate goal is to keep STR's in all of Portsmouth and to promote Safe and Fair regulations.

What the community should realize; #1 the HUGE economic benefits of STR's, #2 STR's strengthen our neighborhoods and #3 that it is simply not fair and discriminatory to not allow STR's in ALL neighborhoods in the city of Portsmouth.

Currently in the top rental sights there are 461 STR advertisements for Portsmouth. If each of these rents for 30 days at an average price of \$300 per night (4 guests), with each guest spending \$88.00 per day (the average \$ amt a New Hampshire tourist spends per day ) that is a \$ 20.5 million dollar impact on our local community!! Plus \$373.5 thousand for the State in tax revenue. Not to mention the 100's if not 1000's of jobs created.

The most important element is that the city of Portsmouth doesn't have to spend a dime for this economic boost! No more parking garages needed, no more unsightly construction, no new hotel development at all. The infrastructure is already here.

The materialization of 'Sharing our Homes' has been happening in this area for many many many years. It is not new. It is so old, in fact, that it has become an invisible part of our economy. This makes it difficult to imagine the extent of the negative impact on our local economy IF that right is taken away from law abiding tax-payers.

STR's strengthen and benefit the character of our neighborhoods;

- They allow residents to keep their homes by giving them supplemental income.
- They allow residents to make improvements to their homes which raises property values in the whole neighborhood.
- They allow residents to spend more money in local establishments which strengthens the business community and local economy.

STR's are local!! they should be thought of as part of the "Buy Local " campaign. All beneficiaries are local...the home owners, the shop owners, the citizens working in the local jobs that are created such as the house cleaners hired, gardeners, home improvement companies, waiters and waitresses, bar tenders etc. Both the homeowners and the business community benefits.

Travelers that rely on STR's; larger families, families with young children, special needs adults/children. STR's offer practical amenities that come with homes and economic sense. STR's open up the ability for renters to share the local experience and vocalize it to future guests. Visitors to STR's stay longer than visitors to hotels and spend more money during their stay. If Portsmouth is not available to STR renters, they will go elsewhere ( New Castle, Rye, Hampton, Kittery, etc). Can we afford to lose them? I think not.

It is unfair and discriminatory to allow STR's in limited segments of the city. It is certainly unfair to send Cease and Desist letters prohibiting rentals to a handful of citizens while allowing others to rent unmitigated (and in the 'same neighborhood'). It infringes upon our rights as citizens and tax payers. If it is allowed in some areas it should be allowed in all areas. No neighborhood or homeowner should be more important than another to the policy makers.

One of the reasons the city council is suggesting STR's be limited to certain neighborhoods is because of a fear that STR's "will change the character of the neighborhood."

It is discriminatory against those in neighborhoods where it would not be allowed just for the sake of "maintaining the neighborhood. " And it is discriminatory in those neighborhoods where it would be allowed because we are essentially saying that it is ok if the " character " of those neighborhoods is lost or changed. Simply not right.

Ironically, the city council is proposing to allow STR's in the Character District of Portsmouth!! ( zones CD4 and CD5 ) I am getting a mixed message.

Brings me to ask "What is the character of our neighborhoods these days"? Seems the notion that is being protected is an old fashioned one. Our towns and neighborhoods have already changed. We have grown. We have progressed. We have a Whole Foods coming to downtown! We no longer live outdoors, we communicate differently, we barely know or see our neighbors, we work at home etc. What hasn't changed is our entrepreneurial spirit. It must be allowed to flourish. It is how we survive. STR's are a by product of this spirit. All who want to should be able to rent short term. The benefits are for all to share.

The city of Portsmouth has spent many dollars and hours promoting tourism to boost the local economy. They have done a good job. There are tourists of many kinds who would like to visit Portsmouth. Some want to be stay in STR's outside of downtown. Let us keep STRs in all neighborhoods. The boost to our economic base benefits us all. The boost to our neighborhoods benefits us all. Let's not make Portsmouth an out of date retirement community. Let's keep our entrepreneurial spirit alive. Let's keep Portsmouth progressive.... as was once said...."A rising tide lifts all boats!"

Rosemarie Golini  
Portsmouth home owner and local business owner

includeInRecords: on  
Engage: Submit

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Below is the result of your feedback form. It was submitted by Rosemarie Golini ([Rogolini@gmail.com](mailto:Rogolini@gmail.com)) on Sunday, February 10, 2019 at 10:38:05

-----  
address: 2 Moebus Terrace

comments: Keep STRs legal for all  
Rosemarie Golini  
Aug 13, 2015

Dear Council Members,

This is a copy of a 2015 letter to the city council which still pertains to today's issue. Thank you for taking the time to read it.

Dear City Council Members,

Thank you to those of you who have taken the time to either talk with me or contact me. It is greatly appreciated.

First, I would like to restate that my objective is to urge you to find a way to keep STR's legal in all Portsmouth zones. I would like to see safe and fair regulations for all while keeping in mind the concerns of both those for and against STRs. As I have stated before, I believe allowing STRs in all zones of Portsmouth is what is FAIR to all Portsmouth citizens. Anything but would be discriminatory as well as unfair. This is not acceptable.

I do understand the difficulty you are having regulating this model to the satisfaction of all Portsmouth citizens. I sympathize with your struggle. For me, it is not about finding a way to satisfy all citizens. I do not believe that is possible and never has been regardless of the issue. Change is hard for many but that does not mean it is wrong. This is about doing what is fair and just for all Portsmouth citizens. That means either allowing it for all or making it illegal for all. Brad, you mentioned that "the city attorney has rendered the OPINION that STRs are not permitted under the current zoning ordinance". (Opinion, meaning there is nothing clearly stating that STRs are not permitted) I am surprised to hear this. When I contacted his office many months ago, before this issue came to a head, I was told that there was nothing in the zoning ordinance saying STRs were illegal or not permitted. I was told they were legal unless there was a law or ordinance stating otherwise. My belief is, if they were illegal all home owners with STR advertisements would have received a cease and desist or worse, I don't believe the planning board would have so quickly suggested the city council allow STRs in all zones of the city if they were illegal, I don't believe the state would be collecting taxes on them if they were illegal, and since STRs are not only a national but a world wide phenomena, I find it hard to believe that Portsmouth, NH's zoning ordinance is so different from everyone else's in the world as to not allow STRs. If this is truly so, it should be changed! I'd like to think we are a city that is fair to all its citizens, a city capable of being a player in the current tourism trend and a city who believes in keeping \$22.5+ million in our LOCAL economy!

STRs are not new and they are here to stay. I believe it is necessary to embrace them with fairness to all. I believe you now have the chance to put in place regulations which will take into consideration the concerns of both sides of this issue. I fear that if this issue is not dealt with correctly now, it will haunt the city until it is. Please don't create an enforcement nightmare or create laws/ordinances difficult to change. Please keep things loose and fair and regulate as needed.

Rosemarie Golini  
Portsmouth Resident  
Local Business Owner

includeInRecords: on  
Engage: Submit

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Below is the result of your feedback form. It was submitted by Jonathan Morse ([jonathan@tripleseat.com](mailto:jonathan@tripleseat.com)) on Tuesday, February 12, 2019 at 09:40:29

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address: 89 Sparhawk St

comments: A memo dating December 18 to John Bohenko from Peter Rice on the subject of Foundry Place Lighting stated the following:

"One possible fix for the pan lights is to adjust the hanging height of those lights to pull them up so that they are screened by the double tees (the structural members that make up the garage deck) and less visible to an outside observer. We have issued a directive to the contractor to do such an operation on a selected area of the garage to see if this is an effective measure. If that works, and doesn't compromise the interior light levels, we would proceed with adjusting all of the pan light heights.

In addition, there was discussion of installing light shields on the pole lights mounted on the roof deck. However, the design engineer had concern that given the pole heights, screen would not be affective and they would adversely impact the desired lighting levels"

It has been 2 months now and I wondering why nothing has been done. The lights are too bright and the town needs to take the action mentioned in the memo above.

includeInRecords: on

Engage: Submit

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**New content begins:**

Below is the result of your feedback form. It was submitted by Lawrence Cataldo ([larrycataldo@yahoo.com](mailto:larrycataldo@yahoo.com)) on Thursday, February 14, 2019 at 08:04:51

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address: 133 Islington Street, Portsmouth

comments: Distinguished Members of the City Council Since early last year, a group of Islington Creek neighborhood residents has been working to obtain parking relief through the City's announced NPP program. We obtained over 60 signatures and interviewed 10 business firms in the area. We also: (1) researched what other cities have done and conducted our own resident and business surveys (shared with PW and PTS committee), (2) held 2 neighborhood meetings, (3) attended 2 public meetings with PW, both attended by City Council members, (4) gave presentations and updates to the Citywide Neighborhood Committee, (6) communicated and met with PW and Parking directors on numerous occasions and (7) actively voiced our opinions in public comment sessions and in the press.

For almost 30 years the Islington Creek neighborhood has endured parking problems from employees working downtown and from tourists. Is it unreasonable to ask your approval to go to the next step and seek signatures from 75% of our neighborhood? There is much to learn from this program which we can only learn if you allow us to go to the next step.

At the February 4th Citywide Neighborhood Committee meeting, I brought up the issue of employee parking because it would be affected by this pilot program. We ask that the Islington Creek pilot be allowed to go ahead as the City of Portsmouth develops more holistic solutions for employee parking.

In a recent Portsmouth Herald editorial, it referred to the NPP pilot as a Band-Aid. I disagree. It is a first step from which a number of other steps and solutions will hopefully follow.

Please consider approving this NPP pilot program for the Islington Creek neighborhood.

Respectfully submitted,

Lawrence Cataldo

Coordinator of the Islington Creek Neighborhood Parking Permit Program Member of the Citywide Neighborhood Committee

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Robin Husslage ([rhusslage@hotmail.com](mailto:rhusslage@hotmail.com)) on Thursday, February 14, 2019 at 21:45:13

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address: 27 Rock Street

comments: Dear City Council Members,

The goal for a neighborhood parking program is to enable residents to be able to find parking close to their home, especially for old neighborhoods like Islington Creek packed with houses and little off-street parking. Most are small, non-conforming house lots with insufficient land to add a driveway. Compounding the problem is the width of the streets, many of which are one-way streets with just one side available for parking.

So, why are we asking for the chance to host a pilot Neighborhood Parking Program? Our neighborhood has experienced more and more demand for parking on our streets from surrounding development of both businesses and dwelling units. In addition, the popularity of Portsmouth as a vacation destination has grown by leaps and bounds. I applaud the growth of our little city and the vibrant energy it brings to our doorstep.

An unintended consequence of this growth, however, is causing undue stress and daily hardship to Islington Creek Neighborhood residents because of our proximity to the downtown core and the rapid new development happening nearby, such as the 4 Deer Street buildings with nearly 20,000 sq ft of Retail Space, 42,000 sq ft of Office Space, 80 dwelling units, 14,400 sq ft of restaurant/bar space, a 2,700 sq ft bank, and a 108-Room Hotel.

Also in the works: 46-64 Maplewood (next to Staley – now underway).....the 350,000 SF HarborCorp development (across from the Sheraton) due to start later this year.....the new 4 story building at the corner of Maplewood and Hanover that is nearly complete....and 135 Congress Street with 18,000 sq ft of space for a restaurant, event venue, and offices.

Then, in 2 years, the Hanover Garage will be under renovations causing 300 cars to be moved to the Foundry Place Garage potentially causing full garage conditions during peak tourist season, forcing commuters and visitors to search out alternatives...like Islington Creek neighborhood...with the bonus of free parking.

Is the currently proposed Neighborhood Parking Program perfect? Probably not, but we've got to start somewhere to learn what works and what doesn't by testing a possible solution through a pilot program.

Are there other parking issues that are not addressed by this program? Absolutely! There are many interrelated parking issues that need attention...but should this hold us back from testing out a possible solution for an already stressed neighborhood which will soon be getting much worse?

We will learn a great deal during the pilot program that will help inform the impact to residents, commuters, and visitors. Now is the time to move forward and test a program like this before the 7 new, very large building developments cause an explosive demand for parking in our neighborhood.

Thank you for listening!

Regards,

Robin Husslage

includeInRecords: on  
Engage: Submit



Below is the result of your feedback form. It was submitted by Marie Kelleher ([mariekelleher297@aol.com](mailto:mariekelleher297@aol.com)) on Friday, February 15, 2019 at 15:21:31

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address: 297 Peverly Hill Road

comments: I was born and raised in Portsmouth and am one of a declining number of natives who can afford to remain living in this city. As a city resident and tax payer who is employed on Islington St, I am against the proposed neighborhood parking program for the following reasons:

- 1) I don't believe that my tax dollars should be applied to a program that cannot be used by all tax payers.
  - 2) Taxpayer money should be used for projects that can potentially benefit all residents, not just a few at the expense and inconvenience of all others.
  - 3) I believe that this program could possibly create a neighbor vs neighbor environment, not what Portsmouth is about.
  - 4) This program that they are creating will essentially be private roads with private parking rules so should be funded and maintained privately, not using public monies.
  - 5) Just because a group of people work hard (as has been stated many times) should not be basis to proceed. There are a lot of NEEDS in Portsmouth that people have worked very hard on that involve safety issues (Peverly Hill Road 24 years of Hard work). This has always been and will always be a NEED. The Parking program falls under a WANT. It is not at all a safety issue, it is a convenience issue and should not be entertained.
- City Council, please reevaluate your priorities.

includeInRecords: on

Engage: Submit

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Below is the result of your feedback form. It was submitted by Kali Barron ([kfbarron7@gmail.com](mailto:kfbarron7@gmail.com)) on Saturday, February 16, 2019 at 19:02:00

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address: 320 Corporate Drive Portsmouth, NH 03801

comments: Great Bay Community College's Kappa Beta Delta Honor Society and Business Club is a student run organization looking to enrich our educational experience through community involvement and networking. Business and accounting majors end up working in all industries, and it's our belief that a solid foundation of social responsibility and taking our education outside of the classroom will further prepare us to enter the workforce post-graduation as ethical and well-rounded prospective employees.

This year our club's main goal is to host a dinner and silent auction to benefit NAMI NH. NAMI is a nonprofit organization working to improve the lives for all those affected by mental illness and suicide through advocacy and support. We've been working hard as a group to plan a fantastic event so that we can help NAMI reach as many people as they can, to increase awareness and reduce the stigma surrounding these types of illnesses. The reason this event has become our main goal is because it's important to us to put the things that we're learning to good use and to leave our community here in Portsmouth and on campus in a better state than it was when we arrived.

Our hope is that you are interested in helping us achieve this goal and will consider purchasing either individual tickets or a table for members of your organization. Our benefit for NAMI will be held March 2nd at the Sheraton Portsmouth Harborside Hotel in downtown Portsmouth. Individual tickets are being sold for \$35.00 apiece, \$350 for a table of 10. Currently we are looking to the leaders in our community to help us spread word of our event, so that we can be successful in our efforts to help NAMI reach as many people as they can. We've had a wonderful reception from businesses in the area and as a result of our efforts have many wonderful items that will be up for auction that evening. In addition to the auction each ticket is an entry into a raffle for a special door prize. Thank you for your time and consideration, we hope to hear from you soon.

