

## CITY COUN/CIL MEETING

### Continuation of November 16, 2020 City Council Meeting

MUNICIPAL COMPLEX

DATE: MONDAY, NOVEMBER 23, 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\\_k4uhh4WdR\\_iBkbCR4V0bwg](https://zoom.us/webinar/register/WN_k4uhh4WdR_iBkbCR4V0bwg)

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 2020-20, 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: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 2020-20 and Emergency Order #12, Section 3. Members location. All votes will be by roll call.

#### ~~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

Mayor Becksted called the meeting to order at 7:00 p.m.

#### IV. ROLL CALL

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

#### V. INVOCATION

Mayor Becksted asked everyone to join a moment of silent prayer and asked everyone to be kind to everyone and asked that the Soretto family be in everyone's thoughts this evening.

#### VI. PLEDGE OF ALLEGIANCE

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

### XIII. CITY COUNCIL MEMBERS

#### **B. COUNCILOR McEACHERN**

##### 3. McEachern Park

Councilor McEachern said the neighborhood contributions have made the views of the sculpture and park better. He said he is pleased with the input he heard and the steps taken by the neighborhood.

No action required.

##### 2. Extending outside dining to end of December

Councilor McEachern said at the outset he wanted to extend the outside dining to the end of December. He said we are taking an incremental approach to this.

**Councilor McEachern moved to extend outdoor dining in the City of Portsmouth where possible until the end of December knowing that there is going to be externalities that we would leave to the City Manager with the help of the Citizens Response Task Force to be able to address those on a case by case basis, and the City Council would revisit this at the end of the year. Seconded by Assistant Mayor Splaine.**

Councilor McEachern said we would need to deal with snow removal and we could look at this again in January.

Councilor Lazenby said he would like to hear from the task force on their feelings regarding outside dining and provide a recommendation to the City Council on that topic.

City Manager Conard said the Co-Chair will present more formally at the December 7, 2020 City Council meeting. She stated the task force would support the restaurants that can continue serving outside for dining through December. She advised the City Council that Public Works Director Rice is planning to remove the barriers at the end of November from the streets.

Mayor Becksted said we received a great deal of information from the task force on this matter. He said he wants to give the task force time at the next City Council meeting to discuss this with the City Council.

Assistant Mayor Splaine said he supports the motion as this is a win/win and we need to help our business community. He said he would like to do this on a year round basis. He asked the City Manager if we go through the end of December what are the initial plans for beginning the process for March next year.

City Manager Conard said that the task force wants to be as supportive as possible. She stated that Valerie Rochon from the Chamber of Commerce would like to bring forth opening as early as March 1<sup>st</sup>. Assistant Mayor Splaine said he would like to discuss this at the December 7, 2020 City Council meeting.

Councilor Kennedy asked what would need to be done in terms of liability issues by extending the outside dining.

City Attorney Sullivan said the liability was for the Bridge Street Parking Lot so we have no liability except for the City's policy with Primex.

Councilor Kennedy expressed concern with snow removal. City Attorney Sullivan said the snow removal would be a question for the restaurants and they would need to check with their insurance company.

Councilor Whelan said he supports Councilor McEachern's motion and we should support outside dining until the end of December.

Councilor Lazenby said the task force is not represented this evening and we should have a written statement from them for the next City Council meeting on their opinion on the next phase of the task force.

Mayor Becksted said we can have a hearty discussion at the December 7, 2020 City Council meeting and at the December 21, 2020 Council meeting by outlining a sunset date for the end of the year.

Councilor Trace said she supports the motion.

Mayor Becksted said he supports the motion but expressed concerns regarding snow removal by businesses. He said ice needs to be a consideration because that is a different thing to deal with.

Councilor Huda said she would like to see an agreement outlining what the businesses are responsible for to include snow and ice removal.

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

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

- A. Approval of Moose License Plate Conservation Grant for FY21 (\$9,760.00)

**Councilor McEachern moved to accept this grant from the New Hampshire State Library, as presented. Seconded by Councilor Lazenby.**

City Manager Conard gave credit to the staff for working on obtaining this grant.

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

- B. Approval of New Hampshire Internet Crimes Against Children Task Force (ICAC) from the Federal FY '20 Forensic Shield-COVID Cares Act Grant - \$1,000,000.00

**Councilor Lazenby moved to accept this grant as presented, and authorize the City Manager to expend these funds subject to the terms of any offer, rules, or regulation pertaining to such funds in cooperation with the Police Department. Seconded by Councilor Kennedy.**

Mayor Becksted spoke to the importance of this grant.

