

# 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*

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, FEBRUARY 18, 2020

PORTSMOUTH, NH  
TIME: 7:00PM [or thereafter]

At 4:30 p.m. there were three Anticipated Non-Public Session held regarding the following subjects:

- McIntyre - RSA 91-A:3, II (e)
- Nomination of Police Commission Member – RSA 91-A:3, II (c)
- Boyle Case – RSA 91-A:3, II (e)

**Councilor Trace moved to enter into Non-Public Session regarding McIntyre – RSA 91-A:3, II (e) Seconded by Councilor Kennedy.**

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor McEachern moved to enter into Non-Public Session regarding Nomination of Police Commission Member – RSA 91-A:3, II (c). Seconded by Councilor Whelan.**

**On a roll call vote 8-1, motion passed. Assistant Mayor Splaine voted opposed.**

**Councilor Kennedy moved to enter into Non-Public Session regarding the Boyle Case – RSA 91-A:3, II (e). Seconded by Councilor McEachern.**

**On a unanimous roll call vote 9-0, motion passed.**

### **I. WORK SESSION**

At 6:15 p.m. a Work Session was held regarding New Recreational Fields.

### **II. CALL TO ORDER**

Mayor Becksted called the meeting to order at 7:25 p.m.

### **III. ROLL CALL**

Present: Mayor Becksted, Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy, Huda, Tabor and Trace

### **IV. INVOCATION**

Mayor Becksted asked for a moment of silent prayer in memory of Charles DeGrandpre who passed away last week.

City Attorney Sullivan spoke regarding Mr. DeGrandpre and his accomplishments as well as his deep friendship with Charlie.

### **V. PLEDGE OF ALLEGIANCE**

Mayor Becksted led in the Pledge of Allegiance to the Flag.

Mayor Becksted spoke to his visit at the Children's Garden Preschool where he spoke and answered questions of the kids and they presented him with a gift that he will place in his office.

## **PRESENTATION**

### 1. Summary of City Hall and Police Department Infrastructure Upgrades

Public Works Director Rice said the Police Department wants to prioritize the improvements needed in their department. He spoke to the three buildings that make up the Municipal Complex and the 2014 study done which looked at the needs of the Police Department. He advised the Council the study indicated there is a 66,000 square foot addition needed. Public Works Director Rice spoke to the renovations that have been made to the building. He also indicated that the Police Department and Municipal Complex meet the needs for the future. He said there are funds in the 2023 CIP for construction costs for the building and suggested moving those funds forward.

Councilor Tabor asked if the current space meet the needs of the Police Department. Public Works Director Rice said with some additions there could be a configuration that could work and would be a collaborative function.

Councilor Huda thanked Director Rice for the presentation on the additional mold abatement. Public Works Director Rice said it is in the same area and the work is phased in. Councilor Huda asked if there are other areas. Director Rice said that there are in some areas but no plan for abatement at this time. He said we monitor the air quality to make sure it is not harmful.

Councilor Kennedy asked when you put the facility back together are you adding some improvements such as a kitchen. Director Rice said there are kitchen improvements and the area will be in good shape.

Councilor Trace asked when you get to the second phase of mold remediation have you found the root cause of the problem. Director Rice said the mold has been corrected. He said there is no comprehensive plan but when you look at the facility you need to look at the whole issue.

Mayor Becksted said we met in Non-Public Session and met with Redgate/Kane and discussed on how we can met and work collaboratively together. He said there are some times you need to do more moves with less people. He has created a four member City Council Subcommittee made up of Councilors McEachern, Tabor, Whelan and Trace. He said the Subcommittee will collaborate and sit down and discuss what the plans are going forward with Redgate/Kane.

## **VIII. PUBLIC COMMENT SESSION**

Josh Denton advised the City Manager that she has the power and faith of the public. He thanked the City Councilors that voted not to vote down the ground lease. He asked the City Council to continue to collaborate and asked the City Attorney to do what is right by the people and not just the City Council. He asked Councilor Huda to reconsider the vote.

Katlin Deyo submitted a letter she spoke to the need to support the City Manager. She said that this is a City Manager form of government and the Council should be working for the residents.

Gerald Duffy said residents have signed a petition to rescind the vote of the McIntyre and demonstrate good faith. He said there are 300 signatures that have been gathered thus far. He said the City Council ran on promises and for listening to the residents. He stated HUB Spot is looking to come to the McIntyre which would help with the project.

John Raganese said he is a parent of a high schooler in the City and he is a licensed sports coach and accessibility is important to the playing fields. He said he is not concerned with players playing on artificial turf. He said the fields are subpar that we have. He indicated he would like to play at the High School field as it is finest field in the City. He reported that natural fields are untrained and are not the best fields and the City needs to move towards artificial fields immediately.

Jackie Cali-Pitts said we have been through this issue of artificial fields in the City. She said it is not a concern with kids playing on the fields. She said she feels we are doing the best for our children by having the fields. She indicated we have problems getting children to play and we can do this more effectively with turf fields.

Nancy MacDonald asked if the motion by Councilor Lazenby is still active this evening. She said the ground lease is a good deal for the developer and not the City Council. She stated the City will receive 1% of revenue sharing and only after 11 years.

Trevor Bartlett said he appreciates the work of the City Council and he believes the vote to reject the Ground Lease was premeditated. He stated for the best interests of the residents and trust for the process a rescinding of the vote should be made to reexamine the factors.

Bill Hamilton thanked the City Council for their vote to withdraw the land lease as the project is not what residents want. He applauds negotiations with the developer, there is no citizen involvement for the plan. He said he supports the City Council Committee of 4 Councilors and the project needs to be reevaluated.

Bill Downy said there is misinformation and disservice surrounding the McIntyre Project. He thanked the current Council for working to make this right and get an agreement that works for everyone.

Byron Matto thanked the City Council for their work thus far. He is concerned with how the project will go with the developers. He stated we need to rely on the current checks and balances for the land use boards. He said the vote to reject the ground lease was not in good faith and we need more assurances. He requested the Council to rescind the vote and represent the entire residents of the City.

Patrick Ellis said the majority of the City Council was not supportive of the Right-to-Know with the request for a Non-Public Session with the City Manager and City Attorney. He said by not having a Non-Public Session you did not move forward.

Mark Brighton asked the City Council not to rescind their vote. He said people are opposed because they don't like the results of the election.

Arthur Clough spoke to the lack of parking in the downtown. He addressed the Right-to-Know law and said the City Council has the right to meet with the City Attorney and City Manager.

Michael Griffin requested the approval of the City Council for the use of City property for Flag Day on June 14<sup>th</sup>. He said the event will take place at Prescott Park and it is a wonderful event and urged the public to attend.

Justin Richardson thanked the City Council for their work on trying to correct the McIntyre Project. He stated there was no approval of the ground lease.

Carl Diemer, Chair of the Recreation Board said they have worked on the issue of fields in the City for over 10 years. He spoke to the research on all aspects including child safety. He said he has been coach and went to Leary Field in the past to pump water off the field and natural turf is not the approach we should take. He urged the City Council to make a decision as soon as possible and put trust in your Boards and Commissions.

## **IX. PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS**

### **Public Hearing – Capital Improvement Plan (CIP):**

#### **A. CAPITAL IMPROVEMENT PLAN (CIP) FY 2021-2026**

- **PRESENTATION**

The Presentation was held at the January 13, 2020 Work Session.

City Manager Conard said the purpose of the Public Hearing is to be in compliance with the City Charter. She stated residents were encouraged to submit projects through the website. She indicated the Planning Board adopted the plan on December 19, 2019 and outlined the 5 index in the plan. She reported the Planning Board reviewed the requests of department heads and the projects are at \$2,000,000.00 and last year's CIP was approved at \$1,800,000.00. City Manager Conard informed the Council that the budget would be submitted to them on April 24<sup>th</sup> or thereafter.

- **CITY COUNCIL QUESTIONS**

Councilor Lazenby asked about changes between the first version and current version. Deputy Finance Director Purgiel indicated the changes are in the number of pages.

- **PUBLIC HEARING SPEAKERS**

Mayor Becksted read the legal notice, declared the public hearing open and called for speakers.

Josh Denton spoke to the Renewable Energy Policy and one of those recommendations was to fund a digester. He said a digester would generate revenues and reduce sludge from land fill. He said there needs to be a report and it has been approved for \$50,000.00. He asked the City Council to make sure the study has been completed.

Pat Bagley asked about the CIP and future CIP as to when we would have a new Police Department. She said we need to prioritize costs and she looked at the CIP which extends out to 2026 and cannot see spending \$4,000,000.00 on police upgrades when a new station is needed.

Doug Woodward said he submitted a request for the Maplewood Avenue Bridge. He said the City needs to look at the sea levels rising and address those matters. He would like to see the issue of sea levels rising integrated with a design for the bridge.

James Boyle spoke to a project close to Greenleaf Avenue from Lafayette Road and said it is not needed. He stated there needs to be an extensive study done on that before closing the area.

After three calls and no further speakers, Mayor Becksted closed the public hearing.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Councilor Lazenby asked about the report on the regional digester as discussed by Josh Denton. Public Works Director Rice said the report was completed and the project was not cost effective. He said the generation of tonnage did not meet the needs for the generation of electricity.

Councilor Kennedy asked about Mr. Woodward questions on climate and the Maplewood Avenue Bridge Project. Public Works Director Rice said we are just getting started with design and we can look at the scope.

Councilor McEachern said he would like the design to incorporate a study on sea level rising. He said we need to understand more resiliency down the line.

Mayor Becksted said action will take place on the CIP at the March 2, 2020 City Council meeting.

**Adoption of Resolution:**

- B. Adoption of Resolution regarding Portsmouth/Dover Emergency Water System Interconnection

City Manager Conard said staff has been speaking for three years with the City of Dover to the commission to look at this matter. She said the interconnection would allow four communities to connect with 8 communities. She reported that Dover is two-thirds away through the project with the City of Portsmouth investing \$50,000,000.00 in the last 20 years. She indicated the request would be to adopt the Resolution.

**Councilor Tabor moved to adopt the Resolution, as presented. Seconded by Councilor Lazenby.**

Councilor Kennedy inquired as to the cost. Deputy Public Works Director Goetz said \$8,000,000.00 with the piping being around \$3,000,000.00. He said the interconnection would be for emergencies.

Councilor Huda asked about the time line. Deputy Public Works Director Goetz said construction would be next year and funding would take place now for the design of the bridge. He said this is not part of our CIP we are seeking funding from the Drinking Water Fund.

**Motion passed.**



## **X. MAYOR BECKSTED**

1. Nomination of Police Commission member

Mayor Becksted thanked everyone that has been involved in this process. He said two candidates rose to the top.

**Assistant Mayor Splaine moved to approve the nomination of Tom Hart as Police Commissioner. Seconded by Councilor Kennedy.**

Assistant Mayor Splaine thanked Mayor Becksted for creating a great committee. He stated that Tom Hart will be an excellent Police Commissioner and urged the City Council to approve the motion.

**Motion passed.**

2. Reappointments to be Considered:
  - Reappointment of Lisa Louttit to the Peirce Island Committee
  - Reappointment of Richard Smith to the Peirce Island Committee
  - Reappointment of Francesca Fernald to the Peirce Island Committee
  - Reappointment of Harold Whitehouse to the Peirce Island Committee
  - Reappointment of Jay McVay to the Peirce Island Committee
  - Reappointment of Marc Stettner to the Peirce Island Committee
  - Reappointment of Steven Marison to the Peirce Island Committee
  - Reappointment of Stephen Philp to the Peirce Island Committee

The City Council considered the reappointment of the individuals listed above that will be voted on at the next City Council meeting.

3. Resignations
  - Resignation of Kathleen Boduch from the Citywide Neighborhood Blue Ribbon Committee
  - Resignation of Chase Hagaman from the Citywide Neighborhood Blue Ribbon Committee
  - Resignation of Kathleen Bergeron from the Citywide Neighborhood Blue Ribbon Committee

**Councilor Kennedy moved to accept the resignations and send letters of regret. Seconded by Councilor Lazenby and voted.**

## **XI. CITY COUNCIL MEMBERS**

### **A. COUNCILOR McEACHERN**

1. Identifying current Accessory Dwelling Unit Use and Applications to Date including Demographics and Locations

**Councilor McEachern moved to request City staff to identify current Accessory Dwelling Unit use and current applications to date including Demographics and Locations. Seconded by Assistant Mayor Splaine.**

Councilor McEachern said Accessory Dwelling Units are a good option to have an income stream. He said he would like to see how many applications and the demographics around them for Accessory Dwelling Units in the City.

**Motion passed.**

**B. COUNCILOR LAZENBY**

1. Motion to Rescind

Councilor Lazenby said the notices of default we have not received an extension on the time line. He said if the motion passed it would remove the ground lease but not approve the ground lease.

**Councilor Lazenby moved to Rescind the motion from the January 28, 2020 City Council meeting to “take action and not approve, we deny the current draft form of the Ground Lease dated December 7<sup>th</sup>, written for use between the City of Portsmouth and SoBow Square, LLC also known as Redgate/Kane. Seconded by Assistant Mayor Splaine.**

Councilor Lazenby said the motion is for moving forward together in good faith and work with development partners Redgate/Kane. He said the petition by Gerald Duffy has over 300 signature and is constructive as presented. He said the original vote was taken just three weeks after being sworn in and was done without information from our City Attorney. Councilor Lazenby said support of the motion allows for a do over. He said we need to identify places to work with Redgate/Kane. He stated there is no down side to moving ahead we can work to get the post office back, complete the application with a Non-Public Session. He asked City Manager Conard for information on things related to financial impact stated in the letter of default. He spoke to engaging outside legal counsel and asked if we have an estimate of cost. City Manager Conard said we do not.

City Manager Conard said in general terms the Finance Department would need a disclosure to our bond counsel and could affect our bond rating and rating agencies if there were impacts on financial scale. She said it would be a bond rating down grade which could have impacts to unassigned fund balance.

Councilor Lazenby said for everyone involved we are at risk with taxpayer’s funds. He said we have an opportunity to remove this, it does not mean we endorse the ground lease we have opportunity down the line to endorse the ground lease. He said we have 11 days to deal with this matter.

**Assistant Mayor Splaine moved that we postpone the vote to rescind until the March 2, 2020 City Council meeting. Seconded by Councilor Whelan.**

Assistant Mayor Splaine said he is tempted to vote to revisit the ground lease and the vote. He said we need to let the Subcommittee created meet with representatives from Redgate/Kane to continue the dialogue or, we could get into a law suit which is the worst case scenario. He stated you could lose funding and the dialogue. He spoke to lower density and having the post office return and more parking spaces. He stated he wants to give the Subcommittee a change and we can revisit the ground lease but we can't lose this fragile moment.

Councilor Kennedy said she agrees with Assistant Mayor Splaine.

Councilor Lazenby said this is a fragile moment and ending up in a law suit is a lose/lose. He said the motion to rescind will make the risk less for the City. He said failure of his motion could be bad for the City. He stated we need to deal with this before the deadline. He said that he opposes the motion to postpone.

Assistant Mayor Splaine said if we were to postpone to March 2<sup>nd</sup> is it possible to have a special meeting before that date.

City Attorney Sullivan said he agrees with Councilor Lazenby and Assistant Mayor Splaine if the motion to rescind passes it would be seen as an extension of an olive branch to Redgate/Kane. He further stated if the motion does not pass it would be seen as a negative. He said discussion of the Subcommittee could work out an extension. Assistant Mayor Splaine said he is in favor of continuing the dialogue and we need to vote to postpone until March 2, 2020.

Councilor Tabor said no one votes to work to make the project better more than he. He said we don't want to vote to reject the ground lease twice. He said Redgate/Kane told us what they would like to know from us. He said he wants to see the process move forward. He said we need to delay and have a meeting of the Subcommittee to see how much further we can get. He said we need to avoid rejecting the ground lease twice. He stated he would vote to rescind to avoid the risk.

Councilor McEachern said he appreciates Councilor Tabor's words and change of heart. He said we came into being a City Council with a threat of litigation and there was a lack of trust. He supports Assistant Mayor Splaine motion to table this to allow more time and for the most prudent decision.

**On a roll call vote 8-1, motion passed. Councilor Lazenby voted opposed.**

### **C. COUNCILOR KENNEDY**

1. Update Re: Report Back on two Budget Policies and Citizens Questions

**Councilor Kennedy moved to have answers to Councilor Kennedy's questions placed on the website. Seconded by Councilor Trace and voted.**

Councilor Kennedy said she would like to see a strong vote on contracts over \$10,000.00 with a report back from the City.

**D. COUNCLOR HUDA**

1. Final Review and Discussion of Proposed FY 2021 Budget Guidelines

**Councilor Huda moved to put forward for final review and discussion the FY2021 Budget Guidelines of January 15, 2020. Seconded by Councilor Kennedy.**

City Manager Conard said we have had several conversations regarding this with Councilor Huda and we can't tell the School Department what to spend items on, our concerns can only be for the bottom line of the budget. She said staff is working to make sure we are meeting the intent of the City Council. She said we will show non-operating expenses and where cuts can and cannot be made. She indicated we are down the road a bit with preparing the budget.

Councilor Tabor asked City Manager Conard the guideline of format will that mean for loss of services in the City. City Manager Conard said it would cause the loss of services and programs offered now.

Councilor Lazenby said if the motion passes are you required to follow the letter of what is there. City Attorney Sullivan said the City Manager controls the form of the budget. City Manager Conard said we will plan the budget process and how you want the budget presented looking forward.

Councilor Trace thanked Councilor Huda for bringing this item forward. She thanked the City Manager for the honest and transparent way of answering the questions regarding the budget.

Councilor McEachern echoed the comments of Councilor Trace and the work of the City Manager and Councilor Huda. He said any effort to bring the reasons why a budget might go up we need to bring more transparency which makes the City Council's job easier. He said City Manager Conard has the City Council's utmost respect and confidence.

Councilor Kennedy understands and does not see why the School Department needs to justify why one school is getting more than another. She will support Councilor Huda's motion. She said the School Department needs to help us and that all elementary schools are being treated equally.

City Manager Conard said she met with Superintendent of Schools Zdravec and Business Manager Bartlett and would provide answers to the questions by the City Council.

Assistant Mayor Splaine said individuals of the Police Department and Fire Department are under the Police Commission and Fire Commission which is a little more defined essential as police and fire services must be provided.

Councilor Tabor asked Councilor Huda to clarify all budgets. Councilor Huda said actual amounts of FY19 make the figures come to as close to the bottom line.

Councilor Tabor asked if you would give a rate.

Councilor Lazenby appreciates the process of the budget and the transparencies the residents need to see in reading what we are voting on.

Councilor Huda said further down the line we go since we are behind that would make it more difficult for everyone else.

**Councilor Lazenby moved to postpone the motion to put forward for final review and discussion the FY2021 Budget Guidelines of January 15, 2020. Seconded by Councilor McEachern.**

Councilor Kennedy said we need to vote to see what can and can't be done on this matter because of time we are late in the process.

City Manager Conard said staff will continue on in the extent we have it we can accommodate either one.

Councilor Lazenby said this is to make guidelines available to everyone in the public.

Councilor Whelan said we discussed this at the first budget meeting. He said it has been out there. He said he trusts the City Manager that she has been working with the guideline.

**On a roll call vote 5-4, motion passed. Councilor McEachern, Whelan, Lazenby, Tabor and Mayor Becksted voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Huda and Trace voted opposed.**

#### **E. COUNCILOR TRACE**

1. New EPA Great Bay Permitting and Potential Effects on City of Portsmouth – both Environmental and Financial

**Councilor Trace moved to request a report from City Staff at the March 2, 2020 City Council meeting including Legal Department on the Great Bay Total Nitrogen General Permit which is NH DES NHG 58A000 with a report back on the potential effects on the City of Portsmouth both environmental and financial and also on recent meetings attended by staff in Dover, New Hampshire. Seconded by Councilor McEachern.**

City Manager Conard indicated that Deputy City Attorney Woodland has drafted a letter on this matter and there is a public hearing tomorrow evening.

Councilor Trace said there are moving parts in the permit and would like the public hearing information for tomorrow available on-line. City Manager Conard said the information is on-line. She also advised that the public hearing tomorrow at Pease is allowing written comments which are due March 9<sup>th</sup>.

Councilor Trace asked if a full presentation could be done at the March 2<sup>nd</sup> meeting. City Attorney Sullivan said it is a complicated permit and how it will impact the City. He said we are still developing and working on this matter. Councilor Trace asked if the storm water lines would be considered storm water remediation. Deputy City Attorney Woodland said a gap in the permit from the Peirce Island Plant there will be time where we would bypass the discharge.

Councilor Whelan asked if the EPA would be making a presentation tomorrow. Deputy City Attorney Woodland said she hopes that they will.

Councilor Trace asked Deputy City Attorney Woodland if Rye is not covered and we were to build the line down Route 1 would we receive credits from the EPA. Deputy City Attorney Woodland said that is implied in the draft permit.

**Motion passed.**

**Councilor Kennedy moved to continue the meeting beyond 10:30 p.m. Seconded by Councilor McEachern and voted. Assistant Mayor Splaine voted opposed.**

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

- A. Acceptance of the Health Trust Wellness Program Reward - \$2,300.00

City Manager Conard spoke to the program and our reward of \$2,300.00.

**Councilor Kennedy moved to accept and approve the Health Trust Wellness Program Reward, as presented. Seconded by Councilor Trace and voted.**

## **XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION**

### **A. CITY MANAGER CONARD**

1. 24-Hour Warming Centers Policy

City Manager Conard spoke to the policy of warming centers which allows entities to open their centers for a 3 day period. She reported they will open Wednesday – Friday of this week and she feels it was appropriate to bring this matter before the Council this evening.

**Councilor Kennedy moved to accept and approve the policy, as presented. Seconded by Councilor Trace.**

Assistant Mayor Splaine thanked the Fire and Police Departments for bringing this policy forward. He understands the real logistics doing this as a regular center and the difficulties that may be encountered. He said he wants to make sure we are not creating a hardship for operation placing and volunteers to make sure this works.

Fire Chief Germain explained that any organization could come forward to do this and the reason for the policy is authorizing overnight accommodations which is not allowed. He reviewed the operations for when the center would need to be functional.

Assistant Mayor Splaine asked if the center worked well last week. Chief Germain said it did. Assistant Mayor Splaine said we need to brain storm over this matter and meet the need out in the community. He would like to look at a city run facility on a 24hr basis.

Police Chief Merner said he notified the officers to try and get individuals to go into a facility during these cold snaps.

