

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, OCTOBER 7, 2019 TIME: 6:15PM

- **6:15PM – PUBLIC DIALOGUE SESSION**

- I. **WORK SESSION** *(There is no Work Session this evening)*

- II. **CALL TO ORDER [7:00 p.m. or thereafter]**

- III. **ROLL CALL**

- IV. **INVOCATION**

- V. **PLEDGE OF ALLEGIANCE**

- VI. **ACCEPTANCE OF MINUTES – SEPTEMBER 3, 2019**

- VII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

- VIII. **PUBLIC DIALOGUE SUMMARY**

- IX. **PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTION**

- Public Hearing**

- A. Public Hearing regarding KENO within the City of Portsmouth

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

- B. Third and Final Reading of Ordinance amending Chapter 3, Article IX – Distribution of Single-Use Disposables

- X. **MAYOR BLALOCK**

- 1. Appointment to be Considered:

- Jessica Blasko as a Regular member of the Conservation Commission

- 2. Appointment of Brian Goetz to the Drinking Water Commission

- 3. Resignation of Nathalie Morison from the Conservation Commission, effective immediately

- XI. **CITY COUNCIL MEMBERS**

- A. COUNCILOR PEARSON**

- 1. Contact Information

B. COUNCILOR DWYER

1. *Update Re: Transition for the 400th

C. COUNCILOR DENTON

1. Distribution of Single Use Disposables Policy
2. *Variances to allow dogs on a restaurant's patio or deck

D. COUNCILOR PERKINS

1. Pease International Tradeport – Strategic Planning Process

E. COUNCILOR RAYNOLDS

1. *Request for Analysis and Report Back on Middle Street Bike Lane

XII. APPROVAL OF GRANTS/DONATIONS

(There are no Grant/Donations on this agenda)

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Request for First Reading Re: Amendments to Building, Life Safety and Health Codes
2. Request for First Reading of Floodplain Overlay District Zoning Amendments
3. Request for First Reading of a Minor Ordinance Change to Conservation Ordinance
4. Request for First Reading on Wetlands Regulations Zoning Amendments
5. Request by Residents that Properties along Chase Drive and Cutts Avenue be Re-Zoned from Gateway Neighborhood Mixed Use Center (G2) to Single Residence B (SRB)
6. Sagamore Avenue Area Low Pressure Sewer System – Cost Apportionment
7. 2219 Lafayette Road Bicycle and Pedestrian Easement
8. 299 Vaughan Street Request for License Term Extension
9. Sale of Surplus Vehicles and Equipment

XIV. CONSENT AGENDA

- A. Letter from Matt Junkin, Seacoast Rotary requesting permission to hold the 11th Annual Turkey Trot 5k on Thanksgiving, November 28, 2019 at 7:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Edward W. Richards Regarding Bethel Assembly of God property, 200 Chase Drive

XVI. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. Report Back Re: Railroad Operations

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XVIII. ADJOURNMENT [at 10:00 p.m. or earlier]

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


** Indicates verbal report*

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: October 3, 2019

To: Honorable Mayor Jack Blalock and City Council Members

From: John P. Bohenko, City Manager 

Re: City Manager's Comments on October 7, 2019 City Council Agenda

6:15 p.m. - Public Dialogue Session

Public Hearings & Votes on Ordinances and/or Resolutions:

1. **Public Hearing Re: KENO.** At the August 12, 2019 City Council meeting, the Council voted that the following referendum question be placed on the ballot for the regular municipal election to be held on November 5, 2019, and further, that a public hearing be held by the City Council on the question at least 15 days but not more than 30 days before the question is to be voted on and that the public hearing be noticed as required by RSA 284:51;

Shall we allow the operation of KENO games within the City of Portsmouth?

2. **Third and Final Reading of Ordinance Amending Chapter 3, Article IX – Distribution of Single-Use Disposables.** At the September 16, 2019 City Council meeting, the Council voted to pass second reading and schedule a third and final reading regarding Councilor Denton's ordinance on Single-Use Disposables. [Attached is the Ordinance with amendments from the September 16th City Council meeting.](#)

At the September 16, 2019 meeting of the City Council, Councilor Chris Dwyer requested to be provided with the motions and amendments which might be made at the October 7, 2019 meeting of the City Council to remove certain provisions from the ordinance which will be heard that evening regarding distribution of single-use disposables. In particular,

she requested the motions and amendments necessary to remove from the ordinance at third reading those provisions which would create a City-wide ban on styrofoam (polystyrene) cups and containers. The motions and proposed amendments follow:

MOVED: To suspend the rules to allow amendments to be made to the proposed ordinance at third reading.

