

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH

DATE: MONDAY, DECEMBER 18, 2023

TIME: 7:00PM

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_irHHP6D8T-uuQIkUWGih_w

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



PORTSMOUTH HIGH SCHOOL HOLIDAY ENSEMBLE PERFORMANCE



PROCLAMATION

1. Jessica's Law Awareness in Portsmouth

VII. ACCEPTANCE OF MINUTES – SEPTEMBER 18, 2023; OCTOBER 2, 2023 AND OCTOBER 16, 2023

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

1. *Recognition of the efforts of Portsmouth NH 400th LLC, and its Managing Director Valerie Rochon

2. *Report of the Achievements of the 2021-2023 Arts and Nonprofits Committee

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

Public Hearings/Second Reading of Ordinance and Resolutions:

A. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article IV – Commission and Authorities – Public Art Review Committee (***Sample motions – a) move to pass second reading and suspend the rules to take up third and final reading, and b) move to pass third and final reading of the ordinance***)

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

B. Public Hearing/Adoption of Resolution on a Supplemental Appropriation from Unassigned Fund Balance of \$450,000.00 for Outside Counsel Legal Fees
(Sample motion – move to adopt the Resolution as presented)

- **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. Temporary Construction License for 70 Maplewood Avenue
2. Lease Extension for Community Campus Tenants
3. Revocable License for 320 Union Street
4. Polling Hours for 2024 Presidential Primary Election
5. Drainage Easement for Property Located at 700 Peverly Hill Road
6. Access Easement for 201 Kearsarge Way

XII. CONSENT AGENDA

- A. Letter from Jennie Halstead, My Breast Cancer Support, requesting permission to hold the 15th Annual Celebrate Pink 5k Walk & Run on Sunday, September 22, 2024
(Anticipated action – move to refer to the City Manager with Authority to Act)
- B. Letter from John Mortimer, Millennium Running, requesting permission to hold the St. Paddy's 5k/10k on Sunday, March 10, 2024
(Anticipated action – move to refer to the City Manager with Authority to Act)
- C. Letter from Cullen Madden, Millennium Running, requesting permission to hold the Eastern States 20 Miler & Half Marathon on Sunday, March 17, 2024
(Anticipated action – move to refer to the City Manager with Authority to Act)
- D. Letter from John Mortimer, Millennium Running, requesting permission to hold the 2024 Restore New Castle 10k on Sunday, April 28, 2024
(Anticipated action – move to refer to the City Manager with Authority to Act)

- E. Letter from Rob Cimini, Greenleaf Rec Center Teens Program, requesting permission to hold the Greenleaf Rec Challenge on Saturday, May 11, 2024 (***Anticipated action – move to refer to the City Manager with Authority to Act***)

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. *Presentation regarding Portsmouth 2123 Time Capsule – James Splaine & Robert Lister
B. Email Correspondence (***Sample motion – move to accept and place on file***)

XIV. MAYOR McEACHERN

1. Resignation – Richard Adams from the Trees and Public Greenery Committee effective December 31, 2023
2. *Appointments to be Voted:
 - 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
3. *Holiday Lights Contest Winners

XV. CITY COUNCIL MEMBERS

A. COUNCILOR DENTON & COUNCILOR BLALOCK

1. HDC Solar Energy Panel Amendment – (***Intent to hold First Reading on Tuesday, January 16, 2024, to amend Article IV: Commissions and Authorities, Section 1.403: Historic District Commission, C. Powers and Duties, by adding the following sentence at the end of paragraph 1: “The review of solar energy panels is not within the purview of the Historic District Commission’s powers and duties.”***)

B. COUNCILOR COOK

1. Governance Committee Year-End Update

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Fire Department from Brian & Suzanne Engelhardt - \$100.00 to be used at the department's discretion (***Sample motion – moved to accept and approve the donation to the Fire Department in the amount of \$100.00 to be used at the departments discretion***)
- B. Acceptance of Donation to the Fire Department from Paul Gormley & Kimi Iguchi - \$2,500.00 to be used at the department's discretion (***Sample motion – move to accept and approve the donation to the Fire Department in the amount of \$2,500.00 to be used at the departments discretion***)
- C. Acceptance of Moose License Plate Conservation Grant - \$9,695.80 (***Sample motion – move to accept and approve the Moose License Plate Conservation Grant as presented***)
- D. Acceptance of Grant to Fire Department from the Department of Safety, Division of Fire Standards & Training and EMS - \$16,575.00 (***Sample motion – move to accept and approve the grant as presented***)

