

CITY COUNCIL MEETING

MUNICIPAL COMPLEX

DATE: WEDNESDAY, JULY 15, 2020

PORTSMOUTH, NH

TIME: 7:00PM [or thereafter]

Remote Meeting Via Zoom Conference Call

To register in advance for this meeting, click on the link below or copy and paste it into your web browser: https://zoom.us/webinar/register/WN_a73N9fNVRJiFXncMfAMWDg You are required to register in advance to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. Please note, this meeting will also be broadcast on the City's YouTube Channel. Public comments for the Council's consideration can be emailed in advance via the City's web site: <https://www.cityofportsmouth.com/citycouncil/contact-all-city-councilors>.

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 2020-10, 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.

Mayor Becksted recited that this is a Remote Meeting via Zoom Conference Call. Per NH RSA 91-A:2III (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 2020-10. Section 8, as extended by Executive Order 2020-4, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location. All votes will be by roll call.

This meeting was recessed from Monday, July 13, 2020. Items stricken has been voted upon.

~~I. WORK SESSION – THERE IS NO WORK SESSION THIS EVENING~~

~~II. PUBLIC DIALOGUE SESSION [when applicable – every other regularly scheduled meeting] – **POSTPONED**~~

~~III. CALL TO ORDER [7:00 p.m. or thereafter]~~

~~IV. ROLL CALL~~

~~V. INVOCATION~~

~~VI. PLEDGE OF ALLEGIANCE~~

~~VII. ACCEPTANCE OF MINUTES – APRIL 6, 2020~~

~~VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS~~

~~IX. PUBLIC COMMENT SESSION – (Via Zoom)~~

~~X. PUBLIC DIALOGUE SUMMARY [when applicable] – **POSTPONED**~~

~~XI. PUBLIC HEARINGS AND VOTES ON ORDINANCES AND/OR RESOLUTIONS~~

~~A. First reading of Ordinance amending Chapter 7, Article I, Section 7.102 – Parking Meter Zones; Chapter 7, Article, Section 7.105 – Parking; Chapter 7, Article III, Section 7.324 – Limited Parking – One Hour; Section 7.325 – Limited Parking – Thirty Minutes; Section 7.326 – Limited Parking – Fifteen Minutes, Section 7.327 – Limited Parking – Two Hours, Section 7.328 – Limited Parking – Three Hours, Section 7.328-1 – Utilization of Multiple Parking Spaces; and Section 7.329 – Limited Parking – Four Hours~~

~~B. Third and final reading of Ordinance amending Chapter 7, Article I, Section 7.105 C. – Parking – Motorcycle Parking~~

~~XII. MAYOR BECKSTED~~

- ~~1. Appointment to be Considered:
 - Reappointment of Erica Wygonik to the Parking & Traffic Safety Committee as an Alternate~~
- ~~2. *Islington Street Corridor Project (*Delayed from the June 15, 2020 City Council meeting*)~~

~~XIII. CITY COUNCIL MEMBERS~~

~~A. ASSISTANT MAYOR SPLAINE & COUNCILOR McEACHERN~~

- ~~1. Resolution for Mandatory Mask/Face Coverings (*Sample motion – move to adopt the Resolution requiring the wearing of facial coverings in the City of Portsmouth*)~~

~~B. ASSISTANT MAYOR SPLAINE~~

- ~~1. “Positive Re-Enforcement” for Wearing of Masks/Face Coverings (*Sample motion – move the Portsmouth City Council endorses the concept of ‘positive re-enforcement’ for the wearing of face coverings through a variety of incentives that may be suggested, advocated for, and implemented by City of Portsmouth staff, the Portsmouth Police Department, the Portsmouth Citizen Response Task Force, and the businesses of our community.*~~

~~*We ask the City Manager to consider such concepts in consultation with supportive parties, public and private, during the coming weeks. Funds available from the Federal sources to offset COVID-19 expenses, or which have been allocated to the Portsmouth Citizen Response Task Force, may be used to support such efforts.*~~

~~*The City Manager may consult with staff, members of the Police and Fire Departments, health care professionals, our business community, non-profit arts and cultural organizations, residents, and the Portsmouth Citizen Response Task Force, to come up with measures and ideas to implement ‘positive re-enforcement’ without the use of punitive fines or civil penalties of any kind.*~~

