

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JANUARY 9, 2023 TIME: 5:00PM

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_G9fqz1GOStaSsujfPJamfg

5:00PM – ANTICIPATED NON-PUBLIC SESSIONS ARE BEING HELD IN CONFERENCE ROOM A

1. PROPOSED MEMORANDUM OF AGREEMENT FOR PORTSMOUTH SCHOOL CUSTODIAL SUPERVISORS – RSA 91-A:3, II (a)(c) and (l)
2. PROPOSED MEMORANDUM OF AGREEMENTS FOR DISPATCHERS/LEAD DISPATCHERS AND PARAEDUCATORS – RSA 91-A:3, II (a)(c) and (l)
3. PROPOSED COLLECTIVE BARGAINING AGREEMENT WITH 1386B – RSA 91-A:3, II (a)(c) and (l)
4. CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (l)

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**
- VII. **ACCEPTANCE OF MINUTES** – *(There are no minutes on for acceptance this evening)*
- VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
 1. *Winners of 2022 Holiday Lights Contest
 2. *Presentation by Rotary Past President, Ben Wheeler
 3. Recognition of Dave Lovely selected as the 2022 EPA Regional Wastewater Treatment Plant Operator of the Year Award
 4. *Recognition of Timothy Metivier selected as 2022 New Hampshire Code Official of the Year Award
- 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

First Reading of Ordinance:

- A. First reading of Ordinance amending Chapter 7, Article IVA, Section 7A.408 – Taxi Stands Designated

Public Hearings of Ordinance and Adoption of Resolution:

- B. Public Hearing/Second reading of Ordinance amending Chapter 1, Article IV, Section 1.408 – Cable Television and Communications Commissions to be named Cable and Broadband Internet Commission

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

(Sample motion – move to pass second reading and schedule a third and final reading at the January 23, 2023 City Council meeting)

- C. Public Hearing/Adoption of Resolution Authorizing a Supplemental Appropriation from the Unassigned Fund Balance for the Design and Engineering of Alternate Plans for the Redevelopment of McIntyre Federal Building and Surrounding Property. The City Council has determined that the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars is to be appropriated from Unassigned Fund Balance to defray the expenditures for the design and engineering of alternate plans for the redevelopment of McIntyre Federal Building and surround property for the Fiscal Year ending in June 30, 2023

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

(Sample motion – move to adopt the resolution as presented) (Two-thirds vote required for adoption)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Amendment to Public Art Funds Ordinance
2. Temporary Construction License for 64 Vaughan Street
3. Easements for Hope for Tomorrow Foundation

XII. CONSENT AGENDA

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

- A. Letter from Maria Stephanou, NH Walk Manager, requesting permission to hold the annual Seacoast Walk to End Alzheimer's on Sunday, October 1, 2023 **(Anticipated action – move to refer to the City Manager with Authority to Act)**
- B. Letter from Debra Smith, Friends of the South End, requesting permission to hold the annual Fairy House Tour on Saturday, September 23, 2023 and Sunday, September 24, 2023 **(Anticipated action – move to refer to the City Manager with Authority to Act)**
- C. Letter from Evan Dolecki, New England Ventures Endurance, requesting permission to hold the 2023 Margarita Half Marathon & 5k on Sunday, April 30, 2023 **(Anticipated action – move to refer to the City Manager with Authority to Act)**
- D. Request from Mark McNabb, Hearth Food Garden, LLC, to install a Projecting Sign at 60 Penhallow 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 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*
- E. Request from Mark McNabb, River Wharf Hospitality, to install a Projecting Sign at 60 Penhallow 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)**

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- *The license shall be approved by the Legal Department as to content and form;*
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XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Perry Silverstein requesting the City not favor one industry over others regarding outdoor dining (***Sample motion – move to accept and place on file***)

XIV. MAYOR McEACHERN

1. *Appointments to be Voted:
 - 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

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. *January 25th Budget Kickoff (***Sample motion – move for a report back on preliminary FY24 trends, major budget drivers, potential tax impacts and city manager guidelines at January 25, 2023 council budget kickoff work session***)
2. *Selection of an Auditor (***Sample motion #1 – move to unseal that portion of the City Council’s non-public session meeting minutes dated December 14, 2022 relative to the selection of an auditor only***) (***Sample motion #2 – move to select an audit firm***)

B. COUNCILOR DENTON

1. *Outdoor Dining (***Sample motion – move for all restaurants with outdoor dining that successfully compost to pay 2022 outdoor dining rates***)
2. *E-mail Addresses (***Sample motion – move for all members of the City Council to be given municipal e-mail addresses for official business***)

C. COUNCILOR BAGLEY & COUNCILOR COOK

1. *2023 Outdoor Dining Season – *In order to encourage outdoor dining and increase vibrancy in downtown Portsmouth, we:* (***Sample motion #1 - move to adopt an outdoor dining policy in Portsmouth with the following parameters:***
 - a. ***Outdoor dining will commence for parking/loading zone encumbered dining starting on May 1 and ending on Indigenous Peoples’ Day. The City of Portsmouth will do everything possible to place and remove barriers within 10 working days following the beginning and end of the parking/loading zone dining season. Sidewalk dining will be allowed as the weather permits, but sidewalk encumbrances should be removed so as not to interfere with sidewalk snow removal, with penalty of fine should removal not take place prior to a snowstorm. Yearly permitting for sidewalk dining will take place in March. Applications for all outdoor dining will be accepted starting February 15, with a deadline of April 1.***

- b. Outdoor dining shall not encumber street flow of traffic in the high traffic zones of the downtown area. Exceptions shall only be permitted by appeal to the City Manager, with evidence of traffic flow below 1000 cars per day.**
- c. Outdoor dining in parking/loading zones shall follow a uniform appearance with City-placed concrete barriers and planter boxes as described in the December 22 City Report, and wooden platforms to allow for uniform accessibility. Restaurants with existing platforms and surrounds designed for prior seasons shall be grandfathered-in with permission of the City Manager. All outdoor dining spaces shall have tables and separate chairs to allow for uniform accessibility. When requiring a divider from sidewalk flow, sidewalk dining shall require either a metal or metal-looking barrier, or a rope-like barrier for separation.**
- d. Parking/Loading zone outdoor dining shall have a permit fee of \$1500/space or \$10/square foot, whichever is a lesser expense. Any restaurant taking up a parking space must pay for the full square footage of the parking space, or the standard space fee. Sidewalk encumbrance shall have a flat fee of \$500/season with sidewalk encumbrance (space) limitations determined by the City Manager.**
- e. Restaurants requesting a parking/loading zone encumbrance can receive up to a \$500 reduction in fees if they compost food waste. For sidewalk spaces, restaurants may receive up to a \$200 reduction in fees if they compost food waste.**
- f. The City Manager has the authority to act with notification of the Council if any unforeseen circumstances occur or unexpected adjustments are needed.**

(Sample motion #2 - move to include the downtown area bounded by Deer Street, the Piscataqua River, Prescott Park, Court Street, and Maplewood Avenue/Middle Street in the redesign of Market Square in 2023 with the goal of enhanced pedestrian access with expanded sidewalks, expanded sidewalk dining throughout downtown and reduced traffic congestion, including possible redesign of traffic flow (two-way traffic) on State Street)

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Tree Fund from Judith A. Sabin - \$25.00 (Sample motion – move to approve and accept the donation as presented)**
- B. Acceptance of Donation to the Fire Department from Paul Gormley & Kimi Iguchi for the Discretion of the Fire Department - \$2,500.00 (Sample motion – move to approve and accept the donation as presented)**
- C. Acceptance of Donation to the Senior Activity Center from Anne Aoki for Senior Luncheon Funds - \$5,000.00 (Sample motion – move to approve and accept the donation as presented)**
- D. *Approval and Acceptance of NH Department of Safety, Division of Homeland Security and Emergency Management - Emergency Management Performance Grant (EMPG) - \$5,500.00 (Sample motion – move to approve and accept the grant as presented)**

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

(There are 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: January 5, 2023

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 January 9, 2023

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

A. First Reading of Ordinance Amending Chapter 7, Article IVA, Section 7A.408 – Taxi Stands Designated:

For first reading this evening is an [amendment to the Chapter 7, Article IVA, Section 7A.408, Taxi Stands Designated Ordinance](#). By way of background, the City Council requested the Parking and Traffic Safety Committee (PTSC) report back on the use of taxi stands reserved throughout the City. At its October 6, 2022 meeting, PTSC members relayed that staff had reached out to the one remaining taxi company left in the City. The owner requested that one taxi stand located at Pleasant Street remain in use. PTSC voted unanimously to remove all taxi stands throughout the City, except the one on Pleasant Street. The City Council approved this action and the PTSC minutes at its December 5, 2022 meeting.

Because the taxi stands are listed in the ordinance, this action requires an amendment to Chapter 7, Article IVA, Section 7A.408, Taxi Stands Designated. Consequently, this is being brought forward for first reading.

I recommend that the City Council move to pass first reading and schedule a second reading and Public Hearing at the January 23, 2023 City Council meeting.

B. Public Hearing and Second Reading of Ordinance Amending Chapter 1, Article IV, Section 1.408 - Cable Television and Communications Commission to be named Cable and Broadband Internet Commission:

The Cable Commission requests that the City Council consider [proposed changes to Chapter 1, Article IV, Section 1.408](#) currently titled Cable Television and Communications Commission. The Commission proposes changes to their title and powers to broaden their responsibility beyond cable television and to include broadband internet services via any physical transport method (including both physical cabling and over-the-air delivery such as cellular). See [attached proposed ordinance changes](#).

The Commission developed these proposed changes over the course of several meetings this year. The Cable Commission referred these proposed changes to the Governance Committee for review and input; the Governance Committee supported the Commission’s desire to broaden their powers. Deputy City Manager/Deputy City Attorney Suzanne Woodland provides staff support for the Commission and has worked with them to develop these proposed changes. She will be available if there are questions this evening, along with a member of the Cable Commission.

I recommend that the City Council move to pass second reading and schedule a third and final reading at the January 23, 2023 City Council meeting.

C. **Public Hearing and Adoption of Resolution Authorizing a Supplemental Appropriation from the Unassigned Fund Balance for the Design and Engineering of Alternate Plans for the Redevelopment of the McIntyre Federal Building and Surrounding Property:**

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 adopt the resolution as presented.

XI. City Manager’s Items which Require Action:

1. **Amendment to Public Art Funds Ordinance:**

[Attached please find a memorandum regarding an amendment to the Public Art Funds Ordinance.](#)

I recommend that the City Council move to place [the attached amended Funding of Public Art Ordinance, Chapter 1, Article XVII, Section 1.1705](#), on the City Council’s next Agenda for First Reading.

2. **Temporary Construction License for 64 Vaughan Street:**

On August 19, 2021, the Planning Board granted site plan approval for renovation of the Margeson building and construction of an addition for property located at [64 Vaughan Street](#) (“Property”). The original site plan included retail and office space with underground parking, as well as sidewalks and improvements to the Worth Lot. The property was conveyed to Novocure Inc. in December of 2021. Novocure Inc. will use the 42,000 square foot building for their flagship North American headquarters.

The Construction Mitigation and Management Plan (CMMP), signed on November 16, 2021, identified temporary encumbrances for project-related work during the project’s construction. Encumbrances for a duration longer than 30 consecutive working days require a license approved by the City Council. All licenses are subject to the “License Fee for Encumbrance of City Property” policy.

On February 22, 2022, the City Council granted a license for this project for the use of 35 square feet of city property in the Vaughan Mall and 14 parking spaces in the Worth Lot from March 5, 2022 through June 3, 2022. The Council granted a second license to use 650 square feet of the alley that abuts the Property and connects Hanover Street to the Worth Lot to set a crane and ten (10) parking spaces in the Worth Lot from September 20, 2022 to January 1, 2023. The applicant has experienced delays due to changes in the project’s design and is [requesting a third license to encumber 10 parking spaces in the Worth Lot](#) from January 10th to April 1st (6 in the Worth Lot and 4 along the alley that connects to Hanover Street for a safety buffer) to complete exterior framing, the façade and roof.

The total License Fee for the ten (10) parking spaces in the Worth Lot is \$28,700 (\$35 per space x 10 = \$350 a day x 82 days).

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 ten (10) parking spaces in the Worth Lot, an appropriate motion would be:

Move that the City Manager be authorized to execute and accept the temporary construction license to encumber the use of ten (10) parking spaces in the Worth Lot for a term of 82 days as requested.

3. **Easements for Hope for Tomorrow Foundation:**

Before the City Council this evening are two easements related to the St. Patrick’s School located at 315 Banfield Road.

The first easement is for the City to grant to the Hope for Tomorrow Foundation (“HFT”), also commonly known as St. Patrick’s School, a sewer easement for existing sewer infrastructure across the City’s Community Campus parcel.

By way of background, on March 16, 2017, the Planning Board approved the construction of the school. Sewer service was to be provided by the construction of a new line from the HFT parcel to existing infrastructure (a pump station) on the abutting Community Campus parcel. The Foundation for Seacoast Health (“Foundation”) owned the Community Campus parcel prior to the City’s acquisition of the property in 2022 and entered into a Joint Operating Agreement with HFT to install the new sewer line and the Foundation agreed to grant a permanent easement once the line was installed with reference to as-built plans. The Foundation did not convey the easement to HFT prior to the transfer of the property to the City of Portsmouth, although all parties including the City were aware of the outstanding easement needed. [Drafts of the easement deed and plan to be recorded are included](#), but there may be minor amendments or edits to these documents prior to recording.

The second easement is to accept an easement from HFT to provide access to water infrastructure. On March 17, 2020, the Planning Board granted site plan approval for HFT to construct a gymnasium on its property. Private water infrastructure was installed and in order for the City to have convenient access to the infrastructure for inspection and leak detection purposes, an access easement in favor of the City was required. HFT mistakenly recorded this Access Easement for Water Service prior to City Council approval. [The Access Easement for Water Service attached](#) is being presented now for City Council approval.

I recommend that the City Council grant the City Manager the authority to both finalize and execute a sewer easement from the City to the Hope for Tomorrow Foundation, and to accept on behalf of the City the Access Easement for Water Service as presented.

XII. Consent Agenda:

D. Request from Mark McNabb, Hearth Food Garden, LLC, to Install a Projecting Sign at 60 Penhallow Street:

Permission is being sought to install a projecting sign at [60 Penhallow Street for Hearth Food Garden, LLC](#) that extends over the public right of way, as follows:

Sign dimensions: 42” diameter
Sign area: 9.6 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1) The license shall be approved by the Legal Department as to content and form;*
- 2) Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3) Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*

E. **Request from Mark McNabb, River Wharf Hospitality, to Install a Projecting Sign at 60 Penhallow Street:**

Permission is being sought to install a projecting sign at [60 Penhallow Street for River Wharf Hospitality](#) that extends over the public right of way, as follows:

Sign dimensions: 40” diameter

Sign area: 8.7 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.*

XVI. Approval of Grants/Donations:

A. **Acceptance of Donation to Tree Fund from Judith A. Sabin - \$25:**

[Attached please find a donation form from the Public Works Department](#) requesting acceptance of \$25 for the City’s Tree Fund from Judith A. Sabin.

I recommend that the City Council move to approve and accept the donation as presented.

B. **Acceptance of Donation to the Fire Department from Paul Gormley and Kimi Iguchi - \$2,500:**

[Attached please find a donation form from the Fire Department](#) requesting acceptance of \$2,500 from Paul Gormley and Kimi Iguchi.

I recommend that the City Council move to approve and accept the donation as presented.

C. **Acceptance of Donation to the Senior Activity Center from Anne Aoki - \$5,000:**

[Attached please find a donation form from the Recreation Department](#) requesting acceptance of \$5,000 from Anne Aoki.

I recommend that the City Council move to approve and accept the donation as presented.

D. **Acceptance of Grant for the Fire Department - \$5,500:**

The Fire Department is requesting acceptance of a grant from the NH Department of Safety in the amount of \$5,500 to update the City’s Emergency Operational Plan, which provides a framework for the City of Portsmouth and our partners to provide assistance to residents and

visitors in the event of a perceived, potential or actual emergency. This Plan was last updated in 2017.

The Emergency Operations Plan establishes policies and procedures, describes strategies, assumptions, objectives and how the City will support the five phases of Emergency Management: prevention, mitigation, preparedness/protection, and response and recovery across 15 functional areas which include transportation, communications and alerting, Public Works & Engineering, Firefighting, Emergency Management, mass care, housing and human services, resource support, health and medical, search and rescue, hazardous materials, agriculture, cultural and natural resources, energy, public safety and law enforcement, volunteer donation and management, and public information.

The grant would be used to hire a consultant to work with City Staff to update the current plan and make the relevant and necessary changes, and ensure compliance with State and Federal requirements.

I recommend that the City Council move to approve and accept the grant as presented.