

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, DECEMBER 4, 2023 TIME: 6:30PM

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

https://us06web.zoom.us/webinar/register/WN_a4GN3jrrTlu1MJysVBELZg

6:30PM – ANTICIPATED NON-PUBLIC SESSION IS BEING HELD IN CONFERENCE ROOM A
1. CONSIDERATION OF LEGAL ADVICE RELATIVE TO COMCAST FRANCHISE AGREEMENT RENEWAL PURSUANT TO NH RSA 91-A:3 II (I)

AGENDA

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

- I. WORK SESSION
- 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
 - A. Presentation of the Blue Ribbon Committee on Historical Archive – Tom Watson (**Sample motion – move to continue the Blue Ribbon Task Force on Historical Archives to pursue the recommendations outlined in their report of November 20, 2023**)
- 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 IV – Commission and Authorities – Public Art Review Committee (**Sample motion – move to pass first reading and hold a public hearing and second reading at the December 18, 2023 City Council meeting**)

Public Hearings/Second Reading of Ordinances:

- B. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article III, Section 1.304 – Recreation Board Membership (***Sample motion – move to pass second reading and hold third and final reading at the December 18, 2023 City Council meeting***)
- PRESENTATION
 - CITY COUNCIL QUESTIONS
 - PUBLIC HEARING SPEAKERS
 - ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS
- C. Public Hearing/Second reading of Ordinance amending Chapter 1, Article IX, Section 1.901 – Municipal Officials Disclosure (***Sample motion – move to pass second reading and hold third and final reading at the December 18, 2023 City Council meeting***)
- PRESENTATION
 - CITY COUNCIL QUESTIONS
 - PUBLIC HEARING SPEAKERS
 - ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS
- D. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure, Section 1.902, Election Candidate Financial Disclosure (***Sample motion – move to pass second reading and hold third and final reading at the December 18, 2023 City Council meeting***)
- PRESENTATION
 - CITY COUNCIL QUESTIONS
 - PUBLIC HEARING SPEAKERS
 - ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. *Supplemental Appropriation for Outside Counsel Litigation Fees
2. Approval of Memorandum of Agreement for Portsmouth School Clerical Employees
3. Approval of Memorandum of Agreement for Association of Portsmouth School Teachers
4. Approval of Memorandum of Agreement for Portsmouth City Employees – AFSCME Local #1386A
5. Portsmouth Indoor Pool Liquidating Charitable Trust

XII. CONSENT AGENDA

- A. Request from Ellen Bruton, Terpsichore, LLC, to install a Projecting Sign at 9 Commercial Alley (***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. Letter from Michaela Kneuer, Big Brothers Big Sisters of New Hampshire, requesting permission to close Pleasant Street on Saturday, September 21, 2024 from 1:00 p.m. to 4:00 p.m. for the 16th Annual Stiletto Sprint (rain date September 22, 2024) (***Anticipated action – move to refer to the City Manager with Authority to Act***)

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. *Presentation regarding Housing Navigator Update by Howard Snyder
- B. Letter from Cody Bureau requesting the City alternate every other year between white and colored lights on the Christmas Tree in Market Square
- C. Email Correspondence (***Sample motion – move to accept and place on file***)

XIV. MAYOR McEACHERN

1. *Holiday Parking (***Sample motion – move to authorize the City Manager to establish free holiday parking from December 16th to December 24th***)
2. Resignation:
 - Abigail Gindele from the Conservation Commission
3. Appointments to be Considered:
 - Stephen Buzzell to the Cemetery Committee
 - Kelly DeCourcy to the Citizen Advisory Committee
 - Susan Durling to the Citizen Advisory Committee
 - Alice Carey to the Conservation Commission
 - Maria Peppas to the Library Board of Trustees
 - Tyler McLaughlin to the Library Board of Trustees
 - Rick Chellman to the Planning Board
 - Paul Giuliano to the Planning Board
 - Peter Weeks to the Trustees of the Trust Fund

- Emma Stratton to the Arts & Cultural Commission
 - Courtney Perkins to the Arts & Cultural Commission
 - Karen Rosania to the Arts & Cultural Commission
 - Robin Albert Lehman to the Arts & Cultural Commission
 - Linnea Grim to the Arts and Cultural Commission
 - John Elias “Eli” Kaynor to the Arts and Cultural Commission
 - Kenneth Goldman to the Arts and Cultural Commission
 - Jason Goodrich to the Arts and Cultural Commission
 - Genevieve Aichele to the Arts and Cultural Commission
 - Jeffrey Cooper to the Arts and Cultural Commission
 - Catherine Saarela to the Arts and Cultural Commission
 - Theresa MacDowell to the Arts and Cultural Commission
 - Lennie Mullaney to the Public Art Review Commission
4. *Appointments to be Voted:
- 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 to the Sustainability Committee
 - Chas Sullivan to the Sustainability Committee