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

- C. Approval of Bureau of Justice Assistance Patrick Leahy Bulletproof Vest Partnership Grant - \$5,999.88

**Councilor Tabor moved to accept this grant as presented. Seconded by Councilor Lazenby.**

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

- D. Approval of Federal Office of Juvenile Justice & Delinquency Prevention Grant (OJJDP)

**Councilor Kennedy moved to accept this grant as presented. 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**

1. Approval of 2021 Council Meeting Calendar

City Manager Conard spoke to the change for the January 14<sup>th</sup> Diversity Training for the Boards and Commissions and a Budget Work Session on January 19<sup>th</sup>.

Councilor Huda said she would like an additional Budget Work Session prior to the CIP Work Session.

**Councilor Lazenby moved to approve this calendar as presented. Seconded by Councilor McEachern.**

Councilor Lazenby said he does not want to add a January 4<sup>th</sup> Work Session.

**Councilor Kennedy moved to amend the motion to hold a Budget Work Session the first week in January. Seconded by Councilor Huda.**

Councilor Kennedy said by the first of January we would have an idea on revenues and tax collection numbers. She stated she would like to have that meeting.

Councilor McEachern said he would like to get the information by January 4<sup>th</sup> and still have the Work Session on January 14<sup>th</sup> as time will come quickly.

City Manager Conard said we will have as much information as we can and what we can provide for numbers in December.

Councilor Huda said we need to look at where we are and where we were and how much we have to date on the CIP moving forward.

Assistant Mayor Splaine said he agrees with Councilor Huda and we need to get as much information as possible. He said we had a tough budget year and we need to look at what is coming forward.

Councilor Tabor said he supports Councilor Huda's request because we are at unusual times and may need more than one CIP Work Session.

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

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

3. Request to Name Private Unnamed Street Located Off Gosling Road

City Manager Conard advised the City Council that the requestor would like to name of the street to be Jacona Road.

**Councilor Tabor moved to approve the request for naming of the previously unnamed private road to Jacona Road. Seconded by Councilor Whelan.**

Councilor Kennedy asked what does the name mean and whether it was a positive or negative tone. She also inquired if the list of street names was reviewed before selecting the name put forward by the requestor.

Planning Director Walker said the name has an historical reference of a ship that was out in our areas of water. She stated that the department makes sure the name is appropriate before bringing it forward.

Councilor Kennedy said the Council needs to understand the names better when a request is being made.

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

#### 4. Parking Agreement for Deer Street Associates

City Manager Conard said the City purchased the land and it is a requirement of the agreement that there be parking spaces in the Foundry Garage.

Staff Attorney McCourt provided an explanation of the 68 paid parking passes to Deer Street Associates (DSA). He said it allows on-street parking off site in the Foundry Garage. He advised the Council that the City agreement is for 68 parking spaces and is for the life of the agreement. He spoke to the various lots owned by Deer Street Associates and discussed those that have site review approval in place.

Denis Robinson updated the City Council on the status for lots 3 and 6. He stated that lot 3 is a hotel and lot 6 is for multi-uses.

Councilor Huda asked why DSA needs parking for vacant lots. She stated that a foundation in the ground is far from a certificate of occupancy.

Mr. Robinson said it is part of the approval process that parking is provided for the building permit and having a parking agreement signed.

Staff Attorney McCourt stated that DSA would start payments on parking spaces when DSA starts receiving benefit.

Discussion followed on extensions granted and the approval process. Also discussed was what would happen if the property was sold and whether the right to the 68 spaces travels with the property. Staff Attorney McCourt said the parking spaces would go with the lot. Councilor Huda said does that mean lots 3 and 6 would stay with the lots through the end of the contract. Staff Attorney McCourt said that is correct. Planning Director Walker stated the Parking Agreement is already committed to and the agreement would need to go into effect. She stated we would not have the legal ability to hold off the approval.

Mayor Becksted asked if it was necessary to vote on the agreement now or could we wait and see what happens with the other lots. Staff Attorney McCourt said there is no hard deadline today but the document is the product of great negotiations and he does not know what would change over time.

Mr. Robinson said the parking spaces do not need to go to all the spaces. Lots 4 and 5 would not have access because the spaces are already being used. It does not need to be divided between the four lots.

Councilor Kennedy said it makes a stronger case that two lots would not have ample parking and we would look at all four lots that would be commercial spaces and 68 split up between lots accordingly. We need to come up with a plan before the lots are built on.