Sincerely,

Kali Barron, President

includeInRecords: on

Below is the result of your feedback form. It was submitted by Sara Curry ([sara@blazenh.com](mailto:sara@blazenh.com)) on Monday, February 18, 2019 at 13:29:47

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address: 800 Islington St Unit 10C

comments: Dear Councilors -

This is email is regarding the Neighborhood Parking Program on behalf of the West End Business Association (WEBA). Since 2005, WEBA has existed to preserve and promote the unique character of the West End. We represent over 200 members, including business owners, employees, residents, and patrons of the West End.

WEBA has come to the conclusion that this program, even as a pilot, is detrimental to many of our members and their ability to conduct business on a regular basis.

Implementing the proposed program would be an unfair burden on West End businesses. The proposal offers solutions for residents without any concessions for businesses and their employees. Limiting workforce parking in the proposed area would only shift the problem to another residential area, which does not create resolution, just moves it to someone else's backyard.

To date, there has been no attempt by the Islington Creek Neighborhood Association to solicit feedback from area businesses that would fall in the radius of this program. Additionally, we feel this program unfairly targets businesses by limiting parking only during business hours. That said, we hope you will consider why we believe this program is problematic:

We have many employees and business owners, some of whom are Portsmouth residents, and use these streets while they're at work. Many of our members come from neighborhoods all over town like Elwyn Park, Pannaway Manor and Maple Haven. Limiting parking to two hours would drastically affect our ability to get to and from work reliably.

Many of our customers also park on these streets and frequent our businesses, often for more than two hours at a time. One of the best aspects of the West End is it's walkability. Our customers can park and walk from destination to destination.

As local business owners, we want to work together with residents to develop a plan that works for all of us. We believe we can come to a solution that gives relief to all parties. A first step in that process is soliciting feedback from both sides of the issue.

On behalf of the West End Business Association, I ask the council to put the breaks on this contentious program and take time to consider a more reasonable solution for everyone involved.

Regards,

Sara Curry  
Steering Committee, West End Business Association

includeInRecords: on  
Engage: Submit

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Below is the result of your feedback form. It was submitted by R. W. Wright ([wrightski@aol.com](mailto:wrightski@aol.com)) on Tuesday, February 19, 2019 at 06:46:30

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address: Sudbury St.

comments: Tonight you will be asked to decide on going forward with an experimental program to relieve our neighborhood of a parking problem that has evolved into a very serious quality of life issue to all of us. Please try to understand that all we are asking for is a simple chance to see if this will work. This can be a learning process for all of us. As two of your colleagues were quoted in this morning's paper regarding a similar issue, "this can be a time-limited experiment to help us all understand its impact on everyone, and help guide the next step(s)."

We are not asking for special treatment, elite parking, all we want is a chance to prove to you that this program can be good for everyone. You built a fabulous garage and now it's time for it to do the positive things you envisioned, not exasurbate an already bad circumstance.

We need your help and in light of the fact that numerous buildings are planned for our area the next few years, we need to see if NPP is a viable solution, not for just us, but ALL surrounding downtown neighborhoods. JUST GIVE IT A TRY...PLEASE!? We've dealt with this for the past 20+ years, can't you give us a few experimental months...please?

Thank you all.

Respectfully,

R. Weight

Sudbury St

includeInRecords: on

Engage: Submit

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Below is the result of your feedback form. It was submitted by Patricia Bagley ([patbagley@aol.com](mailto:patbagley@aol.com)) on Tuesday, February 19, 2019 at 08:48:40

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address: 213 Pleasant St

comments: Honourable Mayor and City Councilors:

I would like to implore you to seriously consider whether we need a "report back" on Summer street closures.

It costs us money to ask for a report back. In this instance, you are asking Chief Merner, Chief Achilles, Peter Rice, Juliet Walker, and Nancy Carmer for input. They must rely upon their staff to pull together the input. A "report back" is not free. Is this a worthwhile use of taxpayers' money? I don't think so. Why not go to the source, the business owners and ask them? Put it on the November ballot? While Councilors Raynolds and Pearson think they know better based on the Oslo article, you are not the business owners. Do we want to lose the parking revenue? Discourage Memorial Bridge traffic? Do we post a sign in Maine to "keep out"? Traffic that comes across the bridge would not just divert down Bow Street, but under the bridge and through the South End...which already has a parking problem. Would we discourage Prescott Park Festival attendees?

The article states that Oslo made "massive improvements in public transport". That's not Portsmouth. Not even close. The article states "...the majority of residents in the city center didn't drive." I would ask that before you spend our money on a "report back", perhaps have an overall plan that can be implemented in steps as we can afford to do so. In the meantime, have you thought about closing Pleasant Street between State and Market Square? It would eliminate one of the three vehicular dumps into Market Square. Rather than the two-way traffic proposal, why not just close it? There's your experiment. Oversimplification? Maybe. But reasonable by comparison?

Thank you for listening, your time, and efforts.

Patricia Bagley

includeInRecords: on

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, P.A.

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

## HAND DELIVERED

February 4, 2019

Mayor Jack Blalock and Portsmouth City Council  
City of Portsmouth  
1 Junkins Ave.  
Portsmouth, New Hampshire 03801

Re: 15 Middle Street, Tax Map 126, Lot 12 (Former Salvation Army Building)  
Request of James McSharry, Owner for Zoning Change from CIVIC District to  
Character District 4 (CD4)

Dear Mayor Blalock and Members of the Council:

On behalf of James ("Jay") McSharry ("McSharry"), please accept this letter and the attached exhibits in support of his request to initiate the City Council and Planning Board zoning change procedure for the former Salvation Army lot/building at 15 Middle Street.

## I. EXHIBITS

1. Portsmouth Zoning Ordinance-Section 10.417-Purpose of CIVIC District.
2. Portsmouth Zoning Ordinance Character District 4 (CD4) provisions.
3. Portsmouth Zoning Map 10.5A21A (partial).
4. Tax Map 126 depicting subject lot/building.
5. January, 2019 Historic District Commission Request for Work Session and attached relevant documents including site photographs.

DANIEL C. HOEFLE  
dhoefle@hpgrlaw.com

R. TIMOTHY PHOENIX  
tphoenix@hpgrlaw.com

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SAMUEL HARKINSON  
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OF COUNSEL:  
SAMUEL R. REID

**II. PROJECT/SITE HISTORY**

The subject parcel and building has for decades been owned and operated as a church, offices and other services by the Salvation Army. It is located in the CIVIC District, the purpose of which is to “to preserve existing buildings and uses that are open to the general public and owned and operated by a not-for-profit entity other than the City of Portsmouth.” PZO§10.410. McSharry is under contract to purchase the property, and, contingent upon the zoning change and receipt of required permits and approvals, intends to convert it to a hotel with 28<sup>1</sup> guest rooms, and, in the area where the current offices and soup kitchen are located, a restaurant.

**III. ZONING DISTRICT ANALYSIS**

Clearly, the subject property cannot remain zoned as “CIVIC” since the continued commercial use cannot comply with the CIVIC zone requirements. Accordingly, McSharry has investigated with the Planning Department staff the appropriate character zone for the property.

The purpose of character based zoning is:

To encourage development that is compatible with the established character of its surrounding and consistent with the City’s goals for the preservation and/or enhancement of the area. This is accomplished by providing a range of standards for the elements of development and buildings that define a place. (PZO§10.5A 11)

The development standards for Character District 4 (CD4) provide:

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

The subject parcel is surrounded by other CIVIC properties (John Paul Jones House) municipal properties (the former Public Library) CD5 properties (located along Congress Street) and CD4 properties (along Porter Street and State Street).

Upon review of McSharry’s intended use(s), its location, nearby uses, and those uses permitted in the various nearby zones, McSharry, with the aid of the Planning Department staff believes that Character District 4 (CD4) is the best “fit” for the subject parcel.

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<sup>1</sup> Exhibit 5 identifies 27 rooms. One has been added.

February 4, 2019

McSharry respectfully requests that the City Council proceed as required to rezone the parcel from CIVIC to CD4. The development team is happy to meet further with City staff and/or to provide any needed or requested additional exhibits, materials or information to assist the City Council and the Planning Board with considering this request.

Respectfully submitted,



R. Timothy Phoenix

RTP/msw

Encl.

cc: Juliet T. H. Walker, Planning Director  
Nick Cracknell, Principal Planner  
Jay McSharry  
Brendan McNamara



| District                       |       | Purpose  |
|--------------------------------|-------|--|
| <b>Pease/Airport Districts</b> |       |  |
| Airport                        | AIR   | To provide for <b>uses</b> associated with the operation of an <b>airport</b> , including aviation-related facilities, <b>structures</b> and activities.                             |
| Airport Industrial             | AI    | To provide for <b>industrial uses</b> requiring proximity to an <b>airport</b> and aviation-related facilities, <b>structures</b> and activities servicing <b>industrial users</b> . |
| Pease Industrial               | PI    | To provide for <b>industrial uses</b> which do not require direct access to an <b>airport</b> .  |
| Airport Business Commercial    | ABC   | To provide for business, commercial and trade-related enterprises in a campus setting.   |
| <b>Other Districts</b>         |       |  |
| Civic District                 | CIVIC | To preserve existing <b>buildings</b> and <b>uses</b> that are open to the general public and owned and operated by a not-for-profit entity other than the City of Portsmouth.       |
| Municipal                      | M     | To recognize areas that are in municipal ownership for governmental, civic, service, educational or recreational <b>use</b> .  |
| Natural Resource Protection    | NRP   | To recognize areas that are in governmental or nonprofit ownership and are dedicated to protection and enhancement of the City's natural resources and ecology.                      |
| Transportation Corridor        | TC    | To provide for future transportation <b>uses</b> and related facilities as well as recreational trail <b>use</b> .   |

Section 10.420 District Location and Boundaries

10.421 District Location and Boundaries

10.421.10 Zoning districts are located and bounded as shown on a map entitled "City of Portsmouth Zoning Map," copies of which are on file in the offices of the City Clerk and Planning Department. The Zoning Map, with all explanatory matter thereon, is hereby made a part of this Zoning Ordinance and may be reissued by the Planning Board to incorporate such amendments as may be made by the City Council.

10.421.20 Any property owned or leased by the City of Portsmouth and not shown on the Zoning Map as being in the Municipal or Natural Resource Protection district shall be deemed to be in the Municipal district, and when so identified shall be placed in that district.

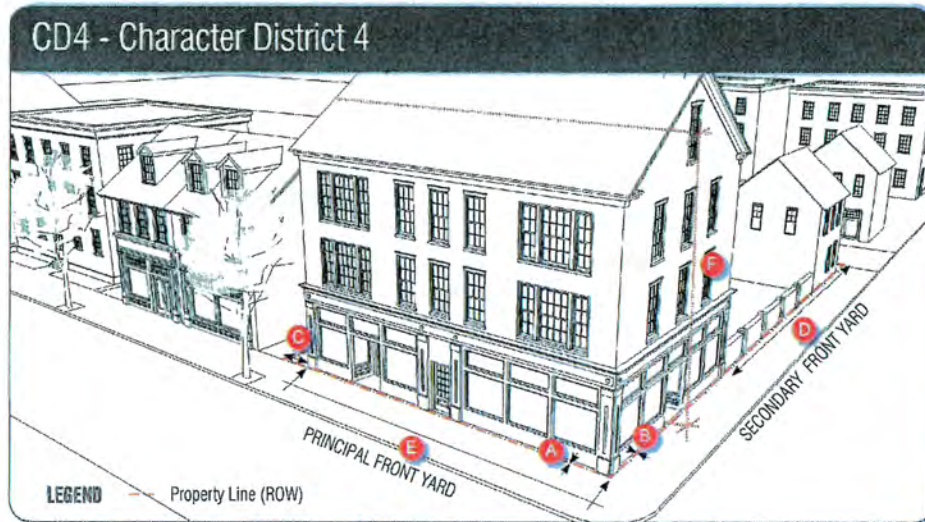
**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS  
CHARACTER DISTRICT 4 (CD4)**

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





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



**BUILDING PLACEMENT – PRINCIPAL BUILDING\***

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

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

**BUILDING AND LOT OCCUPATION**

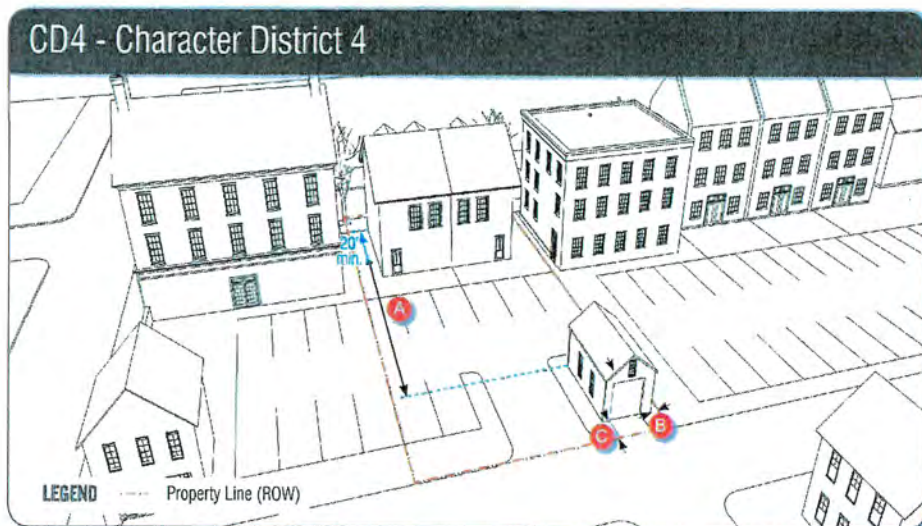
|   |   |          |
|---|---|----------|
| Maximum <b>building block length</b>    | 200 ft  | <b>E</b> |
| Maximum <b>façade modulation length</b> | 80 ft (see Section 10.5A43.20)                  |          |
| Maximum <b>entrance spacing</b>         | 50 ft   |          |
| Maximum <b>building coverage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

|   |           |
|---|-----------|
| Minimum <b>lot area</b>                   | NR        |
| Minimum <b>lot area per dwelling unit</b> | NR        |
| Minimum <b>open space</b>                 | 10%       |
| Maximum <b>ground floor GFA per use</b>   | 15,000 sf |