**Motion passed.**

2. Request to Schedule a Council Retreat

City Manager Conard proposed holding a Work Session Retreat on Saturday, March 28, 2020 and stated she will be working with Mayor Becksted on an agenda.

Assistant Mayor Splaine said much of the meeting should be open to the public.

Councilor McEachern said he would not be in the Country and unable to attend. City Manager Conard said she would work with Mayor Becksted on another date.

3. Presentation and Report Back Re: Elderly & Disabled Exemptions

Assistant Mayor Splaine stepped off the dais because he is eligible for the exemption but would not be applying for it.

Assessor Maurice-Lentz said she looked at the comparison of single family median to elderly exemption which is a 60% increase from 2007. She reported in 2007, 80 year olds received 76% today they receive 48% which is a decline over time. She stated the disabled declined due to real estate's market appreciation throughout the City.

She spoke to two options that are available, Option A and Option B.

Option A:

Keep current exemption levels the same with the proposed increase in income levels.

Option B:

Adjust the exemption levels for the Elderly and Disabled taxpayers similar to the FY 2003 baseline as follows:

- Age 65 to 74            \$235,000 increase to \$110,000
- Age 75 to 79            \$175,000 increase to \$110,000
- Age 80+                 \$225,000 increase to \$110,000
- Disabled                 \$210,000 increase to \$110,000

An analysis showing the estimated median tax impact on single family homes if the proposed changes are made to the exemption limits would be an additional \$.03 or an annual increase of approximately \$14.20.

City Manager Conard advised the City Council with these changes we would need to schedule another public hearing.

Councilor Kennedy said she would like to see the elderly and disabled be equitable.

Assessor Maurice-Lentz said currently we have 10 disabled exemptions in the City.

Councilor Tabor said clearly this exemption has fallen behind and having less and less relief for residents. He said Option B would address the problem which is being recommended by the Assessor. He stated maybe we phase this in over two years.

**Councilor Lazenby moved to schedule a public hearing for the March 2, 2020 City Council meeting for the purpose of reviewing the amended Option B as presented by the City Assessor to amend the disabled exemption. The exemptions amounts for disabled and elderly taxpayers would increase as follows:**

<b>Ages 65-74</b>	<b>\$235,000.00 increase of \$110,000.00</b>
<b>Ages 75-79</b>	<b>\$285,000.00 increase of \$110,000.00</b>
<b>Ages 80+</b>	<b>\$335,000.00 increase of \$110,000.00</b>
<b>Disabled</b>	<b>\$235,000.00 increase of \$135,000.00</b>

**Seconded by Councilor Tabor.**

Councilor Lazenby thanked Councilor Tabor for working with the Assessor on this matter.

**Motion passed.**

#### **XIV. CONSENT AGENDA**

**Councilor Lazenby moved to adopt the Consent Agenda. Seconded by Councilor McEachern and voted.**

- A. Request for License to Install Projecting Sign for owner Margherita Verani of Berkshire Hathaway Verani for property located at 77 Hanover 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 Hershey Hirschkop, Seacoast Outright, requesting permission to hold the Portsmouth PRIDE on Saturday, June 27, 2020 (***Anticipated action – move to refer to the City Manager with authority to act***)
- C. Letter from Nancy Potter, Girls on the Run – NH, requesting permission to hold the annual 5k celebration event on Saturday, May 30, 2020 (***Anticipated action – move to refer to the City Manager with authority to act***)
- D. Letter from Michael J. Griffin, Benevolent and Protective Order of Elks, requesting permission to celebrate Flag Day on Sunday, June 14, 2020 at Prescott Park (***Anticipated action – move to refer to the City Manager with authority to act***)

**XV. PRESENTATION AND CONSIDERAION OF WRITTEN COMMUNICATIONS AND PETITIONS**

- A. Email Correspondence

**Councilor Lazenby moved to accept and place on file. Seconded by Assistant Mayor Splaine and voted.**

- B. Letter from Craig Welch, Portsmouth Housing Authority Director, regarding the Court Street Workforce Housing Project

**Councilor Kennedy moved to accept and place on file. Seconded by Councilor Trace and voted.**

- C. Letter from Bob Lister regarding destination fee

**Councilor Kennedy moved to refer to the Fee Committee. Seconded by Councilor Huda and voted.**

**XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

**XVIII. ADJOURNMENT**

**At 11:15 p.m., Councilor McEachern moved to adjourn into Non-Public Session regarding McIntyre – RSA 91-A:3, II (e). Seconded by Councilor Kennedy and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK



# 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

**RECEIVED**  
MAR 12 2020  
Renewing applicant  
By \_\_\_\_\_

Committee: Recreation Board

Name: Richard Blalock Telephone: 603-502-7424

Could you be contacted at work?  YES  NO - If so, telephone # 603-431-5510

Street address: 922 Greenland Rd. Portsmouth, NH 03801

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

Email address (for clerk's office communication): richbmookie@gmail.com

How long have you been a resident of Portsmouth? 36 years

Occupational background:

20 years as Owner/General Manager at Old Ferry Landing Restaurant  
5 years as Portsmouth Youth Football Coach

Would you be able to commit to attending all meetings?  YES  NO

Reasons for wishing to continue serving: As the youngest member of the Rec Board, I feel it is vital to our community ~~that~~ to continue to improve Portsmouth's recreation facilities and programs. I ~~am~~ have extensive knowledge of Portsmouth and its sports programs.

I believe it is my duty to continue to make Portsmouth a healthy community that is proud of its sports facilities with fiscal responsibility.

6/27/2012

OVER  
➔

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

Portsmouth Youth Football Board  
Portsmouth High School Football  
   
   
 

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

- 1) John Tafolla 10 Oceanview Ave Rye, NH 603-234-9692  
Name, address, telephone number
- 2) Craig Crowell 19 Allen Farm Rd. Greenland, NH 603-512-0410  
Name, address, telephone number

**BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:**

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed 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:  Date: 3/10/2020

**CITY CLERK INFORMATION ONLY:**

New Term Expiration Date: 04-01-2023  
Annual Number of Meetings: 6 2019 Number of Meetings Absent: 2  
Date of Original Appointment: 3/19/2018

**Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801**

April 10, 2020

Mayor Rick Prokated  
City of Portsmouth

Dear Rick,

With regret I resign from the Portsmouth  
Innovation Commission.

The current health crisis requires virtual  
meetings for some time to come. Lacking the  
technology and the ability to use it makes it  
impossible for me to remain an effective member.

Also, lameness from age and arthritic repairs  
diminish my active presence at site walks.  
Site walks often reflect the challenging nature  
of the wetland proposal. It is so important to  
have that on-the-ground presence.

At 77+ years my own energy and ability  
continue to be occupied with caring for my  
husband of 53 years.

It has been a privilege to have served for over 10 years  
first as vice-chair, Steve Miller has set an outstanding  
example for leadership. His retirement and my resignation  
should not stall the Commission's work to  
protect and enhance the wetlands of this city.

Very Truly Yours  
Maureen Blanchard

CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

The Honorable Kyohei Sakita, Mayor of Nichinan  
1-1-1 Chuodori  
Nichinan City, Japan

Dear Mayor Sakita,

As our Sister City to Portsmouth, New Hampshire, you and the people of Nichinan are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for the future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

We write from Portsmouth to say that we are safe; and that New Hampshire is making it through, although our citizens and businesses are riding rough seas. We hope that you, too, are holding up against the severe difficulties your nation is passing through. We read the headlines and think of you, our friends, living through these challenging days.

Each of us has gone through some of the worst times, not only as part of the COVID-19 crisis, but in past eras. Each of our cities has survived; and will survive. We will look back on these times, as we look back on other dark times, knowing that we are stronger and more resilient.

We know that our friendship and dedication to a cause bigger than ourselves will outlast the now. As Sister Cities, members of the same global family, we look forward to the day when we can clasp hands. Please let us know how you are and how, together as Sister Cities, we can plan for the recovery when this is over.

As I have said to the citizens of Portsmouth at the close of each of our virtual City Council meetings, "Be safe. Together, we will get through this." Until that day, be well.

In friendship,

A handwritten signature in black ink, appearing to read "Rick Becksted".

Rick Becksted  
Mayor

CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

Mr. Masakuni Soeda, Director General  
Nichinan Gakuen Jr-Sr High School  
3-5-1 Agatahigashi, Nichinan, Miyazaki 887-0041, Japan

Dear Soeda-san,

As our Sister School to Portsmouth, New Hampshire, you and your colleagues and students of Nichinan-Gakuen Junior-Senior High School are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for our children's future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

We write from Portsmouth to say that our students, teachers and families are safe; and that New Hampshire is making it through, although our citizens and businesses are riding rough seas. We hope that you, too, are holding up against the severe difficulties your nation is passing through. We read the headlines and think of you, our friends, living through these challenging days.

Each of us has gone through some of the worst times, not only as part of the COVID-19 crisis, but in past eras. Each of our cities has survived; and will survive. We will look back on these times, as we look back on other dark times, knowing that we are stronger and more resilient.

We know that our friendship and dedication to a cause bigger than ourselves will outlast the now. As Sister Schools we are members of the same global family; and we look forward to the day when we can clasp hands again. Please let us know how you are and how, together as Sister Schools, we can plan for the recovery when this is over.

As I have said to the citizens of Portsmouth at the close of each of our virtual City Council meetings, "Be safe. Together, we will get through this." Until that day, be well.

In friendship,

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Rick Becksted  
Mayor

CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

The Honorable Igor Skubenko, Mayor  
City of Severodvinsk, Russian Federation  
c/o Severodvinsk Connection/Alex Herlihy  
55 Lang Road  
Rye NH 03870

Dear Mayor Skubenko,

As our Sister City to Portsmouth, New Hampshire, you and the people of Severodvinsk are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for the future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

We write from this Portsmouth to say that we are safe; and that New Hampshire is making it through, although our citizens and businesses are riding rough seas. We hope that you, too, are holding up against the severe difficulties your nation is passing through. We read the headlines and think of you, our friends, living through these challenging days.

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We know that our friendship and dedication to a cause bigger than ourselves will outlast the now. As Sister Cities, members of the same global family, we look forward to the day when we can clasp hands. Please let us know how you are and how, together as Sister Cities, we can plan for the recovery when this is over.

As I have said to the citizens of Portsmouth, at the close of each of our virtual City Council meetings, "Be safe. Together, we will get through this." Until that day, be well.

In friendship,

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Rick Becksted  
Mayor

CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

The Honorable Alice Parma, Mayor  
City Hall, Ganganelli Square 1  
Santarcangelo di Romagna  
Rimini District, Italy 47822

Dear Mayor Parma,

As our Sister City to Portsmouth, New Hampshire, you and the people of Santarcangelo are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for the future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

We write from Portsmouth to say that we are safe; and that New Hampshire is making it through, although our citizens and businesses are riding rough seas. We hope that you, too, are holding up against the severe difficulties your nation is passing through. We read the headlines and think of you, our friends, living through these challenging days.

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In friendship,

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Rick Becksted  
Mayor



CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

The Honorable Mohammed Adjei Sowah, Mayor  
P. O. Box GP 385  
Accra Central  
Accra, Ghana

Dear Mayor Sowah,

As our Sister City to Portsmouth, New Hampshire, you and the people of Accra are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for the future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

We write from Portsmouth to say that we are safe; and that New Hampshire is making it through, although our citizens and businesses are riding rough seas. We hope that you, too, are holding up against the severe difficulties your nation is passing through. We read the headlines and think of you, our friends, living through these challenging days.

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We know that our friendship and dedication to a cause bigger than ourselves will outlast the now. As Sister Cities, members of the same global family, we look forward to the day when we can clasp hands. Please let us know how you are and how, together as Sister Cities, we can plan for the recovery when this is over.

As I have said to the citizens of Portsmouth at the close of each of our virtual City Council meetings, "Be safe. Together, we will get through this." Until that day, be well.

In friendship,

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Rick Becksted  
Mayor

CITY OF PORTSMOUTH  
Municipal Complex 1 Junkins Avenue  
Portsmouth, New Hampshire 03801  
603-610-7200 City of Portsmouth.com



Rick Becksted  
Mayor

April 14, 2020

The Honourable David Fuller, Lord Mayor  
The Lord Mayor's Office  
Portsmouth Guildhall, 2nd Floor, Guildhall Square,  
Portsmouth, England PO1 2AJ.

Dear Lord Mayor Fuller,

As our Friendship City with Portsmouth, New Hampshire, you and the people of Portsmouth are in our thoughts.

Facing this worldwide pandemic, together but alone, it is ever more clear that what we have in common – our hopes for the future, our shared history and our friendship – endures. Nothing can break the bonds that have joined us and continue to assure us of our mutual interests and our devotion to humanity that spans the globe.

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As I have said to the citizens of our Portsmouth, at the close of each of our virtual City Council meetings, "Be safe. Together, we will get through this." Until that day, be well.

In friendship,

A handwritten signature in black ink, appearing to read "Rick Becksted".

Rick Becksted  
Mayor

**DATE: APRIL 15,2020**

**TO: CITY CLERK KELLI BARNABY  
MAYOR BECKSTED  
CITY MANAGER CONARD**

**FROM: CITY COUNCILOR HUDA**

**SUBJECT: APRIL 20TH CITY COUNCIL MEETING AGENDA REQUEST (ZOOM MEETING)  
PLEASE PUT THIS UNDER MY NAME. THANK YOU**

**BASED ON THE LATEST DATA WE HAVE ON THE FORECASTED ECONOMIC DOWNTURN CAUSED BY THE COVID-19 VIRUS**

**> I 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 & SAFEGUARD OUR FINANCIAL POSITION WHILE STILL PROVIDING NECESSARY SERVICES DURING & AFTER THIS PANDEMIC.**

**PORTSMOUTH POLICE COMMISSION**

**MEMORANDUM**

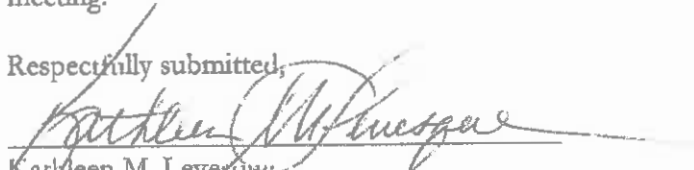
DATE: APRIL 8<sup>TH</sup>, 2020  
TO: KAREN CONARD, CITY MANAGER  
FROM: JOSEPH ONOSKO, PORTSMOUTH POLICE COMMISSION  
ROBERT M. MERNER, CHIEF OF POLICE  
RE: GRANT AND DONATIONS

At the April 7<sup>th</sup>, 2020 Special Police Commission meeting, the Board of Police Commissioners accepted the following grant:

1. Grants & Donations:
  - 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.

We submit the information to you pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their April 20<sup>th</sup>, 2020 meeting. We respectfully request this item be placed on the City Council meeting agenda for the April 20<sup>th</sup>, 2020 regular City Council meeting.

Respectfully submitted,

  
Karleen M. Leverette  
Office of the Chief

Attachments: Award Notice of Award

copies: Board of Police Commissioners  
Finance Director Judie Belanger

Admin. Mgr. Karen Senecal  
Business Asst. Tammie Perez

## GRANT AGREEMENT

The State of New Hampshire and the Subrecipient hereby  
Mutually agree as follows:

### GENERAL PROVISIONS

#### 1. Identification and Definitions.

1.1. State Agency Name <b>New Hampshire Department of Justice</b>		1.2. State Agency Address <b>33 Capitol Street, Concord, NH 03301</b>	
1.3. Subrecipient Name <b>Portsmouth Police Department</b>		1.4. Subrecipient Address <b>3 Junkins Avenue, Portsmouth, NH 03801</b>	
1.5 Subrecipient Phone # <b>(603) 610-7457</b>	1.6. Account Number <b>02-20-20-201510-5021-072-500574</b>	1.7. Completion Date <b>09/30/2022</b>	1.8. Grant Limitation <b>\$ 49,518.00</b>
1.9. Grant Officer for State Agency <b>Thomas Kaempfer</b>		1.10. State Agency Telephone Number <b>(603) 271-3658</b>	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Subrecipient Signature 1		1.12. Name & Title of Subrecipient Signor 1	
Subrecipient Signature 2 <i>If Applicable</i>		Name & Title of Subrecipient Signor 2 <i>If Applicable</i>	
1.13. Acknowledgment: State of New Hampshire, County of _____ on _____, before the undersigned officer, personally appeared the person _____ (satisfactorily proven) to be the person whose name is signed in block 1.11. _____ (as indicated in block 1.12.) and acknowledged that he/she executed this document in the capacity indicated in block 1.12. _____ block 1.12., known to me (or my agent) and that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace _____			
(Seal) _____			
1.13.2. Name & Title of Notary Public _____			
1.14. State Agency Signature(s) _____		Name & Title of State Agency Signor(s) _____	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required)			
By: _____ Assistant Attorney General, On: ____ / ____ / ____			
1.17. Approval by Governor and Council (if applicable)			
By: _____ On: ____ / ____ / ____			

Signatures are procured after grant acceptance by PC and CC

**2. SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), the Subrecipient identified in block 1.3 (hereinafter referred to as "the Subrecipient"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being hereinafter referred to as "the Project").

3. AREA COVERED. Except as otherwise specifically provided for herein, the Subrecipient shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.17), or upon signature by the State Agency as shown in block 1.14 ("the effective date").
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT B.
- 5.3. In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Subrecipient the Grant Amount. The State shall withhold from the amount otherwise payable to the Subrecipient under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Subrecipient for all expenses, of whatever nature, incurred by the Subrecipient in the performance hereof, and shall be the only, and the complete, compensation to the Subrecipient for the Project. The State shall have no liabilities to the Subrecipient other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY SUBRECIPIENT WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Subrecipient shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Subrecipient, including the acquisition of any and all necessary permits.
7. RECORDS and ACCOUNTS.
- 7.1. Between the Effective Date and the date three (3) years after the Completion Date the Subrecipient shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date three (3) years after the Completion Date, at any time during the Subrecipient's normal business hours, and as often as the State shall demand, the Subrecipient shall make available to the State all records pertaining to matters covered by this Agreement. The Subrecipient shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Subrecipient" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Subrecipient in block 1.3 of these provisions
8. PERSONNEL.
- 8.1. The Subrecipient shall, at its own expense, provide all personnel necessary to perform the Project. The Subrecipient warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Subrecipient shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
- 9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Subrecipient shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Subrecipient notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1. Any one or more of the following acts or omissions of the Subrecipient shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Subrecipient a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Subrecipient notice of termination; and
- 11.2.2 Give the Subrecipient a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Subrecipient during the period from the date of such notice until such time as the State determines that the Subrecipient has cured the Event of Default shall never be paid to the Subrecipient; and
- 11.2.3 Set off against any other obligation the State may owe to the Subrecipient any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Subrecipient shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Subrecipient to receive that portion of the Grant amount earned to and including the date of termination.
- 12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Subrecipient from any and all liability for damages sustained or incurred by the State as a result of the Subrecipient's breach of its obligations hereunder.
- 12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Subrecipient hereunder, the Subrecipient, may terminate this Agreement without cause upon thirty (30) days written notice.
13. CONFLICT OF INTEREST. No officer, member of employee of the Subrecipient, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her

personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

- 14. **SUBRECIPIENT'S RELATION TO THE STATE.** In the performance of this Agreement the Subrecipient, its employees, and any subcontractor or subgrantee of the Subrecipient are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Subrecipient nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workman's compensation or emoluments provided by the State to its employees.
- 15. **ASSIGNMENT AND SUBCONTRACTS.** The Subrecipient shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Subrecipient other than as set forth in Exhibit A without the prior written consent of the State.
- 16. **INDEMNIFICATION.** The Subrecipient shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Subrecipient or subcontractor, or subgrantee or other agent of the Subrecipient. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
- 17. **INSURANCE AND BOND.**
- 17.1 The Subrecipient shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
  - 17.1.1 Statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and
  - 17.1.2 Comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

- 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.
- 18. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Subrecipient.
- 19. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
- 20. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
- 21. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
- 22. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
- 23. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
- 24. **SPECIAL PROVISIONS.** The additional provisions set forth in Exhibit C hereto are incorporated as part of this agreement.

EXHIBIT A

-SCOPE OF SERVICES-

1. Portsmouth Police Department as Subrecipient shall receive a subgrant from the New Hampshire Department of Justice (DOJ) for expenses incurred and services provided for direct victim services provided by the Victim/Witness Program under the Victims of Crime Act Grant to include expenses for personnel.
  
2. The Subrecipient shall be reimbursed by the DOJ based on budgeted expenditures described in Exhibit B. The Subrecipient shall submit incurred expenses for reimbursement on the state approved expenditure reporting form as provided. Expenditure reports shall be submitted on a quarterly basis, within fifteen (15) days following the end of the current quarterly activities. Expenditure reports submitted later than thirty (30) days following the end of the quarter will be considered late and out of compliance. *For example, with an award that begins on January 1, the first quarterly report is due on April 15<sup>th</sup> or 15 days after the close of the first quarter ending on March 31.*
  
3. Subrecipient is required to maintain supporting documentation for all grant expenses both state funds and match if provided and to produce those documents upon request of this office or any other state or federal audit authority. Grant project supporting documentation should be maintained for at least 5 years after the close of the project.
  
4. Subrecipient shall be subject to periodic desk audits and program reviews by DOJ. Such desk audits and program reviews shall be scheduled with Subrecipient and every attempt shall be made by Subrecipient to accommodate the schedule.
  
5. All correspondence and submittals shall be directed to:  
NH Department of Justice  
Grants Management Unit  
33 Capitol Street  
Concord, NH 03301  
603-271-7820 or Tanya.pitman@doj.nh.gov



**EXHIBIT B**

**-METHOD OF PAYMENT-**

1. The Subrecipient shall receive reimbursement in exchange for approved expenditure reports as described in EXHIBIT A.
2. The Subrecipient shall be reimbursed within thirty (30) days following the DOJ's approval of expenditures. Said payment shall be made to the Subrecipient's account receivables address per the Financial System of the State of New Hampshire.
3. The State's obligation to compensate the Subrecipient under this Agreement shall not exceed the price limitation set forth in form P-37 section 1.8.

3a. The Subrecipient shall be awarded an amount not to exceed \$24,759.00 of the total Grant Limitation from Governor and Council approval or 07/01/20, whichever is later, to 06/30/21, with approved expenditure reports. This shall be contingent on continued federal funding and program performance.

3b. The Subrecipient shall be awarded an amount not to exceed \$24,759.00 of the total Grant Limitation from 07/01/21 to 06/30/22, with approved expenditure reports. This shall be contingent on continued federal funding and program performance.