Planning Director Walker said some land use would still be needed to meet parking requirements for lots 4 and 5 that would need to provide parking onsite. Because the Planning Board approved lots 3 and 6. The City Council needs to be careful not to conflict with the land use approvals and would become an issue because parking would be taken away.

**Councilor McEachern moved to authorize the City Manager to execute a parking agreement with Deer Street Associates in a form substantially similar to the document presented and to modify the language in Section 1, that if parking passes were provided to Deer Street Associates in another parking facility, not in Foundry Garage, that it be done at the City's option only. Seconded by Councilor Tabor.**

Councilor McEachern said we need to move forward and honor our word by granting the agreement. He said he supports the agreement because we are part of the delay and he does not want to be.

City Attorney Sullivan said the agreement was to be in place at the completion of the garage.

Mayor Becksted asked do they retain ownership of the 68 spaces after the signing of the agreement. City Attorney Sullivan said each space becomes obligated and they go to the lots. Mayor Becksted asked if there would be any renegotiation if the property is sold. City Attorney Sullivan said no. He further stated if buildings are not built, the spaces belong to DSA.

**On a roll call vote 3-6, motion failed to pass. Councilors McEachern, Lazenby and Tabor voted in favor. Assistant Mayor Splaine, Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted opposed.**

5. Request to Schedule First Reading on Floodplain Overlay District Zoning Maps

City Manager Conard explained the change and requested to reschedule first reading for December.

**Councilor McEachern moved to schedule first reading on the proposed amendments to the Floodplain Overlay District for the December 7, 2020 City Council meeting. Seconded by Councilor Tabor.**

Planning Director Walker advised the City Council that a flood plain representative will be here at the December meeting to answer questions by the Council. She said that the Council is required to accept the map and ordinance change for residents to have flood insurance in order to get a mortgage for the property.

Councilor Kennedy said she has a hard time having a public hearing and second reading during the week of Christmas. Planning Director Walker said she would not bring a public hearing at the end of December if this time line wasn't required by January 15<sup>th</sup>. She said we are required to follow the State Flood Office and FEMA for timing. She stated we could push things out one meeting.

**Councilor Whelan moved to schedule first reading on the proposed amendments to the Floodplain Overlay District for the December 7, 2020 City Council meeting. Seconded by Councilor McEachern.**

Councilor Whelan said that this is critical and we need to get this on the books and have first reading.

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

7. Revocable License for 241 South Street

City Manager Conard explained that the granite steps for this property are in the City's right-of-way and the work around this would be to have an agreement for a Revocable License.

**Councilor Kennedy moved to authorize the City Manager to execute and deliver a Revocable License allowing the owners of 241 South Street to replace granite steps on City property consistent with the decision of the Historic District Commission as described in Land Use Application LU-20-185. Seconded by Councilor Whelan.**

Mayor Becksted said he would not support the motion because you can reset the steps. Councilor Trace said if the steps were reset they would not meet the code.

Planning Director Walker stated this is being done to meet code.

Councilor Trace spoke to the character of historical charm of the steps.

Councilor Whelan said this was debated by the Historic District Commission and let's grant the license to the home owners, we can't second guess our land use boards.

Councilor McEachern said we need to trust our boards and they should have working steps.

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

9. 60 Penhallow Street (Brick Market) Amended Temporary Construction License

City Manager Conard spoke to the request for an amended temporary construction license.

Councilor Kennedy spoke to the impact this would have on other businesses. City Manager Conard stated the road closure will allow less impact.

Planning Director Walker said outdoor dining could be accommodated longer and direct outreach must be done depending on the decision by the City Council.



**Councilor Kennedy moved that the developer reach out to the properties in the area and provide information on the data received to the City Council to make a decision at the next meeting. Seconded by Councilor Huda.**

Councilor McEachern asked that we time deliveries to the businesses during certain hours due to the construction. Planning Director Walker said we would work on that issue. Councilor McEachern said he would support a motion that developers work with businesses and on a timed schedule for deliveries.

Councilor Trace asked if there is any discussion with developers holding off on this until after the holiday.

Councilor Kennedy said we need to take a month to reach out to businesses on the construction. She said there was no communication beforehand with businesses. Councilor Huda said she agrees with Councilor Kennedy.

Mayor Becksted said he agrees to gather more information.

**On a roll call vote 6-3, motion passes. Assistant Mayor Splaine, Councilors McEachern, Kennedy, Huda, Trace and Mayor Becksted voted in favor. Councilors Whelan, Lazenby and Tabor voted opposed.**

## **XVI. CONSENT AGENDA**

- A. Request for License to Install a Projecting Sign for owner Helen Marks for Spiritual Reader & Advisor for property located at 90 Fleet 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***

Councilor Kennedy moved 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

Seconded by Councilor Huda.

