

CITY COUNCIL MEETING

Per NH RSA 91-A:2 III (b) the Chair has declared COVID-19 Outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-5, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

to access by web (<https://zoom.us/join>)
to access by phone, dial (1-929-436-2866)
Meeting ID (957 3080 9274)
Password (242060)

DATE: MONDAY, APRIL 20, 2020

TIME: 7:00PM

AGENDA

- I. **6:00PM WORK SESSION – THERE IS NO WORK SESSION THIS EVENING – POSTPONED**
- II. **PUBLIC DIALOGUE SESSION [when applicable – every other regularly scheduled meeting] – N/A**
- III. **CALL TO ORDER [7:00 p.m. or thereafter]**
- IV. **ROLL CALL**
- V. **INVOCATION**
- VI. **PLEDGE OF ALLEGIANCE**

- VII. **ACCEPTANCE OF MINUTES – FEBRUARY 18, 2020**

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

- IX. **PUBLIC COMMENT SESSION – (Via Zoom)**

- X. **PUBLIC DIALOGUE SUMMARY [when applicable] – N/A**

- XI. **PUBLIC HEARINGS AND VOTES ON ORDINANCES AND/OR RESOLUTIONS**

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

XII. **MAYOR BECKSTED**

1. Appointments to be Considered:
 - Reappointment of Richard Blalock to the Recreation Board
2. Acceptance of Resignation from MaryAnn Blanchard from the Conservation Commission
3. *Creating a Committee for Small Business & Restaurant Relief Fund
4. Letters to Sister/Friendship Cities on Behalf of the Mayor

XIII. **CITY COUNCIL MEMBERS**

A. COUNCILOR LAZENBY

1. *Considerations for more Absentee Voting in 2020 Elections

B. COUNCILOR HUDA

1. Latest Data Re: Forecasted Economic Downturn Caused by the COVID-19 Virus (***Sample motion – move to request an updated report to the residents and City Council from the City Manager on the current financial condition of the city and on the immediate actions that the city is taking to maintain and safeguard our financial position while still providing necessary services during and after this pandemic***)

XIV. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant for Victim of Crime Act (VOCA) to the Portsmouth Police Department (***Sample motion – move to approve and accept the grant to the Portsmouth Police Department as presented***)

XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager's Items Which Require Action:

1. Sidewalk Café Licenses
2. Portsmouth Housing Authority – Release of Reverter
3. Request for Restoration of Involuntarily Merged Lots at 27 Thaxter Road

XVI. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Lauren and Chris Atwood of Otter Creek Shop LLC for property located at 206 Market Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Letter from Jylle Nevejans, Bottomline Technologies, requesting permission to hold a 5k Road Race for CASA on Sunday, September 27, 2020 at 11:00 a.m. (***Anticipated action – move to refer to the City Manager with authority to act***)

- C. Letter from Ken La Valley, Out of the Darkness, requesting permission to hold the Out of the Darkness Walk on Saturday, September 12, 2020 from 10:00 a.m. to Noon
(Anticipated action – move to refer to the City Manager with authority to act)

- D. Letter from Joi Smith, Friends of the South End, requesting permission to hold the annual Fairy House Tour event, on Saturday, October 3, 2020 and Sunday, October 4, 2020 from 10:00 a.m. – 3:00 p.m. Further, request to close Washington Street between Hancock and Court Streets to through traffic from 9:30 a.m. to 4:00 p.m. both days
(Anticipated action – move to refer to the City Manager with authority to act)

XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. *Presentation by Health Officer Kim McNamara regarding COVID-19 Update

- B. *Presentation by Economic Development Manager Nancy Carmer regarding Economic Development matters relating to the pandemic

- C. Email Correspondence ***(Sample motion – move to accept and place on file)***

XVIII. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. *Summary of Parking Holiday Revenue Impacts
- 2. *Update on Report Back Requested by Councilor Kennedy Regarding Impact Fees
- 3. Letter to Legislature regarding HB 1672 allowing no fault absentee ballot voting
- 4. *Sagamore Avenue Sewer Extension Project Update
- 5. Peirce Island Wastewater Treatment Facility Progress Report