If that motion should pass by the required two-thirds vote, then the following motions, which must pass by simple majority, might be made to eliminate the City-wide ban on styrofoam cups and containers:

MOVED: To delete section 3.904 A 2, which prohibits the distribution of single-use polystyrene cups, from the proposed ordinance.

MOVED: To delete Section 3.905 A 2, which prohibits the distribution of single-use polystyrene containers, from the proposed ordinance.

If the City Council wishes to proceed, the following motion is required:

Move to pass third and final reading of the Ordinance, which may be amended as described in my comment.

City Manager's Items Which Require Action:

1. **Request for First Reading Re: Amendments to Building, Life Safety and Health Codes.** In December of 2017, the City Council adopted amendments to our Building Code (Chapters 12 and 15), Fire Code (Chapter 5) and our Food Code (Chapter 4) to reflect more current versions of the State Building and Fire Code, formally adopt and amend the 2009 Food Code and certain provisions the N.H. Code of Administrative Rules, He-P 2300, Sanitary Production and Distribution of Food. The amendments to our City Codes revised our local amendments to reflect the updated versions of the State Codes. The State has recently amended the State Building and Fire Codes to incorporate updated version of International Codes. Our current City Codes and local amendments need to be amended again to reflect the updated State Codes. Most of the proposed amendments to the [attached City Codes](#) are not substantive but are housekeeping in nature to reflect the updated State Codes (outlined below) and to delete local amendments now made unnecessary due to the State Code updates.
 - [Chapter 4, Food Licensing and Regulations, adopting definitions and standards for food processing plants from He-P 2300, the N.H. Code of Administrative Rules](#)
 - [Chapter 12, Part I: International Building Code \(IBC\), from 2009 to 2015 version, SBC *](#)
 - [Chapter 12, Part II: International Residential Code \(IRC\), from 2009 to 2015 version, SBC*](#)

- [Chapter 15, Part I](#): International Plumbing Code (IPC), from 2009 to 2015 version, SBC*
- [Chapter 15, Part II](#): International Mechanical Code, (IMC), from 2009 to 2015 version, SBC*
- [Chapter 15, Part III](#): Fuel Gas Installations, from Fuel Gas Installations to 2015 National Fuel Gas Code
- [Chapter 15, Part IV](#): National Electrical Code, 2017, SBC*
- [Chapter 5, Article IX](#): International Fire Code, 2015: Uniform Fire Code, NFPA 1, from 2009 to 2015, SFC**

(Although the Codes below are included in the State Building and Fire Codes, we do not have any local amendments to these Codes):

- Life Safety Code, 2015 (NFPA 101), SFC**
- International Energy Conservation Code, from 2009 to 2015, SBC*
- International Existing Building Code, from 2009 to 2015. SBC*
- [International Swimming Pool and Spa Code, 2015](#), SBC*

*SBC indicates Codes included in the State Building Code

**SFC indicates Codes included in the State Fire Code

In December of 2017, the City Council finalized Guiding Principles Related to Code Adoption in Portsmouth which recommends prompt revision of our ordinances to reflect the most recently adopted state codes and to evaluate current codes to improve code administration. If the Council votes to request a first reading of the amended ordinances in a form similar to those [attached](#), the City will schedule a public information session on these code updates before the public hearing. Prior to that informational public meeting, the City will establish a separate webpage that contains the proposed amendments and code information. This outreach to the community supports another of the Council’s Guiding Principles Related to Code Adoption [attached in the Agenda packet](#).

I recommend the following motions:

- a) *Move to authorize the City Manager to schedule first reading of amendments to Chapter 4 (Food Code) for the October 28, 2019 City Council Meeting;*
- b) *Move to authorize the City Manager to schedule first reading of amendments to Chapter 5 (Fire Code) for the October 28, 2019 City Council Meeting; and,*
- c) *Move to authorize the City Manager to schedule first reading of amendments to Chapter 12 and Chapter 15 (Building Codes) for the October 28, 2019 City Council meeting.*

2. **Request for First Reading of Floodplain Overlay District Zoning Amendments.** Over the past year, the Planning Department and Planning Board have been working on revisions and additions to the Zoning Ordinance that relate to a number of topics and issues identified as an outcome of the 2025 Master Planning process.