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

- B. Request for License to Install two Projecting Signs for owner John Reece for Fidelity Investments Center for property located at 54 Maplewood Avenue ***(Anticipated action - move 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)***

**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***

**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.***

**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**

**Seconded by Councilor Huda.**

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

**C. 89-99 Foundry Place (aka 181 Hill Street, "Lot 6") Easements**

**Councilor Lazenby moved to grant authority for the City Manager to accept the easement deeds and plans for community space in a form similar to those attached. Seconded by Councilor Kennedy.**

**On a roll call vote 6-3, motion passed. Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy and Tabor voted in favor. Councilors Huda, Trace and Mayor Becksted voted opposed.**

**D. 1600 Woodbury Avenue – Sidewalk and Signal Easements**

**Councilor Lazenby moved to authorize the City Manager to accept a signal and sidewalk easement over land at 1600 Woodbury Avenue from DPF 1600 Woodbury Ave., LLC in a form similar to the attached. Seconded by Councilor Huda.**

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

E. 160 Court Street (Portsmouth Housing Authority) – Community Space Easements

City Manager Conard said the easements are outlined in her comments and they have been approved by the Planning Board.

**Councilor Lazenby moved to grant authority for the City Manager to accept the easement deeds and plans for community space in a form similar to those attached. Seconded by Councilor Tabor.**

Councilor Huda asked how the spaces were achieved and if they were taken away from current spaces for Feaster Apartments.

Planning Director Walker explained that community spaces have to be open to the public and they are located where the new building will be built. She said there is a park and current sidewalks at the location as well.

Mayor Becksted said he has concerns on this matter. He asked if we are providing the funds for a park or for Portsmouth Housing Authority. He said he sees problems occurring with this.

**On a roll call vote 6-3, motion passed. Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Tabor and Trace voted in favor. Councilors Kennedy, Huda and Mayor Becksted voted opposed.**

**XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

B. Update on the Portsmouth Citizens Response Task Force *(to include recommendation re: extended use of outdoor dining)*

City Manager Conard advised that a report will be provided at the December 7, 2020 City Council meeting.

C. Memo from Citizen Response Task Force Endorsing Extension of Mask Ordinance

City Manager Conard advised the City Council that discussion will take place at the December 7, 2020 City Council meeting.

D. Paper Street Request from Glenn Lael re: 45 Cliff Road

**Councilor Kennedy moved to refer to the Planning Board for report back. Seconded by Councilor Huda.**

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

E. Email Correspondence

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

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

- F. Letter from John Akar, CAVA requesting permission to continue the use of space on Commercial Alley for 4 tables through the month of December

City Manager Conard advised the Council that no action was necessary.

**XVIII. CITY MANAGER'S INFORMATIONAL ITEMS**

1. Update on Draft Great Bay Total Nitrogen General Permit

City Engineer Desmarais said the letter was a follow up to a long process. He stated in January the EPA used draft permit for storm water and the Waste Water Treatment Facility. He said from discussion with Rochester, Dover and other areas the EPA indicate some modifications were made and they were moving the permit from draft final to the EPA headquarters regardless of final details. He advised the Council that we have permits in the works that are important to move along.

Councilor Trace asked if there have been discussions with the State of Maine and whether they were headed to the same standards of those on the New Hampshire side. City Engineer Desmarais said Maine is a delegate with the Department of Environmental Protection overseeing permitting and as a result of that there is a difference between states that permit would not cover those discharges.

Councilor McEachern stated that Maine defaults to the federal government.

City Engineer Desmarais said New Hampshire, Massachusetts default to Department of Environmental Protection (DEP) in Region I and Maine relies on DEP as a state agency.

Councilor Trace asked City Engineer Desmarais when we might get the final permit or does he anticipate anything out of the ordinary. City Engineer Desmarais said the letter was to move things along. He stated we are hoping to move forward before a major shift in administration.

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

Councilor McEachern thanked the City Council and Mayor Becksted for the more than generous baby gift. Mayor Becksted said the gift was well deserved.

Mayor Becksted spoke regarding the Holiday Decorating Contest and expressed his thanks to Ricci Lumber, Home Depot and Lowe's for their \$500.00 gift cards.

**XX. ADJOURNMENT**

**At 10:10 p.m., Councilor Kennedy moved to adjourn. Seconded by Councilor Trace.**

Mayor Becksted wished everyone a happy and safe Thanksgiving.

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

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK