

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, NOVEMBER 13, 2023 TIME: 5:30 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_HQ0leFgpTWu_vVvPEwpMhw

5:30PM – ANTICIPATED NON-PUBLIC SESSION IS BEING HELD IN CONFERENCE ROOM A

1. COLLECTIVE BARGAINING AGREEMENT – AFSCME 1386A – RSA 91-A:3, II (a)
2. LITIGATION AND LEGAL ADVICE – RSA 91-A:3 II (e) and (I)

AGENDA

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

- I. **6:00PM - WORK SESSION – PROPOSED COMMUNITY POLICING FACILITY**
Zoom link: https://us06web.zoom.us/webinar/register/WN_i4cL9jPmSxe8P9VDIZyKbQ
- 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 Ordinances:

- A. First Reading of Ordinance amending Chapter 6, Article XVII, Sections 6.1701-6.1707 - Outdoor Dining Encumbrance Permit (**Sample motion – move to pass first reading and schedule a public hearing and second reading at the December 4, 2023 City Council meeting to amend Chapter 6, Licenses, Article XVII, Outdoor Dining Encumbrance Permit, Sections 6.1701-6.1707**)

- B. First Reading of Ordinance amending Chapter 1, Article III, Section 1.304 – Recreation Board Membership (***Sample motion – move to pass first reading, refer this amended ordinance to the Governance Committee and hold second reading and public hearing at the December 4, 2023 City Council meeting***)
- C. First reading of Ordinance amending Chapter 1, Article IX, Section 1.901 – Municipal Officials Disclosure (***Sample motion – move to pass first reading and hold second reading and public hearing at the December 4, 2023 City Council meeting***)

Second Reading of Ordinance:

- D. Second Reading of Ordinance amending Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure, Section 1.902, Election Candidate Financial Disclosure (***Sample motions – #1) move to adopt the amendments proposed by Councilor Denton) #2) move to hold second reading and public hearing at the December 4, 2023 City Council meeting***)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

- 1. Approval of the 2024 City Council Calendar (***Sample motion – move to approve the proposed schedule for 2024 meetings as presented***)
- 2. Grays Lane Right of Way Easement (***Sample motion – moved to authorize the City Manager to accept a right of way easement over land at 219 Sagamore Avenue from Thomas and Deirdre Hammar (Tax Map 221 Lot 19)***)
- 3. Revocable License for 217 Austin Street (***Sample motion – move to authorize the City Manager to execute and deliver a Revocable License allowing Owners of 217 Austin Street to replace their existing steps and install pavers on City property***)

XII. CONSENT AGENDA

- A. Request from Ashley Dumont, Coastal Thyme Holistic Skin + Wellness, to install a Projecting Sign at 208 Market Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning & Sustainability 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. Request from Andrea Schwanbeck, Brass Tacks Photography, to install a Projecting Sign at 78 Fleet Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning & Sustainability 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***

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from John Stebbins, Procon, requesting for accent lighting to be affixed to the city street light pole at the corner of Maplewood Avenue and Raynes Avenue to illuminate the sculpture, Hard on the Wind (***Sample motion – move to refer to the City Manager with Authority to Act***)
- C. Memo from Public Arts Review Committee regarding "Love Locks" Fence (***Sample motion – move to accept and place on file***)
- D. Letter from Hearth Market, LLC, requesting permission to hold an Outside Beer Garden Event at Hearth Market from 2:00 p.m. to 8:00 p.m. (***Sample motion – move to refer to the City Manager with Authority to Act***)

XIV. MAYOR McEACHERN

1. Resignations:
- Michelle Consolazio from the Citizens Advisory Committee
 - Jonathan Sandberg from the Citizens Advisory Committee
 - Allison Tanner from the Conservation Commission
 - A. Robert Thoresen from the Public Art Review Committee
 - John Kennedy from the Sustainable Practices Blue Ribbon Committee