VII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Report Back on the Demolition Ordinance
2. Parking Signs for the McIntyre Lot

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**

The Council Chambers
City Hall
Portsmouth, New Hampshire

A Proclamation

- Whereas:** The tragic death of Jessica Smith in 1999 from ice blowing off a tractor trailer and then a box truck in front of her prompted the passage of legislation in New Hampshire in 2002 known as Jessica's Law that requires vehicle operators to clear ice and snow off the tops of their vehicles before driving; and
- Whereas:** Drivers who violate the law face fines of \$250 to \$500 for a first offense and \$500 to \$1,000 for subsequent offenses; and
- Whereas:** The law is based on the legal concept of negligence which generally consists of actions, but can also consist of omissions when there is some duty to act; and
- Whereas:** We see snow-covered cars almost daily, despite the law and the Police Department reminds us that this impedes visibility for the safe operation of vehicles, putting other drivers and pedestrians at additional risk; and
- Whereas:** Local advocates remind us that the responsibility to comply with and spread awareness of the law lies with Portsmouth residents and surrounding communities, and that not taking the time to clear your car can cause irreparable damage to others' lives.

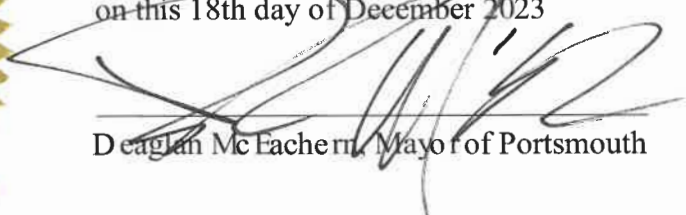
Now, therefore, I, Deaglan McEachern, Mayor of the City of Portsmouth, on behalf of the members of the City Council and citizens of Portsmouth, do hereby join in proclaiming the next 30 days for

Jessica's Law Awareness in Portsmouth

and call upon our fellow citizens to take the extra minute to clear snow and ice from their cars for the protection of us all.



Given with my hand and the
Seal of the City of Portsmouth,
on this 18th day of December 2023


Deaglan McEachern, Mayor of Portsmouth

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: SEPTEMBER 18, 2023

PORTSMOUTH, NH
TIME: 7:00PM

Assistant Mayor Kelley moved to close the Non-Public Session and seal the minutes. Seconded by Councilor Lombardi and voted.

III. CALL TO ORDER

Mayor McEachern called the meeting to order at 7:00 p.m.

IV. ROLL CALL

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Bagley, Lombardi, Blalock, and Cook

V. INVOCATION

Mayor McEachern asked that we hold the family of Keshawn Perkins in our hearts who recently passed away from a motorcycle accident.

VI. PLEDGE OF ALLEGIANCE

Mayor McEachern led in the Pledge of Allegiance to the Flag.

PROCLAMATIONS

1. CONSTITUTION WEEK

Mayor McEachern read the Proclamation declaring the week of September 17 through September 23, 2023 as Constitution Week and ask our citizens to revisit and reaffirm the ideals the framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this declaration of our rights and liberties.

VII. ACCEPTANCE OF MINUTES – SEPTEMBER 5, 2023

Councilor Tabor moved to accept and approve the minutes of the September 5, 2023 City Council meeting. Seconded by Councilor Blalock and voted.

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

A. Dedication of POW/MIA Chair – Robert McGuigan, Rolling Thunder

Robert McGuigan, Rolling Thunder presented the POW/MIA Chair to Mayor McEachern and City Council to be displayed in the Chambers representing the more than 80,000 missing in action. Mr. McGuigan stated the chair is an extension of our voices to represent the POW/MIA and thanked the City Council and City of Portsmouth for joining their voices with Rolling Thunder.

B. Economic Development Commission Outdoor Dining Report – Phil Cohen, Chair

Chairman Cohen stated the EDC recommends that the new outdoor dining ordinance supersede the existing Sidewalk Café Policy No. 2012-02 adopted in 2012 and as subsequently amended but that most of the provisions of Policy 2012-02, not inconsistent with the recommendations contained herein (e.g., insurance requirements, alcohol service, etc.) be incorporated in the new ordinance and associated design standards. He spoke regarding City Staff input on outdoor dining for specific areas of traffic, ground floor business approval, fee recommendations, design standards, and partnerships.

Councilor Bagley moved to refer the framework of the Economic Development Commission to the Legal Department to come back to the City Council with a draft ordinance. Seconded by Councilor Denton and voted.

Councilor Bagley moved to suspend the rules to bring forward XV. D.1. – “Spirit of Portsmouth” KC-46A Pegasus. Seconded by Councilor Moreau and voted.

Councilor Bagley advised the City Council that the Pease Air National Guard Base gifted an aircraft panel of the original KC-46A as a thank you to the City of Portsmouth for their dedicated support. The aircraft panel will be hung in the Portsmouth Room.

IX. PUBLIC COMMENT SESSION

Zelita Morgan – spoke regarding setting a tone of civility and respect of those running for election. She suggested a motion of what principles will be upheld in the election.

Roy Helsel said the city needs to consider that we are overdeveloped. He spoke regarding how some developments are affecting how much some residents are paying in taxes.

Peter Whelan said he is waiting for the update on the McIntyre and that we are at a crossroads. He said McIntyre is the most valuable piece of property in the city and the Council has a duty to the residents to get something done.

Joan Hamblet as an election official urged the City Council to accept the recommendation of the City Clerk and not extend the polling hours. She said the day begins much earlier than 8:00 a.m. and goes into the night long after the polls close. She stated we do not have a pool of people that are able to extend their hours to work longer shifts.

Francis Cormier spoke regarding the \$64,000.00 question.

Sue Polidura said the Council should suspend the rules to bring forward the discussion on the McIntyre. She spoke to issues she finds with the Ethics Ordinance.

Irish Mike said everyone knows where they were during 9/11 and he feels there should be a week in honor of that day.

Petra Huda spoke on the CAFR and PAFR and said she feels the budget is misleading when it comes to actual spending.

Esther Kennedy spoke regarding the number of new employees brought on by the city in the last year. She spoke regarding the impact of bringing these employees on in terms of costs. She urged the city to look at the whole puzzle.

Paige Trace spoke regarding the number of Non-Public Sessions that have been held by the City Council. She said in two years the city has added \$22 million to the budget which is an increase of 10%.

Peter Harris said perception has meaning. He said Councilor Cook is voting on decisions that impact her financially.

Mark from the Park spoke regarding City Council Rule 43 and feels like he is being silenced from speaking.

Rick Becksted said he would like the plaque he received while Mayor to be hung in the Portsmouth Room next to the aircraft panel from the National Guard.

Assistant Mayor Kelley moved to suspend the rules to bring forward Mayor McEachern's McIntyre Update. Seconded by Councilor Bagley and voted.

XIV. MAYOR McEACHERN

2. McIntyre Update

Mayor McEachern provided a brief update on McIntyre. He reported that the General Services Administration (GSA) feels because they did not build a new federal building that they are not required to provide the McIntyre building to the city. He stated the city is looking for a clear answer from the GSA on what their position is regarding McIntyre.

X. PUBLIC HEARING AND VOTE ON ORDINANCES AND/OR RESOLUTIONS

First Reading of Ordinance:

- A. First Reading of Ordinance amending Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban and Chapter 7, Article X – TOWING, Section 7.1002 – Snow Removal Operations

Councilor Lombardi moved to pass first reading and schedule a public hearing and second reading at the October 2, 2023 City Council meeting. Seconded by Councilor Blalock and voted.

Public Hearing/Second Reading of Ordinance:

- B. PUBLIC HEARING/SECOND READING of Ordinance amending Chapter 1, Article VIII – Code of Ethics, Section 1.802 – Conflicts of Interest, amending Subsection F – Gifts and Favors: No officer or employee shall accept any gift over \$100.00 per calendar year
 - **PRESENTATION**

Mayor McEachern read the legal notice, declared the public hearing open and called for speakers.

Councilor Cook moved to pass second reading and hold third and final reading at the October 2, 2023 City Council meeting. Seconded by Assistant Mayor Kelley.

- **CITY COUNCIL QUESTIONS**

Councilor Bagley thanked the Governance Committee. He said he feels the ordinance is too cumbersome and will not be able to support the motion.

- **PUBLIC HEARING SPEAKERS**

Mark Brighton said he feels this denies first amendment rights.

Paige Trace spoke regarding the ordinance and said Councilors Moreau and Bagley are affected by the Ethics Ordinance. She said Councilor Moreau serves as a volunteer and Councilor Bagley should not be penalized for what a family member may say regarding matters. She said the ordinance infringes on first amendments and their right to speak.

Tom Nies said he supports the efforts to change the Ethics Ordinance and the changes will fix some things. He stated the changes are necessary and should be adopted and moved forward.

Esther Kennedy said the problem is with the word “any”, it is too broad. She said an ordinance should be considered for public board members and employees.

Petra Huda said on item “J” you need to keep in mind that they are all volunteers. She said we are having a hard time getting volunteers to serve and this could impact that.

Dick Bagley spoke in support of the amendment to \$100.00 and said he is concerned that we do not have a whistle blower policy.

Zelita Morgan said the City Council needs to consider what you are trying to solve. She also spoke to first amendment rights. She said there needs to be official training on this ordinance and its meaning.

After three calls and no further speakers, Mayor McEachern declared the public hearing closed.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Mayor McEachern said that this will not affect Councilor Moreau. He said this is to make sure we have the appearance of being ethical.

Councilor Moreau said the Zoning Board of Adjustment hears different applications from what is heard at the Planning Board level.

Councilor Cook said Section 1.902 is in the packet and what is coming forward in the future and is separate from this ordinance.

Councilor Bagley said family is defined differently in the ordinance. He said his family does not come and speak here.

Councilor Tabor said land use boards should be impartial.

Councilor Cook said it is important to be creative here, it would not prevent someone from speaking but it would require the person on the board to recuse themselves from the matter. She said the goal was to codify the rules.

Motion passed. Councilors Denton and Bagley voted opposed.

At 9:05 p.m., Mayor McEachern declared a brief recess. At 9:15 p.m., Mayor McEachern called the meeting back to order.

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Request for Street Naming – Grapevine Run

City Manager Conard said that this is from 8 residences approved on Woodbury Avenue with a private street.

Assistant Mayor Kelley moved to authorize the use of Grapevine Run as the private street name for the development at 212, 214, 216 Woodbury Avenue. Seconded by Councilor Moreau and voted.

2. Authorization to Facilitate Installation of Dock

City Manager Conard said we will facilitate a private dock which is located in Atlantic Heights and has approval from the State and City.

Councilor Moreau moved to authorize the City Manager to negotiate and execute any agreements or approvals which are necessary for Roger and Elizabeth Trudeau, 10 Crescent Way, to construct a proposed 10' x 10' deck, 40' seasonal gangway, and 10' x 20' seasonal float as presented. Seconded by Councilor Bagley and voted.

3. Request for Extension of Temporary Construction License for 147 Congress Street

City Manager said they are constructing a 700' addition to the building. She advised the Council that the sidewalk is no longer encumbered and are asking for an extension.

Councilor Moreau moved to authorize the City Manager to execute and accept an extension of the temporary construction license to encumber the sidewalks along Maplewood Avenue that abut 147 Congress Street as requested. Seconded by Assistant Mayor Kelley and voted.

4. Request to Establish Polling Hours for the Municipal Election

Councilor Tabor moved to establish polling hours from 8:00 a.m. to 7:00 p.m. for the November 7, 2023 Municipal Election. Seconded by Assistant Mayor Kelley.

Assistant Mayor Kelley thanked everyone for working at the polls.

Councilor Bagley said the case is made here and it is a long day and encouraged residents to request an absentee ballot, if necessary.

Councilor Cook said she understands the concerns regarding the hours.

Councilor Blalock said that this is one of the most important days in democracy and encouraged residents to get absentee ballots.

Councilor Denton said City Clerk Barnaby indicated the time to extend the hours would be for the Presidential Primary or Presidential General Election.

Motion passed.

XII. CONSENT AGENDA

- A. Letter from Marcia Leach, North Church of Portsmouth, requesting permission to hold the annual Crop Walk for Hunger on Sunday, October 15, 2023 beginning at 12:30 p.m. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- B. Letter from Matt Junkin, Seacoast Rotary, requesting permission to hold the 15th Annual Seacoast Rotary Turkey Trot 5k on Thanksgiving, November 23, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting permission to hold the following events:
 - First Night Portsmouth 2024 – Sunday, December 31, 2023
 - Children’s Day – Sunday, May 5, 2024
 - 47th Annual Market Square Day Festival & 10K Road Race – Saturday, June 8, 2024
 - 21st Annual Summer in the Street – Saturday evenings – June 29, July 6, 13, 20, 27, 2024***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- D. Letter from Effie Malley, Portsmouth Climate Action, requesting use of the Bridge Street Lot on Sunday, October 22, 2023, for the 4th Annual Electric Vehicle Show ***(Anticipated action – move to refer to the City Manager with Authority to Act)***

Assistant Mayor Kelley moved to adopt the Consent Agenda. Seconded by Councilor Bagley and voted.