**BUILDING FORM – PRINCIPAL BUILDING**

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

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



**BUILDING PLACEMENT – OUTBUILDING**

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

**BUILDING TYPES**

See Figure 10.5A43.60 for **building** type definitions

|                                  |               |
|----------------------------------|---------------|
| <b>House</b>                     | not permitted |
| <b>Duplex</b>                    | not permitted |
| <b>Rowhouse</b>                  | permitted*    |
| <b>Apartment building</b>        | permitted*    |
| <b>Live/work building</b>        | permitted**   |
| <b>Small commercial building</b> | permitted     |
| <b>Large commercial building</b> | permitted     |
| <b>Cottage</b>                   | not permitted |
| <b>Paired House</b>              | not permitted |
| <b>Gateway Townhouses</b>        | not permitted |
| <b>Mixed-Use Building</b>        | permitted**   |
| <b>Flex Space Building</b>       | permitted     |
| <b>Community Building</b>        | permitted     |

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

**BUILDING & LOT USE**

See Sections 10.5A30 and 10.440

**FAÇADE TYPES**

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

|                       |               |
|-----------------------|---------------|
| <b>Porch</b>          | not permitted |
| <b>Stoop</b>          | permitted     |
| <b>Step</b>           | permitted     |
| <b>Shopfront</b>      | permitted     |
| <b>Officefront</b>    | permitted     |
| <b>Forecourt</b>      | not permitted |
| <b>Recessed-entry</b> | permitted     |
| <b>Dooryard</b>       | permitted     |
| <b>Terrace</b>        | not permitted |
| <b>Gallery</b>        | permitted     |
| <b>Arcade</b>         | permitted     |

**PARKING**

See Section 10.5A44.30

**COMMUNITY SPACE**


See Section 10.5A45

# Map 10.5A21A






## Character Districts and Civic Districts

X = Subject parcel


### Legend

-  DOD Downtown Overlay District
-  HD Historic District

### Character Districts

-  CD5 Character District 5
-  CD4 Character District 4
-  CD4-W Character District 4-B
-  CD4-L1 Character District 4-L1
-  CD4-L2 Character District 4-L2

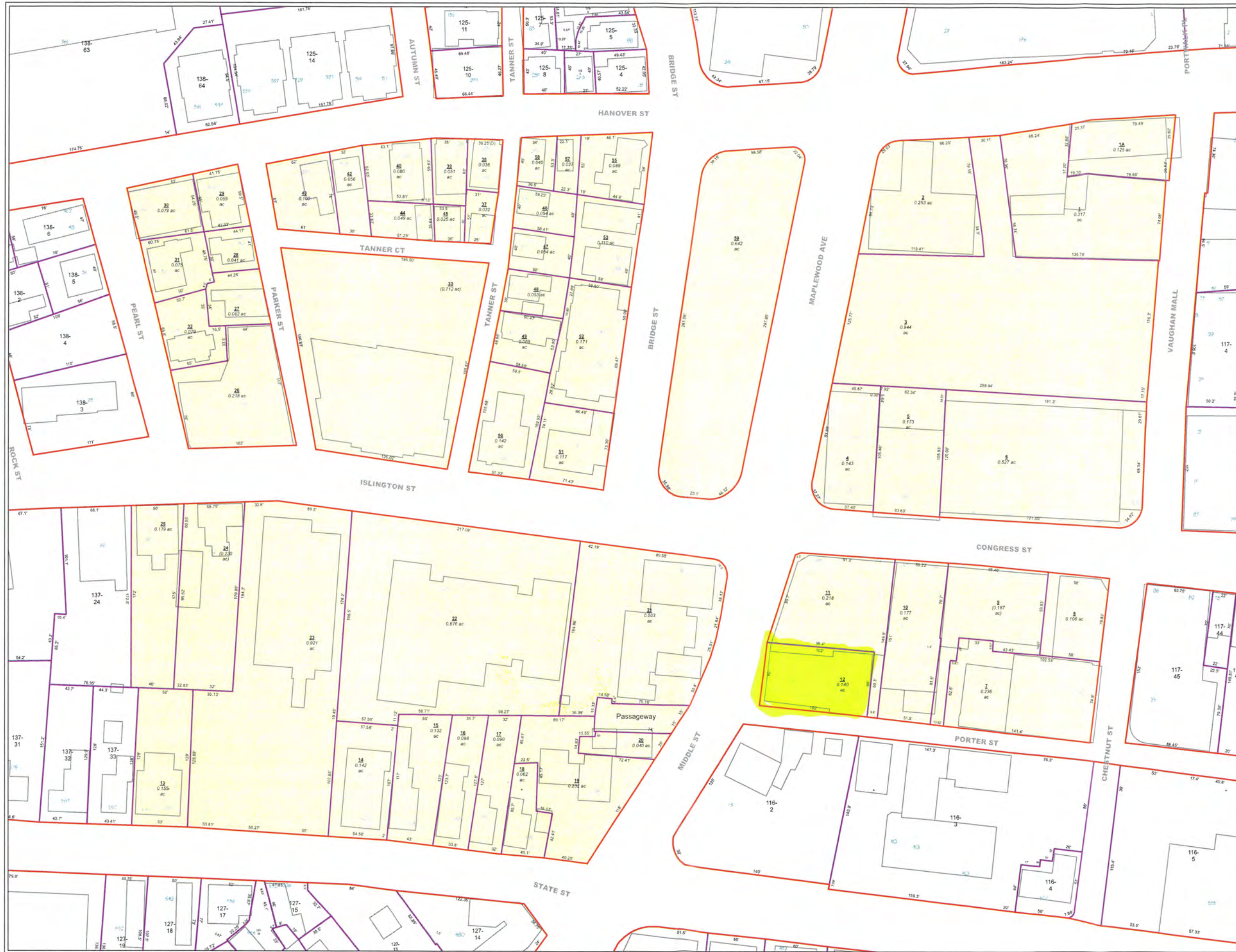
### Civic District

-  CIVIC Civic District

### Other Districts

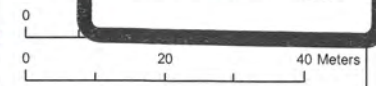
-  M Municipal District
-  TC Transportation Corridor



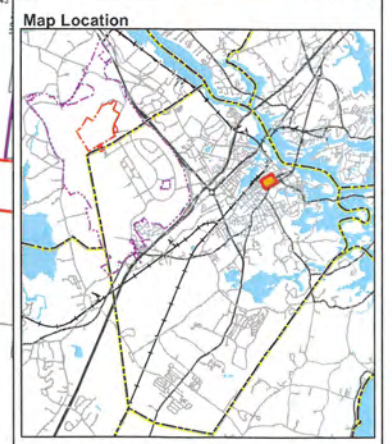
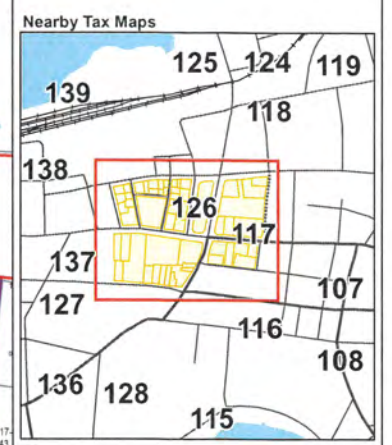


- Partial Legend**  
See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
  - 2.56 ac Parcel area in acres (ac) or square feet (sf)
  - Address number
  - 233-137 Parcel number from a neighboring map
  - 6R Parcel line dimension
  - SIMS AVE Street name
  - Parcel/Parcel boundary
  - Parcel/ROW boundary
  - Water boundary
  - Structure (1994 data)
  - Parcel covered by this map
  - Parcel from a neighboring map (see other map for current status)

**EXHIBIT**  
**4**



*This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.*



Portsmouth, New Hampshire  
2018  
**Tax Map 126**

*Request for a Work Session*

**Historic District Commission**

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

**EXHIBIT**

**5**

Owner: SALVATION ARMY      Applicant: JAMES McSHARRY  
(If different)

Address: 15 MIDDLE ST.      Address: 58 PLEASANT POINT RD.  
(Street)      (Street)

PORTSMOUTH, NH 03801      PORTSMOUTH NH 03801  
(City, State, Zip)      (City, State, Zip)

Phone: -      Phone: (603) 498 6476

Signature: \_\_\_\_\_      Signature: [Signature]

**LOCATION OF STRUCTURE**

---

Address: 15 MIDDLE ST.

Map: 126      Lot: 12      Zoning District: CIVIC

Brief Description of Work: Renovate & remodel with new dormers to existing Attic space

---

Name of Presenter for HDC Work Session: BRENDAN McNAMARA  
RESIDENTIAL DESIGNER  
(207) 439 3521

|              | Meeting (01) | Meeting (02) | Meeting (03) | Meeting (04) | Meeting (05) |
|--------------|--------------|--------------|--------------|--------------|--------------|
| Date         |              |              |              |              |              |
| Fee Paid     |              |              |              |              |              |
| Payment Type |              |              |              |              |              |

**CONTENTS, HDC WORK SESSION APPLICATION FOR PROPOSED RENOVATION, REMODEL, AND CHANGES TO 15 MIDDLE ST., PORTSMOUTH, NH (SALVATION ARMY CHURCH).**

**\*2-Narrative**

**\*3-Tax Map, locating property.**

**\*4-Photographs, Existing Conditions, from Middle St..**

**\*5-Photographs, Existing Conditions, from Porter St. and “gap” to adjoining building.**

**\*6-Existing West Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**\*7-Existing South Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**\*8-Proposed West Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**\*9-Proposed South Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**\*10-Proposed East Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**\*11-Proposed North Elevation,  $\frac{1}{4}''=1'0''$ , reduced to fit 11x17.**

**PROPOSED RENOVATION, REMODEL AND CHANGES TO 15 MIDDLE ST.,  
PORTSMOUTH, NH, (THE SALVATION ARMY CHURCH).**

**NARRATIVE**

The existing, 2 ½ story structure, dates from 1860, when it was built to house the First Congregational Church of Portsmouth. It was later taken over by the Salvation Army. The church's congregation has depleted over time and they are moving to a more suitable location.

The building has (2) distinct components; the brick portion, with entrance on Middle St., which houses the actual church; and the rear, wooden structure with entrance on Porter St., which houses the Kitchen and Dining Hall.

At some point in time, One Middle St. structure was been built to within 8"-12" on the North and East sides of the original church structure. The windows on these walls look onto the masonry block of this structure.

In its current layout the building has 9,717sf of living space. 5,056sf at 1<sup>st</sup> Floor and 4,661sf at 2<sup>nd</sup> Floor.

The 1<sup>st</sup> Floor is divided into 2,408sf for Kitchen, Dining Area and Offices. The actual "church" gathering space is 1,560sf. There is 1,088sf of Storage and Accessory Areas.

The 4,661sf of the 2<sup>nd</sup> Floor is divided into Meeting Areas, Kitchen and Dining Space and Bedrooms/Offices.

The Attic spaces are used for Storage.

The proposed plan is to continue the use of the section of the building that is currently Offices and Soup Kitchen, as a Restaurant. The rest of the structure would be remodeled, including the unused attic space, to create (27) guest rooms. An elevator and sprinkler system would be added. The sprinkler system will require some exterior heads to protect from the adjacent building.

A system of "valet" parking would be established, using the existing parking spaces in Porter St., for pick up and drop off.

Since the property is currently zoned "Civic", a change to the zoning ordinance is required to either CD4 or CD5. However this change will create the need for some further variances, yet to be completely verified.

In terms of the exterior all existing components would be repaired and restored in kind with approval sought to add (10), gable dormers to the roof of the brick building, (5) per side and aligned to the windows below, but recessed back from the wall line by at 2'. These would have slate siding to match the existing roof.

We will need to add a shed dormer to the East, Music Hall side of the rear wooden structure, again set back from the wall line by 2'. This would have clapboard siding to match the rear building. The new dormer windows would be all wood, Milestone Series, from Green mountain windows.

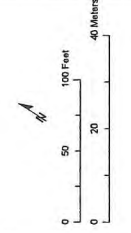
Portions of the wood structure will require a fire resistant substrate and noncombustible trim and siding, to be negotiated with the Code office.

A new wood and glass door would replace the existing steel door to Porter St..

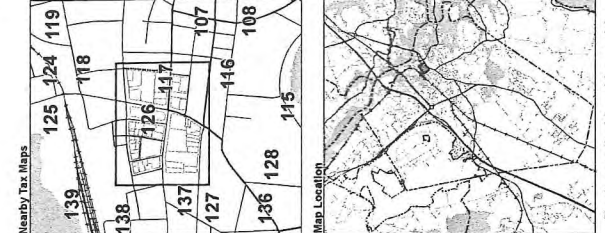
We would also add a 42", balustrade, to the 2nd Floor flat roof portion that faces Congress St. and One Middle St. roof. This would be typical steel, fire escape style, painted black.

It is intended to install exterior mechanical equipment (condensers, heat pumps and such) on the roof of One Middle St. (easement to be created). Other utility work is likely to be undertaken to "simplify" existing supply lines.