2. Appointments to be Considered:
 - *Herb Lloyd to the Sustainability Committee
 - *Aubrey Gewehr to the Sustainability Committee
 - *Effie Malley to the Sustainability Committee
 - *Jessica Blasko to the Sustainability Committee
 - *Steve De Trolio to the Sustainability Committee
 - *Bert Cohen to the Sustainability Committee
 - *Torey Brooks to the Sustainability Committee
 - William Lyons (application submitted) to the Sustainability Committee
 - *Chas Sullivan (application submitted) to the Sustainability Committee
3. *Appointments to be Voted:
 - Annelise Hartley to the Citizens Advisory Committee
 - Kirsten Barton to the Citizens Advisory Committee
 - Sachiko Akiyama to the Cultural Planning Subcommittee
4. *Request Report Back regarding Status of Jones Avenues MAC Metals

XV. CITY COUNCIL MEMBERS

A. COUNCILOR DENTON & COUNCILOR COOK

1. Draft Solar Array Overlay District (***Sample motion – move for the City Manager to report back on the best way to pursue the creation of a Solar Array Overlay District in our zoning ordinance***)

B. COUNCILOR BAGLEY

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the October 5, 2023 meeting (***Sample motion – move to accept and approve the action sheet and minutes of the October 5, 2023 Parking & Traffic Safety Committee meeting***)
2. Parking and Traffic Safety Committee Action Sheet and Minutes of the November 2, 2023 meeting (***Sample motion – move to accept and approve the action sheet and minutes of the November 2, 2023 Parking & Traffic Safety Committee meeting***)
3. State Street Two-Way Study – Results

C. COUNCILOR COOK

1. Draft Changes to the Sidewalk Policy (***Sample motion – the Governance Committee requests review and approval of their recommended changes to the City Council sidewalk policy***)
2. Ethics and Transparency Policy (***Sample motion – the Governance Committee requests review and approval of a new Ethics and Transparency Policy created to provide guidance on Ethics and matters***)

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of the Pre-Disaster Mitigation Grant - \$965,333.33 (***Sample motion – move to authorize the City Manager to enter into a Grant Agreement with the State of New Hampshire Department of Safety to accept \$965,333.33 with a City match of 25% from the Pre-Disaster Mitigation Grant Program***)
- B. Acceptance of the Internet Crimes Against Children (ICAC) Grant, Supplement 2 - \$381,221.00 (***Sample motion – move to approve and accept the grant presented***)
- C. Acceptance of the Bulletproof Vest Grant - \$11,437.50 (***Sample motion – move to approve and accept the grant as presented***)
- D. Acceptance of Donation to the Police Department of a Television Monitor from The Home Depot for investigative purposes (***Sample motion – move to approve and accept the donation as presented***)
- E. Acceptance of Donation for maintenance of historic cemeteries from Elise Parham in honor of Portwalk Place - \$100.00 (***Sample motion – move to approve and accept the donation as presented***)

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

- 1. *Update on Flashvote
- 2. Shop Around Town Event Announcement
- 3. *Food Permit Annual Update
- 4. *Right of Entry – Former Jones School Site at Pease

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**



Karen S. Conard
City Manager

CITY OF PORTSMOUTH

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

Date: November 9, 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 November 13, 2023

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

A. First Reading of Ordinance Amending Chapter 6, Article XVII, Sections 6.1701-6.1707 – Outdoor Dining Encumbrance Permit:

The City Council at its September 18, 2023 meeting reviewed the Economic Development Commission's Recommendations regarding Outdoor Dining on Municipal Property ("EDC's Recommendations") and voted to refer the EDC's Recommendations to the Legal Department for the purposes of drafting an ordinance. The EDC's Recommendations sought to balance the competing interests for use of the public realm, with the goal of enhancing the economic vitality of the City, ensuring ADA accessibility, preserving access to downtown businesses and maintaining the safe flow of vehicular and pedestrian traffic. The EDC's Recommendations also included incorporating staff recommendations. Representatives of the Inspections, Fire, Health, Planning, Public Works, Legal and Economic Development Departments have reviewed the EDC's Recommendations and participated in drafting this proposed ordinance.

The proposed ordinance creates an Outdoor Dining Encumbrance Permit that will be administered through the City's online permitting system. The ordinance clarifies the following: where outdoor dining is permitted (permitted in sidewalks and parking spaces, prohibited on street and in loading zones); what information is required from the applicant (permission from abutter if dining area is in front of its property); more detailed site plans (to flag sight line, utility access issues and layout, with staff assistance); fees to be established by the Fee Schedule Study Committee; restrictions on term of permit (due to special events, construction projects, emergencies) and the creation of penalties (for failure to remove property from the encumbered area after the permit has expired).

The proposed ordinance seeks to balance elements that belong in an ordinance while leaving to staff the development and implementation of design standards and permitting details. The ordinance acknowledges that staff will develop Design, Installation and Maintenance Standards, which will include ADA requirements, Building, Fire and Health Codes, streetscape and other design standards, which may be amended as needed changes arise, as well as a review of transportation and land use considerations and impacts to traffic for pedestrian and vehicular safety.

Proposed Motion: Vote to pass first reading and schedule a public hearing and second reading at the December 4, 2023 City Council meeting to amend Chapter 6, Licenses, Article XVII, Outdoor Dining Encumbrance Permit, Sections 6.1701-6.1707.

B. First Reading of Ordinance Amending Chapter 1, Article III, Section 1.304 – Recreation Board Membership:

At its regularly scheduled meeting of October 18, 2023, the Recreation Board voted to recommend a change to its membership. This change is intended to memorialize the current membership of the Recreation Board in Ordinance. Therefore, the Recreation Director and the Legal Department recommend the City Council amend [Chapter 1, Section 304](#) consistent with the changes detailed in the attached redlined document.

The Legal Department recommends the City Council refer this proposed amendment to the Governance Committee and schedule second reading at the next City Council meeting.

Proposed Motion: Move to pass first reading, refer this amended ordinance to the Governance Committee and hold second reading and public hearing at the December 4, 2023 City Council meeting.

C. First Reading of Ordinance Amending Chapter 1, Article IX, Section 1.901 – Municipal Officials Disclosure:

At the October 16th City Council meeting, Councilor Cook presented proposed amendments to the [Conflict of Interest Ordinance, Chapter 1, Article IX, Section 1.901](#). These amendments were proposed by the Governance Committee and reviewed by Legal Department prior to the first reading this evening.

Proposed Motion: Move to pass first reading and hold second reading and public hearing at the December 4, 2023 City Council meeting.

D. Second Reading of Ordinance Amending Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure, Section 1.902, Election Candidate Financial Disclosure:

Proposed amendments to [Ordinance Chapter 1, Article IX, Section 1.902](#) came before the Council at their October 16, 2023, meeting for second reading. The Council discussed several amendments proposed by Councilor Denton, but rather than voting on these amendments, the Council referred the proposed amendments to the Legal Department for review and report back.

A revised version of the Ordinance that incorporates the proposed amendments from October 16, 2023, is in the Council packet and is on the agenda for a second reading on November 13, 2023. The Council will need to vote on these proposed amendments and any additional amendments at their meeting on November 13, 2023. The Ordinance will then need to return for another second reading at the Council’s December 4, 2023, meeting.

Legal has reviewed the proposed amendments to the Ordinance as drafted. The Council expressed concern about the legality of eliminating the \$100 threshold for disclosures of contributions and expenditures. The State statute governing disclosures of campaign contributions and expenditures, RSA 644:1-13, applies only to certain State and County elected positions and does not apply to City elections. The provisions of RSA 644:14-22 that concern political advertising, push polling, and enforcement are applicable to Cities and Towns.

Moreover, RSA 47:17 specifically empowers Cities and Towns to make laws “requiring the reporting of contributions to, and expenditures by, any candidate or political committee made for purpose of influencing the election of any candidate for local elective office.” RSA 47:17, XIV-b. Thus, the City Council is empowered to set the disclosure limits it believes necessary to regulate the reporting of campaign contributions and expenditures.

Proposed Motion: Move to Adopt the amendments proposed by Councilor Denton.

Proposed Motion: Move to hold second reading and public hearing at the December 4, 2023 City Council meeting.

XI. City Manager’s Items Which Require Action:

1. Approval of the 2024 City Council Calendar:

Please find attached a proposed calendar of City Council meetings for 2024 for your review and approval.

I recommend that the City Council move to approve the proposed schedule for 2024 meetings as presented.

2. **Grays Lane Right of Way Easement:**

The Department of Public Works seeks to improve the road known as Grays Lane, which connects Sagamore Avenue to Broad Street. The City currently owns a right of way interest over half of Grays Lane, and the owners 219 Sagamore Avenue have offered to convey the remaining right of way interest to the City. This conveyance would facilitate planned improvements to Grays Lane in order to remediate existing drainage issues relating to this roadway. This conveyance would clear the chain of title and is recommended by the Public Works Department.

At its regularly scheduled meeting of October 19, 2023 the Planning Board voted to recommend the City Council accept this right of way on behalf of the City.

The right of way easement would coincide with the existing 10' wide driveway easement and would utilize existing legal descriptions. [The area of the easement is depicted in blue on the attached drawing.](#)

I recommend that the City Council move to authorize the City Manager to accept a right of way easement over land at 219 Sagamore Avenue from Thomas and Deirdre Hammar (Tax Map 221 Lot 19).

3. **Revocable License for 217 Austin Street:**

Patrick P. Lavoie and Lauren E. Grady are owners of property located at 217 Austin Street, Tax Map 145, Lot 75 (“Owners”). The property has existing wooden steps that are in poor condition and a portion of the steps appear to be in the City’s right of way (sidewalk on Austin Street). The Owners seek to replace the existing front wooden steps with new granite steps. The Owner is also planning to install pavers along the front of the property and a section of the pavers also appear to be in the City’s right of way.

The Planning, Public Works and Legal Departments have reviewed the Owners’ request and would support the granting of a revocable license allowing the Owners to replace the steps and install the pavers. [Attached as Exhibit A is a proposed Revocable License](#) which will allow the Owners to replace the existing steps with new, safer granite steps and pavers along the front facade of the building, a portion of which appears to be in the City’s right of way, be responsible for any liability associated with the new steps and pavers and to remove the steps and pavers if required by the City. [See attached photograph Exhibit B](#) which depicts existing steps, front facade of the property and the Austin Street sidewalk.

I recommend that the City Council move to authorize the City Manager to execute and deliver a Revocable License allowing Owners of 217 Austin Street to replace their existing steps and install pavers on City property.

XII. Consent Agenda:

A. Projecting Sign License – 208 Market Street:

Permission is being sought to install a projecting sign at [208 Market Street](#) that extends over the public right of way, as follows:

Sign dimensions: 24” x 24”

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.*

B. Projecting Sign License – 78 Fleet Street:

Permission is being sought to install a projecting sign at [78 Fleet Street](#) that extends over the public right of way, as follows:

Sign dimensions: 30” x 48”

Sign area: 10 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 Grant for Public Works Department - \$965,333.33:

The City has been awarded a grant for \$965,333.33 in Congressionally Directed Spending funds from the Pre-Disaster Mitigation Grant Program. The funding from this grant will be used to implement improvements in the resiliency of Pierce Island Road and the adjacent lot to maintain access to the Pierce Island Wastewater Facility as well as allow community access to the park area and walking paths. This funding will be used to raise the low-lying section of Pierce Island Road and adjacent lot above the 100-year flood plain and projected sea level rise. Raising this area will maintain access to the Pierce Island Wastewater Facility and allow the community to access the park and walking paths throughout the year.

I recommend that the City Council move to authorize the City Manager to enter into a Grant Agreement with the State of New Hampshire Department of Safety to accept \$965,333.33 with a City match of 25% from the Pre-Disaster Mitigation Grant Program.

B. Acceptance of ICAC Grant for Police Department – \$381,221.00:

At the [October 23, 2023 Police Commission meeting](#), the Board of Police Commissioners approved and accepted an Internet Crimes Against Children (ICAC) grant, Supplement 2, in the amount of \$381,221 from the US Department of Justice. This award is a continuation of the federal ICAC grant.

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

C. Acceptance of Bulletproof Vest Grant for Police Department - \$11,437.50:

At the [October 23, 2023 Police Commission meeting](#), the Board of Police Commissioners approved and accepted a Bulletproof Vest grant in the amount of \$11,437.50 from the Bureau of Justice Assistance Patrick Leahy Bulletproof Vest Partnership. This award helps to fund 50% of the cost associated with outfitting new officers and replace old vests for current officers.

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

D. Acceptance of Donation for the Police Department – Television Monitor:

At the [October 23, 2023 Police Commission meeting](#), the Board of Police Commissioners approved and accepted an unsolicited donation of a television monitor from the Home Depot for investigative purposes. The Portsmouth Police Department and Organized Retail Crime (ORC) Investigators are working collaboratively on an ORC investigation where television monitoring equipment is necessary in the furtherance of this case.

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

E. **Acceptance of Donation for the Historic Cemeteries - \$100:**

Attached please find a donation form outlining a donation from Elise Parham in the amount of \$100.

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

XVII. City Manager's Informational Items:

1. **Update on Flashvote:**

There were a total of 407 participants for the latest FlashVote on Climate Action which ran from October 25th to October 27th.

Here are some quick takeaways:

- 75.5% of residents surveyed are “very” or “extremely” concerned about reducing greenhouse gas emissions to limit the future effects of global warming. 11.7% said “a little” or “not at all” concerned;
- Nearly 33% of those surveyed report they plan to opt for 100% renewable energy through Portsmouth Community Power or another provider in the future. This in addition to the 26% that say they have already made the switch; and
- Nearly 56% of respondents said they reduced their solo driving by working more from home, biking, walking, or taking public transportation. 55% said they are likely to do that in the future.

Verbatim comments about what actions respondents are taking include:

- “Tough with a very old house and limited budget (retired)”;
- “Composting (at recycling center), installing heat pumps”; and
- “Keep heat at 57 all winter. Live in townhouse, have no control over insulation, solar, heat pump, etc.”

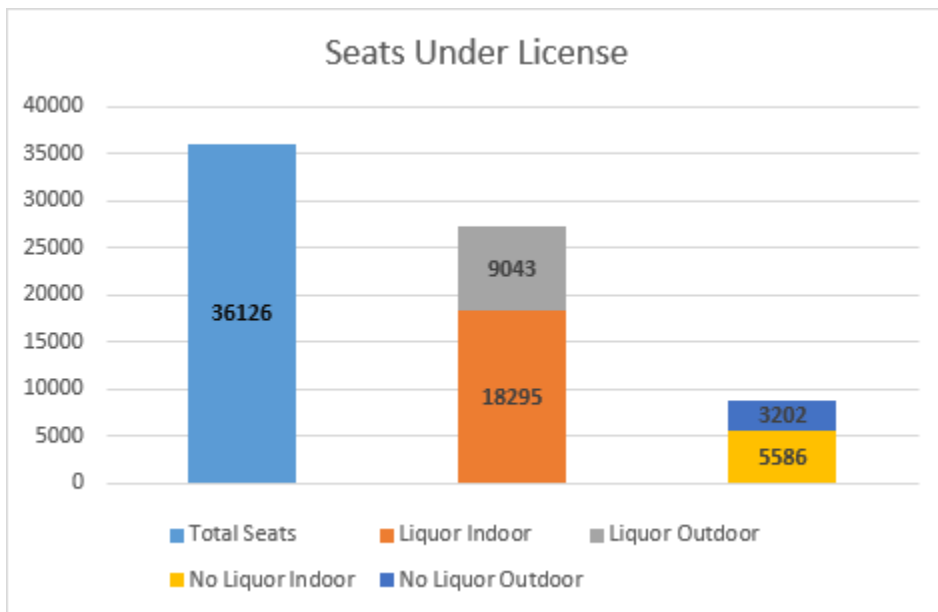
Full results of this and the other FlashVote surveys can be found on the City’s website on the FlashVote page or by going to portsnh.co/flashvote.

2. **Shop Around Town Event Announcement:**

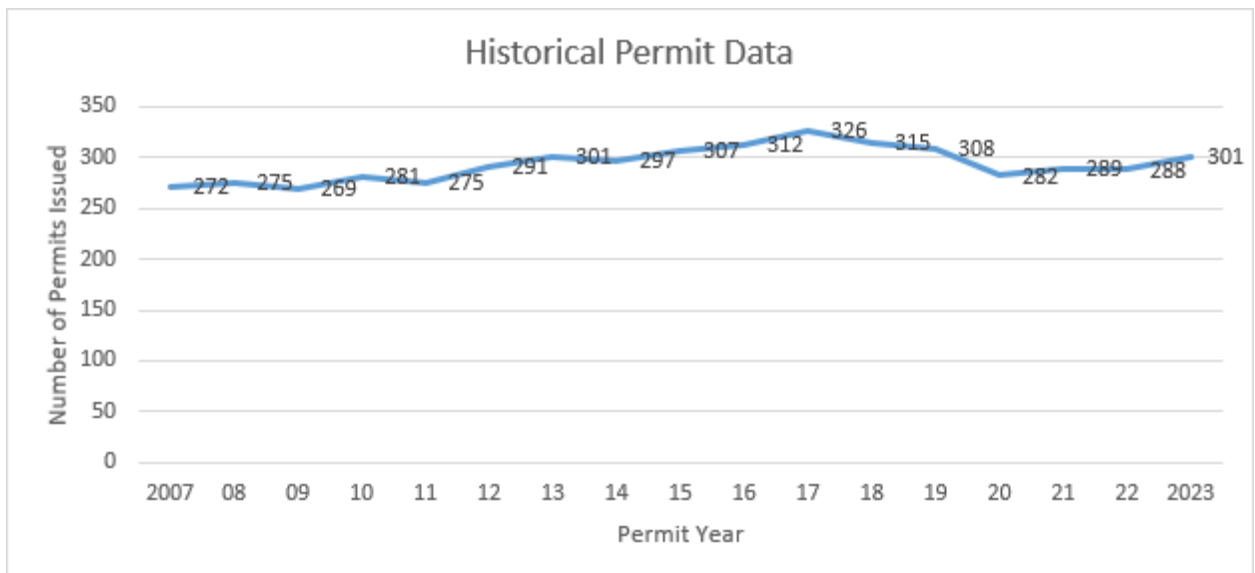
Attached please find a memorandum from Assistant City Manager Sean Clancy announcing a new City event on December 2, 2023 entitled, “Winter Shop Around Town.”

3. **Food Permit Annual Update:**

Each year at this time, the Health Department updates its Food and Liquor Permit data based upon the annual renewal schedule. As of November 2023, the City issued a total of 301 food permits - 164 permits with liquor licenses and 137 permits without liquor licenses. The total number of food permit seats is 36,126 and is described in greater detail in the graph below:



Information relative to historical permit data is depicted in the graph below:



Note: seat numbers are self-reported, and we have new businesses going through the permitting process throughout the year. These numbers indicate an increase from 2022.

4. **Right of Entry – former Jones School Site at Pease:**

In the Pease Development Authority’s November Board packet, there is an item relative to a Right of Entry granted by the PDA to the City for site investigation purposes at 255 Corporate Drive, the site of the former Jones School.

The City is interested in determining the viability of this site for a multi-sport athletic field. The granting of a Right of Entry allows the City to perform preliminary investigation into whether the site is suitable. If the answer is no, then the efforts at this site would cease. If the site is deemed potentially suitable, subsequent efforts involving the City and PDA would include discussions on precisely what the City proposes for the site and ensuring that it complies with PDA Zoning regulations in the Business/Commercial zone in which the parcel lies (i.e., development of a basic concept plan). Recreational uses, including playing fields, are permitted in that zone so long as the use is maintained on a non-profit basis for the benefit of Pease tenants and/or the City of Portsmouth and the Towns of Newington and Greenland. The PDA would certainly be most interested in a use that would have the potential to serve a wide array of recreational users, which a multi-use field appears to satisfy. The next, potentially more complex issue would concern the nature of an actual lease agreement (term, consideration, construction timetable, etc.). Among the issues for consideration would be the approval of the language in the lease by the FAA.

The PDA Board would ultimately need to authorize any proposed development and lease agreement. As such, the Right of Entry is the first step in this process.