

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JANUARY 23, 2023 TIME: 6:30 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_1-gHSLDRS3ia_ywK9YKv6Q

6:30 PM – ANTICIPATED NON-PUBLIC SESSIONS ARE BEING HELD IN CONFERENCE ROOM A

1. CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (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
- 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

First Reading of Ordinance:

- A. First reading of Ordinance amending Chapter 1, Article XVII, Section 1.1705 – Public Arts Funds

(Sample motion – move to pass first reading and schedule a second reading and Public Hearing at the February 6, 2023 City Council meeting)

Public Hearing/Second Reading of Ordinance:

- A. Second reading of Ordinance amending Chapter 7, Article IVA, Section 7A.408 – Taxi Stands Designated
- **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 February 6, 2023 City Council meeting)

Third and Final Reading of Ordinance:

- A. Third and final reading of Ordinance amending Chapter 1, Article IV, Section 1.406 – Cable Television and Communications Commissions to be named Cable and Broadband Internet Commission

(Sample motion – move to pass third and final reading of ordinance as presented)

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager's Items Which Require Action:

1. Approval of Proposed MOA for Portsmouth School Custodial Supervisors
2. Approval of Proposed MOA for Portsmouth School District Paraeducators and Portsmouth Police Civilian Employees Association
3. Approval of Collective Bargaining Agreement with Portsmouth City Employees, Local #1386B
4. Drainage and Water Services Access Easement for Property Located at 1169/1171 Sagamore Avenue
5. Public Access Easement for 238 Deer Street
6. *Formal Acceptance of Longmeadow Road Property Located at Longmeadow Road
7. *Acceptance of Hodgdon Way as a City Street
8. Easements for Property Located at 951 Peverly Hill Road and 1400 Lafayette Road

XII. CONSENT AGENDA

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

- A. Request from Greg and Beth Danilowski, Richardson’s Market, to install a Projecting Sign at 142 State 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***
- B. Letter from Becky Kates, Krempels Center, requesting permission to hold the 26th Annual Cisco Brewers Portsmouth Memorial Day 5K on Sunday, May 28, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Letter from Rich Clyborne, Gundalow Company, requesting permission to hold the 2023 Riverfest Event on Saturday, June 3, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- D. Letter from Alex Cave and Wendy McCoole, Strawberry Banke Museum, informational listing of events being held on Strawberry Banke grounds in 2023. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- E. Letter from Valerie Rochon, Portsmouth NH 400th Inc., informational listing of three upcoming signature events in celebration of the 400th anniversary of Portsmouth. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence ***(Sample motion – move to accept and place on file)***
- B. Letter from Barbara McMillan, Chair, Conservation Commission, requesting City Council’s support for review and proposed revisions to Article 10, Environmental Protections Standards of the Zoning Ordinance ***(Sample motion – move to accept and place on file)***

XIV. MAYOR McEACHERN

1. Appointments to be Considered:
 - Appointment of Anna Howard to the Economic Development Commission, alternate
 - Appointment of Anne Hayes to the COVID Response Task Force Blue Ribbon Committee
2. *Appointment of City Manager Karen Conard as the Portsmouth Representative to the Pease Development Authority Board of Directors
3. *Update on Sound Barriers
4. *Sherburne School Neighborhood Meeting – January 31, 2023 at 6:00 p.m.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. Community Power update, motion to schedule work session
(Sample motion – Move to schedule a work session February 13, 2023 to present The Energy Advisory Committee Electric Aggregation Plan (EAP) and Community Power launch plans prior to February 21 proposal to the council from PEAC to adopt the EAP)

B. COUNCILOR TABOR AND COUNCILOR DENTON

1. *Report Back on Fee Committee

C. COUNCILOR BAGLEY

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the January 5, 21023 meeting ***(Sample motion – move to approve and accept the action sheet and minutes of the January 5, 2023 Parking and Traffic Safety Committee meeting)***

D. COUNCILOR COOK AND COUNCILOR BAGLEY

1. ***(Sample motion #1 - 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.***
2. ***(Sample motion #2 - Move to adopt the attached proposed policy on outdoor dining.)***

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to Playground Update from the Portsmouth Rotary - \$15,000.00 ***(Sample motion – move to approve and accept the donation as presented)***
- B. Acceptance of Donation to Portsmouth Tree Project from the Portsmouth Rotary - \$15,000.00 ***(Sample motion – move to approve and accept the donation as presented)***

- C. Acceptance of Donation to the Skatepark from Michelle Dupras - \$50.00 (***Sample motion – move to approve and accept the donation as presented***)

XVII. CITY MANAGER’S INFORMATIONAL ITEMS

1. *McIntyre Update
2. Report Back on Disc Golf

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 19, 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 23, 2023

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

A. First Reading of Ordinance Amending Chapter 1, Article XVII, Section 1.1705 – Public Arts Funds:

The City Council recently voted to approve the expenditure of \$21,100 from the Public Art Fund Trust to assist in funding the anticipated art project at Bohenko Park. This City Council approved expenditure was presented to the Trustees of the Trust Funds who manage all of the City's Trust Funds to include the City of Portsmouth Public Art Trust. The terms of the Public Art Trust limit the use of the Trust's assets. The terms of the Trust direct that "the assets and income held in the Public Art Trust may be expended for any public art purpose which is consistent with the public art ordinance of the City."

The City's Art Ordinance, Chapter 1, Article XVII, Section 1.1705 (A), provides that "no less than ninety (90%) percent of the principal amount of public art contribution generated by any particular building project shall be expended on the site of that project." Currently, there is \$21,100 in the Public Art Trust which represents the remainder of the City's contribution of \$150,000 for public art at the Foundry Garage. The public art project at the Foundry Garage is now completed but it did not require the expenditure of the entire 90% of the principle amount contributed for the project.

However, the City's Public Art Ordinance does not provide direction for the use of surplus funds in the Trust. Compliance with the ordinance prevents the Trustees from providing more than 10% of the original \$150,000 contribution to a different art project. That means that the Trust can only contribute \$15,000 to the Bohenko Park project even though the City Council authorized the expenditure of \$21,100. There is no authority for the City Council or the Trustees of the Trust Funds to distribute the surplus of \$6,100 in the Trust for the benefit of any other project even though it is not needed for the Foundry Garage project.

The City's Art Ordinance did not contemplate a surplus of funds in the Trust after the completion of a project.

However, this can be remedied with a simple amendment to the ordinance permitting the City Council to authorize the expenditure of surplus funds from the Public Art Trust. [The attached proposed amendment to the City’s Funding of Public Art Ordinance](#) accomplishes this goal.

I recommend that the City Council move to pass first reading and schedule a public hearing and second reading at the February 6, 2023 City Council meeting.

B. Public Hearing and Second Reading of Ordinance Amending Chapter 7, Article IVA, Section 7A.408 – Taxi Stands Designated:

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](#), which is attached for this evening’s public hearing and second reading.

I recommend that the City Council move to pass second reading, and schedule a third and final reading at the February 6, 2023 City Council meeting.

C. Third and Final 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.

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. **Approval of Proposed MOA for Portsmouth School Custodial Supervisors:**

Attached please find a memorandum from the City's Labor Negotiator, Tom Closson, along with a proposed Memorandum of Agreement with the Portsmouth School Custodial Supervisors.

I recommend that the City Council move to approve the proposed agreement as presented.

2. **Approval of Proposed MOA for Portsmouth School District Paraeducators and Portsmouth Police Civilian Employees Association:**

Attached please find a memorandum from the City's Labor Negotiator, Tom Closson, along with a proposed Memorandum of Agreement with the Portsmouth School District Paraeducators and the Portsmouth Police Civilian Employees Association.

I recommend that the City Council move to approve the proposed agreement as presented.