~~*We encourage our businesses, non-profit organizations, city staff and residents to be innovative, inventive, and creative in coming up with proposals for ‘positive re-enforcement’ so that the City of Portsmouth will be considered as the ‘friendly community’ in encouraging the use of face coverings during the current COVID-19 pandemic.”*~~

- ~~2. *City Manager Evaluation~~
- ~~3. *Insurance Liability Requirements for Portsmouth Businesses~~

~~C. COUNCILOR WHELAN~~

- ~~1. *Parking, Traffic & Safety Report~~

D. COUNCILOR LAZENBY

1. Letter to Governor Sununu regarding New Hampshire Face Covering Mandate

E. COUNCILOR HUDA & COUNCILOR TABOR

1. Informational Fee Committee Minutes (No Action Required)

F. COUNCILOR HUDA

1. Request a Report regarding Services and/or Projects completed by former City Manager John Bohenko ~~(Sample motion – move to request the City Manager to provide a report to the residents and City Council on the services and/or projects completed by the former City Manager John Bohenko over the 6 month period ending June 30th per the agreed upon consultant contract)~~

G. COUNCILOR TABOR

1. McIntyre Survey ~~(Sample motion – move that the City Council approve the survey and op ed as finalized by the McIntyre subcommittee and distribute the survey to every home as soon as possible)~~
2. Outdoor Dining Insurance Relief ~~(Sample motion – move to request staff to review city insurance requirements for outdoor dining, currently set at \$3mm for general liability and \$3mm liquor liability, to see if they can be pro-rated for seasonal use and whether they are an excessive burden on restaurants trying to stay open in the pandemic)~~

H. COUNCILOR TRACE

1. *Request a Report Back from Sewer and Water on large rain events & combined sewer overflows ~~(Sample motion – move to request a report back from Sewer and Water on the large rain events and the combined sewer overflows of 10a and 10b along with the overflow and flooding of 13 – Deer Street. Further, how the repair or not of the main sewer pipe under Peirce Island bridge may have played a part. Also, as to the report to the EPA and DES regarding the rain/overflow event)~~

XIV. APPROVAL OF GRANTS/DONATIONS

1. Acceptance of Donations to African Burying Ground from Thomas M. Brightman - \$200.00 and Tara E. Tracy \$50.00

Councilor Kennedy moved to approve and accept the donations to the African Burying Ground as listed, seconded by Councilor Tabor.

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

2. Acceptance of Memorial Bench

Councilor Kennedy moved to accept and approve the donation and grant the City Manager with Authority to Act, seconded by Councilor Huda.

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

XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager's Items Which Require Action:

1. Request to Schedule First Reading Re: Omnibus Ordinance Change

City Manager Conard commented that the current ordinance allows the Parking Traffic and Safety Committee (PTS) to recommend temporary regulations to City Council through their minutes. This is a compilation of what PTS worked on in the previous year. The public and Council have the opportunity to see how the temporary regulations work for a year before adopting. This is a review of all the changes from May 2, 2019 through June 20, 2020. There is also one housekeeping item to remove the 3-hour parking on Daniel St. from the ordinance. It is now a public park.

Councilor Kennedy commented that she would not be supporting this and would like to vote on the residential parking separately. She has received a letter from a resident that commented on how many individuals in the Pickering Sreet neighborhood do not have parking and are longtime residents. These items should be presented individually.

Assistant Mayor Splaine agreed and noted that they should not be endorsing written minutes. These items should go through a normal process.

Councilor McEachern questioned if they could address each item individually now. Councilor Kennedy responded that should not happen tonight. Staff should bring the items to the Council with proper notice and information.

City Manager Conard commented that each change will be heard during the adoption and reading process. This motion would be to just schedule the reading.

Councilor Lazenby commented that the PTS minutes in the packet and the actions on them are taken seriously. When the Council approved the PTS minutes it puts the items into practice until the Omnibus comes around. Now all the changes are compiled to go through as a group for the Council to decide if each item stays or not. It is good to put these items in through the minutes on a temporary basis to see how it works.

Councilor Whelan commented that he would support the motion to move this to the first reading. It is important to get this on the table and let the residents look at it. Changes can be made at the first and second reading.

Councilor Lazenby moved to schedule the first reading of the Omnibus Ordinance Change, seconded by Councilor Tabor.

Councilor McEachern noted that he would support the motion. It was important to make changes as feedback comes in.