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

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

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

** Indicates verbal report*



Karen S. Conard
City Manager

CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
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(603) 610-7201

Date: April 16, 2020

To: Honorable Mayor Rick Becksted and City Council Members

From: Karen S. Conard, City Manager *KSC*

Re: City Manager's Comments on City Council Agenda of April 20, 2020

XIV. Approval of Grants/Donations:

1. **Acceptance of Grant for Victim of Crime Act (VOCA) to the Portsmouth Police**

Department:

At the April 7, 2020 Special Police Commission meeting, the Board of Police Commissioners accepted the following grant:

- a. A grant in the amount of \$49,518 from the New Hampshire Department of Justice through the 'Victims of Crime Act' (VOCA grant). This grant is for expenses incurred and services provided for direct victim services, to include expenses for personnel.

I recommend that the City Council move to approve and accept the grant to the Portsmouth Police Department as presented.

XV. City Manager's Items which Require Action:

1. **Sidewalk Café Licenses:**

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.

While this may seem like an odd time to request Council approval of these licenses given the Coronavirus pandemic and associated Executive orders which have prohibited restaurant service, City staff recommends Council consider approval subject to any change in the Governor's order that may allow such service to resume. According to Health Officer Kim McNamara, it may be that outdoor service, with appropriate distances between seating, may be the first type of service to be

reinstated. Approval now would enable outdoor seating, therefore streamlining the process for businesses to resume operations as soon as possible.

[Attached](#) are applications from Popovers on the Square, Fezziwig’s Food & Fountain, Raleigh Wine Bar & Market and The District. City staff representatives from Police, Fire, Public Works, Building Inspection, Health, and Code Enforcement have reviewed those applications of and 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.

I recommend City Council consider allowing pro ration (/month basis) of the fee based upon the unusual circumstances we are experiencing, with no opening date anticipated at this time. 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 fence.

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

Record #	Establishment	Location	Area	Fee (by policy)	Tables	# of Chairs
20-1	Popovers on the Square	8 Congress St	723	\$7,230	11	42
20-4	Raleigh Wine Bar & Market	67 State Street	258	\$2,580	9	30
20-5	The District	103 Congress	500	\$5,000	16	32
20-6	Fezziwig’s Food & Fountain	112 State Street	120	\$1,200	3	6

City staff have reviewed all applications and are recommending approval as presented with anticipation that additional requests may be prepared for the Council’s next meeting.

I recommend that the City Council move to amend its policy requirement to allow sidewalk café seasonal fees be prorated for the 2020 season; and further

I recommend that the City Council move to authorize the City Manager to enter into Area Service Agreements with Popovers on the Square, Raleigh Wine Bar and Market, The District, and

Fezziwig’s Food and Fountain for outdoor alcohol service on City land for the 2020 season subject to City Council Policy No. 2012-02, and further subject to all Governor’s orders relating to the COVID-19 pandemic.

Applications for Sidewalk Cafés providing Alcohol Service - Private Sidewalk:

The City has received three applications for sidewalk cafés that are proposed for the 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. 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
20-2	Row 34	5 Portwalk Place*	290	6	18
20-3	BRGR Bar	195 Hanover St. Unit 34	480	9	30

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

I recommend that the City Council move to authorize the City Manager to enter into an Area Service Agreements with Row 34 and BRGR Bar for outdoor alcohol service on City land for the 2020 season subject to City Council Policy No. 2012-02, and further subject to all Governor’s orders relating to the COVID-19 pandemic.

2. Portsmouth Housing Authority – Release of Reverter:

The City holds a reverter interest in certain property owned by the Portsmouth Housing Authority (PHA) on Court Street which was conveyed to the PHA by the City in 1968. The reverter provision in the deed from the City to PHA says that if the property is not used for “housing for the elderly”, ownership of the land reverts back to the City. PHA now wants to exchange some, but not all, of the property covered by the reverter with an abutter as part of its workforce housing project. Because it involves the conveyance of the City’s interest in real estate, the ordinances require this matter should be forwarded to the Planning Board by the City Council for a report back and recommendation.

