

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, APRIL 1, 2019 TIME: 6:15 PM

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- 6:15PM – PUBLIC DIALOGUE SESSION

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

## PROCLAMATIONS

- 1. Poet Laureate (*Proclamation will be handed out to City Council on Monday evening*)
- 2. Digital Fast

- V. ACCEPTANCE OF MINUTES – MARCH 18, 2019

- VI. PUBLIC DIALOGUE SUMMARY

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

*(There are no Public Hearings, Ordinances and/or Resolutions this evening)*

- VIII. APPROVAL OF GRANTS/DONATIONS

*(There are no Grants/Donations this evening)*

- IX. CONSENT AGENDA

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

- A. Letter from Crystal Paradis, Portsmouth PRIDE Coordinator, and Hershey Hirschkop, Executive Director, Seacoast Outright, requesting permission to hold the 5<sup>th</sup> Annual Portsmouth PRIDE event on Saturday, June 22, 2019 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Request for License to Install Projecting Sign for David Pettigrew owner of Strawberry Banke Antique and Vintage Shop for property located at 60 State Street ***(Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request)***

### **Planning Director's Stipulations**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***

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

- C. Letter from Portsmouth Professional Fire Fighters requesting permission to hold two boot drives collecting funds for the Muscular Dystrophy Association on Sunday, June 30, 2019 and Sunday, August 18, 2019 (***Anticipated action – move to refer to the City Manager with power***)
- D. Letter from Richard Mason, Seacoast Veteran’s Count requesting permission to hold the Pack & Boots 5K Road Race on Thursday, July 4, 2019 at 8:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)
- E. Letter from Jennifer Gilbert, St. Charles Children’s Home requesting permission to hold the 23<sup>rd</sup> Annual St. Charles 5K on Monday, September 2, 2019 at 9:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)

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

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Retired Command Sergeant Robert Radcliffe, New Hampshire Army National Guard requesting permission to conduct the Regional Best Warrior Competition Ruck March on Wednesday, May 2, 2019 (***Sample motion – move to refer to the City Manager with power***)
- C. Letter from Edward Richards regarding Bethel Assembly of God property, 200 Chase Drive

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

**A. CITY MANAGER**

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

1. Acceptance of Woodbury Avenue Signal Coordination Project
2. Easement Re: Chestnut Street Pedestrian Connector
3. License Extension for Bluestone Properties of Rye, LLC for property located at 135 Congress Street
4. Applications for Sidewalk Cafes providing Alcohol Service
  - Raleigh Wine Bar & Market
  - Popovers on the Square
  - Ri Ra Irish Pub
  - The District
  - Fezziwig’s Food & Fountain

Applications for Sidewalk Cafes providing Alcohol Service-private sidewalk

- British Beer Company
- Row 34
- BRGR Bar

5. Request for First Reading – 15 Middle Street Re-Zoning Request
6. 861 Middle Road Acceptance of Easement

**City Manager's Informational Items:**

1. Water Bottles
2. Public Education Forum

**B. MAYOR BLALOCK**

1. Appointment to be Considered:
  - Appointment of Carrie Mayo to the Blue Ribbon Committee on Sustainable Practices
2. \*Appointments to be Voted:
  - Reappointment of Amy Schwartz to the Portsmouth Housing Authority
  - Reappointment of Todd Henley to the Recreation Board
3. City Manager's Retirement (*See attached*)

**C. ASSISTANT MAYOR LAZENBY**

1. Citizen's Initiative for Radiological Monitoring (*See attached*)

**D. COUNCILORS ROBERTS, DWYER & PERKINS**

1. \*Update Re: McIntyre

**E. COUNCILOR DENTON**

1. \*Floodplain Management Standards (***Sample motion – Move to produce amendments to the Zoning Ordinance to enhance the City's floodplain management standards for projected increases in coastal flooding and extend the Flood Hazard Overlay District***)

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. ADJOURNMENT**

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


*\* Indicates verbal report*

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** March 29, 2019

**To:** Honorable Mayor Jack Blalock and City Council Members

**From:** John P. Bohenko, City Manager 

**Re:** City Manager's Comments on April 1, 2019 City Council Agenda

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

1. **Acceptance of Woodbury Avenue Signal Coordination Project** The City reconstructed all of the traffic signals from Portsmouth Boulevard to Gosling Road, and also at the Woodbury Avenue and Granite Street intersection. The City also replaced all deficient handicapped ramps and markings in these areas to make the entire area handicapped accessible. Of the \$1,413,582.90 required to complete the project, \$533,741.60 was paid for under CMAQ (Congestion Mitigation and Air Quality) Federal funds administered through NHDOT.