Councilor Trace noted that she would support this motion moving to first reading but agreed with Councilor Kennedy's comments. A little bit of transparency goes a long way.

Councilor Kennedy commented that putting these items all together for a first reading was inappropriate. Putting everything under the Omnibus Ordinance change is not transparent. The first reading should be clear about what individual items are being discussed.

City Manager Conard noted that the slide shows what the proposed changes are in the ordinance. They are merely following the process.

Mayor Becksted commented that he would not be supporting the motion because meshing all of the items together was unfair to the residents.

Councilor Lazenby noted that the comment about lack of transparency was not an accurate depiction. These items are openly discussed in the Parking Traffic and Safety Committee Meetings with public input. Then they go in front of the Council to approve the minutes and the temporary change is made to see how it works. The final step is now when the Council decides if the changes should become permanent or not. It is a good way to make changes fast and see how things work. There is no lack of transparency. It is all open and available to anyone interested.

Councilor Huda agreed with Councilor Kennedy. There is too much in here and the public deserves to speak on it. She noted that she would not support the motion.

Assistant Mayor Splaine commented that he would not support the motion. It would be clearer if they were itemized.

Councilor Trace commented that after listening to the other Councilors more she has decided to not support the motion.

Councilor Lazenby asked City Attorney Sullivan what would happen if this did not move forward tonight. City Attorney Sullivan responded that if this did not go to the first reading, then any PTS actions at the 1-year deadline would expire. They would go back to the regulations prior to the PTS actions and the ordinance would not progress. If the actions were necessary at a later point in time, then they would need to be brought forward to City Council.

Councilor Lazenby moved to schedule a first reading of the Annual Omnibus Ordinance at the August 3, 2020 Council meeting, seconded by Councilor Tabor.

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

2. Motor Vehicle Municipal Agent Acceptance

City Manager Conard commented that Nancy Bates has been hired as the new revenue collector and tax collector. City Council is the governing body that must approve her as a municipal agent of the city.

Councilor Kennedy moved that the City Council appoint Nancy Bates as the Municipal Agent for the City of Portsmouth, seconded by Councilor McEachern.

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

3. Execution of Deed Restriction to Protect Vernal Pools – Campus Drive

City Manager Conard commented that this was part of the storm water project for the athletic fields. The City agreed to a conservation convenience of the vernal pools in the western area of the property. It was part of the City application and wetland process. The project was granted approval by the Planning Board in October.

Councilor Kennedy questioned if this went to the Conservation Commission for review. City Attorney Sullivan responded that this was a condition established by the Planning Board who refer to the Conservation Commission when necessary. The creation of this restriction satisfies the Planning Board's condition to move ahead with the athletic fields.

City Manager Conard confirmed that this went before the Conservation Commission.

Councilor Tabor moved that the City Council authorize the City Manager to finalize and execute a Declaration of Restrictive Covenants to satisfy the conditions of the Wetlands Permit and Planning Board approvals to protect the vernal pools, seconded by Councilor Trace.

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

4. Planning Board Report Back – Paper Street request for Ruth Street

City Manager Conard commented that the Planning Board provided a report back for Ruth Street. At the March 16, 2020 meeting Council considered letters from the property owner and a petition from their lawyer to release interest in a portion of Ruth Street. The Planning Board considered this item at their June 18, 2020 meeting and voted to recommend the release. If the City releases interest additional title research may be required by the interested party to ensure no one else has interest in the property. Staff found no reason to retain interest in this street.

Councilor Lazenby moved that the City Council release any interest the City may have in the paper street known as Ruth Street to the centerline of where it abuts the properties at 276 Dennett Street (Map 143 Lot 13) and 294 Dennett Street (Map 143 Lot 26), seconded by Councilor McEachern.

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

5. Release of Reverter for Portsmouth Housing Authority Property

City Manager Conard commented that the Portsmouth Housing Authority has requested the release of the reverter to exchange some but not all of the land covered by the reverter. The Council referred this item to the Planning Board, and it was discussed at their June 18, 2020 meeting. They voted to recommend the release of the partial portion of the lot.

Councilor Huda questioned if the Planning Board report back was included in their packet. City Manager Conard responded that she had a copy of the draft minutes from the June 18, 2020 meeting. The minutes will be approved at the July Planning Board Meeting. The release is for two slivers of land that total 829 square feet and are subject to the reverter. The applicant is requesting that be released from the clause. This project will add 3,302 square feet of land to the existing land in the reverter. The reverter will continue to preserve senior housing and will add work force housing.