The **attached proposed amendments** to the Floodplain Overlay District in the Zoning Ordinance include both updates to bring these regulations into compliance with federal flood insurance program requirements as well as modifications that respond to projected impacts of climate change.

The Planning Board held a work session on these proposed amendments on August 22, 2019 and a public hearing on September 19, 2019. As a result of their review, the Board voted to recommend approval to City Council of the proposed floodplain amendments.

I recommend the City Council move to schedule first reading on the proposed amendments to the Floodplain Overlay District for the October 28, 2019 City Council meeting.

3. **Request for First Reading of a Minor Ordinance Change to Conservation Ordinance.**

At Chapter 8, Article V, the City has a Conservation Ordinance for purposes of protecting land and interests in land (easements) received or purchased for conservation purposes. The Ordinance lists properties subject to conservation protection and sets forth processes for managing those properties.

The proposed Ordinance amendments consist of the following:

- a. Adding two properties to the list of protected properties (property located on Lois Street and property located on Banfield Road) and deleting one property that should not be included on Heritage Avenue (it is a pump station);
- b. Updating the property identifiers with extended parcel IDs and book and page information; and
- c. Adding a new section to allow for the City to maintain municipal infrastructure located on such properties.

The Conservation Commission is supportive of these amendments and the Planning Board does not have a role. **Attached are the proposed Ordinance amendments.**

The Legal Department requests that these proposed changes to Chapter 8, Article V, be scheduled for first reading at the October 28, 2019 City Council meeting.

I recommend the City Council move to schedule first reading of the proposed amendments to Chapter 8, Article V at the October 28, 2019 City Council meeting.

4. **Request for First Reading on Wetlands Regulations Zoning Amendments.** The attached proposed amendments to the Wetlands Protection Section of the Zoning Ordinance primarily help clarify existing requirements as well as providing additional mechanisms for reviewing, assessing, and mitigating proposed impacts on the wetland buffer. These proposed amendments will provided additional detail to assist the Conservation Commission and Planning Board in their implementation of wetland protection regulations and include best practices for working in and near wetland environments throughout the City. The revisions include adding an exemption for fences without footings, clarifying the characterization of impacts to the wetland and buffer, adding information related to the compensatory removal of impervious surface and the requirements for a wetland buffer enhancement plan, providing guidance on living shorelines for tidal areas and use of porous pavement in the wetland buffer, and delineating wetland buffer areas.

The Conservation Commission reviewed the proposed amendments and provide feedback during a work session on July 10, 2019. The Planning Board held a work session on these proposed amendments on August 22, 2019 and a public hearing on September 19, 2019. As a result of their review, the Board voted to recommend approval to City Council of the proposed wetlands protection amendments.

I recommend the City Council move to schedule first reading on the proposed amendments to the Wetlands Protection section of the Zoning Ordinance for the October 28, 2019 City Council meeting.

5. **Request by Residents that Properties along Chase Drive and Cutts Avenue be Re-Zoned from Gateway Neighborhood Mixed Use Center (G2) to Single Residence B (SRB).** On March 31, 2019, residents and homeowners of Chase Drive, Cutts Avenue, Forest Street, and Brigham Lane submitted a letter to the City Council requesting that properties along Chase Drive and Cutts Avenue be re-zoned from Gateway Neighborhood Mixed Use Center (G2) to Single Residence B (SRB). The intent of this request was to reverse a City Council decision in December 2017 to re-zone these properties to a new zoning district – Gateway Neighborhood Mixed Use Center.

At the April 15, 2019 City Council meeting, the Council voted to refer this request to the Planning Board for a recommendation. The Planning Board held a public hearing on this request at the June 20, 2019 meeting. After listening to public comment and deliberating, the Planning Board voted to refer the request to the Planning Department to report back with additional information related to a potential G3 District, which had initially been considered when the current zoning was adopted.

At the Planning Board's request and in consideration of some of the concerns raised by the neighbors in their re-zoning request, the Planning Department developed a draft of a potential G3 district. As proposed, the third district would be primarily residential, but provides opportunities for small scale neighborhood-oriented commercial services. The district would also provide dimensional standards with lower height and density than the G1 and G2. On August 22, the Planning Board held a work session to discuss and review

the staff report back on the potential G3 District. The neighborhood has also provided some feedback on the proposed G3 District for the Planning Board's consideration.