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence

Councilor Moreau moved to accept and place on file. Seconded by Councilor Blalock and voted.

- B. Letter from Tina Sawtelle, The Music Hall, requesting permission to close a portion of Portwalk Place, but to allow alcoholic beverages (wine, beer, and spirits) to be served inside the event's enclosure for the New Hampshire Film Festival Hospitality Party on October 14, 2023 from 9:00 a.m. – 3:30 p.m.

Councilor Tabor moved to refer to the City Manager with Authority to Act. Seconded by Councilor Blalock and voted.

- C. Letter from Riah & Chris Zaremba & Petition from 9 homes requesting that a small portion of Islington Street have the sidewalk repaired and maintained, with the safety of pedestrians on a busy street taken into consideration or to rip up the old sidewalk to the curb, re-grade and loam, and lay seed down to redirect pedestrians to the side of the street with the appropriate sidewalk

Councilor Tabor moved to refer to the City Manager with Authority to Act. Seconded by Assistant Mayor Kelley and voted.

XIV. MAYOR McEACHERN

1. Appointments to be Voted:
- Jen Scumaci to the Economic Development Commission
 - Erica Wygonik as a Regular Member to the Parking & Traffic Safety Committee
 - David Allen as an Alternate to the Parking & Traffic Safety Committee
 - Larry Booz to the Historic District Commission

Councilor Bagley moved the appointment of Jen Scumaci to the Economic Development Commission filling unexpired term of Alan Gold until October 1, 2025. Erica Wygonik as a Regular Member to the Parking & Traffic Safety Committee filling unexpired term of Harold Whitehouse until September 17, 2024. David Allen as an Alternate to the Parking & Traffic Safety Committee until August 4, 2026. Larry Booz as an Alternate to the Historic District Commission filling the unexpired term of Johanna Landis until June 1, 2025. Seconded by Councilor Blalock and voted.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. 10-year Spending History

Councilor Tabor reviewed the chart he created showing the 10-year spending history for the city. He stated he wanted a sheet that showed approved budgets. He said the chart includes extra appropriations the Council also approved.

B. COUNCILOR DENTON

1. Amend Rule 43 A

Councilor Denton moved to suspend the rules to vote on amendment to Rule 43 A this evening. Seconded by Councilor Blalock and voted.

Councilor Denton moved to amend Rule 43 A, by adding between the fourth and fifth sentence, a new sentence that reads, “The playing of music, videos, or the recording of others is prohibited. Seconded by Councilor Blalock.

Discussion followed.

Mayor McEachern said the most important rule in the government is to be a citizen and we work for the people. He said he trusts residents, and it is difficult when we make rules, and he would support the motion.

Motion passed.

C. COUNCILOR MOREAU

1. Soundwall Construction

Councilor Moreau reported that engineering for the soundwall has been completed and construction would be completed by 2025.

E. COUNCILOR COOK

1. Request for First Reading of Election Candidate Financial Disclosure Ordinance

Councilor Cook moved to schedule first reading at the October 2, 2023 City Council meeting of the amendments proposed by the Governance Committee to Section 1.902 Election Candidate Financial Disclosure of the Administrative Ordinance, Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure. Seconded by Councilor Lombardi.

Councilor Cook said that this is coming forward from the Governance Committee. She said they will be looking at both sections of disclosures for changes to reflect concerns surrounding in-kind gifts or donations and additional penalties for Political Action Committees.

Motion passed.

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant in Support of Household Hazardous Waste Collection Events - \$4,265.00

Councilor Blalock moved to accept and expend a \$4,265.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Seconded by Councilor Lombardi and voted.

- B. Acceptance of Office of Highway Safety Grant for the Police Department - \$31,300.00

Assistant Mayor Kelley moved to approve and accept the grant for the Police Department as presented. Seconded by Councilor Blalock and voted.

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Community Policing Facility Public Meeting

City Manager Conard invited the public to the second Community Policing Facility Public Meeting on Thursday, September 21, 2023 at 5:30 p.m., in the Eileen Foley Dondero Council Chambers. She reported that updates on the project will be heard from City staff and our consultants, including site selection, site options, and program test fit.