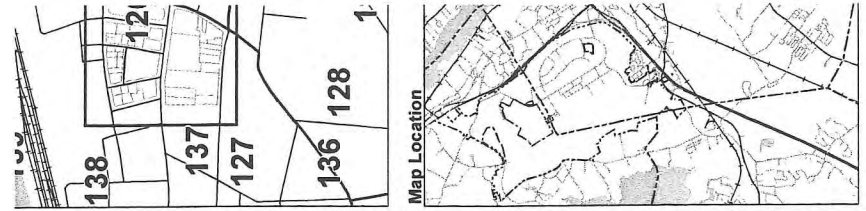
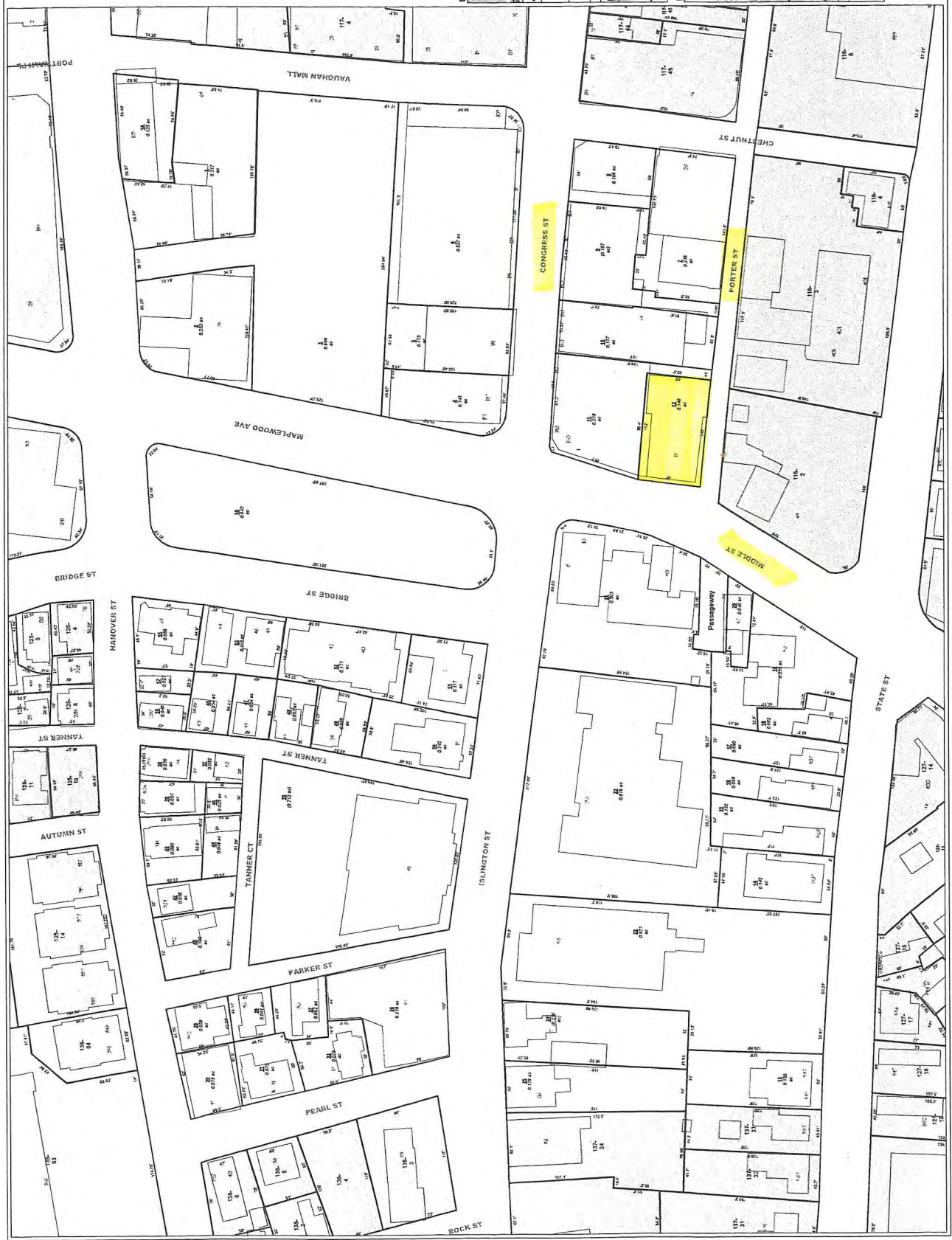
**Partial Legend**  
See the cover sheet for the complete legend.  
ZSA Lot district number  
ZC Zone  
Address number  
Parcel number from a neighboring map  
Parcel line dimension  
SINES AVE Street name



This map is for assessment purposes only. It is not intended for legal description or conveyance. Building footprints are 2000 data and may not represent current structures. Lot numbers like precedence over address numbers. Address numbers shown on this map may not represent precise or legal addresses.



Portsmouth, New Hampshire  
2018  
Tax Map 126



Portsmouth, N.H.  
2018  
Tax Map



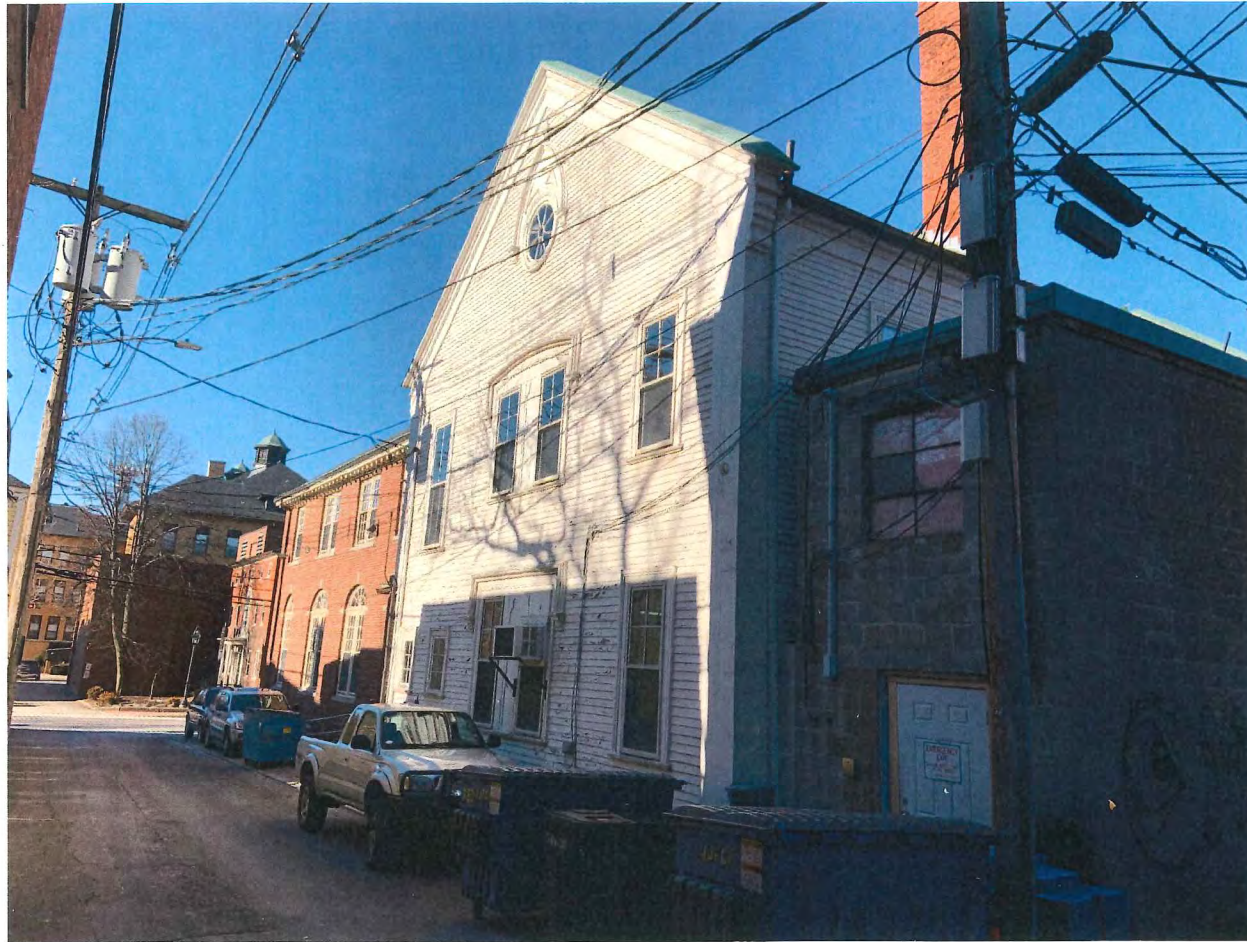




VIEW FROM MIDDLE ST., LOOKING SOUTH EAST FROM CLOSER TO ISLINGTON ST.



VIEW FROM MIDDLE, LOOKING NORTH EAST & DOWN PORTER ST.



VIEW FROM PORTER ST., LOOKING NORTH WEST. NOTE CONCRETE BLOCK BUILDING, PART OF ONE MIDDLE ST.



MIDDLE ST.,  
"GAP" TO 'ONE  
MIDDLE ST.'



"GAP" AT REAR OF WOOD  
STRUCTURE SEEN FROM  
PORTER ST.



EXISTING  
WEST ELEVATION  
 (MIDDLE ST.)

REMODEL + RENOVATION  
 at 19 MIDDLE STREET,  
 PORTSMOUTH, NH.

TITLE: WEST ELEVATION  
 SCALE: 1/4" = 1'-0"  
 DATE: 11.4.2019  
 REVISIONS:



EXISTING  
 SOUTH ELEVATION  
 (PORTER ST.)

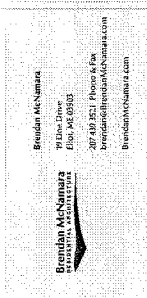
REMODEL + RENOVATION  
 #15 MIDDLE STREET,  
 PORTSMOUTH, NH

TITLE: SOUTH ELEVATION

SCALE: 1/4"=1'-0"

DATE: 11/17/2019

REVISIONS:





PROPOSED  
WEST ELEVATION  
 (MIDDLE ST.)

REMODEL + RENOVATION  
 at 15 MIDDLE STREET,  
 PORTSMOUTH, NH.

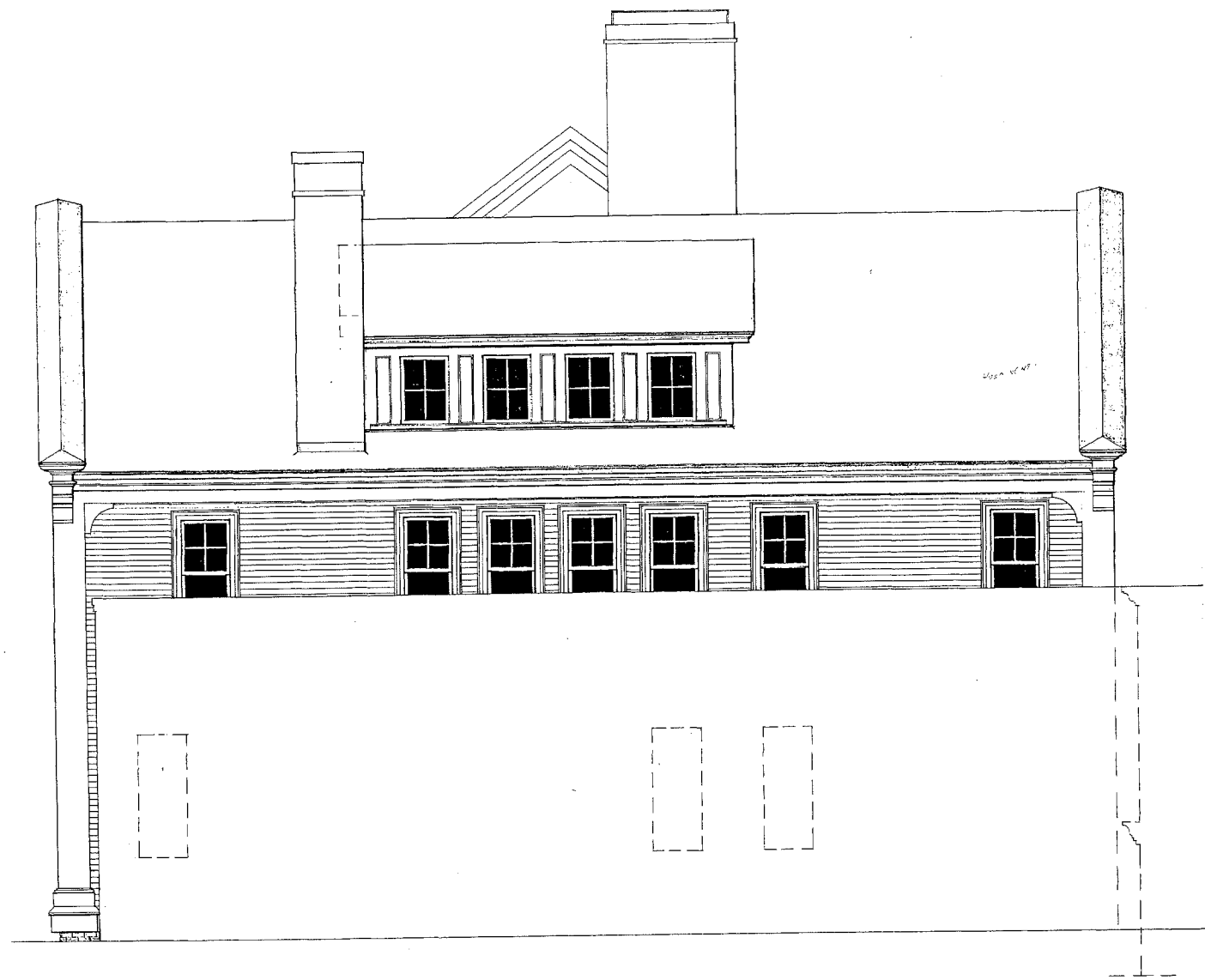
TITLE: WEST ELEVATION  
 SCALE: 1/4" = 1'0"  
 DATE: 1.14.2019  
 REVISIONS:



PROPOSED  
SOUTH ELEVATION  
 (PORTER ST.)

REMODEL + RENOVATION  
 at 15 MIDDLE STREET,  
 PORTSMOUTH, NH

TITLE: SOUTH ELEVATION  
 SCALE: 1/4"=1'-0"  
 DATE: 1.14.2019  
 REVISIONS:



PROPOSED  
EAST ELEVATION  
 (MUSIC HALL)

REMODEL & RENOVATION  
 at 15 MIDDLE STREET,  
 PORTSMOUTH, NH.

TITLE: EAST ELEVATION  
 SCALE: 1/4" = 1'0"  
 DATE: 1.14.2019  
 REVISIONS:



PROPOSED  
NORTH ELEVATION  
 (\*1 MIDDLE ST, JUMPIH JAY'S FISH CAFE PROFILE)

TITLE: NORTH ELEVATION  
 SCALE: 1/4"=1'-0"  
 DATE: 1.14.2019  
 REVISIONS:

REMODEL & RENOVATION  
 #1 MIDDLE STREET,  
 PORTSMOUTH, NH



**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

*Office of the City Manager*

**Date:** February 14, 2019  
**To:** Honorable Mayor Jack Blalock and City Council Members  
**From:** Nancy Colbert Puff, Deputy City Manager *NCP*  
**Re:** City Manager's Comments on February 19, 2019 City Council Agenda

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**6:30 p.m. Non-Public Session:** On Tuesday, February 19, 2019 a non-public session will be held to discuss a tentative Agreement with Patrick Howe, Deputy Fire Chief. A representative from the Fire Commission, as well as Tom Closson, City Negotiator will be present.

---

***Presentation:***

1. **Micro-Transit** Juliet Walker, Planning Director, will have a brief presentation of Micro-Transit. The City has recently released a Request for Qualifications (RFQ) for a short-distance public transportation service within a fixed geographic service area within and adjacent to the downtown core. The pilot project will be designed to reduce traffic congestion and decrease parking demand in the downtown area while providing residents and visitors a safe and convenient transportation alternative to single occupancy vehicles. The term Micro-Transit refers to services as broadly described above that provide shared rides for multiple passengers using a single vehicle.

## ***Public Hearings & Votes on Ordinances and/or Resolutions:***

1. **Public Hearing Re: Capital Improvement Plan (CIP) FY 2020-2025** In accordance with Section 7.7 of the City Charter, the City Council will conduct a public hearing at the City Council meeting on Tuesday, February 19, 2019, regarding the proposed Capital Improvement Plan for FY2020 – FY2025. In addition to the public hearing, the City Council held a work session on January 14, 2019. At the work session, a presentation of the proposed Capital Plan was made by City staff. Also, copies of the Plan were made available to the public as well as put on file with the City Clerk’s Office and the Public Library. Further, the CIP for FY2020 – FY2025 is available on the City’s website:

<http://www.cityofportsmouth.com/planportsmouth/capital-improvement-plan.pdf>

As you are aware, the City Council is required, in accordance with Section 7.8 of the City Charter, to adopt the Capital Plan subsequent to the public hearing and before the City Manager submits the budget to the City Council. It is anticipated the proposed FY2020 budget will be transmitted on or about April 24, 2019.