- i. With sufficient reason and under limited circumstances, the Subrecipient may apply for an extension of the grant period for up to three months. The Subrecipient must submit the request in writing. No extension is granted until approval is received by DOJ in writing.
- ii. Neither the Subrecipient nor DOJ will be responsible for any expenses or costs incurred under this agreement prior to Governor and Council approval, nor after 06/30/22 or 9/30/22 if an extension is approved.

**EXHIBIT C**

**-SPECIAL PROVISIONS-**

1. Subrecipients shall also be compliant at all times with the terms, conditions and specifications detailed in the Special Conditions, which are subject to annual review.

**EXHIBIT C**

**Special Provisions to the State of New Hampshire Grant Agreement**

2019-V2-GX-0050

**SPECIAL CONDITIONS**

1. Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award. By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts all such assurances or certifications as if personally executed by the authorized recipient official

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in the Office of Justice Programs ("OJP") taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. The U.S. Department of Justice ("DOJ"), including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

2. Applicability of Part 200 Uniform Requirements

## EXHIBIT C

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2019 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2019 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2019 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

**Record retention and access:** Records pertinent to the award that the any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

### 3. Compliance with DOJ Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The subrecipient agrees to comply with the DOJ Grants Financial Guide.

### 4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

## EXHIBIT C

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

5. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(1), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

6. Requirement to report actual or imminent breach of personally identifiable information (PII)

Any "subrecipient" at any tier must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

7. All subawards ("subgrants") must have specific federal authorization

Any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

EXHIBIT C

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

8. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000.

The subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

9. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events.

Any subrecipient (subgrantee) at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Post-award Requirements" in the "DOJ Grants Financial Guide").

10. Requirement for data on performance and effectiveness under the award

The subrecipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

**EXHIBIT C**

**11. OJP Training Guiding Principles**

Any training or training materials that any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subrecipient, available at

<https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>

**12. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 42**

Any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

**13. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 54**

Any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

**14. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 38**

Any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time) specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration,

EXHIBIT C

Chapter I, Part 38, under e-CFR "current" data.

15. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits funds awarded by OJP from being used by any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of federal grant or cooperative agreement, subgrant, contract, subcontract, or loan with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law, including exception that applies to Indian tribes and tribal organizations.

Should any questions arise to whether a particular use of funds by a subrecipient would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

16. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2019)

Any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2019, are set out at <https://ojp.gov/funding/Explore/FY19AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a subrecipient would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

17. Reporting potential fraud, waste and abuse and similar misconduct.

Any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent,

Subrecipient Initials \_\_\_\_\_

Date \_\_\_\_\_



**EXHIBIT C**

subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Fraud Detection Office (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>

**18. Restrictions and certifications regarding non-disclosure agreements and related matters.**

No subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

- a. In accepting this award, the subrecipient—
  - i. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
  - ii. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as

EXHIBIT C

described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

- b. If the subrecipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--
  - i. it represents that— it has determined that no other entity that the subrecipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
  - ii. it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
- c. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

19. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The subrecipient at any tier must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The subrecipient also must inform its employees, in writing (and in the predominant

**EXHIBIT C**

native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

**20. Encouragement of policies to ban text messaging while driving**

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

**21. The subrecipient (subgrantees) at any tier, must authorize the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), the New Hampshire Department of Justice (NHDOJ) and its representatives, access to and the right to examine all records, books, paper or documents related to the VOCA grant.**

**22. VOCA Requirements**

Subrecipients assure they will comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the subrecipient certifies that funds under this award will:

- a) be awarded only to eligible victim assistance organizations, 34 U.S.C. 20103(a)(2);
- b) not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 34 U.S.C. 20103(a)(2); and
- c) be allocated in accordance with program guidelines or regulations implementing 34 U.S.C. 20103(a)(2)(A) and 34 U.S.C. 20103(a)(2)(B) to, at a minimum, assist victims in the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by the State.

**23. The subrecipient agrees to submit quarterly performance reports on the performance metrics identified by OVC, and in the manner required by OVC. This information on the activities supported by the award funding will assist in assessing the effects that**

**EXHIBIT C**

VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

**24. Employment eligibility verification for hiring under the award**

- 1. The recipient (and any subrecipient at any tier) must—**
  - A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the any subrecipient properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).**
  - B. Notify all persons associated with any subrecipient who are or will be involved in activities under this award of both--**
    - 1. this award requirement for verification of employment eligibility, and**
    - 2. the associated provisions in 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.**
  - C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).**
  - D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form 1-9 record retention requirements, as well as records of all pertinent notifications and trainings.**
- 2. Monitoring**

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.
- 3. Allowable costs**

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.
- 4. Rules of construction**
  - A. Staff involved in hiring process**

For purposes of this condition, persons "who are or will be involved in

**EXHIBIT C**

activities under this award" specifically includes (without limitation) any and any subrecipient officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

- B. **Employment eligibility confirmation with E-verify**  
For purpose of satisfying the requirement of this condition regarding verification of employment eligibility, any subrecipient may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the subrecipient uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.
  
- C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.
  
- D. Nothing in this condition shall be understood to authorize or require any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.
  
- E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).  
Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). E-Verify employer agents can email E-Verify at [E-VerifyEmployerAgent@dhs.gov](mailto:E-VerifyEmployerAgent@dhs.gov).

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

- 25. Unreasonable restrictions on competition under the award; association with federal government.

**SCOPE.** This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award, whether by any subrecipient at any tier, and regardless of the dollar amount of the purchase or acquisition, the method of

Subrecipient Initials \_\_\_\_\_

Date \_\_\_\_\_

EXHIBIT C

procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

1. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no subrecipient, at any tier may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), grant subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

**EXHIBIT C**

B. Nothing in this condition shall be understood to authorize or require any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

**26. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)**

Any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of any subrecipient. The details of the subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

**27. Determination of suitability to interact with participating minors**

**SCOPE.** This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

Any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

**28. Discrimination Findings**

The subrecipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process

EXHIBIT C

hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the recipient will forward a copy of the findings to the Office for Civil Rights of OJP.

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29. The Subrecipient understands that grants are funded for the grant award period noted on the grant award document. No guarantee is given or implied of subsequent funding in future years.
30. Any publications (written, visual or sound), whether published through Federal grant funds or matching funds, shall contain the following statements: "This project was supported by (2019-V2-GX-0050) awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice."
31. The Subrecipient agency agrees that, should they employ a former member of the NH Department of Justice (NHDOJ), that employee or their relative shall not perform work on or be billed to any federal or state subgrant or monetary award that the employee directly managed or supervised while at the NHDOJ for the life of the subgrant without the express approval of the NH DOJ.
32. The Subrecipient must utilize volunteers to assist in providing VOCA allowable victim services unless extenuating circumstances justify the exclusion of volunteers, and a volunteer waiver is obtained from the NHDOJ.
33. The Subrecipient agrees to assist victims in applying for Victims Compensation benefits. Such assistance includes: identifying eligible victims; making reasonable efforts to notify eligible victims of the availability of compensation; making reasonable efforts to explain the program to victims; offering to assist victims with the application process when it is reasonable to do so.
34. The Subrecipient understands that VOCA *non-allowable* personnel activities include: general administration, prevention, active investigation and prosecution of criminal activities, research and studies, lobbying, capital expenses, compensation for victims of crime and fundraising.
35. The Subrecipient agrees that all services will be provided at no charge to victims unless a program income waiver is obtained from the NHDOJ. If permission to



**EXHIBIT C**

generate program income is granted, the Subrecipient agrees that there must be a sliding scale that starts at zero, and that all program income will be totally expended on grant allowable activities by the end of the funding cycle.

36. Equipment purchased with VOCA funds shall be listed by the Subrecipient on the agency inventory. The inventory must include the item description, serial number, cost, percentage of federal VOCA funds, and location. The Subrecipient agrees that the title to any equipment purchased with VOCA funds will revert back to the NHDOJ, Grants Management Unit, when it is no longer being used for the VOCA program purposes for which it was acquired.
  
37. The Subrecipient agrees that if a financial audit of the agency is performed, whether it be an audit under 2 CFR or not, the Subrecipient agrees to provide a copy of the audit and any associated management letters to the NHDOJ, Grants Management Unit. The Single Audit report must be submitted to the Grants Management Unit within 9 months after the subrecipient's year-end or one month after the issuance of the audit.
  
38. Subrecipients of federal funding from the NHDOJ are required to comply with all federal regulations that relate to non-discrimination. These requirements are specified in United States Code of Federal Regulation Title 28, sections 35, 38, 42 and 54. Individuals who believe they may have been discriminated against by the NHDOJ or by an organization that receives federal funding from the NHDOJ based on their race, color, national origin, religion, sex, disability, age, sexual orientation or gender identity should print and complete a Discrimination Complaint Form found at <https://www.doj.nh.gov/grants-management/civil-rights.htm>.
  
39. The Subrecipient, if a non-profit organization, agrees to make its financial statements available online (either on the subrecipient's website, or the NHDOJ's, or another publicly available website). Organizations that have Federal 501 (c) 3 tax status are considered in compliance with this requirement, with no further action needed, to the extent that such organization files IRS Form 990 or similar tax document (e.g., 990-EZ), as several sources already provide searchable online databases of such financial statements.
  
40. The Subrecipient, if a non-profit organization, must certify their non-profit status by submitting a statement to NHDOJ: 1) affirmatively asserting that the recipient is a non-profit organization and 2) indicating that the subrecipient has on file and available upon audit one of the following:

**EXHIBIT C**

- A copy of the organization's 501 (c) 3 designation letter, or:
- A letter from the State of NH stating that the subrecipient is a non-profit organization operating within the state, or:
- A copy of the sub-grantee's state certificate of incorporation that substantiates its non-profit status

Subrecipient that are local non-profit affiliates of state or national non-profits should also have a statement by the parent organization that the Subrecipient is a local non-profit affiliate.

**41. Certification Regarding EEOP Required:**

If required, within 30 days from the date of the award, the Subrecipient will submit for approval, an acceptable Equal Employment Opportunity Plan (EEOP) as required by 28 CFR 42.301 et seq. or a Certification Form to both the NH DOJ and the Office of Civil Rights, Office of Justice Programs, US DOJ at 810 7th Street, NW, Washington, DC 20531. Failure to submit an approved EEOP or Certification is a violation of the Program Guidelines and Conditions and may result in suspension or termination of funding, until such time as the Subrecipient is in compliance. **The EEOP reporting tool and instructions can be found at: [http://ojp.gov/about/ocr/faj\\_eeop.htm](http://ojp.gov/about/ocr/faj_eeop.htm)**

**42. Compensation for individual consultant services is to be reasonable and consistent with that paid for similar services in the marketplace. The current consultant limit is \$650 per day or \$81.25 per hour. When the rate exceeds the limit for an 8-hour day, or a proportionate hourly rate (excluding travel and subsistence costs), a written prior approval is required from OVC. Prior approval requests require additional justification.**

*I have read and understand all 42 special provisions contained in this document:*

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**Name and Title of Authorized Representative**

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**Signature**

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**Date**

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**Name and Address of Agency**

**EXHIBIT D**  
**EEOP Reporting**

I, \_\_\_\_\_ [responsible official], certify that  
\_\_\_\_\_ [recipient] has completed the EEO reporting tool  
certification

form at: [https://ojp.gov/about/ocr/faq\\_eeop.htm](https://ojp.gov/about/ocr/faq_eeop.htm) on \_\_\_\_\_ [Date]

And that \_\_\_\_\_ [responsible official] has completed the  
EEOP

training at <https://ojp.gov/about/ocr/ocr-training-videos/video-ocr-training.htm> on:

\_\_\_\_\_ [date]

I further certify that:  
\_\_\_\_\_ [recipient] will comply  
with applicable federal civil rights laws that prohibit discrimination in employment and in the  
delivery of services.

Signature: \_\_\_\_\_

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

**EXHIBIT E**

**Non-supplanting Certification**

Supplanting defined

Federal funds must be used to supplement existing funds for program activities and must not replace those funds that have been appropriated for the same purpose. Supplanting shall be the subject of application review, as well as pre-award review, post-award monitoring, and audit. If there is a potential presence of supplanting, the applicant or grantee will be required to supply documentation demonstrating that the reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds. For certain programs, a written certification may be requested by the awarding agency or recipient agency stating that Federal funds will not be used to supplant State or local funds. See the OJP Financial Guide (Part II, Chapter 3)

<http://www.ojp.usdoj.gov/financialguide/part2/part2chap3.htm>

Supplanting and job retention

A grantee may use federal funds to retain jobs that, without the use of the federal money, would be lost. If the grantee is planning on using federal funds to retain jobs, it must be able to substantiate that, without the funds, the jobs would be lost. Substantiation can be, but is not limited to, one of the following forms: an official memorandum, official minutes of a county or municipal board meeting or any documentation, that is usual and customarily produced when making determinations about employment. The documentation must describe the terminated positions and that the termination is because of lack of the availability of State or local funds.

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The \_\_\_\_\_ (Applicant) certifies that any funds awarded through grant number 2019-V2-GX-0050 shall be used to supplement existing funds for program activities and will not replace (supplant) nonfederal funds that have been appropriated for the purposes and goals of the grant.

The \_\_\_\_\_ (Applicant) understands that supplanting violations may result in a range of penalties, including but not limited to suspension of future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under this grant, and civil and/or criminal penalties.

Printed Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**EXHIBIT F**

**NEW HAMPSHIRE DEPARTMENT OF JUSTICE**



**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice ("Department") determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by 31 U.S.C. § 1352, as implemented by 28 C.F.R. Part 69, the Applicant certifies and assures (to the extent applicable) the following:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If the Applicant's request for Federal funds is in excess of \$100,000, and any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative agreement, the Applicant shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its (and any DOJ awarding agency's) instructions; and

(c) The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352.

**2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

**EXHIBIT F**

A. Pursuant to Department regulations on non-procurement debarment and suspension implemented at 2 C.F.R. Part 2867, and to other related requirements, the Applicant certifies, with respect to prospective participants in a primary tier “covered transaction,” as defined at 2 C.F.R. § 2867.20(a), that neither it nor any of its principals—

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) has within a three-year period preceding this application been convicted of a felony criminal violation under any Federal law, or been convicted or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, tribal, or local) transaction or private agreement or transaction;

violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects its (or its principals’) present responsibility;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, tribal, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and/or

(d) has within a three-year period preceding this application had one or more public transactions (Federal, State, tribal, or local) terminated for cause or default.

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application. Where the Applicant or any of its principals was convicted, within a three-year period preceding this application, of a felony criminal violation under any Federal law, the Applicant also must disclose such felony criminal conviction in writing to the Department (for OJP Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov); or for COPS Applicants, to COPS at [AskCOPSRC@usdoj.gov](mailto:AskCOPSRC@usdoj.gov)), unless such disclosure has already been made.

**3. FEDERAL TAXES**

- A. If the Applicant is a corporation, it certifies either that (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to the Department (for OJP

**EXHIBIT F**

Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov); or for COPS Applicants, to COPS at [AskCOPSRC@usdoj.gov](mailto:AskCOPSRC@usdoj.gov)).

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application.

**4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, as implemented at 28 C.F.R. Part 83, Subpart F, for grantees, as defined at 28 C.F.R. §§ 83.620 and 83.650:

A. The Applicant certifies and assures that it will, or will continue to, provide a drug-free workplace by—

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of the employee's conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the Department, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of any such convicted employee to the Department, as follows:

**EXHIBIT F**

For COPS award recipients - COPS Office, 145 N Street, NE, Washington, DC, 20530;  
For OJP and OVW award recipients - U.S. Department of Justice, Office of Justice Programs,  
ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531.

Notice shall include the identification number(s) of each affected award;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

If you are unable to sign this certification, you must attach an explanation to this certification.

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Name and Title of Head of Agency

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Signature

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Date

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Name and Address of Agency





## CITY OF PORTSMOUTH

City Hall, One Junkins Avenue  
Portsmouth, New Hampshire 03801  
kconard@cityofportsmouth.com  
(603) 610-7201

Karen S. Conard  
City Manager

**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

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### *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:

<b>Record #</b>	<b>Establishment</b>	<b>Location</b>	<b>Area</b>	<b>Fee (by policy)</b>	<b>Tables</b>	<b># of Chairs</b>
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 21<sup>st</sup>, 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 18<sup>th</sup> 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).

**CITY OF PORTSMOUTH  
CITY COUNCIL POLICY No. 2012-02**

**POLICY REGARDING USE OF CITY PROPERTY FOR SIDEWALK CAFE'S  
PROVIDING ALCOHOL SERVICE**

**WHEREAS**, the City Council allowed the pilot use of City property by two sidewalk cafe's providing alcohol service during the 2011 summer season; and

**WHEREAS**, the City Council recognizes the benefit to residents, businesses, visitors and the City's economic vitality of allowing sidewalk cafe's with alcohol service on City property; and

**WHEREAS**, the City Council desires to balance said benefits of sidewalk cafe's with the safety, desires, and convenience of the public at large; and

**WHEREAS**, the City Council also recognizes that the City has the inherent authority to regulate any obstructions on City sidewalks and any intrusions into City sidewalks; and

**WHEREAS**, the City Council recognizes the authority of the State to regulate alcohol service.

**NOW THEREFORE**, the City Council adopts the following policies, criteria and standards with regard to the use of City property for sidewalk cafe's providing alcohol service:

1. Requests for use of City property for sidewalk cafe's providing alcohol service shall be made in writing to the City Council on an annual basis by May 1<sup>st</sup> with no expectation of continued year-to-year use of the sidewalk area on a continuing basis.
2. Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curb lines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for the sidewalk café, dimensioned routes of travel within the sidewalk café area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like.
3. The terms and conditions of any such requests that are approved by the City Council in any given year shall be described in an annual Area Service Agreement, which includes a clear depiction of the area approved for sidewalk café use, with said Area Service Agreement to be signed by the City Manager and the party or parties making the request.
4. The term of the Area Service Agreement should be for no more than six (6) months and shall typically run mid-April thru mid-October.
5. Area Service Agreements shall not be assignable to other parties.
6. Use of the Area subject to the Area Service Agreement (the "Area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City in order to accommodate special municipal events.



7. A ten dollar (\$10.00) per square foot fee will be charged for the Area subject to the Area Service Agreement and the fee shall be for the entire 6 month season with no proration of the fee. The minimum fee for the season shall be \$2,000 even if the size of the Area subject to the Agreement is less than 200 square feet. The fee shall be due and payable to the City of Portsmouth prior to authorization to use the Area.
8. The Area specified for sidewalk café use in the Area Service Agreement shall be restored upon termination of the Area Service Agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City.
9. Sidewalk cafés on City property shall indemnify and hold harmless the City of Portsmouth and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department.
10. Sidewalk cafe's shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make same inaccessible for public use or maintenance purposes.
11. Sidewalk cafe's may utilize the Area for authorized purposes during their normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. 7 days a week with no alcohol served within the Area subsequent to one-half hour before the foregoing closure times.
12. Sidewalk café operators shall agree at all times to comply with all laws, rules and regulations of the NH State Liquor Commission and all other local, state and federal laws. Approval of the Area Service Agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission.
13. Sidewalk cafe's shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering a substantial meal with service at tables conducted by wait staff only.
14. Sidewalk café operators will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act.
15. The Area Service Agreement may be suspended at the sole discretion of the City on an administrative basis.
16. The Area Service Agreement may be revoked in its entirety, excepting for indemnity provisions, by the City by vote of the City Council.

17. Sidewalk cafe's with alcohol service should meet the following site design standards:

- Be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy duty black decorative metal materials or equivalent as approved by the City Manager or his designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and insure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches.
- Sidewalk cafe's shall have no audio or visual or entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed to patrons in the sidewalk café.
- Sidewalk café seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the Area approved by the City, and the adjacent public pedestrian way shall not be crossed in order to provide alcohol or food service to additional areas.
- The internal dimensions and table/chair layout of the sidewalk café Area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- Sidewalk cafe's must provide a 5-foot radius clearance from the center of restaurant doorways (exterior) and doorways shall be kept clear at all times and a 5-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- The enclosure system, tables and chairs shall be movable/non-permanent.
- In Market Square the minimum width for the pedestrian way adjacent to the Area shall be 10-feet to 12-feet depending on site conditions. In all other areas where sidewalk cafe's are allowed the width for the pedestrian way adjacent to the Area shall, at a minimum, be 5-feet and, in any event, meet ADA, but will depend on site conditions. The pedestrian way in both instances shall allow for and provide clear unimpeded passage and access along the Area. The pedestrian way shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the Area interfere with accessibility or public safety, including safe lines of sight for drivers.
- Canopies over the sidewalk café shall not be allowed unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the sidewalk café; table umbrellas without logos are allowed, but must not extend beyond the Area.
- No advertising of any kind shall be allowed in the Area.
- No improvements or personal property located within the Area shall extend on or over any municipal property located outside the Area.

18. Smoking should not be allowed in the sidewalk café Area.

19. Sidewalk café operators shall agree at all times to comply with all local laws, rules, regulations and orders including, but not limited to the following:
- Health Department to approve outdoor food service operations and cleaning operations, with the Area to be left in a clean and sanitary condition at all times and garbage contained at all times in covered receptacles. The Area shall be left in clean condition at close of business with all garbage removed in its entirety from the Area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the Area and no condiments, paper products or the like shall be stored on the tables in the Area. Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
  - Inspections Department shall review/approve that bathroom facilities are sufficient to support outdoor sidewalk café seating. Permits shall be sought from the Inspections Department for any proposed Area lighting.
  - A Place of Assembly inspection and updated Place of Assembly permit shall be required from the Fire Department and the Fire Department shall review/approve means of egress.
20. No Area Service Agreement should be approved by the City except in conformance with the foregoing.
21. The above are policy guidelines that will serve as the basis for Area Service Agreements, which may include other terms and conditions deemed by the City to be in the public interest.
22. The number and location of sidewalk cafe's on City sidewalks shall be at the sole unfettered discretion of the City Council acting in the public interest and no entitlement is created by this policy for any party to have a sidewalk café at any location.

**This policy shall take effect upon the passage by the City Council.**

Adopted by the Portsmouth City Council on **March 19, 2012**.  
Ratified by the Portsmouth City Council on January 13, 2014.  
Ratified by the Portsmouth City Council on January 11, 2016.  
Amended by the Portsmouth City Council on February 21, 2017.  
Ratified by the Portsmouth City Council on January 16, 2018.  
Ratified by the Portsmouth City Council on January 8, 2020.

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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

**Sidewalk Cafe Application**

**Applicant**

**Location**

**CAFE-20-1**



Katie Green

6034311119

kmaloney@tinioshospitality.com

8 CONGRESS ST

102

Portsmouth, NH 03801

Status: Active

Submitted: Feb 21, 2020

**Cafe Information**

**Restaurant Name**

Popovers on the Square

**Restaurant Address**

8 Congress Street

**# of Tables**

11

**# of Chairs**

42

**Cafe Area (s.f.)**

723

**Additional information**

--

**Acknowledgement & Authorization**

**Policy Adherence:** I hereby certify that I have read and agree to comply with City Council Policy No. 2012-02 pertaining to sidewalk cafes.

true

**Signature:** I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

**Internal Approvals**

**Date of City Council Approval**

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**Fee Paid**

--

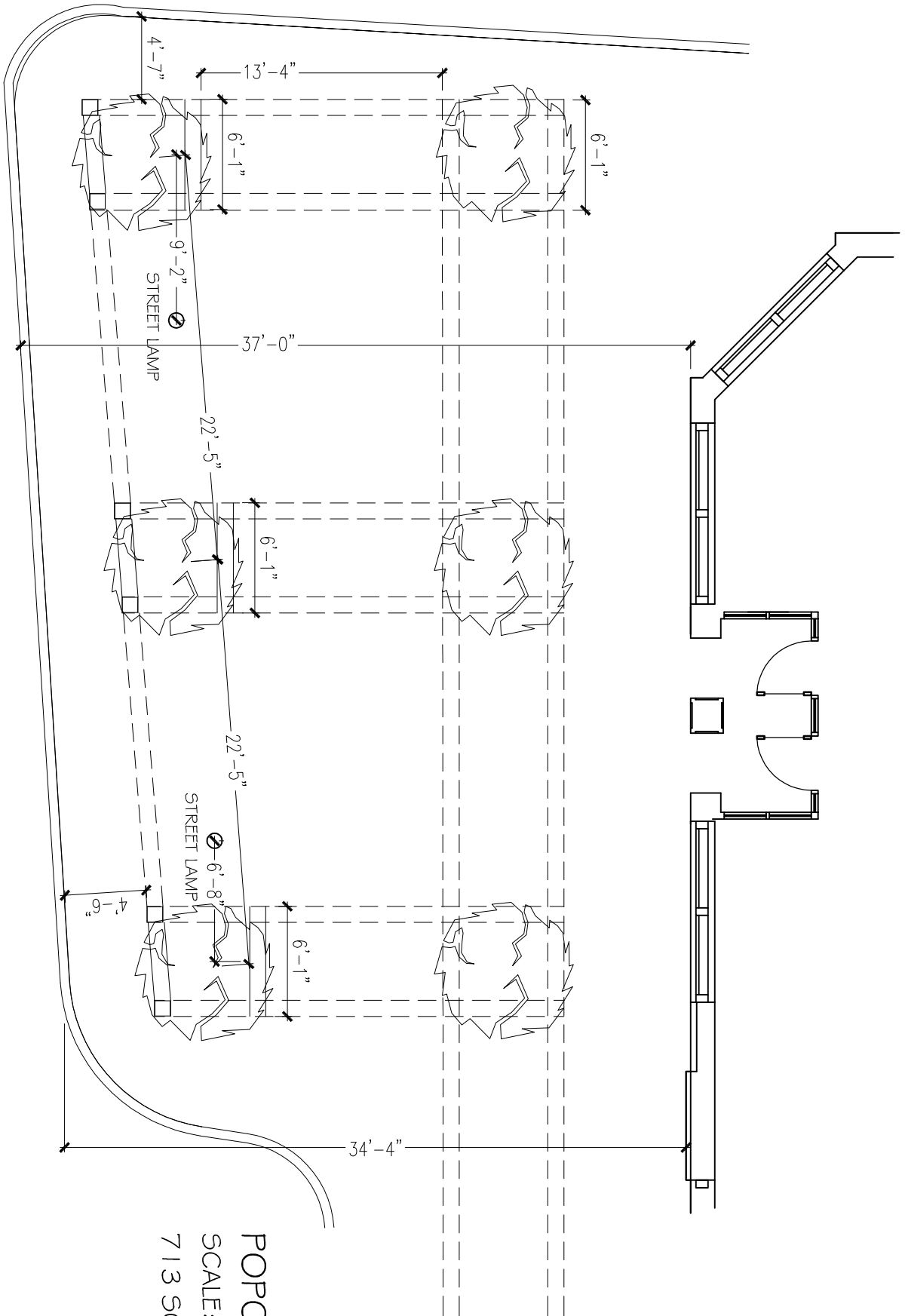
**Attachments (2)**

pdf **Dimensioned site plan showing existing conditions, including:**

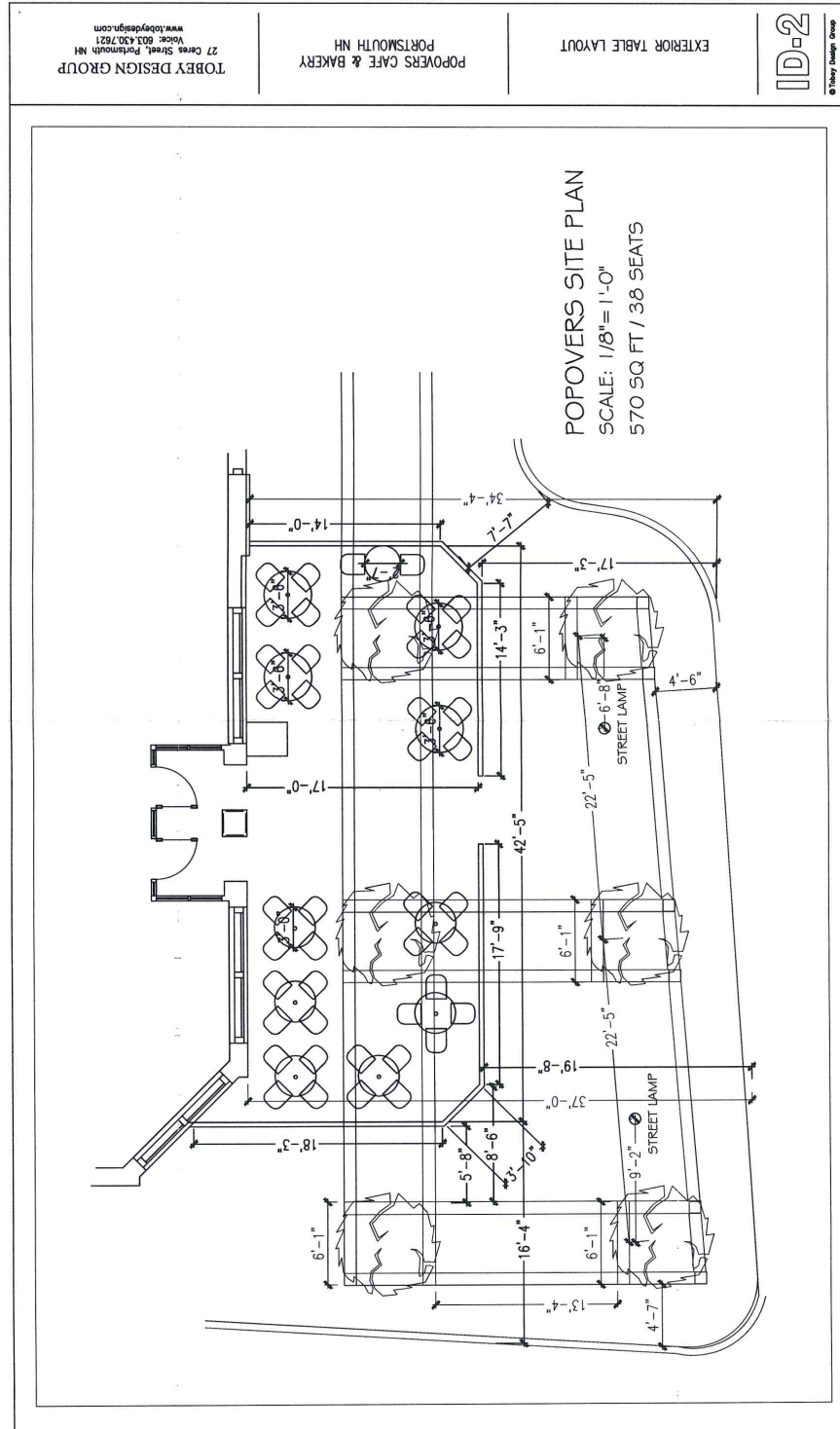
Feb 21, 2020

pdf **Site Details (tables and chairs, enclosure system, lighting, trash receptacles)**

Feb 21, 2020






POPOVERS  
 SCALE: 1/8" = 1'-0"  
 713 SQ FT



Sidewalk Cafe Application

# CAFE-19-1

**Applicant**

 Namrata Idnani  
 973-517-2960  
 nimi@raleighwinebar.com

**Location**

67 STATE ST  
Portsmouth, NH 03801

## Cafe Information

**Restaurant Name**

Raleigh Wine Bar

**# of Tables**

9

**Cafe Area (s.f.)**

444.9

**Restaurant Address**

67 State Street, Portsmouth, NH 03801

**# of Chairs**

30

**Additional information**

258 sq ft of the area is city property and the rest is building property.

## Acknowledgement & Authorization

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true

**Signature:** I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

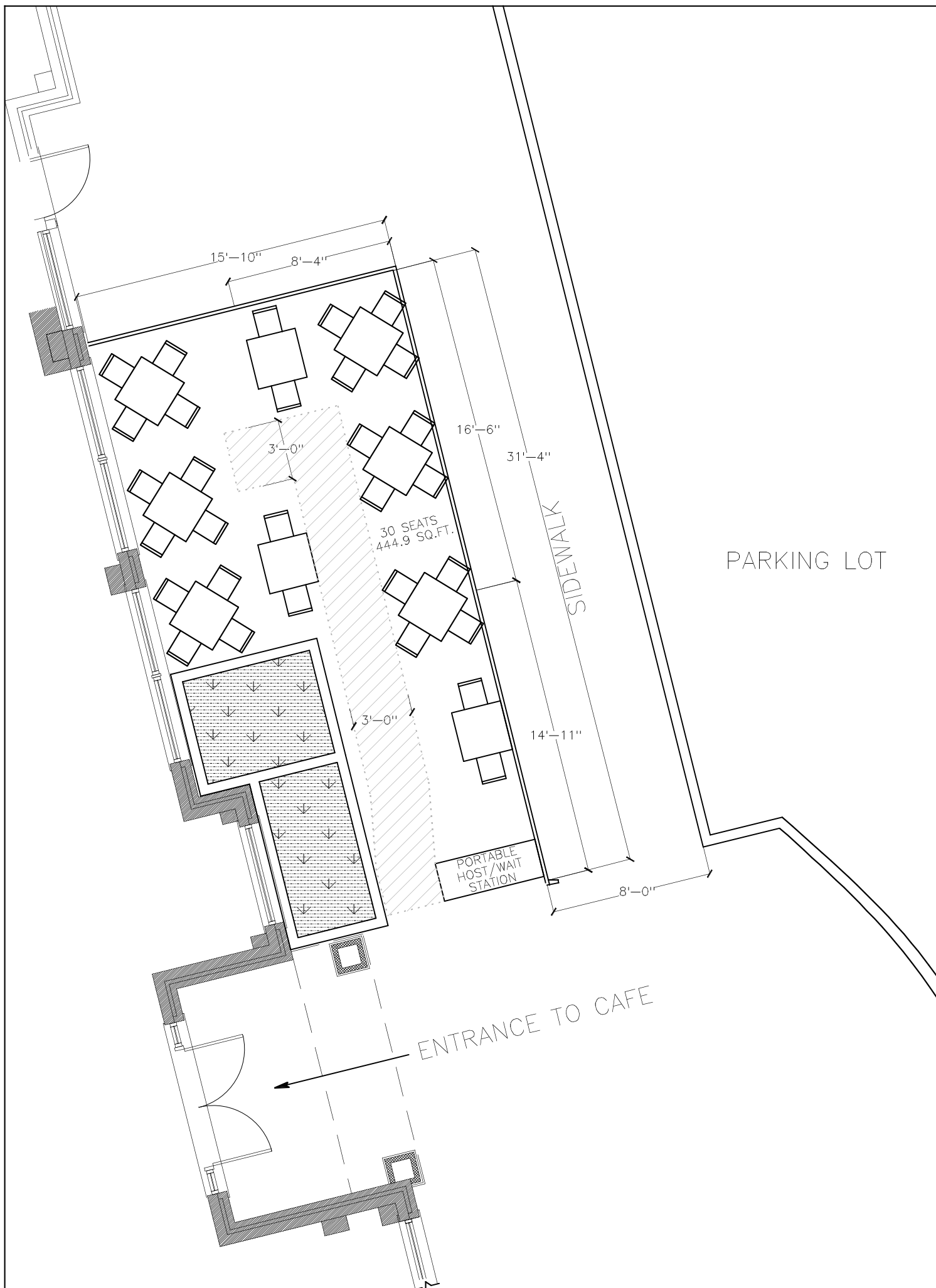
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**Date of City Council Approval**

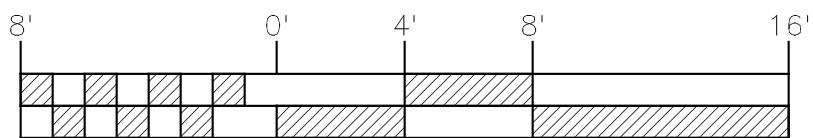
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**Fee Paid**

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PLAN – PROPOSED OUTDOOR SEATING @ PATIO



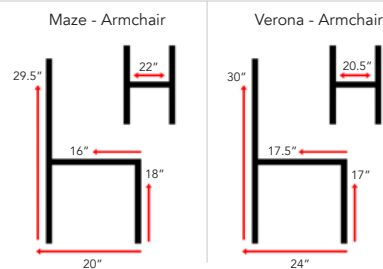




## Maze / Verona

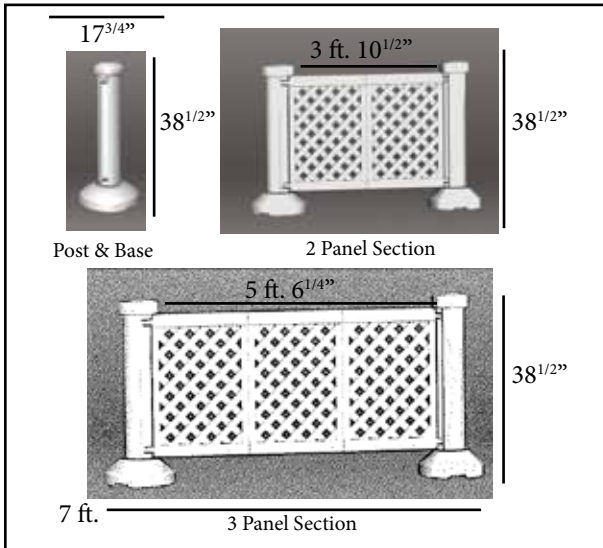
Product #	Description	Finish	Product Dimensions
DV360BL	<b>Maze Armchair</b> , stacking	Black	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Maze - Armchair</p> </div> <div style="text-align: center;"> <p>Verona - Armchair</p> </div> </div>
SU1305BL	<b>Verona Armchair</b> , stacking	Black	

Material (Maze): E-coated powder coated steel micro mesh  
 Material (Verona): Galvanized powder coated steel micro mesh  
 Finish: Black





# Decorative Versatile Interlocking Resin Fence



**Features & Benefits** **Warranty: 3 Yrs.**

- Decorative lattice panels can be assembled and fitted to design & define your patio space!
- U.V. stabilized to resist color fading.
- Made of 100% prime resin, a material naturally weather resistant.
- Each post and base interlocks and can be filled with water or sand to 50 lbs. for extra stability.
- Easily removable for storage at the end of the season.
- Can be power-washed for easy cleaning.
- Will not rust or splinter.
- No painting, sanding, or refinishing necessary.

## Product Specifications

Product Description	Reference Number	Color	UPC Code	Weight Each (lbs.)	Master Pack	Master Pack Volume (cu. ft.)
Fence Post & Base	US960117	Black	912721	4.41	1	3.60
	US960423	Brown	912752			
2 Panel Section	US962117	Black	912738	8.82	1	1.73
	US962423	Brown	912769			
3 Panel Section	US963117	Black	912745	13.23	1	2.51
	US963423	Brown	912776			
4 Piece Connector Pack	USSP0235	Black		.80	1	.083
	USSP0236	Brown				

## 30" Square Greystone Outdoor / Indoor Standard Height Table with Round Base



- Ideal for both indoor and outdoor dining areas
- Black-powder coated, UV resistant base with leveling guides
- Durable composite blend top with laminate finish
- Easy to wipe down between guests or at the end of a busy shift
- Made for all seasons of the year; resistant to weather, stains, scratches, and corrosion
- 350 lb. weight limit
- Delivered knocked down for shipping savings; assembles easily

**UPC Code:**

071235916862

**Condition:**

New

**Shipping:**

Usually Ships in 7-10 Business Days

 **Holland Bar Stool Co.** [View all Holland Bar Stool Outdoor Restaurant Tables](#)

Innovative engineering brings us the Enduro Top table from the Holland Bar Stool Company! Designed to resist staining, moisture, UV rays, scratches, dents, and other signs of wear, this table is perfect for rough, heavy use applications and outdoor seating areas. Learn more by watching this quick demonstration.

HOLLAND BAR STOOL OD214-2230BWOD30SQGRYSTN SPECS	
Length	30 Inches
Width	30 Inches
Height	30 Inches
Height Style	Standard Height
Capacity	350 lb.
Color	Gray
Frame Color	Black
Made in America	Yes
Shape	Square
Tabletop Material	Composite
Type	Tables
Usage	Indoor / Outdoor

## Holland Bar Stool OD214-2230BWOD30SQGryStn Details

Use this Holland Bar Stool OD214-2230BWOD30SQGryStn 30" square greystone standard height table to complete your restaurant's indoor or outdoor dining area! Designed to be used during all seasons of the year, this table boasts a durable composite blend top with a laminate finish that will resist stains, scratches, and corrosion whether it's exposed to bright sunlight or harsh winter conditions. Its attractive, square top rests upon a sleek, UV-resistant black-powder coated frame with adjustable feet to provide stability and added visual appeal.

Delivered knocked down to save you money on shipping, this table is extremely simple to assemble and, once in use, can support up to 350 lb. Provide your guests with a convenient, stylish place to sit and enjoy your offerings with this Holland Bar Stool table!

### **Overall Dimensions:**

Length: 30"

Width: 30"

Height: 30"

Because this item is not stocked in our warehouse, processing, transit times and stock availability will vary. If you need your items by a certain date, please contact us prior to placing your order. Expedited shipping availability may vary. We cannot guarantee that this item can be cancelled off of the order or returned once it is placed.



**Made in America**

This item was made in the United States of America.



**Seating Capacity: 2 - 4**

Two to four people can comfortably sit at this table.

**Sidewalk Cafe Application**

# CAFE-20-5

**Status:** Active

**Submitted:** Mar 14, 2020

**Applicant**



DAVID TAKIS

📞 603-501-0586

@ david@thedistrictnh.com

**CM Action Item #1**

**Location**

103 CONGRESS ST  
Portsmouth, NH 03801

## Cafe Information

**Restaurant Name**

The District

**Restaurant Address**

103 Congress St

**# of Tables**

16

**# of Chairs**

32

**Cafe Area (s.f.)**

500

**Additional information**

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## Acknowledgement & Authorization

**Policy Adherence:** I hereby certify that I have read and agree to comply with City Council Policy No. 2012-02 pertaining to sidewalk cafes.

true

**Signature:** I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

## Internal Approvals

**Date of City Council Approval**

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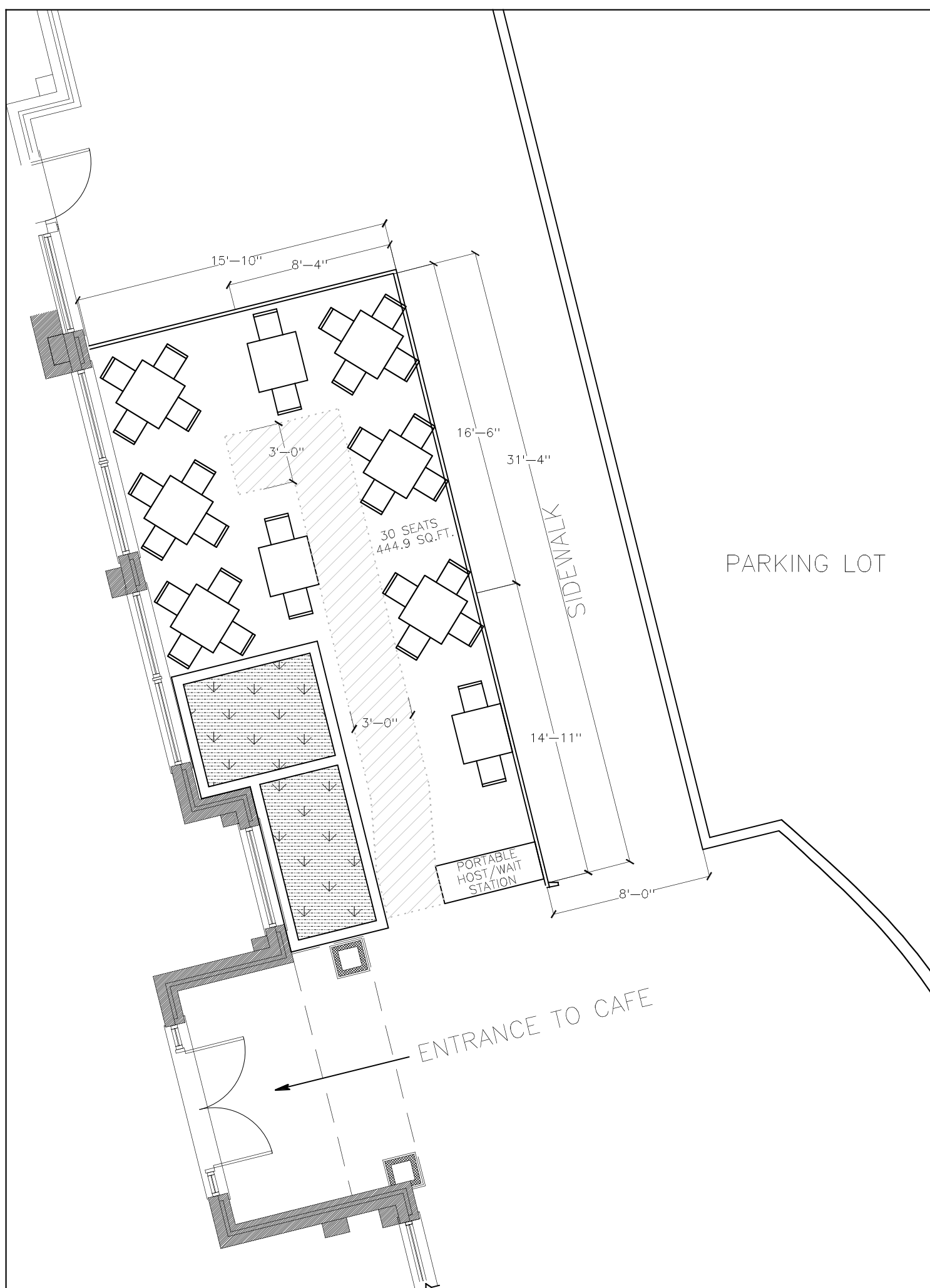
**Fee Paid**

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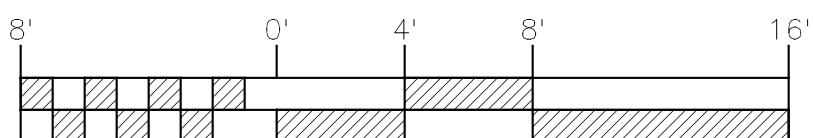
## Attachments (1)

pdf **Dimensioned site plan showing existing conditions, including:**  
Mar 13, 2020





PLAN – PROPOSED OUTDOOR SEATING @ PATIO



Sidewalk Cafe Application

Applicant

Location

CAFE-20-6

Penny Szucs  
603-427-8671  
penny@pickwicksmercantile.com

112 STATE ST  
Portsmouth, NH 03801

Status: Active

Submitted: Mar 15, 2020

Cafe Information

Restaurant Name

Fezziwigs Food & Fountain

Restaurant Address

112 State Street

# of Tables

3

# of Chairs

6

Cafe Area (s.f.)

120

Additional information

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Acknowledgement & Authorization

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true

Signature: I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

Internal Approvals

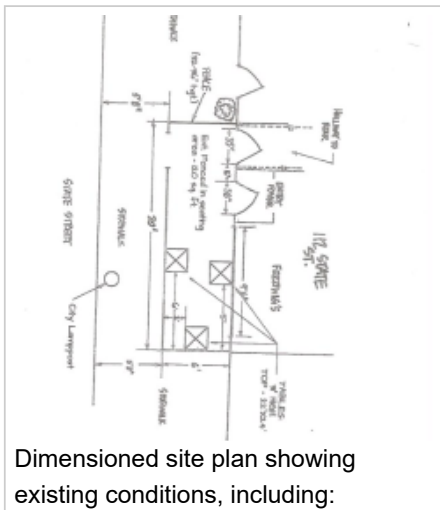
Date of City Council Approval

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Fee Paid

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Attachments (1)



Dimensioned site plan showing existing conditions, including:



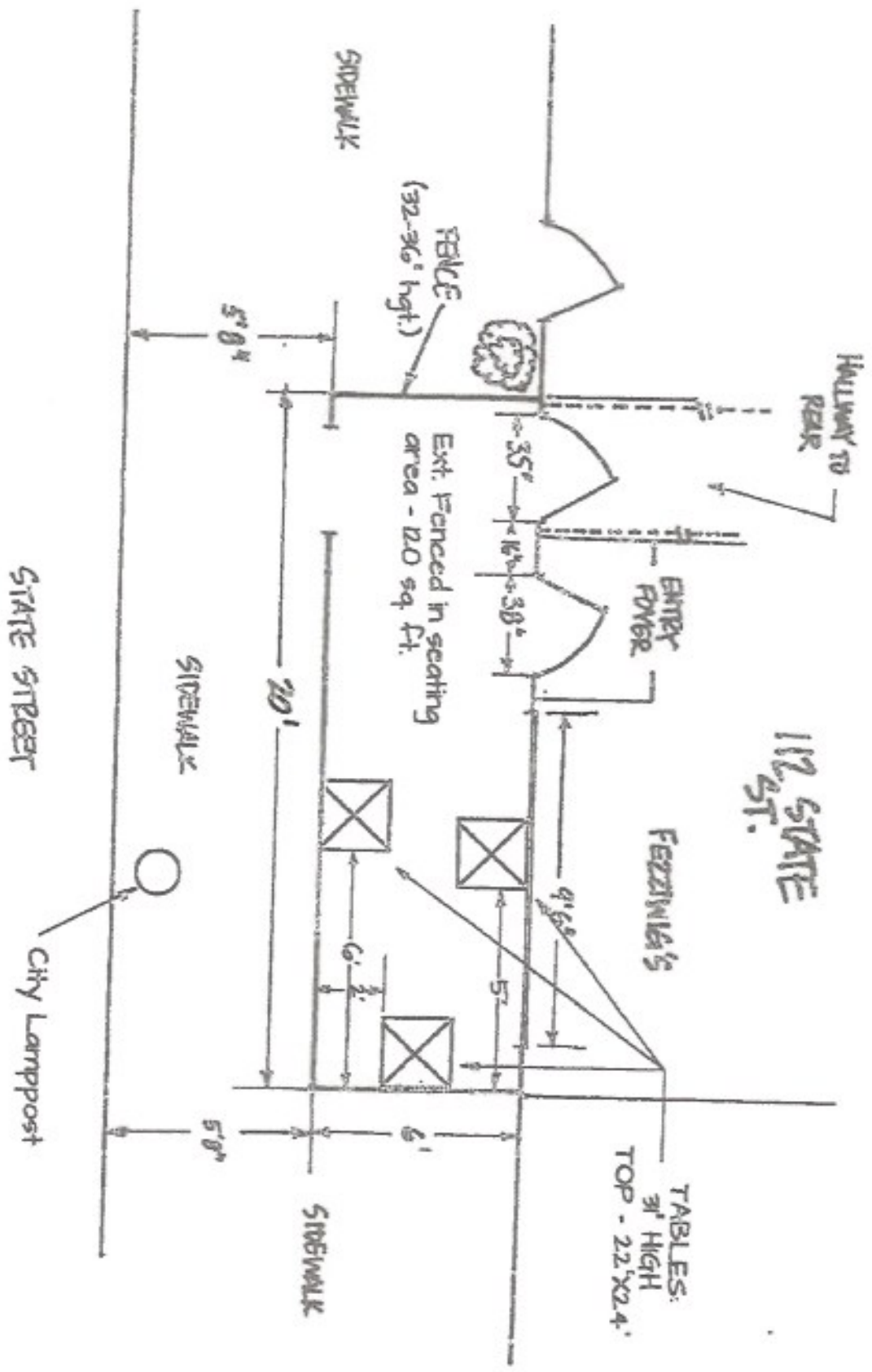


EXHIBIT A




**Sidewalk Cafe Application**

# CAFE-20-2

**Status:** Active

**Submitted:** Mar 02, 2020

**Applicant**

 James McDonnell  
 617-678-3082  
 jmcdonnell@row34.com

**CM Action Item #1**  
**Location**

195 HANOVER ST  
Portsmouth, NH 03801

**Cafe Information**

**Restaurant Name**

Row 34

**Restaurant Address**

5 Portwalk Place

**# of Tables**

6

**# of Chairs**

18

**Cafe Area (s.f.)**

290

**Additional information**

--

**Acknowledgement & Authorization**

**Policy Adherence:** I hereby certify that I have read and agree to comply with City Council Policy No. 2012-02 pertaining to sidewalk cafes.

true

**Signature:** I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

**Internal Approvals**

**Date of City Council Approval**

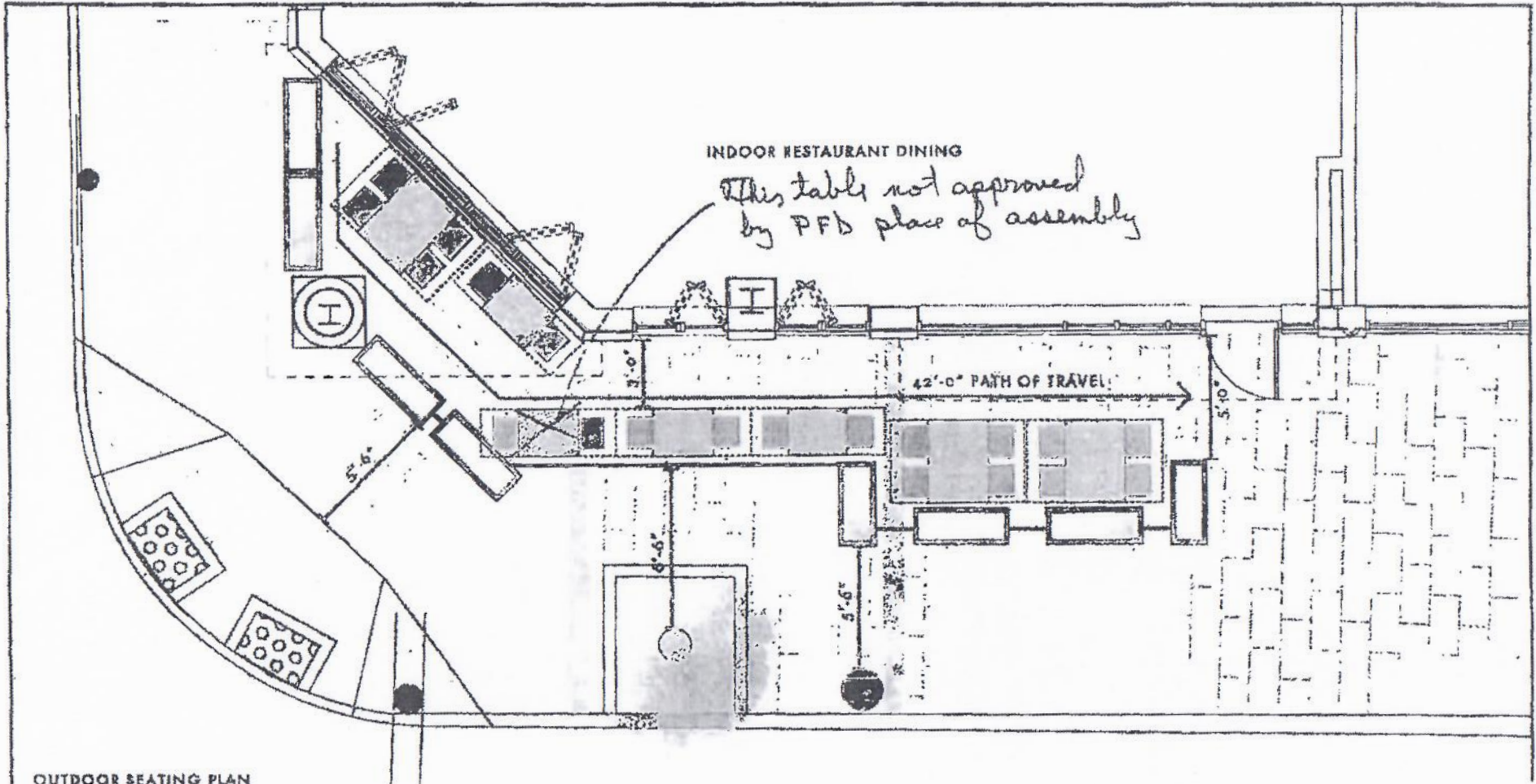
--

**Fee Paid**

0

**Attachments (1)**

pdf **Dimensioned site plan showing existing conditions, including:**  
Mar 02, 2020



PROJECT NO. 2016010

PAGE | 01 |

AR

**ROW 34 PORTSMOUTH**  
5 PORTWALK PLACE, PORTSMOUTH, NH

05 DECEMBER 2016

**ARCHITECTS**  
IN A PROFESSIONAL CORPORATION  
AN EQUAL OPPORTUNITY FIRM

**Sidewalk Cafe Application**

# CAFE-20-3

Status: Active

Submitted: Mar 11, 2020

**Applicant**



Carolyn Gregory

6039033468

bgrworld603@gmail.com

**CM Action Item #1**

**Location**

195 HANOVER ST

34

Portsmouth, NH 03801

**Cafe Information**

**Restaurant Name**

BRGR BAR

**Restaurant Address**

34 Portwalk Place

**# of Tables**

9

**# of Chairs**

30

**Cafe Area (s.f.)**

480

**Additional information**

--

**Acknowledgement & Authorization**

**Policy Adherence:** I hereby certify that I have read and agree to comply with City Council Policy No. 2012-02 pertaining to sidewalk cafes.

true

**Signature:** I hereby agree that my electronic signature (indicated by checking this box) is equivalent to a handwritten signature and is binding for all purposes related to this transaction.

true

**Internal Approvals**

**Date of City Council Approval**

--

**Fee Paid**

--

**Attachments (5)**

pdf **Dimensioned site plan showing existing conditions, including:**

Mar 04, 2020

docx **Site Details (tables and chairs, enclosure system, lighting, trash receptacles)**

Mar 04, 2020

pdf **Insurance Certificate**

Mar 04, 2020

docx **Patio Request Letter.docx**

Mar 11, 2020

pdf **BurgerBar\_Permit Set.pdf**

Mar 11, 2020

March 1<sup>st</sup>, 2016

Jack Blalock  
City Council  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH

Honorable Mayor Blalock and City Council,

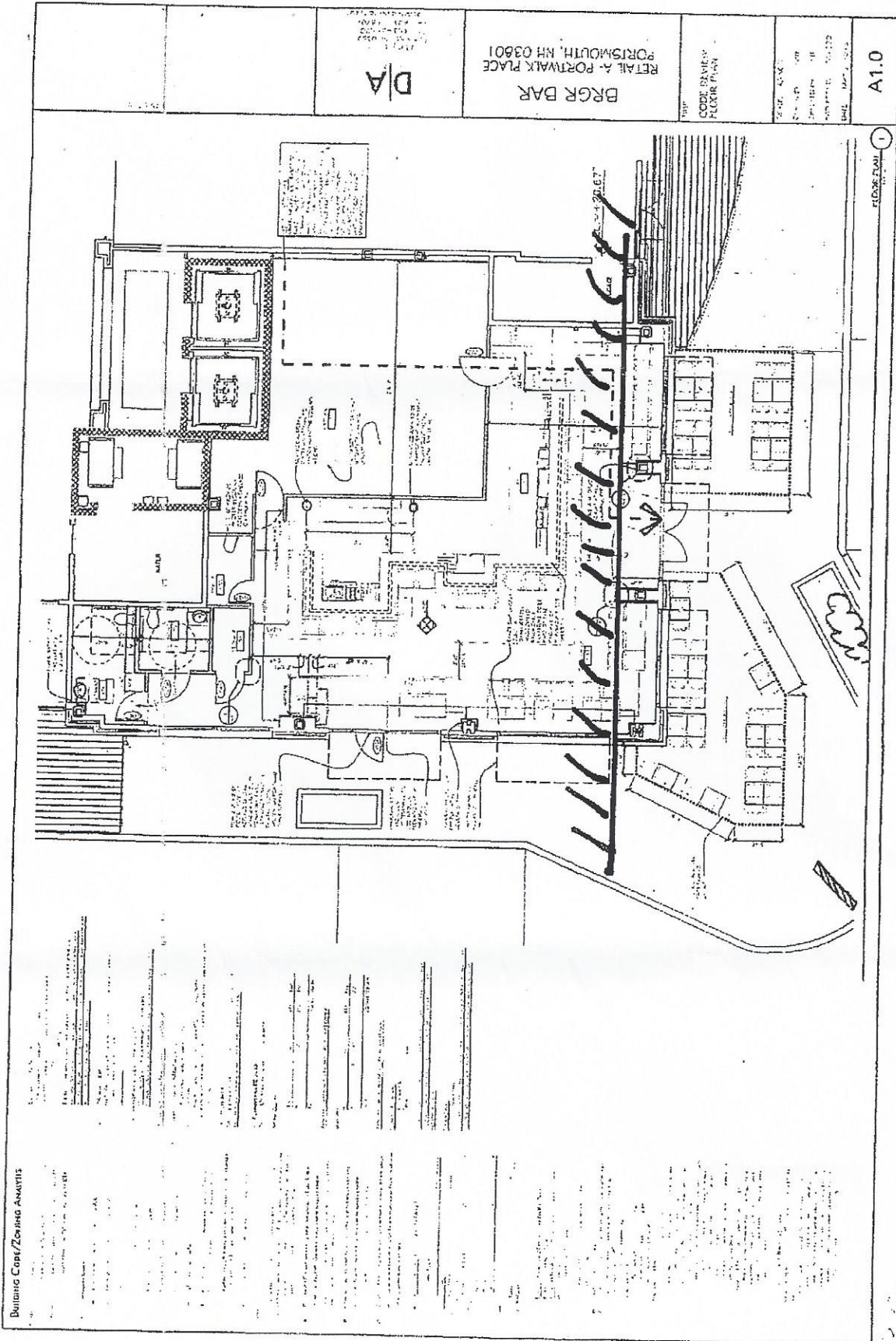
Please allow this letter to serve as a formal request for favorable consideration of an area service agreement for tables and chairs upon a city sidewalk, adjacent to BRGR BAR restaurant as shown on attached plan.

We look forward to reviewing this request with you at an upcoming regularly scheduled meeting.

Respectfully submitted,  
Phelps Dieck  
BRGR BAR,

A handwritten signature in blue ink, appearing to read 'Phelps Dieck', with a long horizontal flourish extending to the right.

CC: Carolyn Gregory , General Manager, BRGR BAR



D/A

BRGR BAR  
RETAIL A - PORTWALK PLACE  
PORTSMOUTH, NH 03801

TYPE  
CODE BAYVIEW  
FLOOR PLAN

DATE: 10/12/07  
DRAWN BY: [illegible]  
CHECKED BY: [illegible]  
SCALE: 1/8" = 1'-0"

A1.0

FLOOR PLAN 1

||||| - SIGN  
☁ - TREE

Building Code/Zoning Analysis

**Site Details:**

BRGR BAR

34 Portwalk Place

Number of tables: 9

Number of chairs: 30

Lighting: Street lighting

Enclosure System: Fencing

Trash receptacles: 1 outside and multiple inside



245 Middle Street, Portsmouth, NH 03801 - [www.porthousing.org](http://www.porthousing.org)

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March 23, 2020

Karen Conard, City Manager  
City of Portsmouth  
1 Junkins Ave  
Portsmouth NH 03801

Re: Portsmouth Housing Authority Court Street Workforce Housing Project

Dear Ms. Conard:

In August 2018, the City of Portsmouth approved our plans to construct a new 64 unit workforce housing project at 160 Court Street, adjacent to the Feaster Apartment building at 140 Court Street.

Our approved project includes a requirement for a lot line adjustment with the owner of real estate at 152 Court Street. We are purchasing a portion of this property at 152 Court Street in order to build our new project, but the owner is retaining and persevering the historic colonial home that is a part of this real estate.

The approved lot line adjustment requires the PHA and the current owner of 152 Court Street to deed a portion of their respective properties to each other. The land PHA will convey is a portion of land conveyed to the PHA by deed of the City of Portsmouth, Book 1942, Page 012. I have enclosed a copy of the deed for your reference.

The deed includes a reverter clause which says if the PHA "ceases to operate and own a housing for the elderly project" where Feaster Apartments currently operates, the land reverts to the City. In order to make the conveyances in accordance with the approved lot line adjustment, we need to obtain a release of the reverter.

I have enclosed a draft release for your review and execution. I am happy to discuss in more detail at your request.

Sincerely,

Craig W. Welch, Executive Director  
Portsmouth Housing Authority & PHA Housing Development Ltd.

Enclosure

Cc: Juliet Walker, City Planner  
Robert Sullivan, Esquire, City Attorney  
Mrs. Ruth L. Griffin, Chair, Portsmouth Housing Authority





**RELEASE OF REVERTER**

The City of Portsmouth, New Hampshire, a municipal corporation organized and existing under the laws of the State of New Hampshire, having an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 does hereby release the right of reverter described in that certain deed from The City of Portsmouth, New Hampshire, to Portsmouth Housing Authority, dated November 22, 1968, and recorded at the Rockingham County Registry of Deeds at Book 1942, Page 12.

This Release of Reverter is given in connection with the conveyance from Portsmouth Housing Authority to Ed Pac, LLC, and the said Right of Reverter is hereby terminated, as to the property conveyed.

IN WITNESS WHEREOF, the undersigned have executed this Release this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

City of Portsmouth

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

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM \_\_\_\_\_, 2020

This release was acknowledged before me by \_\_\_\_\_,  
the \_\_\_\_\_ of the City of Portsmouth.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires:



CM Action Item #2

1942 012

Nov 22 2 37 PM '68 17899

The City of Portsmouth, New Hampshire, a municipal corporation organized and existing under the laws of the State of New Hampshire, with its principal place of business at 126 Daniel Street in said Portsmouth, for consideration paid grants to the Portsmouth Housing Authority, a body corporate and politic, with a principal place of business at 25 Vaughan Street, Portsmouth, County of Rockingham and the State of New Hampshire, with quitclaim covenants a certain tract or parcel of land in said City of Portsmouth bound and described as follows:

Beginning at a point located on the southerly sideline of Court Street, said point being located 241.5 feet, more or less, from the northwesterly corner of Rogers Street and Lot No. 7 as shown on Assessor Plan #21 of the City of Portsmouth; thence turning and running southeasterly for a distance of 245.5 feet; more or less to the boundary line of lands presently or formerly owned by the Home for Aged Women, so-called as shown on said Assessor Plan #21 as Lot No. 10; thence turning northeasterly and running along the westerly property line of said Lot #10 and the westerly property line of Lot No. 19 as shown on said Assessor Plan No. 21 for a distance of 148 feet, more or less; to a point; thence turning and running Northwesterly 90°, 69.91 feet, more or less, to a point; thence turning and running southwesterly 66.72 feet, more or less, to a point located on the westerly boundary line of lot No. 11 as shown on said Assessor Plan No. 21; thence turning northwesterly along said Lot No. 11 boundary line for a distance of 175.08 feet, more or less, to the southerly side line of Court Street; thence turning southwesterly and running 85.5 feet, more or less, in a southwesterly direction along Court Street sideline to the point of beginning.

Meaning to include all of Lot No. 24 and a section of Lot No. 11 so as to include a total of 25,004 square feet of land presently owned by the City of Portsmouth, New Hampshire.

The within conveyance is made subject to the following reverter provision: If and when the said Grantee ceases to operate and own a housing for the elderly project at other property of said Grantee adjoining the above described land, the above described tract or parcel of land shall automatically revert to the said City of Portsmouth.

This deed is given to correct the description in a prior deed dated July 16, 1968 and recorded in Rockingham County Register of Deeds at Book 1920, Page 47.

IN WITNESS WHEREOF, The City of Portsmouth, by its City Manager, duly authorized, has hereunto set his hand and the corporate seal this 22nd day of November in the year of our Lord 1968.

In the presence of:

City of Portsmouth

*Handwritten signature*

By *Handwritten signature*  
Robert C. Violette  
City Manager



STATE OF NEW HAMPSHIRE  
ROCKINGHAM, SS.

November 22, 1968

Personally appeared Robert C. Violette, known to me, who, being sworn did say that he is the City Manager of the City of Portsmouth, a municipal corporation duly organized by law, that the seal affixed to the foregoing instrument is the corporate seal of said City, that said instrument was signed and sealed on behalf of said City, and said City Manager Robert C. Violette acknowledged said instrument to be the free act and deed of said City and that he executed the same for the purposes therein contained.

*Handwritten signature*  
Justice of the Peace

# TITLE LXIV PLANNING AND ZONING

## CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

### Regulation of Subdivision of Land

#### Section 674:39-aa

##### **674:39-aa Restoration of Involuntarily Merged Lots. –**

##### **I. In this section:**

- (a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- (b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.
- (c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

- (a) The request is submitted to the governing body prior to December 31, 2021.
- (b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

**Source.** 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

LAW OFFICES

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**BOYNTON WALDRON DOLEAC  
WOODMAN & SCOTT, P.A.**

---

CHARLES B. DOLEAC\*†  
RALPH R. WOODMAN, JR.  
WILLIAM G. SCOTT  
FRANCIS X. QUINN, JR.\*  
CHRISTOPHER E. GRANT\*†△  
CHRISTINE WOODMAN CASA\*  
PHILIP L. PETTIS  
CHRISTOPHER J. FISCHER  
MICHAEL H. DARLING †

82 COURT STREET  
PORTSMOUTH, NEW HAMPSHIRE 03801  
TELEPHONE (603)436-4010  
FAX (603)431-9973

www.boyntonwaldron.com

JEREMY R. WALDRON  
(1921-2012)

WYMAN P. BOYNTON  
(1908-1997)

\* ALSO MEMBER OF MAINE BAR  
† ALSO MEMBER OF MASSACHUSETTS BAR  
△ ALSO MEMBER OF VERMONT BAR

HAND DELIVERED  
December 11, 2019

City of Portsmouth  
Attn: Kelli Barnaby, City Clerk  
1 Junkins Avenue  
Portsmouth, NH 03801

RE: Jennings Memorandum on Remand to City Council

Dear Ms. Barnaby:

Enclosed are an original and five (5) copies of the Jennings Memorandum on Remand to the City Council – which I understand will be reviewed by the City Council Members prior to the December 16, 2017 Remand Hearing.

I am sending copies of this to Attorney Sullivan and Attorney Mulligan by email today.

Please contact me at [r.woodmanjr@comcast.net](mailto:r.woodmanjr@comcast.net) with any questions. (I've got a bad cold and don't expect to go back to work today).

Very truly yours,



Ralph R. Woodman, Jr.

RRW/jcd

Enclosures

Cc: Robert Sullivan, Esquire  
Christopher Mulligan, Esquire

**JENNINGS MEMORANDUM  
ON  
REMAND TO CITY COUNCIL**

CM Action Item #3

Kenneth and Deborah Jennings (owners of the home at 63 Thaxter Road and direct abutters to the property at 27 Thaxter Road) submit this Memorandum on the Remand by the Zoning Board of Adjustment (ZBA) to the City Council.

This Remand, as stated by the Planning Department in its letter of October 28, 2019, was voted by the ZBA in order to allow the Council

“..to **consider new information** that was not originally available.”

As you will see, this information was “NEW” because neither Mr. Callihan nor the Planning Department staff had previously made it available to the Council.

**THE LAW**

Under certain circumstances, RSA 674:39-a allows for the “restoration of involuntarily merged lots.”

This “restoration” has restrictions under the statute and is not allowed by the City Council if the owner of the lot – or **any previous owner of the property**

“..voluntarily merged his or her lots.”  
674:39 a II (b), with

a “voluntary merger” being defined by the statute as “**any overt action or conduct** that indicates an owner regarded said lots as merged such as, but not limited to, abandoning its lot line.” RSA 674:39-a II (b).

The statute states that in the event that **anyone** who owned the lots in question **at any time** (being the property now known as 27 Thaxter Road) voluntarily merged them, then

“all subsequent owners shall be estopped from requesting restoration” RSA 674:39-a II (b).

Although there is not a great deal of NH Supreme Court cases on the subject in Roberts v. Windham, 165 NH 186 (2013) the Court said the Town properly considered

“the use of the property in its entirety” p. 193  
in determining whether a voluntary merger had occurred.

Also, Newbury v. Landrigan 165 NH 236 (2013) was a case involving “voluntary merger” issues.

In Newbury the Court recognized as a factor (in determining whether “any overt action or conduct” a voluntary merger had occurred) that the owners

“treated the property as a single lot when they applied to the Town for building permits” at 241

So the issue in this matter is has “any overt action or conduct (occurred) that indicates the owner (of the lots at 27 Thaxter) regarded said lots as merged”?

As you will see, 27 Thaxter Road and Lots 44, 45 and a portion of 46 were **created** as a single lot by the action or conduct of the owners in 2004.

As you will also see, the Newbury case is **the same** way that earlier owners (Tong and Healy) treated 27 Thaxter Road in 2011.

**HISTORY OF 27 THAXTER ROAD  
WHAT LOTS MAKE UP 27 THAXTER ROAD?  
(CURRENTLY OWNED BY CHAD CALLIHAN)**

By letter dated February 21, 2019 to the City Council, counsel for Chad Callihan stated that "... between 1972 and 1988... the City involuntarily merged the lots into a single unified lot for tax purposes."

"The lots" which now are called and known as 27 Thaxter Road (Callihan's property) are:

- 44
- 45
- A part of 46 (30 ft. frontage on Thaxter)

all originally shown on an old Plan of Westfield Park (Attached as "A"), with these lots surrounded in green on Attachment A.

In total, these lots today (27 Thaxter Road) contain approximately 12,850 square feet of area and 130 feet of frontage on Thaxter Road.

Chad Callihan now seeks to unmerge a "lot" with only 30 feet of frontage on Thaxter Road and 100 feet deep. This "lot" was formerly known – prior to its merger- as a portion of Lot 46. This is **NOT** the entire original Lot 46, just a portion that is only 30 feet wide.

Prior to 2004, four and one-half (4.5) lots on the Plan of Westfield Park, being lots 42, 43, 44, 45 and a portion of Lot 46 had been merged into **one lot** owned by one owner (Guptill). The lots contained the Guptill residence on Thaxter and Portsmouth's famous "False Tooth Building" on Islington street (where Mr. Guptill worked).

These 4.5 lots are all shown surrounded in red on Attachment A as being on both Thaxter Road and Islington Street, which were considered as one lot by the City until 2004.

**NEW INFORMATION**

When a person takes a careful look at the Registry of Deeds, ZBA historical records and records available at City Hall, they clearly show that owners of 27 Thaxter Road before Chad Callihan took "action or conduct" which shows that they regarded the lots which comprise 27 Thaxter Road (being Lots 44, 45, and a portion of Lot 46) as "merged."

**NONE** of this information was disclosed by the Applicant or the Planning Department to the City Council, the City Manager, Planning Board, or ZBA.

In summary, these actions or conduct by the previous owners are:

1. In 2004, the owner (Guptill at that time) of lots 42, 43, 44, 45 and a portion of 46 (which were merged together **as one** single lot at the time – this one lot is surrounded in red on Attachment A), petitioned the ZBA for a variance in order to create **two separate lots** to allow the separation of one lot into two lots with one home on each lot and the two separated lots becoming:
  - a. Lot 52, having 10,475 square feet and known as 17 Thaxter Road (previously Lots 42 & 43 – surrounded in black); and
  - b. Lot 39 having 12,580 square feet and known as 27 Thaxter Road (previously Lots 44 & 45 and a portion of Lot 46 surrounded in green).

As a result of the actions of the prior owner (Guptill), Lots 44, 45 and a part of Lot 46 were then merged to become **ONE LOT** (Lot 39 with 12,580 square feet and 130 feet of frontage on Thaxter Road) which is the **exact same property** Chad Callihan owns today which is known as 27 Thaxter Road (surrounded in green).

Lots 42 and 43 were then merged to become a separate single lot (Lot 52) with 10,475 square feet and known today at 17 Thaxter Road (surrounded in black).

IN OTHER WORDS, IT IS CLEAR THAT THE SINGLE LOT KNOWN AS 27 THAXTER ROAD WAS CREATED AS A SINGLE LOT IN 2004 AS A RESULT OF THE ACTIONS OF THE OWNERS AT THAT TIME BEFORE THE ZBA. THE "ACTIONS" OF THE THEN OWNER (GUPTILL) WERE SIMPLE AND STRAIGHTFORWARD, HE ASKED THAT 27 THAXTER ROAD (FORMERLY LOTS 44, 45 AND A PORTION OF LOT 46) BE CREATED AS A **SINGLE LOT**, WITH LOTS 43 AND 44 AS A SECOND SINGLE LOT.

The May 27, 2004 ZBA letter to the then owner (Attachment C) confirmed that the owner's request to allow for the creation of a single lot (formerly Lots 44, 45 and a portion of Lot 46) at 27 Thaxter Road was allowed at the ZBA meeting of May 25, 2004.

2. In 2011, the then owners of 27 Thaxter Road (a single separate lot created in 2004) filed a ZBA Application for a lot-line variance. This was requested by the owners at the time – Tong and Healy.

As part of that application they filed an Existing Site Plan dated January 17, 2011 with the ZBA.

This site plan, filed for the owners, clearly showed the entirety of 27 Thaxter Road as a **SINGLE LOT**.

In addition the owners representing to the City that lots 44, 45 and a portion of lot 46 = 27 Thaxter Road were a **SINGLE LOT**, that "Existing Site Plan" shows a single fence around the perimeter of the single lot. (See existing Site Plan for 27 Thaxter Road attached as Attachment D.) This is the same voluntarily merged single lot surrounded in green on Attachment D as was created and surrounded in green on Attachment A.

This white picket fence around the perimeter of the entirety of 27 Thaxter Road is also shown in pictures which were presented to the ZBA, but not able to be shown here due to "page restriction" for this Memo.

The facts as stated in this Section are all **new information** which had not previously been known to the City Council, Planning Board or ZBA.

If this information had been known, you'd think that the Planning Department staff would have mentioned it in its memo – which it did not.

### **PRIOR CITY COUNCIL AND PLANNING DEPARTMENT ACTION**

The City Council referred Chad Callihan's earlier request to unmerge a portion of 27 Thaxter Road (the small 30 foot x 100 foot area) to the Planning Board.

The Planning Department staff did a memo on the request, but neither the acts by prior owners of 2004 or 2011 are referred to in the report.

The City Council was **not informed** of the 2004 and 2011 actions as stated in the above New Information Section prior to the time of the Council's May 20, 2019 6-3 vote to unmerge the lots.

The City Council was not informed of the actions in 2004 and 2011 by the applicant, the Planning Department or otherwise.

It is possible the Planning Department did not find the minutes of the May 25, 2004 meeting due to them being wrongly filed and therefore missing on the website.

**REMAND**

In any event, we now know what occurred with 27 Thaxter Road property in 2004 and 2011, including how Lots 44, 45 and a portion of Lot 46 were created as a single lot known as 27 Thaxter Road at the request of the owner in 2004 and thereafter continue to be treated as a single lot by subsequent owners.

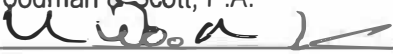
This is the "new information" as referred to in the October 18, 2019 letter from the ZBA.

The City Council now has the opportunity to correct its decision on this matter based on facts now known to it, by denying Chad Callihan's request to unmerge his property, which RSA 674-39 a II (B) requires.

Kenneth and Deborah Jennings  
By: Boynton, Waldron, Doleac,  
Woodman & Scott, P.A.

Dated: December 11, 2019

By:

  
Ralph R. Woodman, Esquire  
82 Court Street • Portsmouth, NH 03801  
603.436.4010





ATTACHMENT B

AGENDA, Board of Adjustment, May 18 & May 25, 2004

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 25, 2004

I. PUBLIC HEARINGS

10) Petition of Orville N. Guptill Revocable Trust, owners, for property located at 27 Thaxter Road wherein Variances from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A



CITY OF PORTSMOUTH

Community Development Department  
(603) 431-2006, ext. 232

Planning Department  
(603) 431-2006, ext. 216

PLANNING DEPARTMENT

ATTACHMENT C

May 27, 2004

Orville N. Guptill Revocable Trust  
27 Thaxter Road  
Portsmouth, NH 03801

Re: Property at 27 Thaxter Road  
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to grant your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot.

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot it is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 - 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

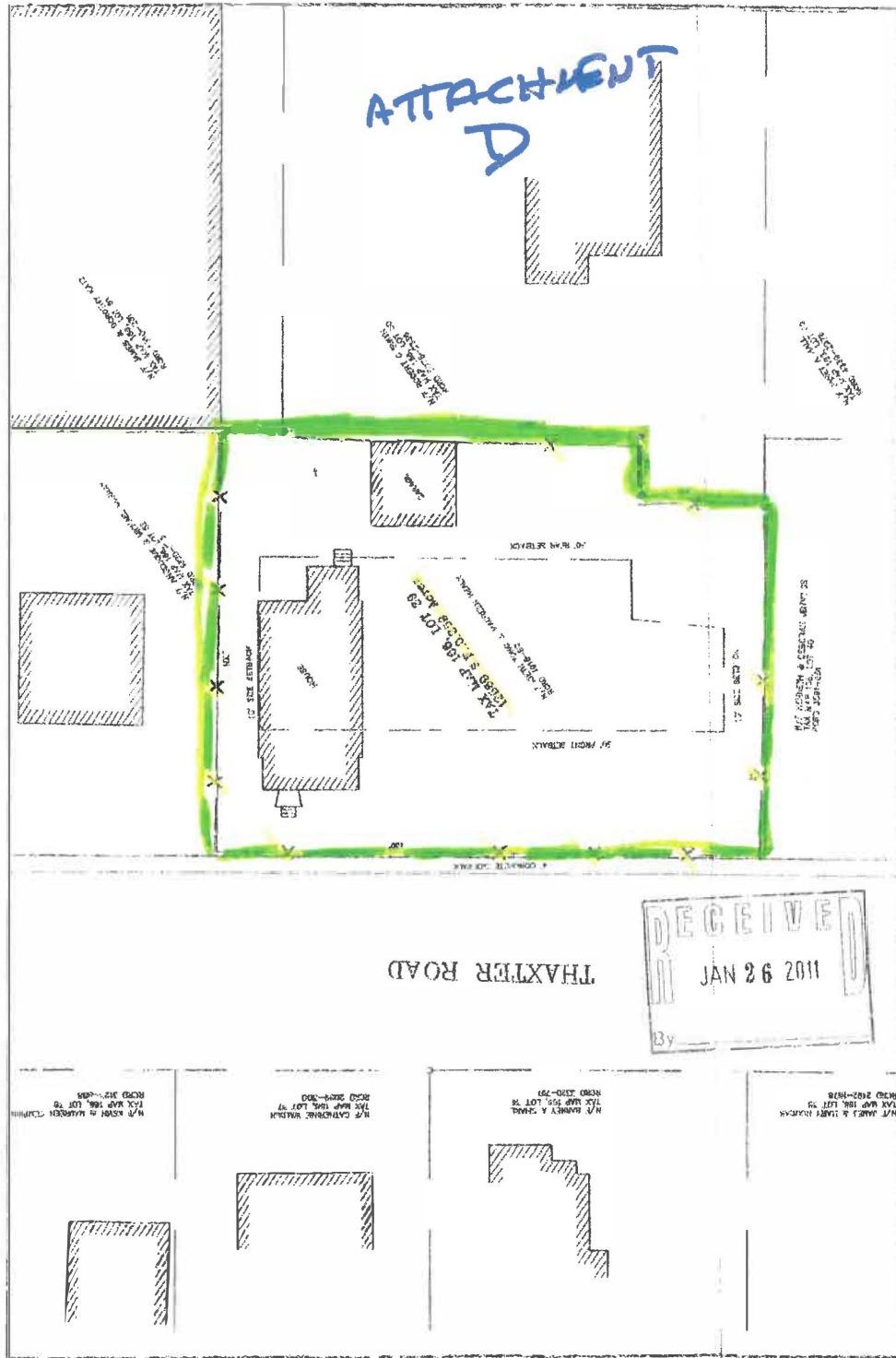
Very truly yours,



Charles A. Le Blanc, Chairman  
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector  
Charles A. Griffin, Esq.



**LITTLE GREEN HOMES, LLC**  
 CHRIS REDMOND - Designer  
 23 Autumn Pond Park - Greenland, NH 03840  
 603-315-8995 www.littlegreenhomes.com

**TONG RESIDENCE**  
 27 Thaxter Road, Portsmouth, NH

TITLE: EXISTING SITE PLAN

SCALE: 1/32" = 1'-0" | DATE: 17 JAN 2011

**BOSEN & ASSOCIATES, P.L.L.C.**  
ATTORNEYS AT LAW

December 11, 2019

VIA HAND DELIVERY

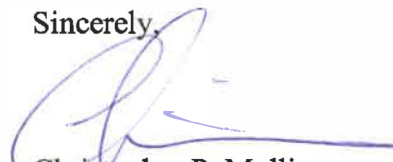
Kelli Barnaby, Clerk  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

**RE: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA  
674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)***

Dear Ms. Barnaby:

Enclosed please find the original and four copies of our memorandum relative to the above matter. Thank you for your attention.

Sincerely,



Christopher P. Mulligan

CPM/

Enclosures

cc: Chad Callihan (w/ enclosures)  
Ralph R. Woodman, Jr. (w/ enclosures)

## MEMORANDUM to City Council

**Re: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)***

On May 20, 2019, following the unanimous recommendation of the Planning Board, the Council voted to restore two involuntarily merged lots located at 27 Thaxter Road owned by Chad Callihan. Kenneth and Deborah Jennings, owners of the abutting property, have objected and appealed this decision to the Board of Adjustment, which in turn has remanded the matter to the Council for further consideration.

The property in question, 27 Thaxter Road, presently exists as a single lot for taxation purposes as Tax Map 166, Lot 39. It was created from three (3) previously existing lots, as is graphically depicted on the attached Exhibit A. These were known as Tax Map 52, Lots 44, 45 and 46. It is Lot 46 that this Council previously voted to restore as a separate lot.

There is no question that Lot 46 existed as a separately taxed Lot in 1971. See Exhibit B. Furthermore, the 1981 tax card (which renumbered the entirety as Tax Map U66 Lot 39) identifies the property as comprising a "primary site" and a "secondary" site. See Exhibit C. It is therefore indisputable that sometime between 1972 and 1981, but prior to 2011, the City involuntarily merged these separate lots into a single, unified lot for tax purposes.

In 2011, RSA 674:39-aa was enacted, requiring municipalities to restore involuntarily merged lots at the request of the property owner. A prerequisite for such restoration is that no owner in the chain of title voluntarily merged the lots in question. RSA 674:39-aa, II(b). Notably, the burden of proof to show that a prior owner acted in a manner to voluntarily merge the lots rests with the municipality. *Id.*

The lots in question have never been voluntarily merged by formal instrument as provided for in RSA 674:39-a. Therefore, it is the burden of the City to establish specific conduct of prior owners in the chain of title sufficient to establish those owners regarded the lots as merged.

Before the Board of Adjustment, the Jennings abandoned their contention that the deed history prior to 1971, including the outsale of a portion of the former Lot 46 to the Jennings' predecessor in title, was relevant to this matter. The lots as they existed as of 1971 were obviously merged by the City by 1981, as demonstrated by Exhibits B and C. The statute requires the restoration of lots so merged prior to September 18, 2010.

The Jennings' sole remaining contention before the Board of Adjustment was that the zoning history of 27 Thaxter Road supports an inference that the prior owners treated the lots as merged. However, neither of the variance requests identified relied on a representation of lot area, lot area per dwelling, frontage, or any other dimensional characteristic that the prior owners were looking to take advantage of that would be vitiated by the restoration of the former Lot 46.

The first request for variances, to allow for the separation of two contiguous lots in common ownership, is wholly irrelevant. The lots in question had never been merged, relief was necessary to convert a formerly commercial lot into a now non-conforming residential lot. This relief was requested in 2004, years before RSA 674:39-aa was enacted. That the prior owner's application identified what is now 27 Thaxter Road as having identical dimensions of the entirety of the lots sought to be restored is hardly surprising, since that was the way the City recognized the lots at the time, as a single lot. In fact, it is unlikely the Planning Department would have accepted the application for consideration if the applicant referred to the lots' dimensions in any other manner. Applicants are certainly not free to simply make up their own dimensions and other physical characteristics without regard to official City records. This is not sufficient evidence that the prior owner considered the lots merged, but merely a recognition of how the lots were treated in City records at the time. As Exhibit C establishes, the City had already treated these lots as merged for tax purposes for more than 20 years.

Similarly, the 2011 variance request for relief to build an addition on the existing structure at 27 Thaxter Road was filed on January 26, 2011. RSA 674:39-aa was enacted in 2011 and was not effective until July 24, 2011. Again, that the prior owner's application includes a site plan that shows dimensions which conform to the City's records at the time is completely understandable, for the reasons set forth above. Notably, the relief requested was side yard setback relief, on the side opposite from the restored lot. Had the applicant sought relief to build within the restored lot (former Lot 46) or in some manner that obviously impacted it, that would present far different considerations. However, the Jennings' contention that these variance applications and the dimensional representations made in connection with them constitute overt action indicating the prior owners considered the lots as merged is simply not accurate. To adopt this reasoning would likely effectively estop any property owner who received a prior variance from availing himself of the rights afforded by RSA 674:39-aa.

The fact that prior owners placed a fence around the entirety was duly considered by the Planning Department staff, the Planning Board and the City Council and was properly found to be insufficient evidence of an intent to treat the lots as voluntarily merged. A fence, unlike a garage, barn or dwelling, is not a structure of such permanence that it evinces an intent to abandon a lot line forever. Nor is anecdotal evidence offered Councilor Beckstead at the May meeting that children had played in the combined lots sufficient to rebut the City's burden of proof. The existing dwelling on 27 Thaxter Road, built in 1929, is not in any way oriented toward former Lot 46 in any manner that would suggest that the lots were intentionally developed as a unified whole.

This latter point is significant because in the lone case interpreting RSA 674:39-aa, Roberts v. Windham, 165 NH 186 (2013) is clear that the fact that the lots have historically been conveyed in a single deed is not legally sufficient to effect a voluntary merger. Nor is acquiescence to taxation as a single lot. It is the property's physical characteristics and historical use that is central to any determination of a voluntary merger by conduct.

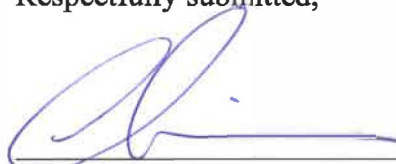
In this case, the existing single family dwelling situated on former Lots 44 and 45 is oriented in such a manner that it faces the street, not former Lot 46. The prior owner's placement of a fence is not indicative of an intent to permanently utilize the Lots as a unified lot. By

contrast, the property owner in Roberts had permanent structures, including a garage within two inches of the lot line for the lot sought to be restored, and access to said garage was only over the lot in question. The Court held "although a shared driveway alone may not be indicative of an intent to merge lots, when viewed in *conjunction with evidence of the placement of the garage and bunkhouse*, the use of a single driveway to serve multiple lots supports the conclusion that the prior owners intended to merge the lots." (Emphasis added). There is nothing comparable in this case which would suggest any permanent intent to treat this Lot as one with the larger property. This is in contrast to the existing garage which spans Lots 44 and 45, and clearly evinces an intent to treat those lots as one. See Exhibit A.

Based upon the foregoing, the City cannot sustain its burden to prove Mr. Callihan or his predecessors voluntarily merged the lots in question and the prior decision of the Council must be upheld.

Thank you for your consideration.

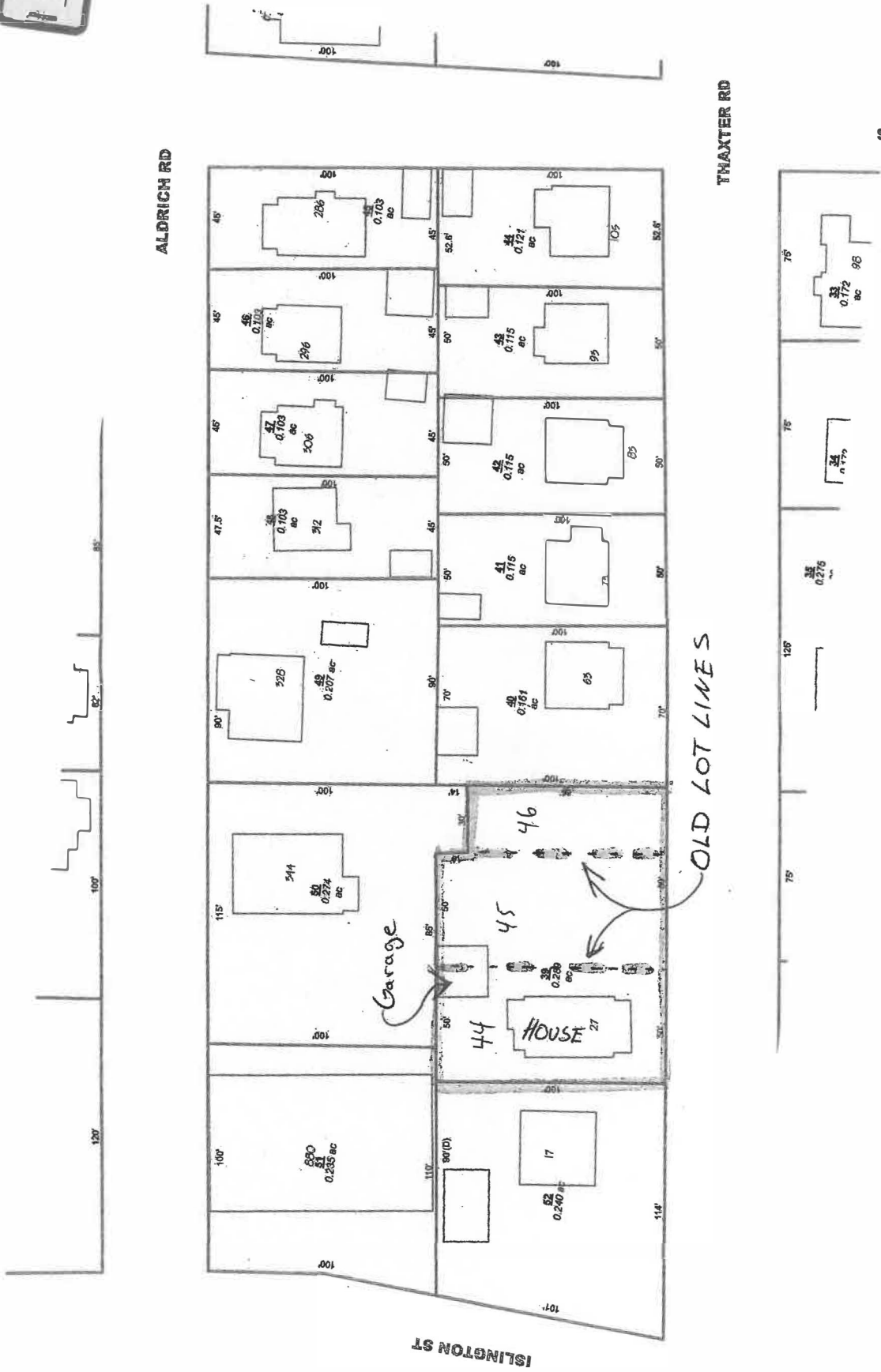
Respectfully submitted,



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Christopher P. Mulligan, Esquire  
Attorney for Chad Callihan  
27 Thaxter Road  
Portsmouth, NH 03801

Date: December 11, 2019





EXHIBIT

B

PROPERTY ASSESSMENT RECORD - CITY OF PORTSMOUTH, N.H.

APRIL 1980

52

46

LOT ONLY - LAND ASSESSED

RECORD OF DEEDS

2-1-1

RECORD OF DEEDS

DESCRIPTION



ORVILLE GURRILL  
WALTER A. GOVE

343/428

6-11-32

1929

RURAL PROPERTY

PROPERTY FACTORS				LAND VALUE COMPUTATIONS AND SUMMARY				OWNER PREVIOUS TO 1981							
TERRAIN	SOIL TYPE	LAND CLASS	IMPROVEMENTS	PERCENTAGE	DEPTH	UNIT VALUE	TOTAL	AREA	PERCENTAGE	AREA	PERCENTAGE	TOTAL	AREA	PERCENTAGE	
LEVEL	TOP SOIL	ROAD	HOUSE	70	86	10	93	930	275						
TOTAL ACRES				TOTAL VALUE LAND				TOTAL VALUE BUILDINGS				TOTAL VALUE LAND & BUILDINGS			
												2580 SPRT			

URBAN PROPERTY

PROPERTY FACTORS				LAND VALUE COMPUTATIONS AND SUMMARY									
PAVED	SEWER	ELECTRICITY	WATER	PERCENTAGE	DEPTH	UNIT VALUE	TOTAL						
PAVED	SEWER	ELECTRICITY	WATER	70	86	10	93	930	275				
TOTAL VALUE LAND				TOTAL VALUE BUILDINGS				TOTAL VALUE LAND & BUILDINGS					
								250					
								250					

EXHIBIT

tabbles

PROPERTY ASSESSMENT RECORD

LOCATOR 27 THAXTER RD  
 MAP 039  
 ZONING SR II  
 CLASS 01  
 ASSESSMENT RECORD  
 15500  
 41600  
 51100

RECORD OF OWNERSHIP  
 CARD 01  
 OLD N/L# 052 544 400-401  
 Mailing Address  
 27 THAXTER ROAD  
 PORTSMOUTH NH 03801  
 Name  
 Guptill Orville N Trustee of the Orville N. Guptill Revocable Trust  
 ROOM-FASE 0943/049R  
 DATE 08/38  
 AMOUNT  
 2685/1110 05/04/87 none

LAND VALUE TYPE	LAND VALUE	BLDG VALUE	TOTAL
1	15500		15500
4	510		510
7	15500		15500

LAND VALUE COMPUTATIONS AND SUMMARY

CODE	SIZE	RATE	INFLUENCE FACTOR	LAND VALUE
1	2000	3.00		15500
4	5000	10		510
7	12500			15500

MEMORANDA

41 values  
 2 values  
 1 value  
 \$41004 for 1st 2nd 3rd values 200  
 No in value

CATEGORY CODES	NUMBER OF ACRES	RATE	INFLUENCE FACTOR	LAND VALUE
1 PRIMARY SITE				
2 SECONDARY SITE				
3 UNDEVELOPED				
4 TILLABLE				
5 PASTURE				
6 WOODLAND				
7 WASTELAND				
8 WASTE				
9 FRONTAGE - ROAD				
10 FRONTAGE - WATER				
11 ROAD				
12 ACREAGE - DEPR.				
TOTAL ACREAGE				

SALES DATA

DATE	TYPE	SALE PRICE	SOURCE	VALIDITY
	1		1	1
	2		2	2
	3		3	3
	4		4	4
	5		5	5
	6		6	6
	7		7	7
	8		8	8
	9		9	9
	10		10	10
	11		11	11
	12		12	12

Orville Guptill

INSPECTION  
 INTERVIEWED BY:

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# MEMORANDUM

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**TO:** Karen Conard, City Manager

**FROM:** Juliet T. H. Walker, Planning Director *JTW*

**DATE:** April 7, 2020

**RE:** City Council Referral – Projecting Sign  
Address: 206 Market Street  
Business Name: Otter Creek Shop LLC  
Business Owner: Lauren and Chris Atwood

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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.



**Request for license  
206 Market Street**



**REVISION:**  
All orders under \$250 include 1 revision only.  
All orders over \$250 include 3 revisions only.  
Additional revisions will be charged at \$25 per revision.

**PLEASE NOTE:**  
Designs are NOT actual size and color may vary depending on printer and/or monitor.

**4/6/20**

**RETURN SIGNED TO: [service@portsmouthsign.com](mailto:service@portsmouthsign.com)**

I understand this Order Form is the final production order and replaces all previous drawings, notes and verbal instructions to this job. Standard vinyl & paint colors will be used. Custom colors and specific matches to PMS colors will be an additional fee. I have carefully reviewed this form and verify that it contains all necessary specifications and represents my order. I authorize fabrication according to this approval.

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



©COPYRIGHT 2017, BY PORTSMOUTH SIGN COMPANY. All designs and custom artwork remain the property of Portsmouth Sign Company until the order is complete and paid in full.

Shop Use Only

Qty:  SS  DS  Materials: \_\_\_\_\_ Background Color: \_\_\_\_\_ Vinyl Color: \_\_\_\_\_ Other: \_\_\_\_\_

HP  Int





**Bottomline Technologies**  
325 Corporate Drive  
Portsmouth, NH 03801  
Phone: +1 603.436.0700  
info@bottomline.com

April 8, 2020

Mr. John Bohenko  
City Manager  
1 Junkins Avenue  
Portsmouth, NH 03801

Dear Mr. Bohenko –

We are writing today on behalf of Bottomline, located at 325 Corporate Drive, Portsmouth for approval to host another 5K road race on Pease. Our beneficiary for the event is Court Appointed Special Advocates (CASA) of New Hampshire. We are working with the Pease Development Authority on approval to host the event on Sunday, September 27<sup>th</sup> at 11:00 am. The route will be similar to the route used last year, with the exception that the starting line and finish line will be at Cisco Brewery. As one of the primary resources offering to coordinate the event, we'd like to gain your approval, and with that reach out to the Police Captain to get Police Detail scheduled. Please let me know if you require any additional information.

Thank you in advance for your consideration and we look forward to hearing from you soon.

I can be reached by email or phone at: [jnevejans@bottomline.com](mailto:jnevejans@bottomline.com) or 603-501-6185

Kind regards,  
Jylle Nevejans



April 8, 2020

City of Portsmouth  
Mayor's Office  
1 Junkins Avenue  
Portsmouth, NH 03801

Dear Honorable Mayor Blalock and City Council Members;

The Portsmouth chapter of the AFSP Out of the Darkness Walk has hosted a fundraising and education walk since 2006 in Portsmouth. This event has grown to more than 600 walkers annually. In fact, in 2019 we had 700 walkers and raised \$102,000 to support local and state suicide prevention education as well as national research programs. We would like to continue the tradition and success of this program and are asking for permission to again host the Out of the Darkness Community Walk in the City of Portsmouth. Given the COVID-19 crisis, we understand the uncertainty surrounding large gatherings. We respectfully ask that you conditionally approve of this event. As we endure the pandemic and move toward community recovery mental health resources will be even more important.

**The proposed date and time is as follows;**

**Date: September 12, 2020 (Saturday)**

**Registration Begins: 8:30am**

**Walk Duration: 10am – Noon**

The walk will begin at the Little Harbor School, 50 Clough Dr, Portsmouth, NH 03801 (see included walk route).

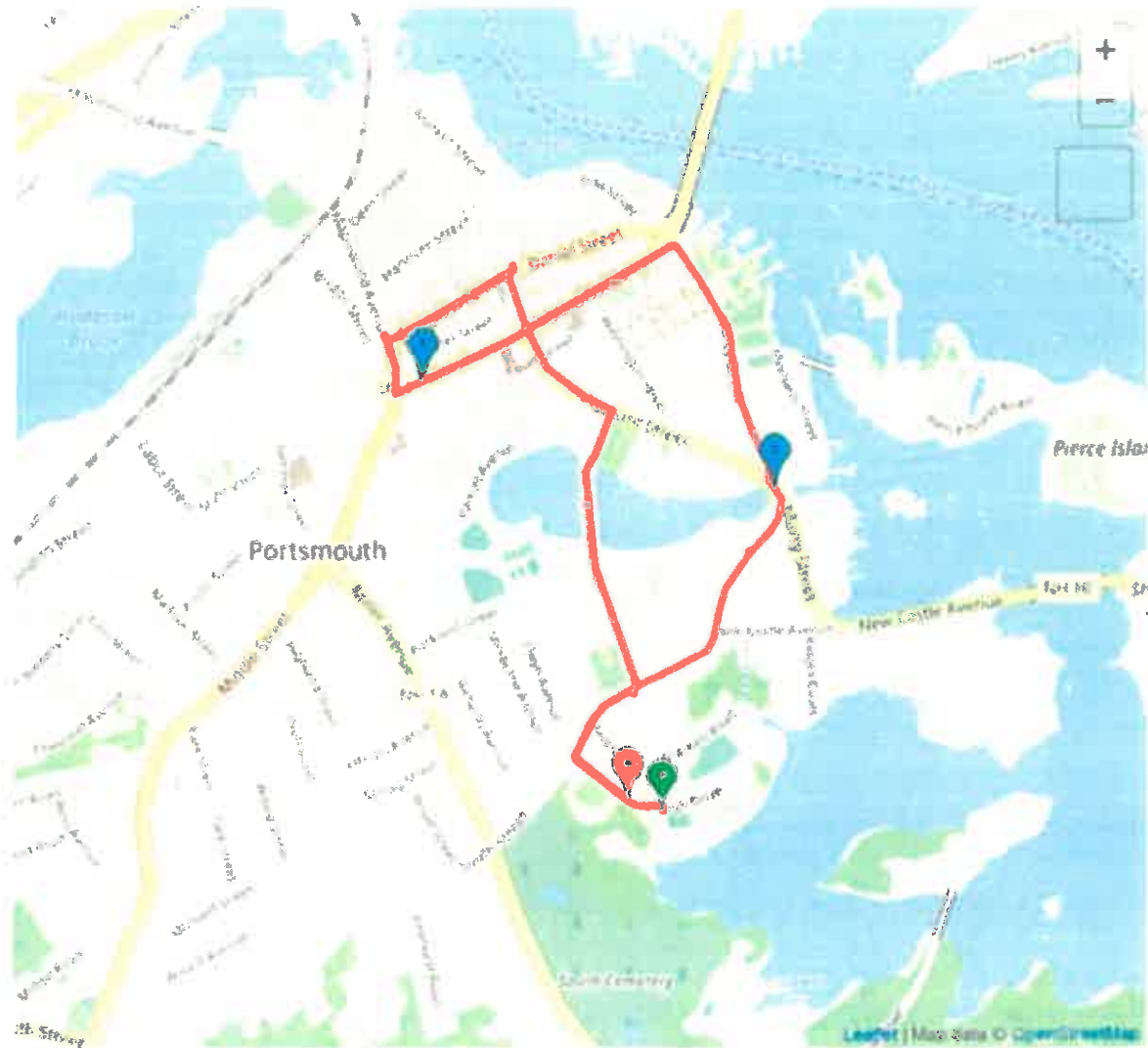
We would like to thank you for your consideration and look forward to your decision.

Respectfully,

Ken La Valley, Chair  
OOTD Walk Committee  
603-556-0823  
66 Hunter Lane  
Barrington, NH 03825

**Proposed Walk Route (2.58 Miles)**

Route 738915 Distance 2.58 miles





Friends of the South End  
PO Box 443  
Portsmouth, NH 03802

April 8, 2020

Ms. Karen S. Conard, City Manager  
Portsmouth City Hall  
One Junkins Ave.  
Portsmouth, NH 03801

Dear Karen,

On behalf of the Friends of the South End and the annual Fairy House Tour event, I am seeking the City's permission to host this event on Saturday, October 3, 2020 and Sunday, October 4, 2020 from 10:00-3:00 pm both days, as well as to help clear the area from conflicting events.

The Tour will take place on the grounds of the Governor John Langdon House, Strawberry Banke Museum and in collaboration with the Prescott Park Arts Festival. We are asking the City for permission to use Peirce Island for parking as well as the use of Prescott Park. We would again like to close Washington Street between Hancock and Court Streets to through traffic from 9:30am-4pm both days.

We anticipate hiring two police officers or crossing guards to aid in the public's crossing over Marcy Street at the Prescott Park flagpole and at the intersection of Mechanic Street.

We look forward to working with the City to create one of our area's most beloved events. Please let us know if you need more detailed information at this time. I will contact your office to schedule a meeting with the City departments at a date set at your convenience.

Thank you for always helping us create a magical event in the South End.



Joi Smith  
2020 Event Coordinator  
s.joismith@gmail.com  
(603) 969-5701

Cc: Esther Kennedy, FOSE Co-President  
Mary Thomas, FOSE Co-President

## CITY COUNCIL E-MAILS

April 6, 2020 (after 4:00 p.m. – April 16, 2020 (9:00 a.m.)

### April 20, 2020 Council Meeting

Below is the result of your feedback form. It was submitted by Joe Onosko ([jonosko@comcast.net](mailto:jonosko@comcast.net)) on Tuesday, April 7, 2020 at 20:24:42

-----  
address: 27 Shaw Road

comments: Dear City Councilors,

Below is a slightly modified email my wife, Jane Zill, sent just before COVID-19 turned our collective lives upside down. The questions below reflect some of the concerns expressed by members of the neighborhood as they prepared for the mid-March working session with city officials on the sewer project. That meeting, of course, was cancelled.

We realize the consent decree deadline looms, however, given the understandable need to cancel the March 16th meeting with Sagamore residents, they remain in the dark about next steps and the questions below.

Sincerely,  
Joe Onosko

Dear City Councilors and Attorney Woodland,

In preparation for the March 16th work session on the Sagamore Avenue Sewer Extension Project, I'm writing with a few questions and concerns. In advance, thank you for your kind consideration.

Best, Jane Zill

- 1) As part of the sewer extension project, will roads in the Walker Bungalow neighborhood (Walker Bungalow, Shaw, and Little Harbor) remain the same width or will resident land be annexed to widen them?
- 2) If land is developed in the Walker Bungalow/Little Harbor Road area and homes are added, what will be the impact on the individual pump/grinder systems currently planned for the area? Or, if commercial development occurs to the south and west, what could go wrong for residents with individual pump and grinder systems? For example, grease from restaurants had been a problem for the Peirce Island wastewater treatment plant. How might large amounts of restaurant grease impact the functioning of a low-pressure system with multiple, interconnected, individual pump/grinder systems?
- 3) Several residents are at the bottom of the Sagamore Avenue/Walker Bungalow Road hill. If there is a failure in the system, what safeguards should be in place to protect residents from sewage that would flow downhill and possibly back up onto their property? We're aware that there have been sewage spills at Carrier's Cove.
- 4) What might be the impact of blasting on radon emission? Can radon emission from blasting be mitigated in any way?
- 5) What is the plan regarding blasting and home damage, including documentation of home foundations and walls prior to blasting? Recall Mimi Clark's disconcerting experience and home damage: <https://www.seacoastonline.com/news/20190605/clark-settles-suits-alleging-city-project-damaged-home>
- 6) What is the current timeline regarding the commencement of construction of the project? When will residents be notified?

includeInRecords: on

Below is the result of your feedback form. It was submitted by James Hewitt ([samjakemax@aol.com](mailto:samjakemax@aol.com)) on Thursday, April 9, 2020 at 19:47:05

-----  
address: 726 Middle Road

comments: Dear Mayor Becksted and City Councilors:

For the second time, the Planning Board voted tonight to enrich developers at the expense of Portsmouth residents seeking affordable housing. I hope it is as clear to you as it is to me that the Planning Board , with this precedent, will have to give all future projects the same deal it gave West End Yards for a density bonus, i.e., 10% units to be workforce units at 80% AMFI for a 3 person household. Maybe its me, but I don't know too many people that would consider \$1,700 /mo affordable for a 800 SF apartment.

Portsmouth needs a more straight forward approach to create affordable housing so that future housing travesties can be avoided. I suggest the City Council review the attached and evaluate implementing a similar plan in Portsmouth.

Regards,  
Jim Hewitt

[https://www.cityofnewburyport.com/sites/newburyportma/files/uploads/odnc011\\_06\\_26\\_17\\_zoning-amendment-inclusionary-housing-w-dhcd-edits-final-as-adopted.pdf](https://www.cityofnewburyport.com/sites/newburyportma/files/uploads/odnc011_06_26_17_zoning-amendment-inclusionary-housing-w-dhcd-edits-final-as-adopted.pdf)

includeInRecords: on  
Engage: Submit

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Below is the result of your feedback form. It was submitted by Mary Lou McElwain ([MI259@comcast.net](mailto:MI259@comcast.net)) on Tuesday, April 14, 2020 at 11:12:25

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address: 259 South Street

comments: Good Morning, I hope this message finds all of you and your families faring well. I listened to the discussion of reinstating the parking and garage fees at your last meeting. I hope it's OK to add some info.