Councilor Whelan noted that he questioned Attorney Bosen extensively at the Planning Board Meeting. The release is just for those two slivers of land. Everything else will remain in the reverter.

City Attorney Sullivan noted that he was also at the Planning Board Meeting and reviewed the file and plans. If the Council follows the Planning Board's recommendation to authorize the partial release, he will make sure to work with the Planning Director and go over the documentation carefully to make sure the intentions of the City Council were satisfied.

Councilor Kennedy commented that she was against it because some of the land that was donated and was part of the home for age of women. She asked why the City Attorney has done so much research before this has been voted on, and how they could vote on this item without the Planning Board minutes. City Attorney Sullivan responded that he did all that prior to a vote because there has been an inordinate amount of controversy over a minor real estate transaction. The initial draft did not accomplish what the Council wanted and that was brought to the attention of the Portsmouth Housing Authority.

Councilor McEachern moved to release the reverter as requested, seconded by Councilor Lazenby.

Councilor Trace was concerned that they did not have the formal opinion of the Planning Board in writing in the packet. The Council should be waiting for the written opinion of the Planning Board.

City Manager Conard responded she is on the Planning Board and Councilor Whelan is on the Planning Board to be the Council Representative. Planning Board minutes are not typically included in the City Council packet and they're on the Planning Board to report back.

Councilor McEachern understands Councilor Trace's concerns. However, Councilor Whelan and City Manager Conard have reported back what happened at the Planning Board. City Manager Conard has stated that this is a minor real estate transaction. Councilor Whelan questioned Attorney Bosen at the Planning Board meeting. If the Council waited for formal minutes to hear the same thing and delayed this for another month it would not be without a cost to the project. Councilor McEachern commented that he would support the motion.

Councilor Whelan commented that initially there was concern that the reverter would be lifted off the Feaster building. They have gone back through everything and it is clear the Feaster building will be protected. Councilor Whelan urged the Council to approve this request. The legal paperwork has all been done.

Councilor Trace understood the urgency and importance of the project because it will provide work force housing. However, if something is sent to the Planning Board for their opinion, then it should be given to the Council formally in writing.

Assistant Mayor Splaine commented that Councilor Trace had a good point for future opinions, but the Planning Board meeting is taped and can be viewed. The minutes don't encapsulate everything that was said. He commented that it makes sense to pass this now and wondered if Attorney Bosen could comment on this.

Assistant Mayor Splaine moved to suspend the rules in order to allow Attorney Bosen to speak relative to the Release of Reverter for Portsmouth Housing Authority Property, seconded by Councilor Whelan.

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

Attorney Bosen commented that the PHA is asking for the release of two slivers of land from the reverter, but they are also adding 3,302 square feet to the reverter. At the end of the day this project is promoting public housing and the intent of the restriction in the deed is to continue elderly housing. It is a win, win for everyone. This is the fourth meeting on this issue and he hoped for the sake of work force housing the Council voted in favor.

Mayor Becksted noted that the reverter was important, and it was not in front of the Council. They were still waiting for the City to craft it. He asked if the Council could see the reverter before it was signed. City Attorney Sullivan confirmed that could happen and questioned if it could be sent to Council for review instead of coming back to a meeting. Mayor Becksted confirmed that was fine.

Councilor Kennedy was concerned about seeing the reverter clause and the Planning Board minutes after casting a vote. This has been through four important meetings. If it had not been reviewed and questioned then, they would have lost land in the reverter. They caught it and brought it up.

Councilor McEachern commented that the Council did not catch that and suggesting that the City Attorney or Planning Department would have caught it undermines the review of a situation like this. It is status quo to send something like this to the Planning Board to have due diligence. Suggesting that requesting the due diligence means that Council caught it undermines how the Planning Board works. The Council should not have to question the work of the Planning Board and City Manager again. It seems like a delaying tactic.

Mayor Becksted agreed with Councilor Kennedy that they did not have all the documentation in front of them. That is the base of the concern. The reverter is a big thing, and they want to make sure that it's being done right.

Councilor Huda commented that in her opinion what was sent to the Planning Board for clarification has not been clarified. It would be nice to have documentation.