With input received from the work session, Planning Department staff is prepared to continue working with the Planning Board and the neighborhood on a proposed zoning amendment to create a G3 District. However, in the meantime, the original request by residents to re-zone to SRB is still pending. Therefore, Planning Board and Planning Department staff felt that it was important to provide City Council with a recommendation regarding the original re-zoning request before proceeding too far with the G3 zoning amendments.

A copy of the draft G3 zoning amendment is attached along with Planning Director Juliet Walker's memorandum dated August 15, 2019.

The Planning Board discussed the original request to re-zone to SRB at the September 19, 2019 Planning Board meeting and voted not to recommend approval to the City Council. Furthermore, the Board voted to have the Planning Department staff provide a report back to the Council on the potential G3 District to determine whether the Council is supportive of the Planning Board moving forward with consideration of a zoning amendment at this time.

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

Move to place on file the citizen request to re-zone the properties along Chase Drive and Cutts Avenue from Gateway Neighborhood Mixed Use Center (G2) to Single Residence B (SRB) and, furthermore, to request that the Planning Board move forward with drafting a zoning amendment to bring back to the City Council for consideration that would create a Gateway 3 (G3) Zoning District.

6. **Sagamore Avenue Area Low Pressure Sewer System - Cost Apportionment.** City staff have evaluated the cost apportionment scenarios for the low pressure sewer system on portions of Sagamore Avenue, Cliff Road, Shaw Road, Walker Bungalow Road, Sagamore Grove and Wentworth House Road.

Because this project is required as part of the Second Modification to the City's Consent Decree with the Environmental Protection Agency and has a broad environmental benefit that extends to the entire rate base, **City Staff recommends that eighty percent (80%) of the capital costs for the sewer extension project be paid for by the sewer enterprise fund. Twenty percent (20%) of the capital costs shall be the responsibility of property owners up to a cap for residential property owners of \$10,000. Residential property owners would be eligible for a 10 year no-interest loan from the City for the capital contribution.** It is anticipated that no payments will be made until 2023.

Private property owners will still be responsible for the costs of their sewer service from the edge of roadway to the house, any plumbing and electrical modifications, and the low

pressure pumping system. Costs for individual property owners will vary depending on distance to the road, ledge and interior plumbing and electrical needs to connect but the cost to connect to the public sewer is likely to be materially less than the cost to replace a septic system that is failing given current regulatory requirements.

Project Background. This project is a public sewer extension to areas of the City where sewage is currently handled with septic tanks and leaching fields. The project is intended to reduce potential water quality issues in Sagamore Creek associated with failed septic systems in the project area. Typically these types of extensions are performed at the request of property owners and the costs for the project (in the road and on private property) are 100% paid by the property owners who benefit from the work. The extension of sewer to the Sagamore Avenue area is unique because the decision to extend the sewer, while initially triggered by failed systems in the area, was incorporated into the Consent Decree Second Modification. The City first looked at extending sewer along Sagamore Avenue and into the residential neighborhoods over twelve years ago; the engineering firm of Wright Pierce having completed a preliminary study in 2008. Adding this sewer extension project to the Consent Decree Second Modification in 2016 as a mitigation element was logical given the already determined need for a sewer option and environmentally sound given the ongoing concern that septic systems near water bodies are a source of pollutants. As a matter of process, the Consent Decree Second Modification was reviewed and approved by the Portsmouth City Council in March of 2016 and the City's monthly reporting of its performance under the Consent Decree Second Modification includes this project and is found on the City's website.

Construction costs for the sewer in this area are higher than typical due to shallow bedrock. In addition this is a sewer only project and there are no cost offsets from other proposed roadway or utility work. The costs for using this low pressure type sewer system are higher than a conventional gravity sewer because it requires property owners to install a pumping system and service to connect. With the high costs of the work and the relatively limited number of connections (~100 properties) the cost per property is estimated to be significantly higher than similar projects conducted in the past.

Staff consulted with the City's rate consultant, Mr. Hyder, and he concurred with the City Staff's recommendation. He indicated that this is a common approach where the overall benefits of a project extend to the entire service area, but the costs to the individual property owner may be unrealistic.

[Attached is an updated map of the project area.](#)

I recommend the City Council move to approve the cost apportionment for the Sagamore Avenue Area Low Pressure Sewer System as follows: twenty percent (20%) of the capital costs shall be the responsibility of property owners up to a cap for residential property owners of \$10,000. Eighty percent (80%) of the capital costs for the sewer extension project will be paid for by the Sewer Enterprise Fund. Residential property owners would be eligible for a 10 year no-interest loan from the City for the capital contribution.

7. **2219 Lafayette Road Bicycle and Pedestrian Easement.** On July 18, 2019, the Planning Board, granted Site Plan Review approval for the construction of a 6,830 square foot addition to an existing car dealership and related changes to the parking and display areas at 2219 Lafayette Road.

As approved, the Site Plan Approval required that the applicant provide an easement to the City for the creation of a 10' multi-use path paralleling Lafayette Road. [See attached Easement Plan and Deed.](#)

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

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

Move to accept a bicycle and pedestrian easement for 2219 Lafayette Road.

8. **299 Vaughan Street Request for License Term Extension.** Previously, the City Council approved a temporary construction license Vaughan Street Hotel LLC to encumber a portion of the street, sidewalk and parking spaces. During the term of the license, Vaughan Street has been operated as a one-way street. The license term for this previously approved license expired on September 27, 2019.

The applicant has indicated that, due to construction delays, they now require an extension of the license term to October 19, 2019. The applicant has been 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 September 28, 2019 and end on October 19, 2019.

The License Area for which an extension is required is shown on the [attached Plan](#). The total license area is 6,235 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 23 days which comes to a total fee of \$7,170. 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 Vaughan Street Hotel, LLC as submitted to facilitate construction activities at 299 Vaughan Street.

9. **Sale of Surplus Vehicles and Equipment.** The Department of Public Works currently has surplus inventory comprising of vehicles and equipment ready for disposal (see attached list). Any questions regarding these items should be directed to Public Works Director Peter Rice at (603) 766-1416. As in the past, we have disposed of the surplus inventory through a sealed bid process in which the inventory is sold to the highest bidder.

According to City Ordinance Section 1.505, property valued at \$500.00 or more must receive approval from the City Council prior to bidding.

I recommend the City Council move to authorize the City Manager to dispose of surplus vehicles and equipment through a sealed bid process in which the inventory is sold to the highest bidder.

Informational Items:

1. **Report Back Re: Railroad Operations.** This memo is a response to ongoing questions about railroad operations in the downtown. Specifically, concerns for noise and exhaust fumes from idling locomotives in the downtown where PanAm Railroad has an active rail yard.

In response to a number of inquiries from local residents, PanAm contacted the City to discuss their operations and strategies to address concerns that have been voiced over the impact of the railroad on those living nearby. PanAm has stated they were working to address the concerns raised and according to PanAm train engines will no longer idle when temperatures are over 43 degrees. While not a complete solution, this will help to reduce the summer idling which creates noise and fumes impacts in a time when people may have their windows open.

To address idling throughout the year, PanAm has said they will increase their utilization of SCS (shore connection systems) units on their trains. These are auxiliary power units that allow the train to power down when they are stationary and idling. Where available these units will reduce noise and fumes from a idling train engines. In cases where these SCS units are not installed or available on certain pieces of equipment, PanAm said they would investigate acquiring the appropriate technology to provide auxiliary power to their engines. In addition, there is the possibility for applying for federal funds to install SCS units on trains that need it. There is a grant program known as the Clean Diesel Program that is overseen by New Hampshire Department of Environmental Services (DES). PanAm would be eligible to apply for anti-idling technology through this program. The City has been in contact with DES about this program and the State has said they will encourage PanAm to apply for the next round of funding that is made available through this grant program.

In addition to these measures, there have been questions about the ability to create Railroad Quiet zones. Designated quiet zones are certain designated road crossing where Trains are exempted from blowing their horns its horn as normally required by Train Horn Rule (49

CFR Part 222). In order to apply for a quiet zone status at any crossing, all of the crossings in a community need to be evaluated and assigned an existing safety rating. The crossing would need to have a minimum of flashing lights and gates and in many cases would need upgrades to be eligible. The analysis looks at the number of pedestrian and vehicles crossing the tracks and whether a quiet zone could be put in place without compromising the safety of those crossing the tracks.

The City is grateful for the interest PanAm has taken in the concerns raised by residents in the community and we look forward to working with them in the future to address these issues.