2. FlashVote Survey #2 Results

Monte Bohanan, Communications and Community Engagement Director spoke to the latest FlashVote on Parking Downtown and the October FlashVote Survey will be regarding the Climate Action Plan.

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor Denton reported there will be a Climate Action Plan discussion at the Liar's Bench on Wednesday, September 27, 2023 from 6:00 p.m. to 8:00 p.m.

Assistant Mayor Kelley extended an invitation to the New England BiPoc Fest on Sunday, September 24, 2023 from Noon to 5:00 p.m. at Vida Cantina.

Councilor Cook announced that Fairy House Tours will be held on September 23, 2023 and September 24, 2023 from 10:00 a.m. to 3:00 p.m. on the grounds of Strawberry Banke Museum, Governor John Langdon House and Prescott Park.

City Manager Conard announced that there were 94 public submissions for the Capital Improvement Plan.

XIX. ADJOURNMENT

At 10:00 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Blalock and voted.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: OCTOBER 2, 2023

PORTSMOUTH, NH
TIME: 7:00PM

III. CALL TO ORDER

Mayor McEachern called the meeting to order at 7:00 p.m.

IV. ROLL CALL

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Bagley, Lombardi, Blalock, and Cook

V. INVOCATION

Mayor McEachern requested that the citizens of Portsmouth keep City Clerk, Kelli Barnaby in their thoughts as her father-in-law passed away this morning. He stated that if City Clerk Barnaby was watching, she is loved, and the City Council sends their condolences.

VI. PLEDGE OF ALLEGIANCE

Mayor McEachern led in the Pledge of Allegiance to the Flag.

PROCLAMATIONS

Mayor McEachern read the Proclamation declaring October 8 – 14, 2023, Fire Prevention Week in Portsmouth with the theme “Cooking Safety starts with YOU!” and encouraged all members of the community to stay alert and use caution when cooking to reduce the risk of kitchen fires.

Mayor McEachern presented the Proclamation to Fire Chief McQuillen who accepted it with thanks and appreciation.

VII. ACCEPTANCE OF MINUTES

(No minutes were brought forward for acceptance)

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

(There are no recognitions or reports this evening)

Councilor Moreau moved to suspend the rules to bring forward Item XIII. A under Presentations and Written Communication. Seconded by Assistant Mayor Kelley and voted.

XIII. PRESENTATION AND WRITTEN COMMUNICATION

A. Presentation from Portsmouth Elks Lodge 97 Regarding Recreation Department Grant - \$3,000.00

Elyse Gallo, the Grant Coordinator of Portsmouth Elks Lodge 97 outlined the main functions and resources that the Portsmouth Lodge 97 located at 500 Jones Avenue offers to residents. She highlighted the vast number of programs available to Veterans and the community's youth. Ms. Gallo identified the different types of grants that she has been able to successfully apply for such as:

- 2024 Gratitude Grant – awarded \$3,000.00. Will provide training and certification costs for 7 to 8 teens entering the city’s train-to-hire lifeguard program to become Red Cross certified lifeguards for our city pool.
- 2024 Beacon & Spotlight Grants – awarded to Lodge 97 for the combined amount of \$6,000.00. To support Operation Blessing’s Teen Summer Program.

Ms. Gallo stated that grants such as the ones identified above have funded 75% of the Teen program’s entire renovation and expansion at the Greenleaf Recreation Center.

- 2023 Impact Grant (renewable) - \$10,000.00 that was doubled through the generosity of members and community donors.
- This Grant Project is called [LINK: Liberty Investments Nurture Kinships](#).

Ms. Gallo explained this project provides opportunities for others to reach out, connect, befriend and be welcoming to local active-duty military members serving Portsmouth’s local bases. She also provided City Council with a brief overview of 2023 savings:

- In 2023, \$11,000.00 was donated in school scholarships, including students entering trades.
- \$9,000.00 supported Portsmouth Little League, Boy Scout Troop 164, and Seacoast Community School.
- To date, the Portsmouth Elks Veterans Committee has used \$60,000.00 to distribute 214 “welcome home kits’ to Veterans transitioning from homelessness to a new home through their Veteran Partner programs.

Mayor McEachern expressed his gratitude to Elyse and the Elks Lodge 97 for the generosity shown to our community. He also spoke to a recent Kayak event he attended.