*I recommend the City Council adopt the proposed Capital Improvement Plan at the City Council meeting on Monday, March 4, 2019.*

2. **Second Reading and Public Hearing of Ordinance amending Chapter 10 – Zoning Ordinance – Accessory Dwelling Units and Garden Cottages**

At the February 4, 2019 City Council meeting, the Council voted to pass first reading and schedule public hearing and second reading for the February 19, 2019 City Council meeting regarding the proposed amendments.

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 the Planning Board discussed at the December 20, 2018 meeting.

Since the Planning Board review in December, the Planning Department has some additional revisions to recommend for inclusion in the amendments being considered by City Council. These are summarized below:

- 1) Staff recommends adding a sentence to Section 10.814.51, *“In a Single Residence or Rural District, a lot with a DADU shall comply with the minimum lot area for the district, but need not comply with the minimum lot area per dwelling unit.”* This will help to clarify that there are different requirements for the General Residence and Single Residence Districts.

2) 10.814.70 allows the Planning Board to modify a specific standard set forth in Sections 10.814.40 or 10.814.50. The intention was not to include modification to minimum lot area or lot area per dwelling unit requirements. Therefore, staff recommends excluding 10.814.51 from this provision, by re-wording Section 10.814.70 as follows (new proposed text is **bolded**, deleted text is ~~stricken~~):

10.814.70 In granting a conditional use permit for an accessory dwelling unit, the Planning Board may modify a specific standard set forth in Sections 10.814.40 ~~or 10.814.50~~ **10.814.52 through 10.814.56**, including requiring additional or reconfigured off-street parking spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.814.60.

*I recommend the City Council move to pass second reading and schedule third and final reading for the March 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 29, 2019 and amending related terms in Article 15 – Definitions, Section 10.1530 – Terms of General Applicability.*

3. **Third and Final Reading – 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**

At the February 4, 2019 City Council meeting, the Council voted to pass second reading and schedule a third and final reading for the February 19, 2019 City Council meeting regarding the **attached proposed amendments** to 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.

*I recommend the City Council move to pass third and final reading on the request of 290 Gosling Road, 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).*

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

1. **Islington Creek Neighborhood Parking Program Re: Pilot** The City Council, at its January 22, 2019 meeting voted to table the proposed Neighborhood Parking Program (NPP) Pilot to allow additional review by residents and the City Council Members prior to voting on the action. Parking Division Staff has prepared a list of potential modifications to the proposed pilot.

Included as attachments are the: NPP General Parameters (amended to apply to Islington Creek only); Proposed NPP modifications; NPP Questions and Answers; Project Expense Breakdown; and On-Street Occupancy Counts.

If the City wishes to proceed with the amended Neighborhood Parking Program (NPP) Pilot, a motion should be made and seconded to forward the amended plan to the Parking and Traffic Safety (PTS) Committee for consideration and a vote. If Council wants to consider any of the proposed modifications (1-5), or any other modifications, a motion on each modification, or on all, could be made. Once any/all modifications have been made, the revised plan will be forwarded to PTS. Once the PTS minutes have been approved by the City Council, the pilot program will go into effect.

*If the City Council is in agreement, an appropriate motion would be:*

*Move to forward the amended Neighborhood Parking Program (NPP) plan to the Parking and Traffic Safety Committee for consideration and a vote.*

2. **Comcast Franchise Renewal Agreement** As follow-up to the public hearing held on January 22, 2019, attached is the draft Cable Television Franchise Renewal Agreement with Comcast covering the five (5) year term of March 1, 2019 through February 29, 2024. The Cable Commission met on February 6, 2019 and February 12, 2019 and prepared the attached report. In summary, the Commission is presenting this draft Agreement for final action by the City Council without endorsement due to Comcast's continuing refusal to add certain provisions requested by the Commission. The Commission acknowledges that further negotiations are unlikely to be fruitful and thus this Agreement is being brought forward for action. Members of the Cable Television and Communications Commission are interested over the next year in evaluating whether there is any meaningful way to spark competition or otherwise increase the options available to residents and to improve customer service. This proposed Agreement does not give Comcast any exclusive rights to serve Portsmouth.

*If the City Council is in agreement, an appropriate motion would be:*

*Authorize the City Manager to execute the Cable Television Franchise Renewal Agreement with Comcast covering the five (5) year term of March 1, 2019 through February 29, 2024, as presented with the Report of the Cable Television and Communications Commission.*

3. **Renewal of Middle Street Baptist Church Parking Contract** Middle Street Baptist Church leases seventeen (17) spaces to the City for the purposes of allowing certain Library staff the use of said space during business hours. The annual fee is \$1,000 and the term for this agreement is April 1, 2019 – March 31, 2020. (See attached agreement)

*If the City Council is in agreement with the recommendation, an appropriate motion would be:*

*Move to approve the aforementioned Parking Lot Usage/Maintenance Agreement and further authorize the City Manager to execute the Usage/Maintenance Agreement for this request.*

### **Informational Items:**

1. **Work Session Re: Parking Principles Review and Discussion** The work session will be held on Monday, March 25, 2019 at 6:30 p.m. in the Levenson Room.
2. **Great American Food Truck Race** A television show produced by the Food Network, and hosted by Tyler Florence, plans to be filming in the City the afternoon of February 25 and 26, 2019. We are working with them to coordinate their activities and will inform you of additional details as they emerge.
3. **McIntyre Project** Reminder of a public meeting with the Redgate/Kane team on Tuesday, March 5, 2019, starting at 6:30 p.m. in the City Council Chambers.
4. **Coalition Communities** The Coalition Communities, of which Portsmouth is a member, formed approximately 20 years ago to fight unfair aspects of the Statewide Education Property Tax and education funding formulas that required those communities with higher real estate values (property rich communities a/k/a “donor towns”) to send part of the locally collected Statewide Education Property Tax (SWEPT) to towns with lower real estate values (property poor communities a/k/a “receiver towns”). From 2000 to 2005, the City of Portsmouth sent \$11,750,318 to the State as a donor town. Under the current funding formula there are no “donor” or “receiver” towns and any town that collects excess SWEPT may retain it. Excess SWEPT is the difference between the state’s calculation of the cost to fund an adequate education for Portsmouth’s students and the amount of SWEPT collected by the City.

The education funding formula has been revised over the last 20 years and there have been 20 years of litigation over what the State’s obligation is to fund an adequate education. The Coalition Communities were very active during these early years litigating and lobbying against the return of “donor” towns. These activities were funded by contributions to the Coalition Fund, an agency fund held by the City

containing Coalition Community funds. For the last several years the Coalition Communities have been less active as there was little support in the legislature to change the education funding formula to support the return of “donor” and “receiver” towns. That is not the case this Legislative Session.

The Coalition Communities have regrouped this legislative session to oppose HB 709, an education funding bill that would require excess SWEPT to be returned to the State. [The City’s testimony in opposition to HB 709 and the amended bill is attached](#) (included in the Agenda packet). The funding analysis on the amendment to HB 709 indicates that the City’s portion of excess SWEPT which would be turned over to the State is approximately \$1,687,530. This loss to the City would translate to an increase of approximately 30 cents on the tax rate.

The Coalition Communities have become aware of the negative fiscal impact to their budgets if HB 709 passes. The towns of Newington, Bridgewater, Lincoln, Newbury, Sunapee, Moultonborough, Waterville Valley, Holderness, Rye, Sugar Hill and the City participated in a conference call on February 5, 2019. Those Coalition Communities that participated in the call decided that there was a need for the Coalition Communities to hire a lobbyist to oppose HB 709. The Coalition Communities will be reaching out to the other members of the Coalition Communities who did not participate in the call. The cost of hiring a lobbyist will be shared by the Coalition Communities who will be sending contributions to the Coalition Fund. Those that cannot contribute due to missing town meeting deadlines will be asked to send confirmation that they will contribute next year.



## CITY OF PORTSMOUTH NEIGHBORHOOD PARKING PROGRAM (NPP) GENERAL PARAMETERS

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In areas where a neighborhood parking program is established, on-street parking will be limited to two hours on residential streets. Residents who live on street that participate in the program may obtain a permit that will exempt them from posted time limits. Enforcement hours will be 9 am to 8 pm, daily.

The NPP will first be available on a pilot basis; the City Manager shall have the authority to make necessary changes throughout the pilot period to accommodate unanticipated circumstances. Any required fees associated with the program will be set by the City Council.

### How to Become a Neighborhood Parking Area:

Residents must petition the City, via its Parking Office, in order for their streets to be subject to NPP rules. In order for the petition to be accepted:

- The petitioners must designate a NPP Steering Committee. The Steering Committee Chair is the designated liaison between the City and the Neighborhood, regarding neighborhood-specific policies, such as enforcement hours. If the neighborhood has an established Neighborhood Committee, petitioners are encouraged to work through that group.
- The NPP Steering Committee is responsible for contacting its residents, circulating a petition, and obtaining signatures for a minimum of 75% of single-family households within the NPP neighborhood. The petition must encompass all households on the streets listed. One signature per household. A 'household' is defined as a legal single-family residential address. Two units in a building qualifies as two households.
- Staff will evaluate the petition request, ensure that all petition requirements are met, and make a recommendation to City Council.

### How the Program Works:

The time limit for parking in an NPP neighborhood without a valid permit is two (2) hours, and will be actively enforced.

- Participation in the program is voluntary. If you choose not to participate, you must obey the posted restrictions in the area if you wish to park on the street. Vehicles not registered with an NPP are subject to enforcement.
- A Parking Enforcement Officer will be assigned to patrol the neighborhood during the enforcement hours. The dispatch office can be reached at 603.766.7000, ext. 7.
- All city parking ordinances continue to apply: vehicles may not be parked within fifteen (15) feet of either side of a fire hydrant; within an intersection; on a crosswalk, or within twenty (20) feet of an intersection. Any vehicle that is parked for a period of time so that it appears to be abandoned may be tagged and required to be removed within 72 hours. These rules each apply regardless of whether the vehicle displays a valid NPP permit.

### How to Receive your Parking Permit/Permit Rules:

- Once the neighborhood is approved for an NPP, individual applicants apply for a permit.
- Permit applicants must be able to show proof of residency within the NPP neighborhood. Residence must be the primary residence (i.e.) where you are registered to vote.
  - Similar to other residency-based parking programs, proof of residency can be established with a valid, NH Driver's license with the appropriate address, motor vehicle registration showing that the vehicle being registered is in your name, and either a current utility bill or a fully-executed lease agreement.
- Each eligible household may obtain one (1) transferable Guest permit to be used on a vehicle of its choice (trucks over 5500 lbs. do not qualify). A participating household is defined as a household in which at least one resident holds a valid annual NPP Permit issued by the City.
- Each vehicle must be registered to an applicant living at the address. If a resident drives an employer-assigned vehicle, the resident must provide written documentation of assignment from their employer in addition to a copy of the vehicle registration.
- Applicant must resolve all outstanding City-related financial obligations prior to receiving a permit (e.g. outstanding parking tickets).

- Businesses located within an NPP Neighborhood are eligible for one (1) Neighborhood Parking Permit, net of available off-street parking associated with the property.

#### Permits for Special Events/Contractors/Service Vehicles:

- If a resident needs to utilize a Service Provider such as a plumber or electrician, and the contractor is doing work subject to a Building Permit, he/she can display a copy of that active permit on the dashboard of the vehicle. If there is no active building permit for the project, the resident may visit the Foundry parking offices at 100 Foundry Place, Portsmouth, NH to request a temporary placard for the provider for that specific date, which the service provider must then display on the dashboard of the vehicle when parked.
- If replacing an NPP-registered vehicle, registrant may either transfer the plate to the new vehicle and update vehicle information with the Parking Clerk's offices, or register the new plate, cancelling the existing plate. Applicant must again provide required proofs of residency.
- To facilitate on-street parking for Events, actively-participating NPP households may request up to four (4) Single-day Event Visitor Permits per calendar month, allowing event guests to park up to 24 hours. Interested residents can obtain Event passes at the Foundry parking offices located at 100 Foundry Place, Portsmouth, NH. Fees associated with such permits will be established and updated by the City Council.

#### Other Rules:

- Participants understand that a permit does not guarantee a parking space on any street.
- All permits are subject to annual renewal; proof of residency is required for renewal.
- If any information on the NPP application form is falsified, or if you switch plates among vehicles, the permit will be revoked.
- The Guest Placard is intended to be transferable.
- NPP registrations become null and void if used on a vehicle other than the vehicle listed on the application.

#### Neighborhood-Specific Rules

**Islington Creek\*:** This program applies to these specific streets: McDonough from Salem to Brewster; Cabot from Islington to the Railroad tracks; Rockingham; Cornwall; Langdon, wrapping around to Brewster; Brewster, wrapping around to Langdon; Sudbury; Hanover from Brewster to Bridge; Rock Street from Islington to the signage at Heinemann; Pearl Street; Parker Street; Tanner Court; Hill Street

Islington Creek households are eligible to acquire a maximum of three (3) permits and one (1) guest permit per household, net of available off-street parking associated with the property.





# Proposed Neighborhood Parking Program Modifications

February 19, 2019

(Modifications to be made by City Council Motion)

1. Change to a 6-month pilot (as opposed to a year) with an assessment at 6 months.
2. Allow businesses to receive same number of permits as single households.
3. Allow all residents to be eligible for transferable Guest Pass (even if they don't participate in the program or are 'netted-out' by available off-street parking).
4. Delete the 'Net of Off-Street Parking' stipulation.
5. Establish that neighborhoods will have 45 days from City Council approval to collect and submit petition to Parking Division.