As part of the State's close out procedure on the project, the City is required to formally accept the project. *Attached is a Certificate of Final Completion of Work.* The Public Works Department and their consulting engineers, TEC, Inc., have reviewed the entire project in depth and find no fault with the work that was performed.

*I recommend the City Council vote to formally accept the Woodbury Avenue Signal Coordination Project.*

2. **Easement Re: Chestnut Street Pedestrian Connector** The final detail to complete the Chestnut Street Pedestrian Connector Project is the execution and recording of an Easement Agreement under which the City would accept an easement from TD Bank, N.A. The easement is made necessary by the fact that the pedestrian connector is located on approximately three (3) feet of TD Bank, N.A. land.

*Attached is a proposed easement* which has been the subject of significant negotiation between TD Bank N.A., David Moore and the City Legal Department. The essential purpose of the easement is to allow the public to use and the City to maintain the pedestrian connector TD Bank, N.A. land.

*I recommend the City Council move to authorize the City Manager to accept and record the easement agreement for the Chestnut Street pedestrian connector from TD Bank, N.A. as presented.*

3. **License Extension for Bluestone Properties of Rye, LLC for property located at 135 Congress Street**  
Previously, the City Council approved a temporary construction license for Bluestone Properties of Rye, LLC to encumber a portion of the City's sidewalk at 135 Congress Street which expires on March 26, 2019. The applicant has indicated that due to construction delays associated with the construction of the three-story building, they now require a temporary construction license through April 30, 2019. The applicant was approved for a 30-day temporary encumbrance permit, but was advised that a new license would be required along with applicable fees. The proposed license would replace the temporary encumbrance permit and the effective term of the license would start on March 27, 2019 and end on April 30, 2019.

The License Area is shown on the attached plan. The total license area is 563 square feet. Per the City's policy for "License Fee for Encumbrance of City Property", the total fee for the temporary license is calculated at \$0.05 per square foot per day for a total of 35 days, which comes to a total fee of \$985.25. The attached proposed license agreement provides that if the license area is returned to the City prior to the end of the License Term, the City will refund to the applicant the portion of the license fee already paid to the City. The proposed license also gives the City Manager the ability to extend the term of the license up to 6 months.

The Planning and Legal Departments have reviewed and approved the proposed temporary construction license.

*I recommend the City Council move to authorize the City Manager to negotiate and enter into a temporary construction license with Bluestone Properties of Rye, LLC as submitted to facilitate construction activities at 135 Congress Street.*

4. **Applications for Sidewalk Cafes providing Alcohol Service.** In 2012, the City Council adopted City Council Policy 2012-02 titled "**Policy Regarding Use of City Property for Sidewalk Café's providing Alcohol Service**", a copy of which is attached. That policy allows restaurants to apply for an Annual Service Agreement to occupy a defined portion of City sidewalk space for the purpose of creating a sidewalk café with the ability to serve alcohol. The policy outlines the criteria for both the application and the operations of the sidewalk cafés and calls for a 6 month term, typically running from mid-April through mid-October.

Last year, four Area Service Agreements were issued for public Sidewalk occupancy. To date we have received five applications, including Raleigh Wine Bar and Market, Popovers on the Square, Ri-Ra Irish Pub, Fezziwig's Food & Fountain, and The District. City staff representatives from Police, Fire, Public Works, Building Inspection, Health, and Code Enforcement have reviewed those applications, found the applications complete and recommend issuance of the Area Service Agreements in accordance with City Council Policy 2012-02.

The fee for the use of the public "Area" subject to the Area Service Agreement is \$10.00 per square foot, with a minimum season's fee of \$2,000 and no proration of the fee. The Agreements may be suspended at the sole discretion of the City on an administrative basis and revoked in their entirety by vote of the City Council. Hours of operation are until 10:30 p.m. Monday through Saturday, and until 10:00 p.m. on Sunday, with no smoking allowed in the "Area" at any time. Use of the "Area" may be precluded, modified or made subject to special conditions to accommodate municipal events. The sidewalk café Area will be separated from the public pedestrian space by black decorative metal fencing. (See attached sidewalk café layouts.)