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR, COUNCILOR MOREAU AND COUNCILOR BLALOCK

1. *Report Back on the CIP Citizen Request Meeting

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of ARPA Funds for the Fleet Street Roadway Reconstruction - \$519,500.00
(Sample motion – move to authorize the City Manager to enter into an ARPA Grant Amendment No, 1 with the New Hampshire Department of Environmental Services for modification of the anticipated project substantial completion to the existing grant agreement)
- B. *Acceptance of Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant - \$460,000.00
(Sample motion – move to authorize the City Manager to enter into a Grant Agreement with the United States Department of Transportation to accept \$460,000.00 from the CRISI Grant Program. This funding will be used to perform preliminary engineering and development of specifications and cost estimates to replace the Bartlett Street bridge near the intersection of Bartlett and Cate Street)

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Jones Avenue Scrap Yard Report Back to the City Council
2. *Disposition of the McIntyre Property
3. *Pease Development Authority Board Meeting Update

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: November 30, 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 December 4, 2023

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

A. First Reading of Ordinance Amending Chapter 1, Article IV – Commission and Authorities – Public Art Review Committee:

Attached please find [an ordinance amending Chapter 1, Article IV – Commission and Authorities – Public Art Review Committee](#).

I recommend that the City Council move to pass first reading and schedule a public hearing and second reading at the December 18, 2023 City Council meeting.

B. Public Hearing and Second 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](#).

At the November 13th City Council meeting, the Legal Department recommended the City Council refer this proposed amendment to the Governance Committee and schedule second reading at this evening's meeting.

I recommend that the City Council move to pass second reading and schedule a third and final reading at the December 18, 2023 City Council meeting.

C. **Public Hearing and Second Reading of Ordinance Amending Chapter 1, Article IX, Section 1.901 – Municipal Officials Disclosure:**

Attached please find a proposed amendment to Chapter 1, Article IX, Section 1.901 – Municipal Officials Disclosure.

I recommend that the City Council move to pass second reading and schedule a third and final reading at the December 18, 2023 City Council meeting.

D. **Public Hearing and 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.

The Legal Department 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.

I recommend that the City Council move to pass second reading and schedule a third and final reading at the December 18, 2023 City Council meeting.

XI. City Manager’s Items Which Require Action:

1. **Supplemental Appropriation for Outside Counsel Litigation Fees:**

The City is involved in two complex litigation matters that are being handled by outside counsel and require additional funds. These matters are the City v. SoBow Square (the McIntyre litigation in the Superior Court’s Business Court that sits in the Hillsborough Northern District Superior Court in Manchester) and Banfield Road LLC v. the City, et al., (an environmental claim filed against the City and several other parties in Federal Court).

In the SoBow Square litigation the City is represented by the Hinckley Allen law firm and in the Banfield Road litigation the City is represented by the McLane law firm. In these two matters, there is no dedicated fund from which to pay the on-going monthly invoices from outside counsel. Both matters were initiated in the Spring of this year, after the budget was published and before the litigation was significantly underway. It would have been difficult to anticipate the on-going legal expenses associated with these matters at the time the budget was passed.

Our outside counsel has provided us with an educated approximation of their anticipated fees for the remainder of this fiscal year. Based on these estimates the Legal Department is requesting an additional \$450,000.

I recommend that the City Council move to schedule a Public Hearing on the Proposed Supplemental Appropriation from Unassigned Fund Balance of \$450,000 for Outside Counsel Legal Fees at the December 18, 2023 City Council meeting.

2. **Approval of Memorandum of Agreement for Portsmouth School Clerical Employees:**

Attached please find a proposed Memorandum of Agreement (MOA) for the Portsmouth Association of Clerical Employees, along with a memorandum from the City's Labor Negotiator, Tom Closson.

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

3. **Approval of Memorandum of Agreement for Association of Portsmouth School Teachers:**

Attached please find a proposed Memorandum of Agreement (MOA) for the Association of Portsmouth School Teachers, along with a memorandum from the City's Labor Negotiator, Tom Closson.

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

4. **Approval of Memorandum of Agreement for Portsmouth City Employees – AFSCME Local #1386A:**

Attached please find a proposed Memorandum of Agreement (MOA) for Portsmouth City Employees – AFSCME Local #1386A, along with a memorandum from the City's Labor Negotiator, Tom Closson.

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

5. Portsmouth Indoor Pool Liquidating Charitable Trust:

In 2010, a nonprofit tax-exempt corporation, Save the Indoor Portsmouth Pool (“SIPP”), was formed to “lessen the burdens of the City of Portsmouth” in connection with the operation of the Portsmouth Indoor Pool (“Pool”). Through a unique lease and operations agreement with the City of Portsmouth, SIPP was able to raise funds for needed capital improvements and helped modernize pool programming and the fee structure. The Pool is in a much better position now than in 2010 both with regard to the condition of the facility and operations.

SIPP desires to discontinue its existence as a nonprofit corporation. Last year, the lease and operations agreement with SIPP came to an end; SIPP having had no interest in renewing it. This year, SIPP is looking to complete the wind down of its activities by placing its remaining funds, approximately \$185,000, in a trust to benefit the Pool.

The Legal Department has been working with SIPP representatives, Attorney Charles Doleac and its Board President Michael Chubrich to develop the [attached Portsmouth Indoor Pool Liquidating Trust instrument](#) that is before the City Council for consideration. Suzanne Woodland, Deputy City Manager/Regulatory Counsel, has been working with SIPP and is prepared to speak to the draft Trust if there are questions. A representative of SIPP is also expected to be present.

With regard to the Trust, it is fairly simple. If the City continues to invest in and operate the Pool as it is currently doing, the Trust will provide matching funds for continued capital improvements. If the City determines not to operate the Pool any further, the funds would be distributed to another 501(c)(3) organization in the area that operates an indoor pool. The Trust is to sunset in 2030.

The Trustees of Trust Funds reviewed and approved the form of this Trust instrument at its meeting of November 16, 2023. If the City Council approves it as is, the Trustees are prepared to execute it without further action.

I recommend that the City Council authorize me to execute the Portsmouth Indoor Pool Liquidating Trust.

XII. Consent Agenda:

A. Projecting Sign License – 9 Commercial Alley:

Permission is being sought to install a projecting sign at [9 Commercial Alley](#) that extends over the public right of way, as follows:

Sign dimensions: 32” x 42”

Sign area: 9.3 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 Housing Navigator Update by Howard Snyder:

Howard Snyder, the City's Housing Navigator, will give an update regarding the upcoming engagement effort with Portsmouth Listens as well as introduce RKG's financial market analysis.

XVI. Approval of Grants/Donations:

A. Acceptance of ARPA Funds for the Fleet Street Roadway Reconstruction - \$519,500:

The City was awarded \$519,500 in ARPA funds for the Fleet Street Roadway Reconstruction project in 2022. The City Council accepted those funds in March of 2022, however the City is requesting a modification of the anticipated project substantial completion date for the project.

The following authorization is requested from the City Council for the City Manager to amend the current ARPA Grant agreement for the Fleet Street Reconstruction Project.

I recommend that the City Council move to authorize the City Manager to enter into an ARPA Grant Amendment No.1 with the New Hampshire Department of Environmental Services for modification of the anticipated project substantial completion to the existing grant agreement.

B. Acceptance of Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant - \$460,000:

The City has been awarded a grant of \$460,000 (\$345,000 in federal funds and \$115,000 for the City's 25 percent match) from the Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant. The funding from this grant will be used to perform preliminary engineering, and development of specification and cost estimates to replace the 135-year-old through plate girder bridge over Bartlett Street. The project will also perform preliminary engineering, and development of specification and cost estimates for surface and safety improvements at three grade crossing (Barberry Lane, Maplewood Avenue, and Green Street) on the CSX Portsmouth Branch and one public crossing (Market Street) on the CSX Newington Industrial Track. These improvements may include replacement of the crossing surface, installation of continuous welded rail through the crossing and installation of upgrades of active warning devices.

The following authorization is requested from the City Council for the City Manager to enter into a contract for the acceptance of these grant funds.

I recommend that the City Council move to authorize the City Manager to enter into a Grant Agreement with the United States Department of Transportation to accept \$460,000 from the CRISI Grant Program. This funding will be used to perform preliminary engineering and development of specifications and cost estimates to replace the Barlett Street bridge near the intersection of Bartlett and Cate Street.

XVII. City Manager's Informational Items:

1. Jones Avenue Scrap Yard Report Back to the City Council:

Attached please find a report back from the Legal Department regarding the status of the Jones Avenue/MAC Metals scrap metal yard as requested at the November 13th City Council meeting.

2. Disposition of the McIntyre Property:

I will provide a verbal update on the disposition of the McIntyre property at this evening's meeting.

3. Pease Development Authority Board Meeting Update:

I will provide a brief update on the business that was discussed at the Pease Development Authority (PDA) Board Meeting held on November 16th.