## NPP Questions and Answers

- If there is a landlord/tenant discrepancy – who gets the parking passes?
  - **Whoever occupies the dwelling, renters would show their lease.**
- The NPP proposes a two hour time limit – why not a four hour limit like other outlying neighborhoods?
  - **Creates issues, may allow someone to park at beginning of shift and move at lunch avoiding the permit requirement.**
- Did residents come up with number of passes ((3) per household)?
  - **Yes, in survey/meeting feedback.**
- How does this dovetail with our parking and zoning requirements? (Seems contradictory to our zoning.)
  - **It does not, this is a pilot program and will be evaluated as such.**
- Do you have data that supports the neighborhoods that have parking issues?
  - **Yes (survey responses as well as attached inventory figures).**
- Does this present an opportunity to explore employee parking programs/policies?
  - **Yes, we are exploring transportation initiatives such as micro-transit.**
- What can residents expect for this petition/75% from single family dwellings?
  - **Parking Division Staff will provide petition form for residents to fill out.**
- Is there data on netting out driveway space?
  - **No.**
- What is the best estimate of costs of doing the NPP pilot? What is it for one neighborhood or both?
  - **Please see the attached. While the estimate was prepared with the implementation of two neighborhoods in mind, we project the estimated costs are not significantly altered.**
- Is there data in both Islington Street and South End/Gates areas as to current usage?
  - Trends in terms of Percentages Occupied and at what times of day?
    - **Please see the attached.**
  - At what time of the year was this measured?
    - **Please see the attached.**
  - How does this relate to best practices on availability of parking inventory?
    - **Best management practice calls for action if occupancy is above 85%.**
- Are there legal risks for the City if the NPP program as it stands currently is implemented?
  - How does it compare to others implemented in New Hampshire and elsewhere?
    - **Similar in that all programs have time limits, permits, enforcement hours which vary from program to program.**
    - **It is believed that the NPP is within the lawful authority of the City to implement.**
  - If there are significant risks, are there ways to modify the proposal to mitigate the risk?
    - **We will not know until it is legally challenged.**

## NPP Program - Projected Expense Breakdown

### Expenses-Equipment

| Item              | Count/Months | Rate   | Total            | Detail                      |
|-------------------|--------------|--------|------------------|-----------------------------|
| Software          | 4            | 200.00 | 800.00           | Add Four NPP Tablets        |
| Software Licenses | 4            | 500.00 | 2,000.00         | Annual Compus Data Figure   |
| Signage           | 95           | 100.00 | 9,500.00         |                             |
|                   |              |        | <b>12,300.00</b> | <b>Total Equipment Fees</b> |

### Expenses-Processing

| Item                          | Count/Months | Rate           | Total            | Detail   |
|-------------------------------|--------------|----------------|------------------|--|
| Complus Data-Current Contract | 3650         | .72 per ticket | 2,628.00         | 10 tickets daily; 365 days; \$ .72 per ticket per CDI Contract |
| Supplies                      | 500          | 3.00           | 1,500.00         |  |
| Windshield Permitt Stickers   | 500          | 3.00           | 1,500.00         |  |
| Supplies                      | 500          | 3.00           | 1,500.00         |  |
| Laser-Imaged dash pass seals  | 183          | 15.00          | 2,745.00         | 20 tickets/roll; 10 tickets daily = 182.5 rolls @ \$15/roll    |
| Receipt Paper Rolls           | 183          | 15.00          | 2,745.00         |  |
| Repair and maintenance        | 12           | 400.00         | 4,800.00         |  |
|                               |              |                | <b>13,173.00</b> | <b>Total Processing Fees</b>                                   |

### Expenses-Labor

| Item                        | Hours | Rate   | Gross Payroll | Taxes/Ins/Work Comp | Total            | Detail  |
|-----------------------------|-------|--------|---------------|---------------------|------------------|---|
| Operations Assistant (9)    | 0     | 21.51  | -             | -                   | -                | Administers NPP enforcement program                       |
| Admin (5)                   | 0     | 17.75  | -             | -                   | -                | Handles applications, payment and distribution of permits |
| Enforcement Team Management | 572   | 14.67  | 8,391.24      | 6,125.61            | 14,516.85        | PT PEO-Mon-Thurs* ASSUMES 10 HOURS OF ENFORCEMENT, 7 DAYS |
| Field (2)                   | 572   | 14.67  | 8,391.24      | 6,125.61            | 14,516.85        | PT PEO-Mon-Thurs* ASSUMES 10 HOURS OF ENFORCEMENT, 7 DAYS |
| Field (2)                   | 429   | 14.67  | 6,293.43      | 4,594.20            | 10,887.63        | PT PEO-Fri-Sun* ASSUMES 10 HOURS OF ENFORCEMENT, 7 DAYS   |
| Field (2)                   | 429   | 14.67  | 6,293.43      | 4,594.20            | 10,887.63        | PT PEO-Fri-Sun* ASSUMES 10 HOURS OF ENFORCEMENT, 7 DAYS   |
| Uniforms                    | 4     | 200.00 | -             | -                   | 800.00           | 4 EE uniform sets at \$200 per                            |
|                             |       |        |               |                     | <b>51,608.96</b> | <b>Total Labor</b>  |

Total Start Up Costs **12,300.00** hardware, software licenses and vehicles  
 Ongoing Operations Costs **64,781.96** software monthly, supplies, R&M, Gateway, Enforcement Labor and Supplies

Year One **77,081.96** \* ASSUMES 10 HOURS OF ENFORCEMENT, 7 DAYS

**On-Street Occupancy Counts by Neighborhood: January-February 2019**

| 4:30 AM                           | 1:00 PM                           | 6:00 PM                           |
|-----------------------------------|-----------------------------------|-----------------------------------|
| Islington Creek<br>58.9% Occupied | Islington Creek<br>60.6% Occupied | Islington Creek<br>69.8% Occupied |
| FOSE<br>53.0% Occupied            | FOSE<br>66.9% Occupied            | FOSE<br>69.0% Occupied            |

**On-Street Occupancy Counts by Neighborhood: July-September 2018**

| 4:30 AM                           | 1:00 PM                           | 6:00 PM                           |
|-----------------------------------|-----------------------------------|-----------------------------------|
| Islington Creek<br>86.0% Occupied | Islington Creek<br>78.7% Occupied | Islington Creek<br>88.4% Occupied |
| FOSE<br>76.9% Occupied            | FOSE<br>84.6% Occupied            | FOSE<br>71.3% Occupied            |

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:

City of Portsmouth Cable Television Renewal Franchise –  
March 1, 2019 – February 29, 2024

**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. Franchisee shall be responsible for the cost and expense of such placement underground in the same manner as the electric and telephone utility companies.

(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**

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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 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



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replace all private property, real and personal, damaged or destroyed as a result of the 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 Franchise 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 attachers. 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.

## **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 ninety (90) 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.

(i) Franchisee shall distribute the Government Access Channel programming in high definition by June 30, 2021.

### **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;

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- (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;
- (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.

## **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.

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**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.

**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 626(d) of the Cable Act

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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.

## **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.



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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:

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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



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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.

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**EXHIBITS**

City of Portsmouth Cable Television Renewal Franchise –  
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**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.

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**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.

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**EXHIBIT 3 – GROSS ANNUAL REVENUES QUARTERLY REPORTING FORM**



|                   |                |
|-------------------|----------------|
| Vendor ID:        | 154861         |
| Contract Name:    |                |
| Statement Period: |                |
| Payment Amount:   |                |
| Statement Number: |                |
| CUID:             |                |
| System ID:        | 8773-2000-1100 |

Phone:

|  |
|--|
| PORTSMOUTH CITY OF NH<br>MUNICIPAL COMPLEX<br>1 JUNKINS AVE<br>PORTSMOUTH, NH, 03801 |
|--|

|   |
|---|
| This statement represents your payment for the period listed above. |
|---|

| Revenue Category                | Amount |
|---------------------------------|--------|
| Expanded Basic Video Service    |        |
| Limited Basic Video Service     |        |
| Digital Video Service           |        |
| Pay                             |        |
| PPV / VOD                       |        |
| Digital Video Equipment         |        |
| Video Installation / Activation |        |
| Guide                           |        |
| Other                           |        |
| Late Fees                       |        |
| Write-offs / Recoveries         |        |
| Ad Sales                        |        |
| Home Shopping Commissions       |        |
| <b>Total</b>                    | *      |
| Franchise Fee %                 | 5.00 % |
| Franchise Fee                   |        |

To the best of my knowledge and belief, the above is a true and correct statement for the accounting of the gross revenues received by this corporation for the period.

\_\_\_\_\_

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**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.

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

## Report of the Cable Television and Communications Commission

Pursuant to Chapter 1, Administrative Code, City of Portsmouth, New Hampshire Ordinances Section 1.408, the Cable Television and Communications Commission (the “Commission”) has the authority to “oversee the operation of the existing Cable Television Franchise Agreement and any future agreements, which the City Council may approve.” In accord with that grant of authority, the Commission reviewed the performance of Comcast of Maine/New Hampshire Inc. (“Comcast”) and in 2018 entered into negotiations with Comcast for a new Cable Television Renewal Franchise (“Agreement”).

The Commission has, with the support of Deputy City Attorney Suzanne M. Woodland, Esq., developed a draft of a new Agreement between Comcast and the City for the period of March 1, 2019 to February 29, 2024 . This report summarizes the Commission’s position with regard to that draft Agreement.

As has been shared with the City Council and public during the presentations of January 7, 2019 and January 22, 2019, federal law limits the ability of municipalities to regulate rates and programming. Notwithstanding the limitations of federal law and regulations, Comcast could have, but has refused to, support the following in the draft Agreement:

- inclusion of a State-of-the-Art provision;
- an agreement to maintain its customer service office in Portsmouth; and
- inclusion of meaningful performance measures.

**The Commission provides this draft Agreement to the City Council for its final review and consideration without endorsement, but with the acknowledgement that further extensions of the existing Cable Television Renewal Franchise are unlikely to produce a meaningful change on the part of Comcast. The lack of competition limits the bargaining power of the Commission and the Commission’s position on the draft Agreement acknowledges that reality.**

As a final note, the draft Renewal Franchise Agreement attached to this report has minor edits from the draft originally provided to the City Council for its January 7 meeting and the January 22 public hearing. None of the edits changed any of the key provisions reviewed with the City Council.

By Vote of the Cable Television and Communications Commission February 12, 2019

## PARKING LOT USAGE/MAINTENANCE AGREEMENT

Middle Street Baptist Church, 18 Court Street, Portsmouth, New Hampshire (hereinafter " Church"), and the City of Portsmouth a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire, (hereinafter "City"), hereby enter this agreement with respect to the parking lot owned by the Church (Map 127, Lot 2) (hereinafter "the Lot") for the purposes and under the terms and conditions contained herein.

1. This agreement shall commence in effect on April 1, 2019 and continue in effect until March 31, 2020.
2. During the period in which this agreement is in effect the 17 parking spaces in the Lot shown on the attached plan shall be available at the direction of the City for the purpose of allowing employees of the Portsmouth Library to park.
3. Parking under this Agreement shall be limited from Monday through Friday of each week and from the hours of 8:30 a.m. to 9:30 p.m. each day. Except, however, that by prior written notice delivered to the Library Director not less than twenty-four (24) hours in advance, the Church may have use of the seventeen (17) spaces for specific Church events during these hours up to eight (8) times per calendar year. Such use of the spaces by the Church beyond the eight (8) times shall be at the discretion of the City.
4. The City shall post and maintain signage in a manner to be approved by the Church to designate the 17 spaces for library employee parking. The signs shall include information about the hours and days when such employees are permitted to use the spaces.
5. The City shall have the authority to provide regular and consistent enforcement of its rules and regulations governing the use of these parking spaces during the times stated to ensure that the parking spaces are only being used by authorized permit holders.
6. The City shall install a key-locked security gate in the existing chain link fence in a manner subject to the reasonable approval of the Church. Keys to the gate shall be provided to the Church and to the Library employees. The City shall remove the security gate upon termination of the Agreement and restore the existing chain link fence to its original character.
7. The City shall plow snow, apply salt and sand, and remove snow as necessary from the Lot in accordance with its normal practices for City parking lots.
8. Except as described in this agreement all other the use of the lot shall be under the control of the Church.



9. The City agrees to indemnify and hold the Church harmless with respect to any and all claims for liability arising out of any use of the parking which is sanctioned, arranged, sponsored or conducted by the City, to the extent and under the terms and conditions under which the City itself is entitled to indemnification from the New Hampshire Local Government Center, Property and Liability Trust, under the terms of its member agreement as it may be in effect from time to time.
10. In exchange for the foregoing the City shall pay to Church the total annual compensation of \$1,000.00, which shall be due no later than July 31 of each year of the Agreement.
11. This Agreement may be terminated by the Church in the event that the City fails to maintain its obligations under it, after the City has been given written notice of such failure and a thirty (30) day period to cure it.

**For the City of Portsmouth**

**For Middle Street Baptist Church,  
Portsmouth, NH**

\_\_\_\_\_  
John P. Bohenko, City Manager

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Pursuant to vote of the City Council  
on \_\_\_\_\_

Pursuant to vote of the Middle Street Baptist  
Church Board of Trustees on  
\_\_\_\_\_



## CITY OF PORTSMOUTH

---

Municipal Complex  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
(603) 610-7200  
Fax (603) 427-1526

Jack Blalock  
Mayor

January 29, 2019

Chairman Mel Myer  
House Education Committee  
107 North Main Street  
Concord, NH 03301

Re: Letter in Opposition to HB 709 on behalf of the City of Portsmouth

Chairman Myer and Members of the House Education Committee:

On behalf of the City of Portsmouth, I am submitting written testimony in opposition to HB 709. The City opposes the bill's amendment to RSA 76:8, II and the provisions of the bill that address RSA 198:42-a. The City takes no position on the other provisions of the bill.

The amendment to RSA 76:8, II and creation of RSA 198:42-a, simply put, create donor towns. The City and other former donor communities fought hard and successfully in the past to repeal legislation that created what was commonly referred to as "negative aid" or "donor towns", an education funding mechanism that forced "donor" towns to pay for education funding for children in "receiver" towns. This form of funding was divisive, pitting "donor" town against "receiver" town, neighbor against neighbor. This is an era in our State's history on education funding that we do not want to revisit.

Property values and tax rates do not tell the whole story in any town. The "donor" towns are rich in appraised property value but many of these communities have modest and low income populations that struggle to pay their bills. Tax rates would be raised or educational services would be cut for those communities required to send SWEPT collected in excess of its adequacy costs to the State for deposit in the education trust fund for distribution to "receiver" towns. This is unfair to residents of "donor" communities that may be riding the current wave of high real estate values, but still struggle to pay their bills. Some of you may recall the data submitted over a decade ago regarding the median income and population of school children receiving free and reduced lunch in the "donor" communities versus "receiver" communities, which demonstrated the unfairness and disproportionality of the prior "donor" bills.

This is a bill that is NOT based on education policy, but is based on budget policy.

We all agree that every schoolchild in New Hampshire deserves an equal education opportunity. Unfortunately, this bill does not fairly address how that education should be funded. On behalf of the City of Portsmouth, I urge the Education Committee to vote HB 709 Inexpedient to Legislate.

Thank you for your consideration.

Jack Blalock, Mayor of the City of Portsmouth

2/7/19

Rep. Ladd, Graf. 4  
February 7, 2019  
2019-0353h  
04/10

Amendment to HB 709-FN-A-LOCAL

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Application of Receipts; Excess Education Tax. Amend RSA 6:12, I(b)(65) to read as follows:

4 (65) Money received under RSA 77-A, RSA 77-E, RSA 78, RSA 78-A, RSA 78-B, RSA  
5 83-F, ***RSA 198:42-a***, RSA 284:44 and RSA 284:47, and from the sweepstakes fund, which shall be  
6 credited to the education trust fund under RSA 198:39.

7 2 Assessment; Commissioner's Warrant. Amend RSA 76:8, II to read as follows:

8 II. The commissioner shall issue a warrant under ~~the commissioner's~~ hand and official seal  
9 for the amount computed in paragraph I to the selectmen or assessors of each municipality by  
10 December 15 directing them to assess such sum and pay it to the municipality for the use of the  
11 school district or districts, ***and if there is an excess education tax payment due pursuant to***  
12 ***RSA 198:42-a, directing them to assess the amount of the excess payment and pay it to the***  
13 ***department of revenue administration for deposit in the education trust fund.*** Such sums  
14 shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or  
15 assessors of the municipality.

16 3 Transportation of Pupils. Amend RSA 189:6 to read as follows:

17 189:6 Transportation of Pupils. The local school district shall furnish transportation to ~~[all]~~  
18 pupils in ~~[grade 1] kindergarten~~ through grade 8 who live more than 2 miles from the school to  
19 which they are assigned. ~~[The local school board may furnish transportation to kindergarten~~  
20 ~~pupils, pupils in grades above the eighth or to any pupils residing less than 2 miles from the school~~  
21 ~~to which they are assigned.]~~ ***The local school district may furnish transportation to pupils in***  
22 ***kindergarten through grade 8 who live 2 miles or less from the school to which they are***  
23 ***assigned, and to pupils in grades 9 through 12,*** when it finds that this is appropriate, and shall  
24 furnish it when so directed by the commissioner of education.

25 4 Education Trust Fund Created and Invested. RSA 198:39, I(g) is repealed and reenacted to  
26 read as follows:

27 (g) The full amount of excess education property tax payments from the department of  
28 revenue administration pursuant to RSA 198:42-a.

29 5 Cost of an Opportunity for an Adequate Education. Amend RSA 198:40-a to read as follows:

30 198:40-a Cost of an Opportunity for an Adequate Education.

31 I. For the biennium beginning July 1, ~~[2015]~~ **2021**, the annual cost of providing the  
32 opportunity for an adequate education as defined in RSA 193-E:2-a shall be as specified in

Amendment to HB 709-FN-A-LOCAL

- Page 2 -

1 paragraph II. The department shall adjust the rates specified in this paragraph in accordance with  
2 RSA 198:40-d.

3 II.(a) [~~A cost of \$3,561.27~~] **\$3,783** per pupil in the ADMA, plus differentiated aid as follows:

4 (b) An additional [~~\$1,780.63~~] **\$1,892** for each pupil in the ADMA who is eligible for a  
5 free or reduced price meal; plus

6 (c) An additional [~~\$697.77~~] **\$740** for each pupil in the ADMA who is an English  
7 language learner *receiving English language instruction*; plus

8 (d) An additional [~~\$1,915.86~~] **\$2,035** for each pupil in the ADMA who is receiving  
9 special education services; plus

10 (e) An additional [~~\$697.77~~] **\$740** for each third grade pupil in the ADMA with a score  
11 below the proficient level on the reading component of the state assessment administered pursuant  
12 to RSA 193-C:6 or the authorized, locally-administered assessment as provided in RSA 193-C:3,  
13 IV(i), provided the pupil is not eligible to receive differentiated aid pursuant to subparagraphs (b)-  
14 (d). A school district receiving aid under this subparagraph shall annually provide to the  
15 department of education documentation demonstrating that the district has implemented an  
16 instructional program to improve non-proficient pupil reading.

17 III. The sum total calculated under paragraph II shall be the cost of an *opportunity for an*  
18 adequate education. The department shall determine the cost of an *opportunity for an* adequate  
19 education for each municipality based on the ADMA of pupils who reside in that municipality.

20 IV. *A school district which receives adequate education aid under this section for*  
21 *schools within its jurisdiction shall separately account for such aid as part of its*  
22 *financial accounting procedures. Such aid may also be used to provide enhanced*  
23 *programs in schools within its jurisdiction for which such aid has been allocated that are*  
24 *known to improve pupil achievement, including but not limited to: pre-kindergarten*  
25 *programs, full-day kindergarten programs, extended learning time, professional*  
26 *development opportunities for teachers, hiring of additional instructional and non-*  
27 *instructional personnel, programs designed to reduce class size, parental involvement*  
28 *programs, additional technology resources, dropout prevention programs, principal*  
29 *incentive programs, and curriculum enrichment programs. The school district shall*  
30 *determine which programs are most needed and most appropriate for their pupils. The*  
31 *department shall annually review and update the list of approved programs from which a*  
32 *school district may choose.*

33 V. *A school district which receives adequate education aid under this section for*  
34 *use in schools within its jurisdiction shall annually submit a report to the commissioner*  
35 *documenting for each school within its jurisdiction for which such aid has been allocated,*  
36 *the enhanced programs selected for implementation, an explanation of the specific*  
37 *educational needs which the program is intended to address, an explanation of how the*

1 *program will be implemented in the school, and an estimate of the cost of implementing*  
2 *the program. The commissioner shall review these reports to ensure that adequate*  
3 *education aid will be used to provide programs approved under paragraph I.*

4 *VI. A school district which receives adequate education aid for schools within its*  
5 *jurisdiction pursuant to this section shall direct such aid to the schools for which such*  
6 *aid was calculated. A school district which receives adequate education aid for pupils*  
7 *that attend schools in another school district, shall direct such aid to the school district*  
8 *where its pupils are being educated. Any adequate education aid directed from one school*  
9 *district to another pursuant to this paragraph shall be a credit against any existing*  
10 *financial liability between the school districts.*

11 6 School Money; Additional Aid Based on Free or Reduced-Price Meals; Fiscal Capacity  
12 Disparity Aid. RSA 198:40-b and 40-c are repealed and reenacted to read as follows:

13 198:40-b Additional Aid Based on Free or Reduced-Price Meals.

14 I. The commissioner shall distribute the following aid to a municipality's school district:

15 (a) An additional \$946 multiplied by the ADMA, in a school district in which at least 12  
16 percent but less than 24 percent of the ADMA is eligible to receive a free or reduced-price meal; or

17 (b) An additional \$1,892 multiplied by the ADMA, in a school district in which at least  
18 24 percent but less than 36 percent of the ADMA is eligible to receive a free or reduced-price meal;

19 or

20 (c) An additional \$2,838 multiplied by the ADMA, in a school district in which at least  
21 36 percent but less than 48 percent of the ADMA is eligible to receive a free or reduced-price meal;

22 or

23 (d) An additional \$3,784 multiplied by the ADMA, in a school district in which 48  
24 percent or more of the ADMA is eligible to receive a free or reduced-price meal.

25 II. No chartered public school or municipality required to make an excess education tax  
26 payment pursuant to RSA 198:42-a shall be eligible to receive aid under this section.

27 198:40-c Fiscal Capacity Disparity Aid.

28 I. In addition to aid for the cost of the opportunity for an adequate education provided  
29 under RSA 198:40-a, each biennium the commissioner shall calculate fiscal capacity disparity aid  
30 and provide that amount of aid in each year of the biennium to a municipality's school districts as  
31 follows:

32 (a) A municipality with an equalized valuation per pupil of \$660,000 or less shall  
33 receive \$1,500 per pupil in the municipality's ADMA.

34 (b) A municipality with an equalized valuation per pupil between \$660,001 and  
35 \$999,999 shall receive .0044 cents per pupil in the municipality's ADMA per dollar of equalized  
36 valuation per pupil between \$660,001 and \$999,999.

37 (c) A municipality with an equalized valuation per pupil of \$1,000,000 or more shall

1 receive no fiscal capacity disparity aid.

2 II. Fiscal capacity disparity aid shall be distributed pursuant to RSA 198:42.

3 III. In this section, "equalized valuation per pupil" means a municipality's equalized  
4 valuation, including properties subject to taxation under RSA 82 and RSA 83-F, as determined by  
5 the department of revenue administration, that was the basis for the local tax assessment in the  
6 determination year, divided by the school district's kindergarten through grade 12 ADMA in the  
7 determination year.

8 IV. No chartered public school or municipality required to make an excess education tax  
9 payment pursuant to RSA 198:42-a shall be eligible to receive aid under this section.

10 7 Determination of Adequate Education Grants. Amend RSA 198:41, I to read as follows:

11 I. Except for municipalities where all school districts therein provide education to all of  
12 their pupils by paying tuition to other institutions, the department of education shall determine the  
13 total education grant for the municipality as follows:

14 (a) Add the per pupil cost of providing the opportunity for an adequate education for  
15 which each pupil is eligible pursuant to RSA 198:40-a, I-III, and from such amount;

16 (b) Subtract the amount of the education tax warrant to be issued by the commissioner  
17 of revenue administration for such municipality reported pursuant to RSA 76:8 for the next tax  
18 year; *and*

19 (c) *Add the municipality's additional aid for free or reduced-price meals*  
20 *pursuant to RSA 198:40-b and fiscal capacity disparity aid pursuant to RSA 198:40-c.*

21 8 Determination of Education Grants. RSA 198:41, III is repealed and reenacted to read as  
22 follows:

23 III.(a) No municipality shall receive a total education grant which is less than the total  
24 education grant received in the preceding fiscal year. This subparagraph shall not apply to a  
25 municipality required to make an excess education tax payment pursuant to RSA 198:42-a.

26 (b) A municipality's total education grant shall be adjusted to an amount not to exceed  
27 101.5 percent of the total education grant it received in the preceding fiscal year or an amount equal  
28 to its calculated cost of an opportunity for an adequate education under RSA 198:40-a less the  
29 amount of its education tax, whichever is greater.

30 9 New Section; Excess Education Tax Payments. Amend RSA 198 by inserting after section 42  
31 the following new section:

32 198:42-a Excess Education Tax Payments.

33 I. The commissioner of the department of revenue administration shall annually calculate a  
34 municipality's excess education tax pursuant to RSA 198:41 and shall notify each municipality of  
35 the amount of its excess. A municipality shall remit any excess education tax revenue to the  
36 department of revenue administration on or before March 15 of the tax year in which the excess  
37 occurs. The commissioner shall collect and remit the excess to the state treasurer for deposit in the

**Amendment to HB 709-FN-A-LOCAL**  
**- Page 5 -**

1 education trust fund established by RSA 198:39.

2           II. The amount of such excess to be remitted shall not include any income derived from the  
3 investment of funds by the municipal treasurers under RSA 41:29 and RSA 48:16.

4           III. The commissioner shall approve and provide forms relative to the reporting and  
5 remitting of excess education tax by the municipalities.

6           10 Repeal. RSA 198:41, IV, relative to stabilization grants, is repealed.

7           11 Effective Date. This act shall take effect July 1, 2021.

UNAPPROVED

2019-0353h

AMENDED ANALYSIS

This bill:

- I. Increases the base per pupil cost for an adequate education.
- II. Increases differentiated aid available to eligible pupils.
- III. Establishes fiscal capacity disparity aid to municipalities based on equalized valuation per pupil.
- IV. Provides additional aid to municipalities based on the percentage of pupils eligible to receive a free or reduced-price meal.
- V. Requires school districts to report on the use of adequate education grant funds.
- VI. Amends the law governing transportation of pupils in kindergarten through grade 12.
- VII. Repeals stabilization grants to municipalities.
- VIII. Requires excess education tax revenue to be credited to the education trust fund.





# 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: Conservation Commission -  
regular member or alternate

Name: Jessica Blasko Telephone: 603-828-9203

Could you be contacted at work?  YES  NO If so, telephone# 603-766-8220 or cell

Street address: 74 Wentworth Rd. Portsmouth

Mailing address (if different): \_\_\_\_\_

Email address (for clerk's office communication): jess@jptphysicaltherapy.com

How long have you been a resident of Portsmouth? 10 years; grew up in NH

Occupational background:

I have been a physical therapist for 17 years. Initially I  
earned my Master's Degree in PT from Northeastern  
University. I returned to NH to earn my Doctorate  
after practicing for a few years. I have been self-employed  
(continued on back) ->

Please list experience you have in respect to this Board/Commission:

I went before the conservation commission in  
2014 for a renovation to our property. It abuts  
conservation land.



here on the Seacoast for over 10 years. The majority of that has been here in Portsmouth. In that time I also worked for a local business owner helping to establish a PT practice as part of his business plan.

Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO Spoke with Peter Britz. Emailed him for the chairman's (Steve Miller) info but opted to send in application before I heard from him.  
Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to serve: I am invested in this community.  
My husband and I are both self-employed here in Portsmouth.  
We own 2 properties in Portsmouth. We just had our first child who will grow up here. I would like to be more involved in issues impacting our community and its future.

Please list any organizations, groups, or other committees you are involved in:

Committee to help promote Clipper Foundation; Volunteer for Cooking Matters/NH Foodbank/SOS; Member of Music Hall, Seacoast Science Center and Surfrider Foundation; Current work situation consists of 5 independently owned businesses operating under (see back)

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

- 1) David Witham 238 Walker Bungalow Rd Portsmouth, NH 603-436-6649  
Name, address, telephone number
- 2) Jim Jalbert <sup>C&J</sup> 185 Grafton Drive Portsmouth, NH W-603-433-8715  
Name, address, telephone number C-603-817-1717

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: Jessie Blasko Date: 01/28/2019

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 Jenkins Avenue, Portsmouth, NH 03801

one roof, meet regularly to discuss future plans and goals for community we serve, our focus is a more holistic, comprehensive health and wellness option for people.

# **Jessica Paskalis Blasko**

74 Wentworth Road  
Portsmouth NH 03801  
978-317-5857

[jess@jptphysicaltherapy.com](mailto:jess@jptphysicaltherapy.com)

## **EDUCATION**

**Northeastern University, Boston, MA**

Doctor of Physical Therapy, August 2006

Master's in Physical Therapy, June 2002

Bachelor's of Science in Rehabilitative Sciences, June 2001

## **LICENSURES/CERTIFICATIONS**

Physical Therapy License No. MA 16210, NH 2956

Certified Early Intervention Specialist

CPR Certification- Professional Rescuer

## **PROFESSIONAL MEMBERSHIPS**

Member of American Physical Therapy Association

Member of NESSHA

## **WORK EXPERIENCE**

**JPT, LLC, Portsmouth, NH**

Owner and Director

Outpatient clinic

September 2008- Present

**Atlantic Physical Therapy & Weight Loss Center, Portsmouth, NH**

Supervising and Managing Physical Therapist

Outpatient Clinic

July 2011- November 2015

**Bernier Physical Therapy Associates, Newburyport, MA**

Part time physical therapist

Outpatient orthopedic clinic

August 2007- September 2008

**Cape Ann Early Intervention- Northshore ARC, Beverly, MA**

Part time physical therapist

Early Intervention program

April 2005-June 2008

**Essex Elementary School, Essex, MA**

Contract physical therapist

School based physical therapist

August 2005-June 2008

**Total Body Therapy, Manchester, NH**

Contract physical therapist

Outpatient clinic focusing on Craniosacral Therapy

June 2004-January 2005

**Shaughnessy Kaplan Rehabilitation Hospital, Salem, MA**

Per Diem physical therapist  
In-patient rehab and acute care  
August 2002 – September 2004

**Boston Center for Physical Therapy and Sports Medicine, Boston, MA**

Full time physical therapist and co-op student  
Outpatient orthopedic clinic  
January 2000 – July 2003

## CV

|                         |   |
|-------------------------|---|
| January 27, 2004        | <b>Principles of Seating &amp; Positioning</b><br>Seating Solutions Seminar Series  |
| April 1-4, 2004         | <b>Craniosacral Therapy Level I</b><br>The Upledger Institute Inc.  |
| March 6- April 18, 2004 | <b>Mat Plus Intensive Pilates Instructor Course</b><br>Stott Pilates Merrithew Corporation  |
| June 15, 2004           | <b>Protocol for Wheelchair Adaptations</b><br>Total Body Therapy, LLC Speaker Tom Adams   |
| September 18-21, 2004   | <b>Craniosacral Therapy Level II</b><br>The Upledger Institute Inc.   |
| August 8, 2005          | <b>Therapeutic Approaches to Family and Behavioral Challenges in Early Childhood Intervention</b><br>Cross Country Education                |
| August 10, 2005         | <b>Attachment: The Foundation of Childhood Mental Health</b><br>Beverly Public Schools  |
| August 17, 2005         | <b>Signs and Symptoms: Early Onset Mental Illness in Children Bi-Polar, ADHD, Oppositional Defiant Disorder</b><br>Beverly Public Schools   |
| May 19, 2006            | <b>Ready S.E.T. Go! Sensorimotor Early Childhood Themes</b><br>Cross Country Education  |
| June 6, 2006            | <b>Early Markers of Autism Spectrum Disorders</b><br>Early Intervention Training Center   |
| December 2, 2006        | <b>Teaching Children to Walk: A Practical Approach to Supported Ambulation</b><br>Mobility Research, LLC                                    |
| March 18, 2008          | <b>Effective Techniques for Total Body Strengthening: The Physiology of Strength Training and Program Design</b><br>Cross Country Education |
| October 18, 2008        | <b>New England Region Leadership Development Seminar</b><br>American Physical Therapy Association   |
| October 29, 2008        | <b>Documentation, Coding and Billing for Rehabilitation Strategies for Success</b><br>Cross Country Education                               |
| January 22, 2009        | <b>Topics in Advanced Wound Care</b><br>APTA  |
| April 27, 2010          | <b>Pharmacological Update for the Practicing PT</b><br>PT Seminars  |
| October 29, 2010        | <b>Are You Boomer Ready? Joint Replacement Rehab</b><br>Cross Country Education   |
| November 18, 2010       | <b>Osteoporosis</b><br>CE International   |
| December 08, 2010       | <b>Integrated Neuromuscular Re-Education Muscle Energy Therapy and Positional Release</b><br>Cross Country Education                        |
| September 2012          | <b>Frontline Nutritional Certification</b><br>Metagenics  |
| January 2013            | <b>Transforming Lives with Clinically Tested Weight Loss Program</b><br>Metagenics  |
| January 2014            | <b>Transitioning from ICD-9-CM to ICD-10-CM</b><br>National Government Services   |

|                |  |
|----------------|--|
| January 2014   | <b>Myofascial Trigger Point Identification &amp; Treatment</b><br>Summit Professional Education                      |
| February 2014  | <b>Outpatient Physical Therapy/Occupational LCD/SIA and Changes for 2014</b><br>National Government Services         |
| March 2014     | <b>Healthy Transformations</b><br>Metagenics   |
| September 2014 | <b>Kinesiology Taping and Manual Therapy</b><br>Summit Professional Education  |
| June 2015      | <b>Outpatient Physical and Occupational Therapy Billing and Coding- Part 1</b><br>National Government Services       |
| June 2015      | <b>Outpatient Physical and Occupational Therapy Billing and Coding- Part 2</b><br>National Government Services       |
| May 2016       | <b>Mastering Myofascial Release</b><br>Cross Country Education   |
| August 2016    | <b>(Re)Defining the Core: The Key to Functional &amp; Corrective Exercise</b><br>Cross Country Education             |
| November 2016  | <b>Feed for Speed &amp; Power: The NEW Evidence-Based Sports Nutrition</b><br>Cross Country Education                |
| June 2017      | <b>Spine Health &amp; Trunk Stability: Influence of the Thorax &amp; Respiration</b><br>Vyne Education               |
| July 2017      | <b>Lymphedema &amp; Complete Decongestive Therapy: What Every Clinician Needs to Know</b><br>Cross Country Education |
| September 2017 | <b>Probiotics, Food &amp; The Immune System</b><br>INR Seminars  |

**References Available Upon Request**



## Report Back Request

From: Councilors Raynolds and Pearson

To: City Manager, in consultation with the Police Chief, Fire Chief, Public Works Director, Economic Development Director, Planning Director

For: Research, analysis and a report back on a potential time-limited experiment with making a larger area downtown a Pedestrian and non-motorized vehicle zone [See attached Map]

### Proposed Dates & Times:

- July 6-7, July 13-14, July 20-21, July 27-28 (Note: same 4 weekends in July on which City Council has for many years authorized the Pro-Portsmouth-sponsored "Summer in the Streets" closures of Pleasant St between State & Market Square.)
- 9 a.m. to midnight on Saturday,
- Noon to 9 pm on Sunday.

### Proposed area [see attached Map]:

- close Pleasant between State & Market Square;
- close Market St. between Bow & Market Square;
- close Daniel St. from Bow to Market Square (discourage Memorial Bridge traffic from Kittery, but divert any such remaining southbound traffic to Market St. between Bow and Market Square;
- Congress from Market Square to Fleet St. would thus be car-free
- close Penhallow and Chapel Sts. between State & Bow
- make Porter St. between Fleet St. and Church St. two-way for residents only

### Issues/Concerns/Challenges to be addressed include, but not limited to:

- City Department resource re-deployments, any additional requirements
- General public parking availability and access
- Handicap parking and access (designated areas?)
- Business deliveries, band drop-offs etc. (if necessary during those hours),
- Resident access (Daniel St., Sheafe St etc.)
- Emergency vehicle access
- Public transportation routes
- Coordination with Kittery

### What happened when Oslo decided to make its downtown basically car-free?

It was a huge success: Parking spots are now bike lanes, transit is fast and easy, and the streets (and local businesses) are full of people.



[Photo: Åsmund Holien Mo/Urban Sharing]

**BY ADELE PETERS** 5 MINUTE READ

If you decide to drive in downtown Oslo, be forewarned: You won't be able to park on the street. By the beginning of this year, the city finished removing more than 700 parking spots—replacing them with bike lanes, plants, tiny parks, and benches—as a major step toward a vision of a car-free city center.

Without those parking spots, and with cars banned completely on some streets, few people are driving in the area. “There are basically no cars,” says Axel Bentsen, CEO of [Urban Sharing](#), the company that runs [Oslo City Bike](#), the local bike-share system. The city's changes are designed, in part, to help improve air quality and fight climate change, but the difference in the quality of life is more immediate. “The city feels different faster than you can feel the difference in [cleaner air],” he says. “You can see that you're actually reclaiming the space and can use it for other purposes than parking cars.”

Oslo first pedestrianized some streets in the city center in the 1970s, and invested heavily in public transportation in the 1980s. In 2015, when a progressive political coalition came to power in the city council, they started planning a more significant transformation. At first, they called for a full ban on cars because the majority of residents in the city center didn't drive. But when business owners objected, worried that they'd lose customers and have problems with deliveries, the government changed focus to remove parking spots—a slightly more gradual approach. For now, there are still parking garages on the periphery of the center.



[Photo: Åsmund Holien Mo/Urban Sharing]

A few spots are left, converted into parking for disabled drivers or EV charging, and some streets are open for delivery trucks for a couple of hours in the morning. Emergency vehicles still have access. But other drivers have to park in garages, and traffic restrictions help nudge drivers who don't need to go through the city center to take a ring road around it instead. In a new zoning plan, the city is taking its intentions further, giving pedestrians, cyclists, and public transportation greater priority than private cars, and planning a network of pedestrian zones that are fully car-free.

"Cities, like Oslo, have been built for cars for several decades, and it's about time we change it," Hanne Marcussen, Oslo's vice mayor of urban development, said in an email. "I think it is important that we all think about what kind of cities we want to live in. I am certain that when people imagine their ideal city, it would not be a dream of polluted air, cars jammed in endless traffic, or streets filled up with parked cars."

To help support the shift, the city made "massive improvements in public transport and making cycling safe and comfortable," says Rune Gjøvs, Oslo's head of cycling. The city is adding new trams and metro lines and more frequent departures, and lowering the cost of tickets. For the last few years, the city has also been quickly building out a better-connected bike network, converting parking to bright-red bike lanes. It handed out grants to help citizens buy electric bikes. The city bike-share system has quickly grown, tripling to nearly 3 million trips a year between 2015 and 2018. The system usually closes in the winter, but it ran a pilot this winter using bikes with spiked tires. It also tested offering cargo bikes.



[Photo: Åsmund Holien Mo/Urban Sharing]

As more people bike, that opens up room on overcrowded public transit. “Usually when you have these discussions you say, ‘Oh, we need bikes to replace cars,’ but there’s a missing link there, and that’s public transit,” says Bentsen. “What we see is that actually we take people out of the bus and onto the bike and walking, which leaves room for people to leave their car and take the bus.”

The changes, unsurprisingly, have been met with some resistance, both from car owners and businesses. But while business owners initially worried about the city creating a ghost town that no one would visit, the opposite seems to be true; as in other cities that have converted some streets to pedestrian-only areas, the areas in Oslo that have been pedestrianized are some of the most popular parts of the city, Marcussen says. Last fall, after hundreds of parking spots had been removed, the city found that it had 10% more pedestrians in the center than the year before. “So that is telling me that we are doing something right,” she says.

“Changing habits will always be challenging,” she says. “Cities have been built for cars for many decades, and the car has been seen as a status symbol, and I guess it still is for some people. We need to plan our cities better for the future so that the private car is not setting the premise for how we build our cities anymore. So in new developments, we are trying to make sure it’s easy for those who move into their new home to live without their own private car.”

Several other cities are also working to reduce car use, such as Madrid, which limits access to the city center for anyone other than the people who live there. Other cities will follow. “I am absolutely certain that in the future, the private car will take up much less space in the cities,” says Marcussen. “I hope that other cities will be inspired by us to create their own car-free city center. I think this will become an

increasingly important issue as we see more and more clearly that letting private cars take up so much of a very limited space within city centers is just not very efficient. At the same time, we are learning more about how pollution affects those of us who live in the cities, especially children. A couple of decades ago, it was perfectly normal to smoke cigarettes inside. Today, very few would do that. I think it's the same with cars in the city center: One day we will look back and ask ourselves why we ever thought that was a good idea."

#### ABOUT THE AUTHOR

Adele Peters is a staff writer at Fast Company who focuses on solutions to some of the world's largest problems, from climate change to homelessness. Previously, she worked with GOOD, BioLite, and the Sustainable Products and Solutions program at UC Berkeley



|   |   |
|---|---|
| PEDESTRIAN ONLY                                 |  |
| MAKE ONE WAY                                    |  |
| OPEN / MAINTAIN TRAFFIC FLOW                    |  |
| DESIGNATED HANDICAPPED PARKING                  |  |
| POLICE OFFICER/TRAFFIC DIRECTION/ACCESS CONTROL |  |

**THE CITY OF PORTSMOUTH  
TWO THOUSAND NINETEEN  
PORTSMOUTH, NEW HAMPSHIRE**

**SERVICE-CONNECTED TOTAL DISABILITY TAX CREDIT**

**RESOLUTION #**

**BE IT RESOLVED:**

**THAT** Pursuant to RSA 72:35, the City of Portsmouth hereby adopts an optional tax credit in the amount of \$3,200.00 as of April 1, 2019; an optional tax credit in the amount of \$3,300.00 as of April 1, 2020; an optional tax credit in the amount of \$3,400.00 as of April 1, 2021; an optional tax credit in the amount of \$3,500.00 as of April 1, 2022; an optional tax credit in the amount of \$3,600.00 as of April 1, 2023; an optional tax credit in the amount of \$3,700.00 as of April 1, 2024; an optional tax credit in the amount of \$3,700.00 as of April 1, 2024; an optional tax credit in the amount of \$3,800.00 as of April 1, 2025; an optional tax credit in the amount of \$3,900.00 as of April 1, 2026; an optional tax credit in the amount of \$4,000.00 as of April 1, 2027; on the taxes due on the residential property of any veteran who has been honorably discharged or honorably separated from military service and; who has a total and permanent service-connected disability; OR is a double amputee or paraplegic because of the service-connected injury; OR is the surviving spouse of a qualified veteran and has not remarried.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect upon its passage.

**APPROVED:**

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**JACK BLALOCK, MAYOR**

**ADOPTED BY THE CITY COUNCIL:**  
**, 2019**

\_\_\_\_\_  
**KELLI L. BARNABY, CMC**  
**CITY CLERK**

IN THE YEAR OF OUR LORD  
TWO THOUSAND FOUR  
CITY OF PORTSMOUTH, NEW HAMPSHIRE

RESOLUTION #8 - 2004

BE IT RESOLVED:


Pursuant to RSA 72:35, the City of Portsmouth hereby adopts an optional tax credit in the amount of \$1,700.00 as of April 1, 2004; an optional tax credit in the amount of \$1,800.00 as of April 1, 2005; an optional tax credit in the amount of \$1,900.00 as of April 1, 2006; an optional tax credit in the amount of \$2,000.00 as of April 1, 2007; on the taxes due on the residential property of any veteran who has been honorably discharged and; who has a total and permanent service-connected disability; **OR** is a double amputee or paraplegic because of the service-connected injury; **OR** is the surviving spouse of a qualified veteran and has not remarried.

**THAT** this resolution shall take effect upon passage of its reading.

APPROVED:

  
EVELYN F. SIRRELL, MAYOR

ADOPTED BY THE CITY COUNCIL:  
FEBRUARY 9, 2004

  
KELLI L. BARNABY, CITY CLERK

(Synopsis not part of resolution: Adoption of the resolution would create an annual graduated increase in the tax credit for qualified disabled veterans and spouses commencing with a tax credit of \$1,700.00 as of April 1, 2004 and concluding with a credit of \$2,000.00 as of April 1, 2007.)

A True Copy

Attest:

Date:

  
Feb. 17 2004 City Clerk



**DRAFT LEGISLATIVE PRINCIPLE ON EDUCATION FUNDING**

**Support legislation that provides education funding based on an equitable and sustainable framework.**

**Approved by vote of the Legislative Subcommittee on February 11, 2019.**