The table below includes applications (this year we asked applicants to submit their request online, via our ViewPoint portal) received to date along with the areas and associated fees:

Record #	Establishment	Location	Area	Fee	Tables	# of Chairs
19-1	Raleigh Wine Bar & Market	67 State Street	258	\$2,580	9	30
19-2	Popovers on the Square	8 Congress St	723	\$7,230	11	42
19-4	Ri Ra Irish Pub	22 Market Square	508	\$5,080	7	48
19-6	The District	103 Congress	500	\$5,000	16	32
19-7	Fezziwig's Food & Fountain	112 State Street	120	\$1,200	3	6

City staff have reviewed all applications and are recommending approval as presented.

*I recommend the City Council move to authorize the City Manager to enter into Area Service Agreements with Raleigh Wine Bar and Market, Popovers on the Square, RiRa Irish Pub, The District, and Fezziwig Food and Fountain for outdoor alcohol service on City land for the 2019 season subject to City Council Policy No. 2012-02.*

**Applications for Sidewalk Cafes providing Alcohol Service-private sidewalk.** The City has received three applications for sidewalk cafes that are proposed for private sidewalk that runs along Portwalk Way. While these proposed locations are completely contained on private property, they are adjacent to the sidewalk area that the City has an easement over. (See attached sidewalk café layouts.) The operation of these areas requires review for health and life-safety compliance and it was therefore determined that the City should review and issue a license for the operation. Because the operation occurs on private property and not on City property, as the other Sidewalk Café licenses, there is no associated fee with this action.

Record #	Establishment	Location	Area	Tables	# of Chairs
19-3	British Beer Company	2 Portwalk Place*	350	9	24
19-5	Row 34	5 Portwalk Place*	290	6	18
19-8	BRGR Bar	34 Portwalk Place	480	9	30

City staff have reviewed all applications and are recommending approval as presented.

*I recommend the City Council move to authorize the City Manager to enter into Area Service Agreements with British Beer Company, Row 34, and The BRGR Bar for outdoor alcohol service on private land for the 2019 season subject to City Council Policy No. 2012-02.*

## 5. **Request for First Reading Re: 15 Middle Street Re-Zoning Request**

On February 4, 2019, Attorney Phoenix submitted a letter to the City Council on behalf of his client, James McSharry, requesting that the property located at 15 Middle Street be re-zoned from CIVIC to Character District 4 (CD-4). At the February 19, 2019 City Council meeting, the Council voted to refer this request to the Planning Board for a recommendation.

The property is currently zoned Civic District (see attached Zoning Map). Portsmouth has six main Character Districts in the Zoning Ordinance. Except for the “Civic District”, all the Districts pertain to private properties and uses in the Downtown, North End, and West End. In contrast, Civic Districts contain properties that are designated to preserve the existing buildings and uses, which are open to and primarily serve the general public (i.e. religious facilities, historical societies and other non-profit establishments). Properties in the Civic District are generally open to the general public and are dedicated to the arts, culture, education, religion, or other public uses. Properties in the Civic District may be converted to other civic uses permitted under the ordinance; however, new structures or alterations or expansions of the existing structures that propose non-civic uses require a change to the Regulating Plan (or Zoning Map) as set forth in Section 10.5A22 of the Zoning Ordinance.

Being a religious use for more than a century, the structure at 15 Middle Street was designated as Civic Use upon adoption of the Character-Based Zoning in 2013. Since that time, the current property owner (the Salvation Army) has marketed the property for other uses and recently signed a purchase and sale agreement to convert the use of the building to a non-civic use -- hotel. Thus, the conversion of the use requires a change in the Regulating Plan as well as land use approvals from the Historic District Commission and the Planning Board.

This property abuts both the higher-density CD5 District along Congress Street – the heart of the downtown commercial district – and the medium-density CD4 District located along Porter Street. Due to the orientation, setback, and the fact that the primary entrance to the building is located along Porter Street, City Planning Department staff recommended re-zoning to CD4. Note that the permitted land uses are exactly the same for CD4 and CD5. The only discernible difference between the districts are the building’s placement characteristics and its occupation on the lot. Understanding the current reuse proposal is to make relatively minor alterations to the existing structure, the CD4 District will permit such changes without the need for additional zoning relief.

