

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: WEDNESDAY, DECEMBER 14, 2022 TIME: 6:00 PM

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_mQ7L2354QHWPIP_bBxaoEA

6:00 PM – ANTICIPATED NON-PUBLIC SESSION IS BEING HELD IN CONFERENCE ROOM A

1. CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (I)
2. CONFIDENTIAL COMPETITIVE SELECTION PROCESS FOR AUDITOR – RSA 91-A:5 AND RSA 91-A:3, II (c)(d)(I)

AGENDA

**Regular portion of City Council meeting to begin at 7:00 p.m.*

- 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**



**Portsmouth Music and Arts Center
Brewery Big Band Holiday Music Performance**



- VII. **ACCEPTANCE OF MINUTES – (There are no minutes on for acceptance this evening)**
- VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
- IX. **PUBLIC COMMENT SESSION (This session shall not exceed 45 minutes) – (participation may be in person or via Zoom)**
- X. **PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

Third and Final Reading of Ordinances:

- A. Third and final reading of Ordinance amending Chapter 12 and Chapter 15 – City's Building Code (**Sample motion – move to pass third and final reading of the ordinance as presented**)

- B. Third and final reading of Ordinance amending Chapter 5, Article I – Fire Department, Section 5.101 – Personnel and Article IX – Fire Code (***Sample motion – move to third and reading of the ordinance as presented***)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Greenleaf Recreation Center Concession Agreement with Operation Blessing, Inc.
2. Request for Public Hearing for Supplemental Appropriation regarding McIntyre Project
3. Temporary Construction License for 46 State Street
4. *Request for Work Session of the Disposition of Sherburne School

XII. CONSENT AGENDA

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

- A. Request from John Robert David & Anastasia Livingstone, Snap Quack Pop, to install a Projecting Sign at 123 Market Street Unit A (***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 to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Letter from John Mortimer, Millennium Running, requesting permission to hold the St. Patty’s 5k & 10k on Saturday, March 11, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- C. Letter from John Mortimer, Millennium Running, requesting permission to hold the annual New Castle 10k on Sunday, April 30, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Presentation Regarding Staff Recommendations for 2023 Outdoor Dining Season – Beverly Mesa-Zendt, Planning Director

XIV. MAYOR McEACHERN

1. Appointments to be Considered:
 - Reappointment of Dana Levenson to the Trustee of the Trust Funds
 - Reappointment of Phyllis Eldridge to the Zoning Board of Adjustment
 - Appointment of Alan Cohen to the Task Force to Study Private/Public Historical Archives Committee

2. *Appointments to be Voted to the Arts and Nonprofits Committee Cultural Plan Subcommittee:
 - Alan Chace
 - Jeffrey Cooper
 - Ellen Fineberg
 - Gerardo Gonzalez
 - Tom Kaufhold
 - Amanda Kidd-Kestler
 - Robin Lurie-Meyerkopf
 - John Mayer
 - Karen Rosania
 - Emma Stratton
 - Karen Battles (Alternate)
 - Suzanne Danforth (Alternate)
 - Ed Simeone (Alternate)

3. *Announcement of Appointment of Sean MacDonald and Anna Nuttall to the Skateboard Park Blue Ribbon Committee

4. *Holiday Lights Contest

XV. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR KELLEY & COUNCILOR BAGLEY

1. *Council Year in Review

XVI. APPROVAL OF GRANTS/DONATIONS

(There are no items under this Section of the Agenda this evening)

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

(There is no items under this Section of the Agenda this evening)

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

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

**Indicates verbal report*

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



CITY OF PORTSMOUTH

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

Karen S. Conard
City Manager

Date: December 8, 2022

To: Honorable Mayor McEachern and City Council Members

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

Re: City Manager's Comments on City Council Agenda of December 14, 2022

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

A. Third and Final Reading of Ordinance Amending Chapter 12 and Chapter 15, the City's Building Code:

The City's building code ordinance was last amended in December of 2019. At that time, the City Council adopted amendments to our building code ordinances (Chapters 12 and 15) to reflect the current version of the State Building Code and to update our local regulations and amendments to those codes. This version consists of 55 pages in two separate Chapters.

The Inspection Department has received complaints from the public that the City's existing building code ordinances are too long and are not user friendly. When the public cannot find local requirements and Code amendments, the building code ordinance is more difficult to administer. This is caused in part because our current ordinances track and amend different sections of the State Building Code that repeat the same language.

In July of 2022, the State of New Hampshire adopted the 2018 version of the International Codes and other national codes ("State Building Code"). The adoption of these new codes create an opportunity for the City to update and revise our existing building code ordinance.

This proposed amendment, as presented, removes Chapter 15 in its entirety, resulting in one completely revised building ordinance – a new Chapter 12 consisting of approximately 20 pages. Chapter 12, as rewritten, will be the City Building Code which adopts the current State Building Code as well as our local regulations and amendments to the State Building Code, which are permitted when they are stricter than the State Building Code.

The statutes governing local amendments to the State Building Code will be amended as of January 1, 2023. The current statute requires only that local building code ordinances be filed with the State Building Code of Review ("Board").

The amended statute creates a complicated process whereby all local building code amendments must be reviewed by the Board prior to passage in order to verify that the local requirements do not “conflict” with the current State Building Code. There is no definition of “conflict” in the amended statute, thus calling into question the ability of municipalities to make any local regulations and amendments to the State Building Code.

At the City Council’s December 5, 2022 City Council meeting, Shanti Wolph, the City’s Building Inspector, provided a presentation on these amendments.

I recommend that the City Council move to pass third and final reading of the ordinance as presented.

B. Third and Final Reading of Ordinance Amending Chapter 5, Article I – Fire Department, Section 5.101 - Personnel and Chapter 5, Article IX – Fire Code:

The City’s fire code ordinance was last amended in December of 2019. In July of 2022, the State of New Hampshire adopted the State Fire Code, which adopts by reference the Life Safety Code, NFPA 101, 2018 edition, and the Uniform Fire Code NFPA 1, 2018 edition. When the State Fire Code is updated, the Fire Department reviews and makes housekeeping amendments to Chapter 5. The City does not adopt any amendments to the State Fire Code. However, in addition to the adoption of the State Fire Code, the City also adopts the International Fire Code.

The Fire Department is recommending that the City [amend Chapter 5, Article I – Section 5.101 and Chapter 5, Article IX](#) to adopt the current State Fire Code and the updated version of the International Fire Code, 2018 Edition. The amendments are primarily housekeeping edits to reference the correct section of the International Fire Code, 2018 edition. Some local amendments have been deleted as they are now included within the published codes and are no longer necessary. Additionally, we have deleted the local amendments regarding solar installations as the State has amended these requirements within the State Fire Code.

I recommend that the City Council move to pass third and final reading of the ordinance as presented.

XI. City Manager’s Items which Require Action:

1. Greenleaf Recreation Center Concession Agreement with Operation Blessing, Inc.:

The Greenleaf Recreation Center Concession Agreement with Operation Blessing, Inc. has expired. The [proposed renewal Agreement is attached](#).

The Agreement is based on terms required by the federal government that authorize the use by Operation Blessing, Inc. of the City’s facility located on Greenleaf Avenue for operation of a recreation facility. The programming at the Greenleaf Recreation Center serves persons with disabilities, youth recreation and out of school programs and adult programming, including the use of the facilities for residential groups. The location of the Greenleaf Recreation Center is in close proximity for residents of Portsmouth Housing Authority’s Wamesit Place.

The use of the Greenleaf Recreation Center will continue as in prior years, with activities that include but are not limited to:

- Recreation and socialization programs for young adults with disabilities;
- Various types of youth programs, including play groups, out of school programs, exercise programs, recreational activities and trips; and
- Support groups and life skill programing for adults and families.

Changes to the Agreement include making it more consistent with other City leases/licenses by permitting Operation Blessing, Inc. to terminate the Agreement, extending the term from 2 years to 5 and reducing the limits of liability to be consistent with other leases to \$2,000,000 from \$5,000,000. Operation Blessing, Inc. has updated its list of programs and will now provide the City with Annual Participation Reports relative to public participation in its programs and a copy of its Strategic Plan. These reports and plan will assist the City and Operation Blessing, Inc. in evaluating and evolving programs for the benefit of the community.

I recommend that the City Council move to accept the renewal extension of the Greenleaf Recreation Center Concession Agreement with Operation Blessing, Inc. as presented.

2. **Request for Public Hearing for Supplemental Appropriation Regarding McIntyre Project:**

In April of 2022, the City and SoBow Square, LLC (SoBow) executed a Settlement Agreement that resolved a law suit brought by SoBow against the City, related to the McIntyre project. Over the last seven months, the City, SoBow, and its partners completed a design for what is commonly referred to as the “Community Plan.”

The preliminary cost estimates for construction of the Community Plan vary widely. As discussed at the December 5th City Council meeting, the City requested and was granted an extension of the License with (GSA) for the McIntyre building, and for the submission of its application to the National Park Service (NPS) for an additional ninety days.

During the next three months, the City will engage in discussions and negotiations with SoBow regarding the design, the division of capital contributions to the project, the division of the expected revenue returns, and other pending elements of the project. The City will contract with qualified consultants to assist in these negotiations.

The expected expenses are estimated to be up to \$50,000 per party per month. [A copy of the supplemental appropriation for \\$150,000](#) is attached and recommended to pay for these costs.

I recommend that the City Council move to schedule a public hearing at the January 9, 2023 City Council regarding the proposed supplemental appropriation.

3. **Temporary Construction License for 46 State Street:**

Applicant, Auger Building Company, Inc., under Encumbrance Permit ENCM 22-77, is performing exterior brickwork improvements to property located at [46 State Street](#), shown on the City of Portsmouth Assessor’s Map as Tax Map 0105, Lot 0011 (“Subject Property”).

Applicant has encumbered the sidewalk and three parking spaces in front of the Subject Property for 30 working days. The encumbrance permit expires on December 15, 2022 and [the Applicant is seeking a license to extend the encumbrance beyond 30 days](#) due to delays caused by unanticipated repairs required for exterior walls. The Applicant seeks to encumber three parking spaces and the sidewalk in front of the Subject Property for another 75 days (December 16, 2022 through February 28, 2023). The sidewalk encumbrance will be in two phases; for the first 30 days the sidewalk will be encumbered and public access will be prohibited, and for the remaining 45 days of the requested term there will be pass through staging and public access to the sidewalk.

Licenses are subject to the “License Fee for Encumbrance of City Property” policy. Under this policy, a daily fee is calculated per square foot of encumbered sidewalk at .05 per square foot per day and \$50 a day per parking space. The Applicant has requested to encumber three parking spaces in front of the Subject Property. The license fee for the parking spaces is \$11,250 (3 x \$50 = \$150 x 75 days = \$11,250). The Applicant also has requested to encumber 280 square feet of sidewalk in two phases. The first phase will be for 30 days (December 16, 2022 through January 14, 2023) without public access. The license fee to complete phase one is \$420 (280 square feet x .05 = \$14 day x 30 days = \$420). For the second phase for the remaining 45 days of the requested license term the Applicant will erect pass through staging (\$14 day x 45 days = \$630). The total license fees for the three parking spaces and both phases of the sidewalk encumbrance equals \$12,300. However, when the public has access to sidewalks with pass through staging, license fees are typically waived. The total license fee waiving the portion of the license fee when the public has access through pass through staging is \$11,670.

The Legal and Planning Departments have reviewed and approved the form of [the attached License](#).

If the Council agrees to grant the temporary construction license to encumber the sidewalk and three parking spaces that abut 46 State Street, an appropriate motion would be:

Move that the City Manager be authorized to execute and accept the temporary construction license to encumber the sidewalk and three parking spaces that abut 46 State Street as requested.

4. Request for a Work Session Regarding Disposition of Sherburne School:

In regards to a request made by the Council at the October 24th City Council meeting, I would like to request a work session on the disposition of the Sherburne School be scheduled for January 12, 2023 at 7:00 p.m.

I recommend that the City Council move to schedule a work session regarding the disposition of the Sherburne School on January 12, 2023 at 7:00 p.m.

XII. Consent Agenda:

A. Projecting Sign Request for 123 Market Street Unit A:

Permission is being sought to install a projecting sign at [123 Market Street Unit A](#) that extends over the public right of way, as follows:

Sign dimensions: 36" x 36"

Sign area: 9 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.*

XIII. Presentations and Written Communications:

A. Presentation Regarding Staff Recommendations for 2023 Outdoor Dining Season:

Beverly Mesa-Zendt, the City's Planning Director, will provide a presentation on the City's recommendations for the 2023 outdoor dining season at this evening's meeting.

If the City Council wishes to take action on outdoor dining for next season at this evening's meeting, I recommend that the City Council move to adopt the recommendations outlined on page 8-10 of [the 2023 Outdoor Dining Season Report](#).