3. **Approval of Collective Bargaining Agreement with Portsmouth City Employees, Local #1386B:**

Attached please find a memorandum from the City's Labor Negotiator, Tom Closson, along with a proposed Collective Bargaining Agreement with Portsmouth City Employees, Local #1386B.

I recommend that the City Council move to approve the proposed agreement as presented.

4. **Drainage and Water Services Access Easements for Property Located at 1169/1171 Sagamore Avenue:**

At its regularly scheduled meeting on August 18, 2022, the Planning Board granted a wetlands conditional use permit to John and Colleen Hebert for temporary and permanent wetlands buffer impacts at property located at 1169 and 1171 Sagamore Avenue. As a part of this vote, the Planning Board recommended the City grant a drainage easement to the property owners, and to accept a drainage easement and an access easement for water services from the property owners.

All three easements are shown on the drawing included in the Council packet.

As a part of the Capital Improvements Plan, the City plans to construct a sidewalk along the State road Sagamore Avenue. The City will be responsible for the maintenance of the sidewalk, however the property owners at 1169 and 1171 Sagamore Avenue have agreed to construct the portion of the sidewalk in front of their properties as a part of this project. In order to support this new sidewalk, the property owners have agreed to construct a culvert crossing from 1169 Sagamore Avenue, under the right of way, and emptying on City property across the street. This new culvert will include construction of a filtration system on City property.

The City will own and maintain this infrastructure once it is completed and City staff confirm the culvert and associated infrastructure meet City specifications. However, because the water will pass from the sidewalk over private property through the culvert and onto City land, an easement is necessary to secure future rights for water to pass onto the City parcel.

Second, City Public Works staff anticipate there may be a need for a second culvert at the southerly end of this project. To support this potential need, the property owners have agreed to convey a drainage easement to the City in the event the City constructs this second culvert.

Finally, the property owners have agreed to convey to the City an access easement for water services so the City may monitor private water laterals to be constructed as a part of the private development project.

The Planning and Legal Departments have reviewed [these easements](#) for form. The Heberts plan to convey the property to Sagamore Group, LLC, therefore the Legal Department recommends granting an easement to and accepting easements from Sagamore Group, LLC once that transaction is finalized.

I recommend that the City Council move to authorize the City Manager to accept and record a drainage easement and an access easement for water services from Sagamore Group, LLC and to grant a drainage easement to Sagamore Group, LLC.

5. Public Access Easement for 238 Deer Street:

On March 17, 2022, the Planning Board granted 238 Deer Street, LLC (“Owner”), site plan approval for a new 3-4 story mixed-use building with first floor retail and 21 micro housing units at property located at 238 Deer Street (“Property”). This project is on the lot of the former VFW and Staley restaurant. In addition to site plan approval, the project has received a conditional use permit for parking from the Planning Board and a variance for open space from the Board of Adjustment.

The approved site plan includes a pedestrian access easement to be conveyed from the Owner to the City. This [Easement for Public Access](#) presented to Council for approval abuts an existing public access easement located at 46 Maplewood Avenue, which was accepted and approved by Council on August 12, 2019. The Owner of 238 Deer Street is not receiving any open space credit for community space by granting this easement to the City. The easement was recommended by TAC in order to create a wider public access easement between the two lots (238 Deer and 46 Maplewood). The easement area totals 390 square feet and is highlighted in yellow in [the Plan attached](#) to the easement in the Council packet as Exhibit A.

All of the foregoing has been reviewed by the Planning and Legal Departments.

I recommend that the City Council move to grant authority for the City Manager to negotiate, execute, accept and record the Easement for Public Access in a form similar to the attached.

6. Formal Acceptance of Longmeadow Road Property Located at Longmeadow Road:

At the City Council meeting on May 6, 2019, the City accepted property from Service Credit Union as a part of a subdivision in order for the City to construct an extension of Longmeadow Road. Since that time, the City has completed construction of the Longmeadow Road extension. This roadway extension is designed pursuant to a traffic study in order to divert traffic from the intersection of Lang Road and Lafayette Road to the intersection of Longmeadow Road, Ocean Road and Lafayette Road, where there is an existing traffic signal.