I recommend that the City Council move to refer this item to the Planning Board for a report and recommendation back.

3. **Request for Restoration of Involuntarily Merged Lots at 27 Thaxter Road:**

This memorandum represents the most recent chapter of a lengthy consideration by the City government concerning a request by a property owner on Thaxter Road to separate two lots which had been previously conjoined by the City and an objection to that action taken by the owners of an abutting lot.

On May 20, 2019 the City Council reviewed a request from Chad Callihan and a recommendation from the Planning Board, subsequently voting to unmerge two lots on Thaxter Road owned by Mr. Callihan. The lots were believed to have been involuntarily merged by the City. See NH RSA 674:39-aa (copy is [attached](#) for reference).

Abutters Kenneth and Deborah Jennings of 63 Thaxter Road then appealed that decision of the City Council to the Board of Adjustment as allowed by the statute. The Board of Adjustment heard the appeal on September 17, 2019 and then continued its deliberations to the October 15, 2019 meeting. At the first hearing on the appeal, Attorney Ralph Woodman, on behalf of the appealing abutters, indicated to the Board of Adjustment that there was information which had not been available to the City Council at the time of its initial vote, and that the information should have been considered prior to granting the unmerging of the lots. The hearing and the deliberation of the Board of Adjustment on this matter may be reviewed on YouTube at <https://youtu.be/kXgZE42ztOk?t=1296> (September 17, 2019 hearing) and <https://youtu.be/MOfxZ5gJur4?t=1374> (October 15, 2019 meeting). Subsequent to the hearing and deliberation, the Board of Adjustment voted to remand the matter to the City Council for the Council to take whatever action it deemed to be appropriate under the circumstances.

The matter went back to the Council on December 16, 2019. At that time, attorneys for each side were asked to present their arguments in writing, with a limit of seven pages each. Those writings are [attached](#). After some discussion and subsequent to the failure to pass a motion to uphold the City Council's previous decision to unmerge the lots, the City Council moved to refer the unmerging question to the Planning Board.

On January 16, 2020 the referral from the City Council was addressed by the Planning Board. At that time, the Planning Board "recommended to the City Council restoration of the involuntarily merged lots, as originally recommended."

Therefore, the matter is back before the City Council, with a recommendation from the Planning Board that the Council uphold its previous decision of May 20, 2019 to unmerge the lots.

I recommend that the City Council move to approve the unmerging of the two involved lots at 27 Thaxter Road as requested by the applicant Chad Callihan and as recommended by the Planning Board.

XVI. Consent Agenda:

A. Projecting Sign License - 206 Market Street:

Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 48” x 23” Sign area: 7.6 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1. The license shall be approved by the Legal Department as to content and form;*
- 2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, 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.*

XVII. Presentations and Consideration of Written Communications and Petitions:

A. Presentation by Health Officer Kim McNamara Regarding COVID-19 Update:

City Health Officer, Kim McNamara, will provide a verbal update to City Councilors and the public on COVID-19.

B. Presentation by Economic Development Manager Nancy Carmer Regarding Economic Development Matters Relating to the Pandemic:

Economic Development Manager, Nancy Carmer, will provide a brief presentation to update City Councilors and the public on economic development findings and response measures to the COVID-19 outbreak.

XVIII. City Manager’s Informational Items:

1. Summary of Parking Holiday Revenue Impacts:

The following is an updated summary of parking revenues and projections for Fiscal Year 2020 (FY20). As the result of social distancing measures, closures of most downtown businesses and the parking fee holiday until April 20th, the Parking Division’s revenue collection has been seriously reduced. As implemented, the parking holiday has stopped all parking revenues from

meters, garages and monthly passes. This loss of revenue will impact both the Parking Division's operations and the City's General Fund.

As of March 31, 2020 the Parking Division revenues were at \$6.8M or 74% of \$9.2M total revenue projection for FY20, with 75% of FY20 completed. Parking revenue losses are projected using FY19 revenue data. Based on revenues generated in 2019, a loss of approximately \$716,667 is estimated to date.

