

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, SEPTEMBER 7, 2021 TIME: 6:30PM

Members of the public also have the option to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:

https://us06web.zoom.us/webinar/register/WN_sfzqMmXQRS2Tw6mgwbMpGw

6:30PM – ANTICIPATED NON-PUBLIC SESSION:

- 1. ACQUISITION OF REAL ESTATE – RSA 91-A:3, I (d)**

AGENDA

- I. WORK SESSION – THERE IS NO WORK SESSION THIS EVENING**
- 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**

PROCLAMATION

1. CONSTITUTION WEEK

- VII. ACCEPTANCE OF MINUTES – AUGUST 23, 2021 AND DECEMBER 14, 2020 (*Sample motion – move to accept and approve the minutes of the August 23, 2021 and December 14, 2020 City Council meetings*)**
- VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
 - A. *Recognition of Juliet Walker, Director of Planning
- IX. PUBLIC COMMENT SESSION – (*participation may be in person or via Zoom*)**
- X. PUBLIC DIALOGUE SUMMARY [when applicable] – N/A**
- XI. PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTIONS**

Public Hearings of Ordinances & Resolutions:

- A. ORDINANCE AMENDMENTS TO CHAPTER 7, ARTICLE IX, SECTION 7.901 - PENALTIES, FORFEITURES AND SEPARABILITY (*Sample motion – move to pass second reading, and to schedule third and final reading of these ordinance amendments at the September 20, 2021 City Council meeting*)
 - PRESENTATION
 - CITY COUNCIL QUESTIONS
 - PUBLIC HEARING SPEAKERS
 - ADDITIONAL COUNCILOR QUESTIONS AND DELIBERATIONS

B. ORDINANCE AMENDING CHAPTER 1, ARTICLE IV – COMMISSIONS AND AUTHORITIES, SECTION 1.414 AUDIT COMMITTEE *(Continued from the August 23, 2021 City Council meeting)*

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

XII. MAYOR BECKSTED

1. Appointments to be Considered:
 - Alan Gold reappointment to the Economic Development Commission
 - Marsha Filion reappointment to the Board of Library Trustees
2. *Appointments to be Voted:
 - Marylou McElwain reappointment to the Parking and Traffic Safety Committee
 - Stephen Pesci reappointment to the Parking and Traffic Safety Committee
 - Harold Whitehouse reappointment to the Parking and Traffic Safety Committee
 - Mark Syracuse appointment to the Parking and Traffic Safety Committee

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR SPLAINE

1. *Encouraging Masks In All City Buildings *(Sample motion – move that with new cases and hospitalizations increasing, the Portsmouth City Council is concerned about the impact of COVID-19 and its variants on the health and well-being of our residents, visitors, and city employees. Therefore, we encourage the City Manager to set a policy that masks be worn indoors at all times by city employees, residents, and visitors in the public areas of all city buildings. We will back the City Manager in setting the policy, with exceptions and a timetable to be determined by the City Manager)*
2. *Encouraging COVID-19 Vaccinations Or Tests For City Employees *(Sample motion – move that with nearly 40% of the population of New Hampshire unvaccinated and with the Delta variant now infecting many who are vaccinated and unvaccinated, the Portsmouth City Council is concerned about the impact of COVID-19 on the health and well-being of our residents, visitors, and city employees. We also agree with the science about the spread of viruses, and the advice of medical professionals, that every additional person who is vaccinated contributes to the reduction and impact of the spread of COVID-19 and variants. Therefore, we encourage the City Manager to set a policy that all city employees, full and part-time, and contractors who work in city buildings, be vaccinated. We also encourage that the City Manager set a policy that employees and contractors who do not produce proof of vaccination be required to be tested for COVID-19 at least once a week. We will back the City Manager in setting that policy, with exceptions and a timetable to be determined by the City Manager)*

B. COUNCILOR WHELAN

1. Action Item Needing Approval by City Council

- No Parking sign 20 feet from crosswalk at intersection of Kensington Road and Middle Road, and triangle mark the No Parking area
2. Parking & Traffic Safety Committee Action Sheet and Minutes of the August 5, 2021 meeting (***Sample motion – move to accept and approve the Action Sheet and Minutes of the August 5, 2021 Parking & Traffic Safety Committee meeting***)

C. COUNCILOR LAZENBY

1. Proposed City Policy regarding Transparency of Information to Elected Officials (***Sample motion – move that the City Council adopt City Council Policy No. 2021-01 regarding Transparency of Information to Elected Officials, as written, effective immediately***)
2. McIntyre Project – Request for Updated Timeline and Status of Post Office Correspondence

D. COUNCILOR KENNEDY

1. *Addressing Cutts Avenue Concerns (***Sample motion – move to gather all information on Cutts Avenue concerns for a report back and status update by the Legal Department***)

E. COUNCILOR HUDA

1. Audit Committee Section 1.414 Ordinance (***Sample motion – move to do second reading of the Audit Committee Section 1.414 Ordinance and amend with the attached changes***)

XIV. APPROVAL OF GRANTS/DONATIONS

- A. *Acceptance of Grant from the State Department of Justice for the NH Internet Crimes Against Children (ICAC) Task Force Grant - \$200,000.00 (***Sample motion – move to approve and accept the grant for the Police Department in the amount of \$200,000.00 as presented***)
- B. *Acceptance of Skate Board Park Donation - \$2,500.00 (***Sample motion – move to approve and accept the donation from the Blalock family in the amount of \$2,500.00 as presented***)

XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager's Items Which Require Action:

1. *Request to Schedule Portsmouth Housing Authority Work Session

2. New Castle Water Line and Easements
3. Acquisition of Sewer Line Easements and Proposed Release of Paper Street
4. Request for First Reading regarding Amendment to Chapter 7, Article XI, Section 7.1100 – Speed Limits
5. Request for First Reading regarding Amendment to Chapter 7, Article XII, Section 7.1200 – Parking for the Walking Disabled
6. Borthwick Forest Easements
7. Report Back on 135 Thaxter Road Request for Restoration of Involuntarily Merged Lots
8. Request to Establish a Public Hearing for Refinancing a Callable Bond

XVI. CONSENT AGENDA

(Proper Motion for Adoption of Consent Agenda - move to adopt the Consent Agenda)

- A. Request for License to Install Projecting Sign from owner John Tilton, of Troupe Studio for property located at 18 Ladd 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***

XVII. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. *Presentation from Health Officer, Kim McNamara regarding COVID-19
- B. Email Correspondence ***(Sample motion – move to accept and place on file)***
- C. Letter from H. Dixon Turner regarding mitigation of speeding on Woodbury Avenue

XVIII. CITY MANAGER'S INFORMATIONAL ITEMS

1. *Peeverly Hill Road Public Necessity Hearing
2. Islington Creek Residents Comments to Surface Transportation Board regarding Rail Yard

3. Wetland Conditional Use Permits Granted by the Planning Board according to Section 10.1017 of the Portsmouth Zoning Ordinance between August 2017 and August 2021
4. Report Back on the Number of Upcoming/Ongoing Development Projects
5. Report Back on Litigation List
6. *City Council Quorum
7. *Report Back on Portsmouth Community Garden

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XX. ADJOURNMENT [at 10:30 p.m. or earlier]

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

**Indicates verbal report*



Karen S. Conard
City Manager

CITY OF PORTSMOUTH

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

Date: September 2, 2021

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 September 7, 2021

VIII. Recognitions and Volunteer Committee Reports:

A. Recognition of Juliet Walker, Director of Planning:

I would like to recognize the City's outgoing Director of Planning, Juliet Walker. Juliet has been in the City's employment since 2013, when she started as the full-time Transportation Planner. She was promoted to Assistant Planning Director a few years later and soon after was promoted to the City's Director of Planning in 2017.

Juliet's leadership has resulted in Portsmouth's Complete Streets transportation policy and design process, land use and regulatory amendments to foster smart and sustainable growth, protection of the City's built and natural environment, and bicycle and pedestrian improvements across the City.

I am proud of all that Juliet and the City have accomplished together.

XI. Public Hearings and Votes on Ordinances and/or Resolutions:

A. Public Hearing and Second Reading of Ordinance Amending Chapter 7, Article IX, Section 7.901 – Penalties, Forfeitures, and Separability:

In its ongoing effort to ensure compliance with applicable City Ordinances, the Parking Division deploys a citation protocol with a view to encouraging residents and visitors to pay the meter system for the use of City-managed parking inventory. The citation protocol includes patrolling the City's parking spaces to ensure payment, and to issue parking citations when payment is not made, or a driver has allowed their session to expire without renewal. The four most common citations were updated via City Council passing of third reading on May 17, 2021.

During discussions regarding the four most common citations, it was further discussed that a number of additional violation categories were similarly in need of an update.

Research of surrounding towns shows that Portsmouth lagged behind peer averages in several violation categories.

To address the issue of modernizing the fine structure for safety violations, the Parking Division presented the **attached fine schedule** and **proposed ordinance amendments** to the Parking and Traffic Safety Committee on June 3, 2021, resulting in a unanimous vote to forward to the City Council for first reading.

I recommend that the City Council move to pass second reading, and to schedule a third and final reading regarding these ordinance amendments at the September 20, 2021 City Council meeting.

B. Public Hearing and Second Reading of Ordinance Amending Chapter 1, Article IV – Commissions and Authorities, Section 1.414 Audit Committee:

Councilor Huda will be speaking on behalf of the Mayor’s Blue Ribbon Audit Committee regarding this proposed ordinance amendment.

XIV. Approval of Grants/Donations:

A. Acceptance of Grant from the State Department of Justice for the NH Internet Crimes Against Children (ICAC) Task Force Grant – \$200,000:

At the August 24, 2021 Police Commission meeting, the Board of Police Commissioners approved and accepted a grant in the amount of \$200,000 from the State Department of Justice for the New Hampshire Internet Crimes Against Children Task Force.

I recommend that the City Council move to approve and accept the grant for the Police Department in the amount of \$200,000 as presented.

B. Acceptance of Skateboard Park Donation – \$2,500:

The City received a donation for the skateboard park in the amount of \$2,500 from the Blalock family.

I recommend that the City Council move to approve and accept the donation from the Blalock family in the amount of \$2,500 as presented.

XV. City Manager’s Items which Require Action:

1. Request to Schedule Portsmouth Housing Authority Work Session:

Per Councilor McEachern’s request at the August 2, 2021 City Council meeting, I would like to propose a joint work session with the City Council and the Portsmouth Housing Authority on October 18, 2021 at 6:00 p.m.

I recommend that the City Council move to schedule a joint work session with the Portsmouth Housing Authority on October 18, 2021 at 6:00 p.m.

2. **New Castle Water Line and Easements:**

Attached please find a [communication from the Town of New Castle Select Board](#) requesting that the City agree to accept certain easements and new water infrastructure to be constructed at the Town of New Castle's expense. By way of background, a portion of New Castle residents are served by the New Castle water system (it is City of Portsmouth water purchased wholesale but distributed through New Castle owned pipes). The other portion of New Castle is served by the City of Portsmouth water system.

In the last two years, New Castle has undertaken significant construction efforts to improve Town of New Castle water infrastructure. As a result, New Castle has seen improved water pressure and water quality. New Castle next seeks to improve certain water infrastructure on that portion of the island served by the City of Portsmouth water system. See [attached figure](#) showing New Castle's proposed Special Assessment District for properties that would benefit from the new water infrastructure.

There currently exists privately maintained water pipe in Spring Hill Road and Lavanger Lane, both private roads. The City of Portsmouth maintains infrastructure in Wentworth Road and serves the residents of Spring Hill Road and Lavanger Lane. That private infrastructure is in need of replacement. New Castle is prepared to upgrade these private lines to Portsmouth water system specifications, at no cost to Portsmouth. Once upgraded, and having secured necessary easements, New Castle is prepared to turn these new water lines over to Portsmouth.

Acting Deputy City Manager Suzanne Woodland is prepared to provide information and answer questions at this evening's meeting. A representative of the New Castle Select Board will also be available to speak to this item.

I recommend that the City Council move to authorize the City Manager to accept the new water lines if constructed to the satisfaction of the City and accept the easements necessary for the City to access and maintain them.

3. **Acquisition of Sewer Line Easements and Proposed Release of Paper Street:**

In order to complete the Sagamore Avenue Area sewer line project, the City requires sewer line easements within a private right-of-way known as Sagamore Avenue West. Three easements are required from property owners that will directly benefit from the public sewer extension. Those property owners are: Debra Dupont of 911 Sagamore Avenue, Hogsweave LLC of 912 Sagamore Avenue, and the Heidi S. Ricci Revocable Trust of 913 Sagamore Avenue West. A schematic showing the easement needs is [attached, titled "Sagamore Avenue Sewer Extension Project."](#)

In addition to the three easements described above, a fourth easement is required over property of Mark Simpson, located on Sagamore Avenue, which contains exclusively a private right-of-way (no structures on the property). Mr. Simpson resides at 28 Thornton Avenue and is not benefited by the public sewer line extension.

In consideration for the grant of a sewer line easement over the private right-of-way, Mr. Simpson requests the City convey by quitclaim deed any interest it may have in a portion of a paper street, called Ruth Street, adjacent to his home at 28 Thornton Street. See [attached drawing titled “Ruth Street Area.”](#) On July 11, 2020, the City Council voted to release an adjacent portion of this paper street, which is also shown on the attached drawing. The Department of Public Works has advised that no current or planned utility needs would be impacted by the City releasing its interest in this portion of Ruth Street.

At the August 2, 2021 City Council meeting, the City Council referred these easement needs and the release of the paper street, Ruth Street, to the Planning Board for its review and recommendation. On August 19, 2021, the Planning Board unanimously recommended these easements and the release of Ruth Street. The Legal Department will finalize the form of the easements and the quitclaim deed if the City Council approves the recommended action.

I recommend that the City Council authorize the acceptance of four (4) sewer line easements as described and to release the paper street known as Ruth Street where it abuts 28 Thornton Street as shown.

4. **Request for First Reading Regarding Ordinance Amendment to Chapter 7, Article XI, Section 7.1100 – Speed Limits:**

At its October 8, 2020 meeting, the Parking and Traffic Safety Committee (PTSC) heard a report back on traffic calming on Chevrolet Avenue in response to residents’ concerns about pedestrian and traffic safety. In addition to a discussion on beginning a neighborhood traffic pattern plan for the area, the PTSC voted unanimously to lower the speed limit on Chevrolet Avenue from 30 mph to 25 mph as a measure to improve pedestrian and traffic safety.

The speed limit became a temporary parking and traffic regulation through the Council’s approval of the PTSC’s minutes on November 16, 2020. Temporary parking regulations expire one year after approval unless they are adopted by the Council as an amendment to Chapter 7 through the City’s ordinance adoption process. The PTSC recommends the adoption of an [amendment to Chapter 7, Article XI, Section 7.1100 Speed Limits](#), sub-section E to reduce the speed limit on Chevrolet Avenue from 30 mph to 25 mph.

I recommend that the City Council move to schedule a first reading regarding this ordinance amendment at the September 20, 2021 City Council Meeting.

5. **Request for First Reading Regarding Ordinance Amendment to Chapter 7, Article XII, Section 7.1200 – Parking for the Walking Disabled:**

At its August 5, 2021 meeting, as reflected in its minutes, the Parking and Traffic Safety Committee voted unanimously to recommend to the City Council an [amendment to Chapter 7, Article XII, Section 7.1200](#) that would provide three hours of free parking in parking metered zones for ADA-credentialed vehicles. Over the course of several prior meetings, the Committee acknowledged that before the enactment of the Stay and Pay system, the City had an uncodified policy of providing three hours of free parking for the walking disabled in time-limited parking spaces.

This policy conformed with NH RSA 265:74, which provides that a municipality must provide free parking for the walking disabled but has discretion to set reasonable time limits for free parking.

After the enactment of the Stay and Pay System, most time limits in City-managed parking spaces were abolished. The Committee was uncertain as to what would qualify as reasonable time limits for free parking under our Stay and Pay parking system because we no longer have time limited parking and the guidance documents provided by the Governor's Commission on Disability did not address a Stay and Pay type parking system. The Committee instructed staff to reach out to the Commission for clarification. Representatives at the Commission's Office confirmed that three hours of free parking for the walking disabled was reasonable under the City's Stay and Pay system and was consistent with the Commissions' policies and state law.

I recommend that the City Council move to schedule a first reading regarding this ordinance amendment at the September 20, 2021 City Council Meeting.

6. **Borthwick Forest Easements:**

On May 22, 2017, the Planning Board granted preliminary and final subdivision approval and site plan review approval for an application from Borthwick Forest, LLC for property located off Borthwick Avenue to construct an office building and new subdivision road.

The approved project plans included a number of required easements, which are shown on **the enclosed plans** and summarized below:

- An easement for maintenance and access for an existing water line extending across the applicant's property (**labeled as Easement #1** on the enclosed plans and deeds);
- An easement for City maintenance and public access to a 10' wide paved off-road multi-use path extending from the end of the new subdivision road (Eileen Dondero Foley Road) to Islington Street. This easement is located over an easement for the new water line (**labeled as Easement #2**);
- An easement for City maintenance and access of a new public water line extending between Islington Street and Borthwick Avenue (**labeled as Easement #3**); and
- An easement for public access to a multi-use path that parallels the new subdivision road from Borthwick Avenue to the new off-road multi-use path referenced above (**labeled as Easement #4**).

All of the foregoing have been reviewed by the Planning, Legal, and Public Works Departments and are recommended for approval.

I recommend that the City Council move that the City Manager be authorized to negotiate, execute, deliver and record the easement deeds regarding the Borthwick Forest property as presented.

7. **Report Back on 135 Thaxter Road Request for Restoration of Involuntarily Merged Lots:**

At its meeting of May 17, 2021, the City Council considered a request from Bernie W. Pelech, Esq., on behalf of the property owners Vincent and Monica Zinganello, requesting the restoration of involuntarily merged lots at 135 Thaxter Road to their pre-merger status pursuant to NH RSA 674:39-aa. The Council voted to refer this request to the Planning Board and the City Assessor for a report back.

The City Assessor provided the enclosed report regarding this request.

At the August 19, 2021 Planning Board meeting, the Planning Board held a public hearing on this request and voted to recommend that the City Council grant the request to unmerge the lots.

I recommend that the City Council move to grant the request to restore the involuntarily merged lots at 135 Thaxter Road.

8. **Request to Establish a Public Hearing for Refinancing a Callable Bond:**

In reviewing the City's debt schedule, there are existing bonds eligible for refunding (refinancing) which will result in total future interest savings. The original bond terms included a call provision which allows the issuer the option to pay off bonds prior to the maturity date by issuing another bond at a lower interest rate. There are two refunding opportunities, both requiring a public hearing with two-thirds roll call vote of the City Council:

- The original General Obligation Capital Improvement Bonds that are eligible for refunding was issued on December 14, 2011 for \$22,500,000 bond for the construction of the Middle School and has a remaining 10-year term.

Keeping in mind that interest rates are subject to change, the City, by opting to refinance these bonds in the current market, could experience savings in excess of \$1,500,000 net of all issuance costs, over the remaining life of the bonds.

- The original General Obligation Capital Improvement Bonds that are eligible for refunding was issued on December 14, 2011 for \$3,000,000 for Peirce Island Waste Water Treatment Plant and has a remaining 10-year term.

Keeping in mind that interest rates are subject to change, the City, by opting to refinance these bonds in the current market, could experience savings in excess of \$210,000 net of all issuance costs, over the remaining life of the bonds.

I recommend that the City Council move to establish a public hearing at the September 20, 2021 City Council meeting for a Refunding Bond Resolution of up to Eleven Million Six Hundred and Fifty Thousand Dollars (\$11,650,000) to refund the remaining portion of the aforementioned callable bond and all related costs; and

*I recommend that the City Council move to establish a public hearing at the September 20, 2021 City Council meeting for a **Refunding Bond Resolution of up to One Million Six Hundred Thousand Dollars (\$1,600,000)** to refund the remaining portion of the aforementioned callable bond and all related costs.*

XVI. Consent Agenda:

A. Projecting Sign License – 18 Ladd Street:

Permission is being sought to install a projecting sign at **18 Ladd Street** that extends over the public right of way, as follows:

Sign dimensions: 30” x 20”

Sign area: 4 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 from Health Officer, Kim McNamara, Regarding COVID-19:

The City’s Health Officer, Kim McNamara, will be providing an update regarding COVID-19.

XVIII. City Manager’s Informational Items:

1. Peverly Hill Road Public Necessity Hearing:

A Peverly Hill Road Public Necessity Hearing has been scheduled for October 14, 2021 at 5:00 p.m. Additional details on this meeting will be shared via the meeting notice which will be posted to the City’s website.

2. **Islington Creek Residents' Comments to Surface Transportation Board Regarding Rail Yard:**

Please find [attached Islington Creek Residents' comments](#) about rail yard traffic, noise and fumes, along with [letters from the City](#) and [Congressman Pappas](#) to the Surface Transportation Board regarding the CSX/Pan Am merger.

3. **Wetland Conditional Use Permits Granted by the Planning Board According to Section 10.1017 of the Portsmouth Zoning Ordinance Between August 2017 and August 2021:**

As previously requested by Councilor Trace, please find attached a [report back on Wetland Conditional Use Permits granted by the Planning Board](#) according to Section 10.1017 of the Portsmouth Zoning Ordinance between August 2017 and August 2021.

4. **Report Back on the Number of Upcoming/Ongoing Development Projects:**

As previously requested by Councilor Trace, please find [attached a report back on the number of upcoming and ongoing development projects](#) which includes the number of living units and/or office space per project and the number of parking spaces per development.

5. **Report Back on Litigation List:**

As previously requested by Councilor Kennedy, please find [attached a list of active litigation cases](#).

6. **City Council Quorum:**

At the August 23, 2021 meeting of the City Council, it was requested that the Legal Department produce a memorandum on the topic of quorums. This request was prompted by two recent situations in which a quorum (5 members) of the City Council had inadvertently appeared at the same place at the same time when such was not anticipated. This raised obvious questions under the Right to Know law, RSA 91-A.

The first of these situations involved the quorum of the City Council appearing at a Public Works event which had not been noticed as a meeting. The second involved a quorum of City Councilors appearing at a McIntyre Subcommittee meeting for which notice had been published that the Subcommittee would meet, but no notice had been published for the full City Council to meet.

For the purpose of the Right to Know law, a:

“meeting means the convening of a quorum of the membership of a public body ..., whether in person, by means of telephone or electronic communications, or in any other manner such that all participating members are able to communicate with each other contemporaneously ... for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters.”

Two problems have been presented by the inadvertent assemblage of the City Council as described above. The first is whether or not a meeting has occurred in violation of the Right to Know law. Secondly, if a meeting has occurred, has it been properly noticed by publishing notice in two public places at least 24 hours prior to the meeting?

A confusing wrinkle which occurred in the second situation described above, is that a meeting of the McIntyre Subcommittee for which the quorum is three (3) members had been properly noticed. However, when a member of the City Council joined the four (4) members of the McIntyre Subcommittee, it arguably created a meeting of the City Council, which had not been noticed as such.

In both of the situations described above, these issues were addressed by adopting an ad hoc solution whereby City Councilors who had appeared when no meeting of the Council had been noticed or City Councilors in excess of the Subcommittee members who appeared at the meeting were requested not to participate in the discussion as to avoid a meeting of the City Council as defined above being held.

While not an ideal solution to the issues, this approach at least presented a reasonable attempt to provide compliance with the Right to Know law without totally depriving members of the City Council of the opportunity to hear what was said at a meeting even if they could not participate in the discussion.

One effort which will be followed by City staff in the future to hopefully avoid confusion on these issues is that whenever it is reasonably perceived that five (5) members of the City Council might be in the same place at the same time, even though no Council meeting is planned, a document which we are now calling a Notice of Quorum will be published in two (2) public places. This will show sensitivity to the Right to Know law should it later be determined that a Council meeting was held.

Moreover, it is the Legal Department recommendation that whenever it is reasonably perceived that additional members of the City Council may appear at a Subcommittee or other meeting where Council members are present, the notice to be published of that meeting should reflect not only that there will be a meeting of the smaller public body, but also that it is possible for a quorum of City Council members to be present.

It might also be a resolution for the City Council itself to address this quorum complexity. For example, the Council might adopt a policy or rule prohibiting a quorum of the Council to assemble anywhere unless proper notification has been made. In that situation, once four (4) members of the Council were in any one place at any one time, any further members of the City Council who should arrive would be expected to voluntarily remove themselves from that gathering.

The foregoing represents current Legal Department thinking on this difficult issue. Perhaps, with some further thought, other approaches or solutions can be developed.

7. **Report Back on Portsmouth Community Garden:**

Attorney Sullivan will be providing information on the proposed community garden at this evening's meeting.