Although the City accepted the property upon which Longmeadow Road now sits, the City used State-administered federal funding to complete the project. The State requires the City formally accept this new roadway in order to close out the project. The City Council has the authority to accept streets pursuant to RSA 299:1.

The Public Works Department and the City’s consulting engineers at CMA Engineers, Inc. and Tighe and Bond have reviewed the new roadway and find it meets City specifications.

I recommend that the City Council move to accept Longmeadow Road as a City street.

7. Acceptance of Hodgdon Way as a City Street:

The City has completed the Hodgdon Way Project, which culminated in the construction of a new public right of way. During the project, the City built a new roadway to traverse through the West End Yards development along the bank of Hodgdon Brook to create a link between Cate Street and the Route 1 Bypass. This new roadway segment now gives Islington Street and Bartlett Street area traffic direct access to the traffic signals at the intersection of Borthwick Avenue and the Route 1 Bypass.

One way in which public streets are created is by formal acceptance of the City Council (RSA 229:1). Although the City owns the property upon which Hodgdon Way now sits, it is best practice for the City Council to formally vote to accept a new public way. The Public Works Department and their consulting engineers Underwood Engineers, have reviewed the entire project in depth and find it meets City specifications.

I recommend that the City Council move to accept Hodgdon Way as a City street.

8. Easements for Property Located at 951 Peverly Hill Road and 1400 Lafayette Road:

On April 30, 2020, the Planning Board granted site plan review approval for the construction of a 53-unit garden and townhouse style residential development with six structures at the former location of the Yoken’s Restaurant. The Planning Board extended this approval by votes on April 22, 2021 and May 19, 2022. As a part of its approval, the Planning Board recommended the City accept community space easements, a sidewalk easement and an access easement for water services.

The sidewalk easement will be used to secure that portion of the Peverly Hill Road multi-use path over 951 Peverly Hill Road. The developer, Yokens Townhomes, LLC, will construct this portion of the multi-use path at its expense, along with the community space improvements.

The location of the proposed community space easements are reflected on [the attached plans](#). Finally, the water access easement which will be from Yokens Townhomes, LLC will permit City staff to monitor the private water infrastructure for leaks and facilitate shutoffs.

The Planning and Legal Departments have reviewed the easements for form, and recommend the City Council authorize the City Manager to accept and record [the attached easements](#). There may be minor edits to the easement documents or plans to facilitate recording.

I recommend that the City Council move to authorize the City Manager to finalize, accept and record community space easements, a sidewalk easement, and an access easement for water services from 4 Amigos LLC and Yokens Townhomes, LLC.

XII. Consent Agenda:

A. Projecting Sign Request – 142 State Street:

Permission is being sought to install a projecting sign at [142 State Street for Richardson’s Market](#) that extends over the public right of way, as follows:

Sign dimensions: 52” x 21.3” & 19.5” x 12.75”
Sign area: 9.4 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.*

XVI. Approval of Grants/Donations:

A. Acceptance of Donation to Playground Update from the Portsmouth Rotary- \$15,000:

[Attached please find a donation form from the City Manager’s Office](#) requesting acceptance of \$15,000 for future Playground Updates from the Portsmouth Rotary.

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

B. **Acceptance of Donation to Portsmouth Tree Project from the Portsmouth Rotary - \$15,000:**

Attached please find a donation form from the City Manager's Office requesting acceptance of \$15,000 for Tree Projects from the Portsmouth Rotary.

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

C. **Acceptance of Donation to the Skateboard Park - \$50:**

Attached please find a donation form requesting acceptance of \$50 for the Skateboard Park from Michelle Dupras.

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

XVII. City Manager's Informational Items:

1. **McIntyre Update:**

City Attorney Susan Morrell and I will provide an update on the McIntyre Redevelopment Project at this evening's meeting.

2. **Report Back on Disc Golf:**

Please find attached a report back from the Recreation Department regarding disc golf, which was requested at the September 19, 2022 City Council meeting.