Councilor Tabor requested clarification what they were voting on and urged the Council to move ahead. The Planning Board has reviewed this extensively. The result is a new document that will only release 824 square feet from the reverter. The reverter remains in effect for the Feaster building and over 3,000 square feet will be added to it. It was created at a time of urban renewal when elderly residents needed homes. The land is not related to the Parrott Avenue home for woman. It is a different parcel of land. The intention of the reverter was to keep elderly housing and it will continue to do that. The recommendation of the Planning Board was their positive vote. City Manager Conard confirmed the vote to recommend approval from the Planning Board was unanimous. The plan and draft release were included in the Council's packet, so they have all of the information.

Councilor Tabor commented that he would support the motion.

Councilor Lazenby commented that the date, time and result of the Planning Board vote is their written opinion. The action sheet from the June meeting shows the results of that vote. The City needs affordable housing. It is even more urgent as we move into this current economic challenge. There is an urgency to help businesses and it should be the same for residents.

Councilor McEachern asked City Attorney Sullivan if he expected the draft of the partial release of the reverter documented in their packet to change. City Attorney Sullivan responded that the draft would be reviewed to ensure it accomplishes what Council wants.

Assistant Mayor Splaine commented that the Council should not be discouraging the Portsmouth Housing Authority from doing good work. There was some complication with this project and improvements were made. Assistant Mayor Splaine noted that he would support the motion.

Councilor Kennedy requested that the motion be clarified to say how the reverter is being changed. Mayor Becksted agreed it should be more specific.

Councilor Kennedy asked if they could add a measurement to the motion. City Attorney Sullivan confirmed they could amend the motion with a measurement if they wanted.

Councilor McEachern commented that he would not amend the motion because it would be overstepping their bounds. The motion should be kept simple, and the Planning Board did their job.

Councilor Kennedy commented that the motion needed to be that particular to ensure everything stays. Mayor Becksted questioned if that amendment would be acceptable Attorney Bosen. Attorney Bosen confirmed it would.

Councilor Kennedy moved to amend the motion to release 829 square feet for the reverter, seconded by Councilor Huda.

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

6. Report Back on Request of Restoration of Involuntary Merged Lot – 246 Thornton Street

City Manager Conard commented that this was review by the Deputy Tax Assessor Verna Sharp. She recommends unmerging the lots involved.

Councilor McEachern moved to approve the restoration of involuntary merged lot at 246 Thornton Street, seconded by Councilor Lazenby.

Mayor Becksted questioned if this was reviewed by the Planning Board.

City Attorney Sullivan responded that the former process was to refer these to the Planning Board. That is not required by state law but was done by the City as their own practice. That process became problematic because the Planning Board has its own appeal process. The City made the recommendation that Council should send these to the Assessor's Office. They deal with these issues and are in a good position to provide the Council with information without creating another appeal process. Mayor Becksted clarified that they could still appeal if needed. Attorney Sullivan confirmed that there was an appeal process through the Council.

Mayor Becksted commented that this process should not be streamlined, and it should be referred to the Planning Board. This would prevent another issue like the Thaxter Road request.

Councilor Kennedy agreed this should be sent to the Planning Board because there is a process to appeal. That also gives an opportunity for neighbors to see what is going on and have a conversation about it. The neighbors will be notified if it goes to Planning Board.

Councilor McEachern commented that the summary was pretty clear. The lots were merged sometime before 1972-1983. It is unclear if it was involuntary. There are no records of a request to merge the lots. This process was created in an attempt to avoid conflict with the Planning Board and creating a burden on the property owners. This property did go before the Board of Adjustment, so the neighborhood was able to come out and speak. The Council should not cause undue hardships.

Mayor Becksted commented that they have come here to request unmerging the lots. The Council set a precedent on Thaxter Road. The process needs to be done and needs to clarify that. This comes down to expenditure. There have been examples over the years where it was not involuntary. That separation is at the cost of the taxpayers. He said he would support Councilor Kennedy's motion.

City Manager Conard noted that the recommendation from the Planning Board was ignored by Council last time.

Councilor Tabor asked City Attorney Sullivan if the lots were subject to an involuntary merger then the property owner has the right to correct the error. City Attorney Sullivan confirmed that was correct. The City is required to grant the merger if it was involuntary. The City Council is the committee that grants that. Mayor Becksted wanted further review to avoid what happened on Thaxter Road.

City Assessor Rosann Maurice-Lentz commented that they did a chain of title look up and looked at all the records to make sure the property was not voluntarily merged. She was 100% confident these lots have not been voluntarily merged. The state statute is clear. If the lots were not voluntarily merged, then the property owners have the right to unmerge the lots.

Councilor McEachern commented that in light of the City Assessor's comments, Council has to respect the rights of the property owners. They need to respect the taxpayers' rights, but they also need to support the property owners. It would place undue hardship on the property owner if this was sent to the Planning Board. Councilor McEachern said he would not support the motion.

Mayor Becksted commented that the Thaxter Road application was challenged when it went through the Planning Board process. The process change should have been up to Council. This should go to the Planning Board. That process gives detailed notice to the neighbors.

Councilor McEachern commented that Council changed the process when they ignored the Planning Board recommendation. The new process and the property owner's rights have to be respected.

Councilor Kennedy commented that they needed to respect the property owner's rights and the neighbors. The current process doesn't notify the neighbors. The Planning Board sends out letters to abutters, so people know what is happening. It's the right of the Council to not accept a recommendation.

Councilor Tabor commented that the property owner has the right to have their lots unmerged if they were merged involuntarily. This process is good. The Assessor's Office can make the determination if the lots were voluntarily or involuntarily merged.

City Manager Conard commented that at the June 22, 2020 meeting City Council voted to refer these matters to the Assessor for a report back. Mayor Becksted commented that the process should be that it goes through the Planning Board.

7. Report Back on Request of Restoration of Involuntary Merged Lot – 1240 Islington Street

Councilor Kennedy moved to amend the motion to refer both requests XV. A.6. – Report Back on Request of Restoration of Involuntary Merged Lot – 246 Thornton Street & XV. A.7. – Report Back on Request of Restoration of Involuntary Merged Lot – 1240 Islington Street to the Planning Board for review and recommendation. Seconded by Councilor Huda.

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

(Main motion does not move forward as the amended motion takes precedent)

8. Workforce Housing Covenant for West End Yards Project

City Manager Conard commented that in September 2019 this development was granted land use approval for a mixed-use development with retail space, office space, apartments and townhomes. The Planning Board granted the CUP to allow density with the condition that 10% or no less than 27 units need to be work force housing. The work force housing (WFH) covenant provides enforceable price and occupancy and will be for a minimum of 30 years. This is recommended by the Planning Board and Legal Department.

Councilor Lazenby moved to grant the authority for the City Manager to accept the Workforce Housing Covenant in a form similar to that attached in the City Manager’s Comments dated July 9, 2020, seconded by Assistant Mayor Splaine.

Councilor Kennedy asked what the affordability amount is right now. City Manager Conard responded that she would look it up.

Councilor Trace commented that the City has received some great benefits with this project. However, going from 54 WFH units to 27 WFH units is a huge decrease. Mayor Becksted noted that it was a trade off with expenditures. The covenant for work force housing is usually for 20 years, but this was increased to 30 years.

Planning Director Walker clarified that the project never proposed 54 affordable units. That is a reference of what could have been required by the Planning Board because they could mandate 20% WFH in exchange for the bonus density incentive. Part of the process with granting a density bonus is the consideration of pros and cons for requiring compliance with the 20%. The Planning Board is allowed to go through that consideration process. The amount that was decided on was 10% or 27 units and an affordability rate of 80% of the area median income. That is one of the ranges within the WFH that is often talked about. The other is 60% median area income, which is referenced in the ordinance. The Planning Board considered the balance of what was feasible for the developer and the overall financial benefit the City would be getting. There was a lot of consideration on the public realm improvements. The Cate Street connector road is the result of this project. They could have built this project without the connector road. A number of other public realm all factored into deciding on 10% WFH housing units.

City Manager Conard commented that 80% income for a 3-person family was \$60,000 and 60% income for a 3 person family was \$50,940.

Councilor Kennedy commented that moving forward with WFH she hoped the Planning Board considered the number of units. \$60,000 is still hard for a lot of people to obtain. Portsmouth still does not have affordable housing for many residents. Moving forward the Planning Board should ask for 20%.

Councilor McEachern agreed with Councilor Kennedy. Portsmouth has one of the highest median incomes in the country. Moving forward they need to hold people accountable for providing affordable housing. They chose to not ask for more and that is disappointing.

Councilor Trace questioned that the proposed monthly rent would be. City Manager Conard responded at 80% it would be \$1,348.00 and 60% would be \$1,116.00.

Councilor Lazenby questioned what would happen if this did not pass. Planning Director Walker responded that if this did not pass, then the developer would need to provide that WFH covenant subject to Planning Board approval. There is no requirement that this covenant has to be held by the City. Staff recommends that the covenant be held by the City because that gives them more control of the content and form of the covenant. It is possible the developer could be in compliance through another entity.

Councilor Lazenby commented that it would be good to hear from the developer on the pricing and the impact to the project if the motion fails.

Councilor Lazenby moved to suspend the rules to hear from the developer on the project, seconded by Councilor Tabor.

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

Attorney Bosen commented that it would be catastrophic if the motion failed. This project is a fully approved project and construction has begun. A significant construction loan was recently obtained. Land swaps have been completed with the City for the construction of the public road. If this did not pass it would result in litigation. The borrower would be out of covenant with the lender. The loan requires the completion of 27 WFH units. This is a very carefully thought-out project. It has been vetted by City Staff and peer reviewed. It went through the development process and public realm improvements. The developer could have built up to 325 units of housing and could have put in more affordable units. But instead of that they scaled back to 270 units. There will be 250 apartments and 27 condos. The 27 WFH units will be largest the WFH project in the City that has broken ground. It is not perfect but the 30-year affordability clause is great. It was not feasible to build a greater percentage at less AMI. Attorney Bosen hoped Council could appreciate how difficult it was to get to the point they are at.

Mayor Becksted commented that he watched this project carefully. They had the best presentation explanation of their WFH process. They told the Planning Board exactly what they had to pay and what they needed to get that investment back. He would support the motion. It is not perfect, but 27 units at 30 years is the largest to come through Council.

Councilor McEachern noted that he would also be supporting the motion. He asked City Attorney Sullivan if efforts were made to prevent 10% and 80% median income from becoming a precedent. The state standards are not overly strict, and it should not set a precedent. City Attorney Sullivan

responded that once this is accepted and recorded it becomes the law of this project. A change in the state law would not change this.

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

9. Request for Temporary Construction License for Brick Market Project

City Manager Conard commented that the Planning Board granted site plan approval for the second part of the brick market development in their January 2020 meeting. In April they signed a temporary encumbrance on Penhallow Street and Daniel Street an encumbrance longer than 30 days is subject to Council approval. The proposed duration of Area 1 on Daniel Street is 180 days and Area 2 the four parking spaces on Penhallow Street is 123 days. The total fee for use of the public space \$68,208.00.

Councilor Lazenby moved to authorize the City Manager execute and accept the temporary construction license regarding 60 Penhallow Street as submitted, seconded by Assistant Mayor Splaine.

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

XVI. CONSENT AGENDA

- A. Request for License to Install a Projecting Sign for owner Deborah LaPointe, LastLooks; for property located at 18 Ladd Street

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***

Councilor Kennedy moved to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request, seconded by Councilor Trace.

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

- B. Acceptance of Donation to the Coalition Fund
- Town of Carroll - \$2,000.00

Councilor Kennedy abstained from the vote because she worked in the district and was also a donator.

Councilor Lazenby moved to approve and accept the donation, as listed, to be placed in the Coalition Fund, seconded by Councilor Huda.

On a unanimous roll call vote 8-0, motion passed. Councilor Kennedy abstained from voting.

XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

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

B. ~~*Update on the Portsmouth Citizens Response Task Force~~

C. ~~*Presentation regarding Sagamore Avenue Sewer Extension Project~~

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

Councilor Kennedy moved to accept and place on file, seconded by Councilor Whelan.

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

E. Letter from Lawrence Yerdon, Strawberry Banke, advising the City Council that Strawberry Banke Museum opened on July 1st to visitors and the museum is offering 90-minute tours, on the hour and half-hour, seven days each week through the end of October (***Sample motion – move to accept and place on file***)

Councilor Kennedy moved to accept and place on file, seconded by Assistant Mayor Splaine.

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

XVIII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Report Back on Release of Rolling Stock and Capital Items

City Manager Conard commented that this was requested at the June meeting by Councilor Huda. The final approved FY21 for rolling stock and capital items is \$427,500.00 and 1,276,000.00 million respectively.

2. Preliminary Report for September Primary Election

City Manager Conard commented that City Clerk Barnaby has been working on preliminary preparation for the September primary election by outlining the conditions and protocols for the election.

City Clerk Barnaby said she wanted to make sure they were aware of everything that was provided by the Secretary of State's office through grant funding. It would be at no cost to the City for any items they are supplying. Additional items can be requested if needed.

Assistant Mayor Splaine commented that the work on this covered the letter of concern Council received from the Ward 5 elected officials. People should feel comfortable voting on election day. There will be safeguards for voters and officials. People can also vote by absentee. He asked when someone needed to turn their absentee ballot into the City for it to be counted. City Clerk Barnaby responded that absentee ballot applications were available now and they can be requested by calling the office. The post office advised to inform people to allow at least a week for the ballot to reach us and be counted for election. They have to be received through the mail by 5:00 p.m. on election day.

Assistant Mayor Splaine questioned if people could fill out an absentee ballot in the office and hand it in. City Clerk Barnaby responded that would be fine. Assistant Mayor Splaine questioned if a husband or wife could pick up or hand in an application for their spouse. City Clerk Barnaby responded that only the voter them self can pick up their ballot. A direct relative can return a ballot. Detailed instructions will be included in the ballot.

Councilor Lazenby commented that there was concern about the absentee ballots being thrown out because they were turned in too late. The City Clerk has given good guidelines on when they need to be turned in. A lot of people are requesting absentee ballots for the first time because of COVID. It is good to do public outreach on the issue to ensure more votes are counted. City Manager Conard confirmed there would be a press release, it would be posted on the city web site, and a there would be a public advisory. City Clerk Barnaby commented that they were developing a separate web page similar to the COVID web page that will explain the major election points and absentee voting. People can register to vote through the mail as well.

City Clerk Barnaby commented that she met with Ward 5 election officials and discussed the report. They felt more comfortable, and all agreed to work on election day.

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

1. Letter from Tina Sawtelle, The Music Hall requesting permission to hold events every Thursday through Sunday this summer through the end of September (Not on agenda)

City Manager Conard commented that the Music Hall sent a letter to book a series of events on Chestnut Street every Thursday through Sunday from 6:00-10:00 p.m. through September. They are seeking Council approval to allow her to work with the Music Hall on this series.

Councilor Kennedy asked what the time of the events would be. City Manager Conard responded that they would run two 45-minute performances between the hours of 6:00 p.m. and 10:00 p.m.

Assistant Mayor Splaine moved to refer to the City Manager with Authority to Act, seconded by Councilor Whelan.

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

1. Requests regarding the Involuntary Merged Lots on 246 Thornton Street and 1240 Islington Street –

Councilor McEachern commented that he voted in the minority on the property involuntary mergers. He asked if someone on the majority motioned to reconsider that would they be able to do so with the power to act and not come back to Council. City Attorney Sullivan confirmed they could.

Assistant Mayor Splaine gave notice that reconsideration of the requests regarding Involuntary Merged Lots will be acted upon at the August 3, 2020 City Council meeting.

2. Face Coverings Ordinance

Assistant Mayor Splaine asked City Attorney Sullivan to give a rereport on the process and next steps on face coverings.

Mayor Becksted commented that they got an email of the report. If the Council sees fit, then they can have a special meeting next week to discuss this.

Assistant Mayor Splaine agreed they should have a meeting next week and thought the Council should pass along their comments to the City Attorney. We need to do this collectively to let the community know that we feel it's important.

Councilor Trace noted that City Staff who would be impacted should be included in the meeting as well. Councilor Kennedy added that the schools should be included as well.

Councilor Lazenby asked if the next step should be first reading. He asked if a first reading could be a work session or if it needed to be a formal meeting. City Attorney Sullivan responded that it needs to be a meeting to act on it. In order for the Council to move quickly the ordinance needs to be in writing at the first meeting. In order for someone to write they need to have an understanding of what the Council wants to see in the ordinance. Councilor Lazenby commented that it would make sense to have a work session. There are a lot of other important stakeholders they want to hear from before they have the City Attorney put anything into the ordinance. Mayor Becksted agreed.

Councilor Lazenby moved to schedule a Work Session on Wednesday, July 22, 2020 at 7:00 p.m. regarding a Face Coverings Ordinance, seconded by Assistant Mayor Splaine.

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

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

At 9:15 p.m., Councilor Kennedy moved to adjourn. Seconded by Councilor Whelan.

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

**Becky Frey
Acting Recording Secretary for City Council**