I have been walking in downtown and into neighborhoods daily, rain or shine , since Monday 3/16 between 6:30and 9:30 AM . For three weeks it was like being in The Twilight Zone. No traffic, even across the three bridges. So quiet,I commented to someone that you could hear a pin drop. Really. Very few cars parked on the streets, some pedestrian traffic, especially the dog walkers. That changed in my observation last Monday 4/6. Now there are vehicles driving everywhere until the evening. Construction trucks and landscape trucks are common along with cars. And now I see vehicles parked on city streets and in the municipal lot from N.H. mostly,Maine, many, MA, many, and on occasion other NE states and random from CO,NY,NJ. You get the picture. And that's in the morning . Are offices open? I think visitors are coming to our very walkable city for pleasure and to walk their dogs. and with good weather this Influx of out of area vehicles and pedestrian traffic will increase. !

There are four places open for beverage and food in downtown in the morning; Portsmouth Provisions, Kaffee Vonsolln, Tuscan Market and The Works. I don't know how many restaurants are doing takeout but I see that the city has placed signage for parking/ takeout .

So unless the City really can afford to lose the parking revenue for many more weeks I think reinstating meters and garage fees should happen by May 1st as we see increased traffic.

What line items are the parking revenues earmarked for and can these expenses be put on hold or deleted.This is important to review when making this policy decision.

It isn't an easy decision . Businesses should be assured that the City will work with their employees in this time of diminished income.

Thanks for all you do.

Mary Lou McElwain

includeInRecords: on

**From:** Pamela Riding [<mailto:marieredfeather@gmail.com>]

**Sent:** Friday, April 10, 2020 8:34 PM

**To:** Kelli L. Barnaby <[klbarnaby@cityofportsmouth.com](mailto:klbarnaby@cityofportsmouth.com)>

**Subject:** Stop Deployment of Wireless during Quarantine

Dear Ms. Barnaby,

Dear Mayor & City Council Member,

We ask that you impose a moratorium on “small cells” and other wireless infrastructure permits process and deployment until the COVID-19 emergency is over.

The wireless providers are using the COVID-19 emergency as cover to expand and cement their rapid and virtually unsupervised deployment of harmful wireless infrastructure. Our local leaders should not have to dedicate time and resources to policing whether the wireless companies are following local and state law, they have far more important things to do.

The FCC wireless permit rules allow emergency moratoria. Homeland Security guidelines emphasize that maintenance of existing communications capability is the priority. New construction is not “essential.”

The COVID-19 emergency has led to a government shut down of non-essential activity. Hospitals, emergency response and local officials are overwhelmed and they must be allowed to focus on what is indeed “essential”. Now is not the time to be dedicating resources to expanding, rather than just maintaining, our networks.

The FCC has directly held a local jurisdiction can impose a temporary halt to deployment and permits during emergencies. In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers, FCC 18-111, 33 FCC Rcd 7705, 7784-7785, ¶157 (2018) (“We recognize that there may be limited situations in the case of a natural disaster or other comparable emergency where an express or de facto moratoria that violates section 253(a) may nonetheless be ‘necessary’ to ‘protect the public safety and welfare’ or to ‘ensure the continued quality of telecommunications services.’”)

Homeland Security has declared that local government is on the forefront and can take control over determining whether to temporarily halt all non-essential activity. Homeland Security guidance documents prioritize maintenance of existing Communications Systems, and do not support “essential” status for new construction. See Homeland Security Cybersecurity & Infrastructure Security Agency, Identifying Critical Infrastructure During COVID-19, <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> (local control); e-Critical Infrastructure and Key Resources Support Annex, <http://www.fema.gov/pdf/emergency/nrf/nrf-support-cikr.pdf> (focus on “protection, response, recovery, and restoration”). Homeland Security, like the FCC, understands that it is essential in an emergency situations justify focusing on protecting, responding, recovering and restoring of existing systems, but new communications facilities construction is and should be deemed nonessential, and subject to lockdown for so long as we are under emergency conditions.

Cities can and should impose a moratorium on deployment in their local area and freeze the permit process until the COVID-19 emergency is over.

Sincerely,  
Pamela Riding  
2 Freedom Circle  
Portsmouth, NH 03801

## STATE OF NEW HAMPSHIRE

MEMORANDUM

TO: New Hampshire Election Officials

FROM: William M. Gardner, Secretary of State  
Gordon J. MacDonald, Attorney General

RE: Elections Operations During the State of Emergency

DATE: April 10, 2020

On April 3, 2020, Governor Sununu issued Executive Order 2020-05 continuing the State of Emergency relating to the outbreak of Novel Coronavirus 2019 (COVID-19). As we confront the many challenges posed by this public health crisis, it is important that we take steps to ensure that the fundamental right to vote is protected and that we work together to ensure that New Hampshire continues its long tradition of conducting fair and well-run elections.

As clerks, moderators, and other local election officials, you provide critical services to your local communities. Our offices remain open and are available to assist you. Please do not hesitate to contact us if we can be of assistance.

Secretary of State: (603) 271-3242 Elections Division: (800) 540-5954 / (603) 271-8241  
elections@ sos.nh.gov; [nhvotes@sos.nh.gov](mailto:nhvotes@sos.nh.gov)

Attorney General: (866) 868-3703 / (603) 271-3658  
[electionlaw@doj.nh.gov](mailto:electionlaw@doj.nh.gov)

In response to questions from local election officials and others prompted by the ongoing public health emergency, we provide the following guidance with respect to absentee ballots.

**Absentee Ballots****1. Municipal Elections to be held in 2020**

With respect to any upcoming municipal elections, we offer the following guidance as to who is eligible to vote by absentee ballot in light of the current public health crisis. As explained below, in light of the current public health state of emergency, Emergency Orders #16 and #26, and current public health guidance on social distancing and avoiding being in public in groups of 10 or more, all voters have a reasonable ground to conclude that a “physical disability” exists within the meaning of RSA 657:1. Therefore, all voters may request an absentee ballot on that basis.

## 2. Analysis

Under existing New Hampshire law, RSA 657:1, a voter may vote by absentee ballot when the voter:

- Will be absent on the day of the election;
  - Absence is defined to include:
    - Being physically absent from the city, town, or incorporated place where domiciled;
    - Being unable to appear at the polling place because of an employment obligation;
    - Employment obligation includes:
      - Where scheduled work hours, including commuting time leave the voter unable to vote in person during polling hours.
        - This applies even where the person's employment is in the town or ward where the voter is domiciled;
      - The care of children or infirm adults, with or without compensation.
        - This would include a voter caring for a person quarantined for COVID-19, including self-quarantine based on general medical advice issued to the public by health officials.
- Cannot appear in public on Election Day because of his or her observation of a religious commitment; or
- Cannot vote in-person by reason of disability.
  - This would include any medical condition where medical advice is that the voter not go out in public.
  - This includes a voter who is quarantined, including self-quarantine, for any reason due to COVID-19. Compliance with general medical advice issued to the public by health officials is sufficient, individualized advice from the voter's personal physician is not required. Current general medical advice is that all household members of a person self-quarantined for cause, also self-quarantine.

Given this broad interpretation of the term "disability" with respect to absentee voting, it is worth noting that the term's above-described application can occur outside emergencies as well. Absentee voting is permitted in any circumstance where the voter is under medical advice – whether it is individualized advice or general advice to the public – to avoid being in places like a polling place.

In light of the current public health advisories related to COVID-19, any voter who in the voter's judgment is being advised by medical authorities to avoid going out in public, or to self-quarantine, would qualify to vote by absentee ballot. This applies equally to voters who are experiencing symptoms of COVID-19 or any other severe communicable flu, and those who are self-quarantining as a preventative measure. As the law does not define the term "disability" for

the purpose of absentee voting, particularly in light of this guidance, any voter's reasonable determination that he or she qualifies satisfies the law.

**3. Procedure**

As a result, voters with either a disability, as construed above, or an employment obligation, including caring for another, are entitled to mark the absentee ballot application form indicating

- "I am unable to vote in person due to a disability;" or
- "I cannot appear at any time during polling hours at my polling place because of an employment obligation. For the purposes of this application, the term "employment shall include the care of children and infirm adults, with or without compensation."

RSA 657:1; RSA 657:4.

Similarly, these voters are entitled to sign the Absentee Voter Affidavit envelope indicating:

a) Absence from City or Town. A person voting by absentee ballot because of absence from the city or town in which he or she is entitled to vote shall fill out and sign the following certificate:

I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_, New Hampshire, in ward \_\_\_\_\_; that I will be unable to appear at any time during polling hours at my polling place because I will be working on election day, or I am voting on the Monday immediately prior to the election, the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning, and I am elderly or infirm, have a physical disability, or have to care for children or infirm adults, or I will be otherwise absent on election day from said city or town and will be unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind). For the purposes of this certification, the term "working" shall include the care of children and infirm adults, with or without compensation.

(Signature) \_\_\_\_\_

Or

(b) Absence Because of Religious Observance or Physical Disability. A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate:

I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_, New Hampshire, in ward \_\_\_\_\_; that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).  
 (Signature) \_\_\_\_\_

RSA 657:7.

**4. September 8, 2020 Primary and November 3, 2020 General Elections**

It is impossible to predict the course of the COVID-19 public health crisis or how it might be affecting our state in September and November 2020 when the Primary and General Elections will be held. Nonetheless, it is important for election officials, voters, and candidates to have a clear understanding now about how public-health related concerns will be addressed.

It is reasonable to anticipate that voters may feel apprehension about voting in person in the September 2020 Primary and November 2020 General Elections. Voters should not have to choose between their health and exercising their constitutional right to vote. Thus, any voter who is unable to vote in person in the September 8, 2020 Primary Election or the November 3, 2020 General Election because of illness from COVID-19 or who fears that voting in person may expose himself/herself or others to COVID-19 will be deemed to come within the definition of “disability” for purposes of obtaining an absentee ballot. Any voter may request an absentee ballot for the September 2020 Primary and November 2020 General Elections based on concerns regarding COVID-19. We anticipate providing further guidance to election officials about planning for and accommodating what could be a significant increase in absentee ballots.

**5. Enforcement**

Suspicion or evidence that a person is trying to vote by absentee ballot, when not entitled by law to do so, is **never** a legal ground for rejecting an absentee ballot. As a general matter, beyond reporting suspected violations to the Attorney General, local election officials do not have a role in determining the legitimacy of an absentee voter’s claim to absence or disability.



Local officials must cast and count absentee ballots that are otherwise lawfully submitted, even if there is a suspicion the person did not qualify to vote absentee.

RSA 657:24 establishes enforcement authority for “misusing absentee ballots.” No voter whose conduct is consistent with the guidance in this Memorandum will be prosecuted under the second sentence of that statute.



DEPARTMENT OF PUBLIC WORKS

# PEIRCE ISLAND

WASTEWATER TREATMENT FACILITY (WWTF)  
UPGRADE PROJECT

## MAJOR COMPLIANCE MILESTONE FOR SECONDARY TREATMENT MET IN 2019



2020



2016



2018



2017



2019

The Peirce Island Wastewater Treatment Facility (WWTF) has entered its fourth year of construction. Construction of the upgrade started in September 2016 and has seen the majority of the work completed by the end of 2019. This included a major milestone which was substantial completion of construction of the biological treatment system in December 2019. In the year 2020, start-up of the biological treatment system will occur as well as continued construction to convert the old Sludge Processing Building to the new Operations/Laboratory Building. This project significantly increases the level of wastewater treatment provided at the facility resulting in improved effluent discharged to the Piscataqua River.

# Biological Aerated Filter

# BAF

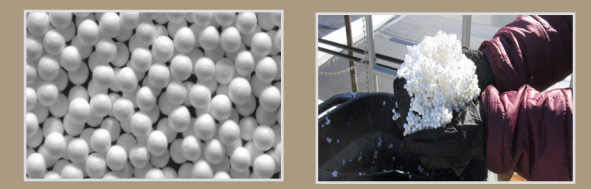
A BAF is a treatment process in which biological treatment and filtration occur in one step. This allows the system to be more compact in area and is referred to as a “high rate” treatment system. Wastewater flows upward through media in the BAF providing a surface on which biological organisms can attach and grow. The media is retained in the filter cells while treated water is discharged at the top of the cells. Wastewater receives two phases of treatment in this system, meaning it is treated in the first stage cells and then further in the second stage cells.

Periodically a filter cell is removed from service and backwashed to remove accumulated excess biomass and solids. In the six first stage BAF cells, air is added at the bottom of the media to keep the process aerobic. Air is not required for treatment in the six second stage BAF cells. Multiple filter cells are provided in each stage in order to provide redundancy as well as accommodate flow and loading variation and backwash cycles. The system has flow nozzles to distribute the flow evenly across the filter area, and an aeration grid at the bottom of each cell.



BAF Building 2020

## BAF Media and Start-up



The BAF is undergoing start-up. Wastewater will be flowing through the BAF cells while the biological organisms needed for treatment grow and establish themselves on the media. Because some of the organisms needed for treatment grow very slowly, it can take several months for them to establish a population large enough to treat the wastewater to the levels desired.

Representatives from the BAF manufacturer will assist during the start-up period to monitor its operation and confirm that it is working as intended. The BAF is a highly automated treatment system, so a portion of their effort will be spent testing and modifying the automated systems. The BAF manufacturer’s staff will also be conducting training for the City’s operators on an ongoing basis.



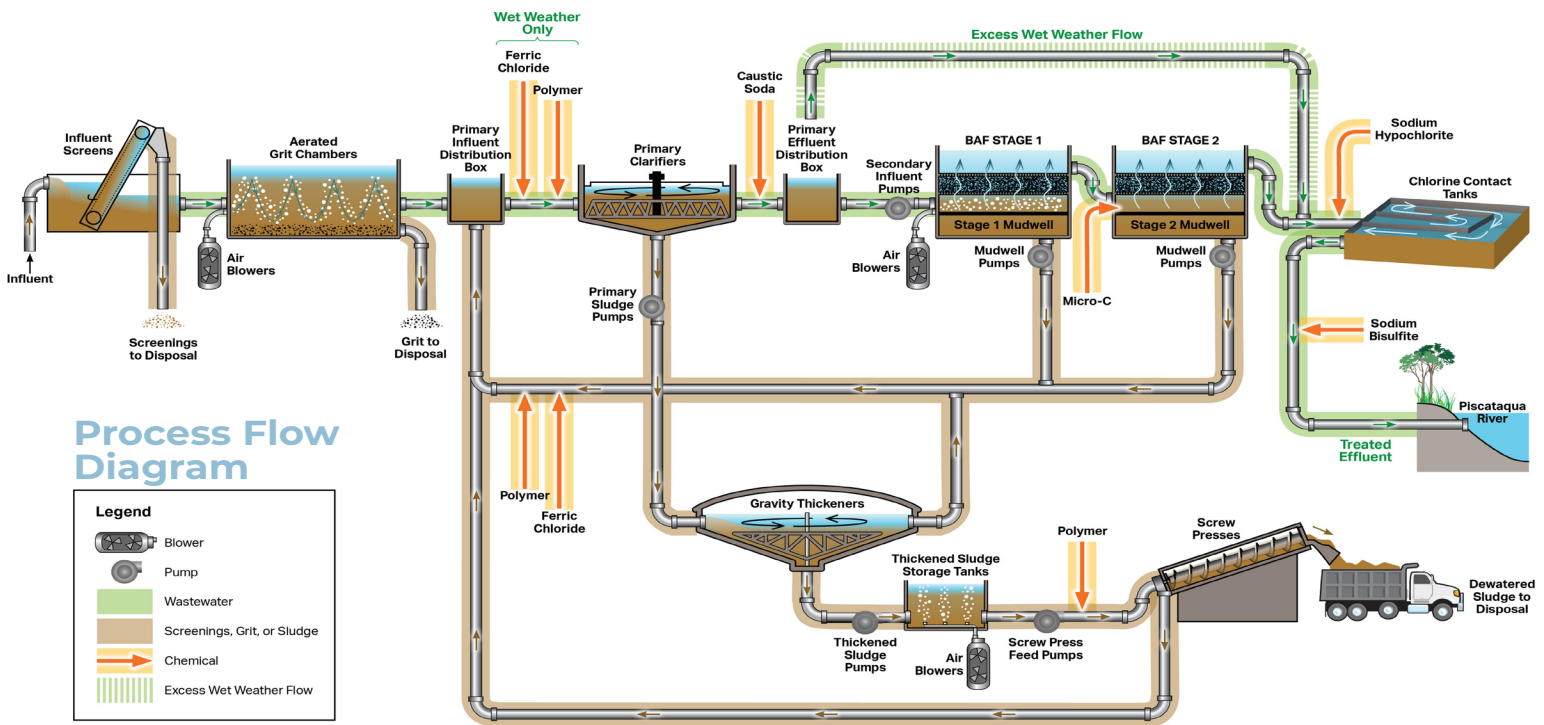
Filter Cell



Filter Cell Netting



Media Being Loaded Into Cell



## Proposed Walking Path and Osprey Nesting Platform

City staff are working closely with the Peirce Island Committee to add a trail extending from the current “Cliff Overlook” along the Piscataqua River’s edge to the south side of the treatment facility, which would effectively complete the trail loop around this end of Peirce Island. The trail would be constructed as part of the restoration of the island as the construction contract winds down. The potential trail extension would provide a safe pathway for visitors to walk around the river side of the treatment facility and enjoy the views.

A 40-inch square Osprey nesting platform was installed on a decommissioned utility pole on the island. An article about the platform project will be featured in Treatment Plant Operator (TPO) Magazine PlantScapes section in either June or July.

Link to TPO Magazine: [www.tpomag.com](http://www.tpomag.com)

## Public Tours on the Island

City staff and AECOM, the project engineering firm, have conducted seven tours to date. In June 2019, two tours were organized. The New England Water Environment Association (NEWEA), toured the facility on June 4th. The annual public tour was conducted on June 6th. The public tour included approximately 40 attendees, including City Councilors.

Attendees were guided in small groups through the construction site. Participants viewed the Headworks, BAF, Grit, and Solids Buildings, along with the Primary Clarifiers.

Future tours are being planned for 2020.

## 2019 TOURS



# Cost Summary

PROJECT CONTRACT VALUE	AMOUNT
Original Contract	\$ 72,785,545.00
Change Order No. 1	367,290.42
Change Order No. 2	546,722.46
Change Order No. 3	93,838.31
Change Order No. 4	162,869.20
Change Order No. 5	249,828.16
Change Order No. 6	292,031.11
Change Order No. 7	169,138.30
Change Order No. 8	112,659.75
<b>TOTAL CONTRACT</b>	<b>\$74,779,922.71</b>
<b>CONTRACT COSTS</b>	
as of February 29, 2020	
Construction Costs Expended	\$68,681,199.60
% Expended Based on Total Contract	91.84%
<b>OVERALL PROJECT CAPITAL BUDGET (MILLIONS)</b>	
Primary Clarifier Replacement	1,600,000
Peirce Island Bridge Improvements	600,000
WWTF Design Engineering	5,200,000
WWTF Construction Engineering	7,900,000
WWTF Construction*	74,800,000
WWTF Construction Contingencies	1,500,000
WWTF Construction Mitigation and Public Art	300,000
<b>TOTAL</b>	<b>\$91,900,000</b>

\*\$0.4 million for water main improvements included in the contract, but not paid from sewer funds.

Since the prior progress report in November 2018, Change Orders 6, 7 and 8 have been executed. These change orders included adjustments necessary during the course of construction. This is common and expected with a construction project of this size and complexity. For a summary of modifications and changes associated with each change order, please visit the project web page at: [www.cityofportsmouth.com/publicworks/wastewater/peirce-island-wastewater-facility/peirce-island-wastewater-facility-upgrade-project](http://www.cityofportsmouth.com/publicworks/wastewater/peirce-island-wastewater-facility/peirce-island-wastewater-facility-upgrade-project).

On April 20, 2016 the City entered into an agreement with the New Hampshire Department of Environmental Services for a State Revolving Fund (SRF) Loan for \$75 million. On July 10, 2017 the City Council voted to authorize additional borrowing for up to \$6.9 million for the Peirce Island WWTF Upgrade project.

The City received four (4) amendments to the original loan agreement to date. Amendment No. 1 was approved on December 14, 2016 which decreased the interest rate. Amendment No. 2 was approved on February 7, 2018 in the amount of \$3.5 million. Amendment No. 3 was approved on April 17, 2019 in the amount of \$2.1 million. Amendment No. 4 was approved on March 11, 2020 in the amount of \$1.3 million.

# Schedule

PROJECT SCHEDULE	DATE	STATUS
Execute Contract to Construct Upgrades	September 1, 2016	Complete
Submit Two Additional Milestones for EPA Review and Approval	December 1, 2016	Complete
Additional Milestone 1: Transfer of the existing SCADA System to the New Headworks Bldg	November 21, 2017	Complete
Additional Milestone 2: Startup and testing of the Secondary Influent Pump Station in the New Solids Bldg	May 9, 2019	Complete
BAF Substantial Completion	December 1, 2019 December 31, 2019*	Complete
Achieve Compliance with NPDES Permit Limits	April 1, 2020	In Progress
Project Substantial Completion	June 30, 2020	In Progress
Project Final Completion	September 29, 2020	In Progress

\*BAF Substantial Completion date was extended by approval from the EPA in a letter dated December 9, 2019.

The City has a number of milestone dates related to this project as summarized in the adjacent table. The BAF Substantial Completion date, originally December 1, 2019 was extended to December 31, 2019. As reviewed earlier in this report, the City, vendors and engineers are working toward start-up, which is necessary to achieve compliance with the NPDES Permit Limits beginning April 1, 2020. The construction contractor's recent progress schedule shows that the work to complete the entire project will extend past the original completion June 30, 2020 date. The City is working closely with the contractor and engineers to finalize a revised schedule. During the course of this effort City staff are evaluating means to consolidate construction activities closer to the WWTF so that recreational activities on the island and parking areas can begin to be restored for public access. The following figure shows the major remaining planned work outside the WWTF fence for 2020.

Documentation is available online: [www.cityofportsmouth.com/publicworks/wastewater/resources](http://www.cityofportsmouth.com/publicworks/wastewater/resources)