In addition to the base zoning districts, the Character District properties are also subject to separate requirements for building height standards. These are regulated by Zoning Maps 10.5A21B. These standards follow street frontages and not property lines (e.g. a property that fronts on more than one street may be subject to different height standards on each street). The height standards for each of the abutting street frontages are 2 to 3 stories or 40 feet maximum. Planning Department staff recommends amending the standards for this property to match the standards as listed above.

Properties in the Civic District are exempt from dimensional standards. A comparison of the primary dimensional standards for the CD4 and CD5 zoning districts is provided below:

<b>Dimensional Standards</b>	<b>CD4</b>	<b>CD5</b>
Principal front yard (max)	10 ft	5 ft
Secondary front yard (max)	15 ft	5 ft
Side yard	NR	NR
Rear yard (min)	5 ft	5 ft
Front lot line buildout (min)	50%	80%
Building block length (max)	200 ft	225 ft
Façade modulation length (max)	80 ft	100 ft
Entrance spacing (max)	50 ft	50 ft
Building coverage (max)	90%	95%
Building footprint (max)	15,000 sf	20,000 sf
Lot area (min)	NR	NR
Lot area per dwelling unit (min)	NR	NR
Open Space (min)	10%	5%
Ground floor gross floor area per use (max)	15,000 sf	15,000 sf
Building height (max)	see Map 10.5A21B	see Map 10.5A21B
Finished floor surface of ground floor above sidewalk grade (max)	36"	36"
Ground story height (min)	12 ft	12 ft
Second story height (min)	10 ft	10 ft
Façade glazing	70% min for shopfront façade	70% min for shopfront façade



Permitted uses in the Civic District are open to the general public and are dedicated to arts, culture, education, religion, recreation, government, transit, gardening, horticulture, public gathering, assembly, or meeting. The primary land uses allowed in CD4 and CD5 are provided below.

<b>Land Uses</b>	<b>CD4/CD5</b>
Single family dwelling	P
Attached ADU	CU
Garden Cottage	CU
Two-family dwelling	P
Townhouse	P
Multifamily dwelling	P
Live/Work unit	P
Assisted Living Center	P
Residential Care Facility	P
Place of Assembly	S
School	P
Museum	P
Performance Facility	P/S (depending on size)
Club / fraternal organization	P
Indoor amusement facility	P
Health club, etc	P/S (depending on size)
Office	P
Financial institution	P
Group daycare	P
Personal and consumer services	P
Convenience stores	P
Retail sales	P
Restaurant / bar	P/S (depending on size)
Bed and breakfast	P
Inn	P
Hotel or motel	P
Conference center	P

***Planning Board Action***

At the March 21, 2019 meeting, the Planning Board voted 6 to 1 to recommend to the City Council that this property be re-zoned as follows:

- 1) From CIVIC District to Character District 4 (CD4)
- 2) From no height standard to 2-3 stories (40')

*If the City Council is in agreement, I recommend the City Council vote to schedule first reading for the April 15, 2019 City Council meeting.*

6. **861 Middle Road Acceptance of Easement** On May 21, 2015, the Planning Board approved an application from Northern NE Conference of Seventh Day Adventists, Inc. for property located at 861 Middle Road to build an addition on an existing church with related site improvements. (See attached Drainage and Utility Easement Deed.)

As approved, the [Site Plan \(attached\)](#) includes a drainage and utility easement to provide municipal access to the City to construct, reconstruct, maintain, repair, and operate drainage and utility infrastructure, along a portion of the northerly rear property line of the grantor's property.

All of the foregoing has been approved by the Planning Board and is recommended by the Planning and Legal Departments.

*I recommend the City Council move to accept an access easement to 861 Middle Road as presented.*

### **Informational Items:**

1. **Water Bottles** As requested, re-usable, dishwasher safe drinking bottles have been ordered and distributed to City Council members and City employees who would like to use them.
2. **Public Education Forum** In reply to a [letter received from the Save Our Schools Project \(attached\)](#), the Mayor and School Department have established a date and time of April 16, 2019 from 6:00 p.m. to 8:00 p.m. to hold the Ed Funding 101 Forum presentation in the Nichinan Room at Portsmouth High School. The public is invited to attend.