If the decision is made to resume monetized parking operations as of April 21st, conservative projections through the remainder of the fiscal year show a shortfall of \$1.87M, roughly 20% under budgeted FY20 figures. If the parking holiday is continued until the end of the fiscal year, the City anticipates a total loss of approximately \$2.5M in revenues.

A loss of \$2.5M will jeopardize the stability of the City's Parking Fund. Even without the continued parking holiday, the decline in business will significantly impact revenues. Parking Revenues contribute \$2.4M to the City's General Fund, plus approximately \$1.8M in additional services to the City (for example: senior transportation; Coast Buses; police; fire, school; school crossing guards; snow removal and downtown trash collection). These contributions equal an average reduction in taxes to the median valued home of approximately \$330/year. Given the financial challenges the City is facing, City staff does not recommend the continuation of a parking holiday.

To address this revenue shortfall, the Parking Division is cutting expenditures and holding off on capital expenditures. If these measures are insufficient, use of Parking Fund Balance will be necessary.

2. **Update on Report Back Requested by Councilor Kennedy Regarding Impact Fees:**

At the March 16, 2020 City Council meeting, the Council voted to request that the City Manager, Legal Department, Fees Committee and Planning Board review and report back at the April 20, 2020 meeting regarding suggested development impact fees proposed by Councilor Kennedy and any other feedback related to impact fees. Due to scheduling challenges presented by the COVID-19 emergency, the Fees Committee and the Planning Board have not had an opportunity to review and discuss this item.

City staff respectfully request that the report back be postponed until the May 18th Council meeting.

3. **Report Back on Letter to Legislature regarding HB 1672 Allowing No Fault Absentee Ballot Voting:**

Following the City Council meeting of April 6, 2020, Secretary of State Gardner and Attorney General MacDonald issued the [attached memorandum](#) regarding Election Operations during the State of Emergency related to the outbreak of Novel Coronavirus 2019 (COVID-19).

With respect to the September 8, 2020 Primary and November 3, 2020 General Elections it is impossible to know the affect COVID-19 might have on our state during our fall elections. Recently, the Secretary of State and the Attorney General have opened up the criteria for obtaining an absentee ballot due to illness from COVID-19 or fear that voting in person may expose the voter or others to COVID-19. The criteria now allows all voters to request an absentee ballot on the basis of COVID-19 and sign under the disability requirement. Additionally, as it relates to the absence on the day of an election, a voter caring for a person quarantined due to COVID-19, including self-quarantine based on general medical advice issued to the public by health officials, will qualify to vote absentee. It is anticipated that we could have a significant increase in absentee ballots based on the additional criteria covering the issues relating to COVID-19.

Based on the foregoing the City expects to receive further guidance from the Secretary of State and the Attorney General on matters relating to the issuance and processing of absentee ballots during the September Primary and November General Elections.

Further updates can be provided as received by Secretary Gardner and Attorney General MacDonald to inform City Councilors and the public.

4. **Sagamore Avenue Sewer Extension Project Update:**

City staff has developed a survey to gather additional information from individual property owners in the Sagamore Avenue Sewer Extension project area. The questions center on gauging interest in connecting to a new sewer line and the existing septic system on the property. It is anticipated that the information gathered will assist with the development of better cost estimates for the benefit of the City Council's decision-making purposes. The survey will be mailed to the property owners in the project area. Survey information will also be distributed via email to those who have provided their address. Staff is hopeful that conditions will allow for a work session to be held with the City Council in May so that elements of the project can be finalized and final design completed.

With regard to the schedule for starting the project, the project will not begin in June 2020 as described in the Consent Decree. The City has requested of the Environmental Protection Agency and other parties to the Consent Decree that the start date for the project be moved forward. The parties to the Consent Decree are in discussions currently.

City staff continue to receive questions from owners in the project area and will be prepared to respond to those questions during the course of future public meetings (or in writing if public meetings must be further delayed).

5. **Peirce Island Wastewater Treatment Facility Progress Report:**

Please find [attached](#) a progress report prepared by City staff regarding the Peirce Island Wastewater Treatment Facility (WWTF).