Assistant Mayor Kelley moved to approve and accept the grant as presented. Seconded by Councilor Blalock and voted.

IX. PUBLIC COMMENT SESSION

Irish Mike spoke on the topic of ethics and political campaigns in the City of Portsmouth.

Petra Huda spoke on the topic of parking addressing item 2 under Councilor Bagley’s name. She gave a simple suggestion to the parking issues on Mechanic Street, emphasizing RV’s and camper issues to which she suggested painting parking lines to provide guidance on vehicle sizes. Ms. Huda also thanked Councilor Tabor for requesting the Fiscal Year 2023 Financial update.

Jim Lee spoke on the topic of “What day is it?” Identifying that Columbus Day falls on Monday, October 9, 2023, and a celebration will be held in front of North Church from 12:00 p.m. to 1:00 p.m.

Sue Polidura spoke on the topic of WCN - White Christian Nationalist expressing how she finds the use of Christian offensive and hateful.

Mayor McEachern stated he does not typically respond during public comment however, wanted to acknowledge Ms. Polidura's position on offense to the use of Christian and stated the idea that to be a nationalist you also must be white, or Christian is the point we all abhor in America, where you'd have to be neither to be proud of this country.

Esther Kennedy spoke on the topic of good news, stating that during former Mayor Becksted's term, she accompanied the former mayor to a meeting with the governor to discuss sound barriers. She announced that the installation of sounds barriers will be beginning in 2024, and this timeline was moved up as was originally scheduled to begin in 2025.

Paige Trace spoke on the topic of Portsmouth. She too expressed similar remarks from the above speaker concerning the installation of sound barriers for 2024. She also spoke to Councilor Cook's ethics amendment in terms of the municipal election financial disclosure forms. Ms. Trace stated she supports this change as if any violations are found the identified candidates should be reported to the Attorney General's office.

After three calls and no speakers in person or zoom, Mayor McEachern closed the public comment.

X. PUBLIC HEARING AND VOTE ON ORDINANCES AND/OR RESOLUTIONS

- A. First Reading of Ordinance amending Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure, Section 1.902, Election Candidate Financial Disclosure

Councilor Tabor moved to pass the first reading, and schedule public hearing and second reading at the October 16, 2023 City Council meeting. Seconded by Councilor Cook.

Councilor Cook addressed the City Council acknowledging this is the first time that the Council has seen these proposed changes to the mandatory financial disclosures for elections. She specified these amendments are for the candidate financial disclosure forms, and wanted residents to know that these amendments would not affect the 2023 Municipal Election. Councilor Cook stated that the Governance Committee considered the proposed amendments at length and decided to bring forward changes specifically in Section C requesting *disclosures of contributions made in money, materials, and services*. She noted concerns within the committee that there had been campaign donations made in the past that were not financial. Section F would allow the City Council to provide violations to those who are not elected to office. Lastly, Councilor Cook stated that the Governance Committee also requested for the submitted financial disclosures to be submitted to the website.

Councilor Lombardi stated a lot of time and input was placed into the proposed amendments for the election candidate financial disclosures. He spoke in support of the ordinance moving forward. Councilor Moreau asked for further clarification on money material services, asking if this would include having a group of volunteer's canvas on your behalf.

Councilor Cook said no that the Governance Committee would not be considering volunteering as all campaigns have volunteers. Clarifying it would be if somebody gave you a service that they would typically charge for. She confirmed that the mandatory financial disclosure requires reporting on anything more than \$100.00.

Councilor Denton commended the committee on the improvements made. He also spoke to the language under political action committee in which he initially proposed back in 2017. Councilor Denton identified that a past goal was to have candidates declare how the money is spent, by amounts received during the campaign. He advised he would be bringing this forward at the next council meeting.

Councilor Bagley spoke in support of the ordinance moving forward. He spoke briefly to his personal campaign costs.

Councilor Cook wanted to ensure it is understood that reporting of expenditures is anything over \$100.00, this is total figure and not itemized which is what Councilor Denton was pointing out.

Motion passed.

- B. First Reading of Ordinance amending Chapter 1, Article IV, Section 1.413 – Sustainability Committee

Councilor Lombardi moved to pass the first reading, and schedule public hearing and second reading at the October 16, 2023 City Council meeting. Seconded by Councilor Blalock

Councilor Denton spoke to his time serving on the Sustainability Committee, noting he has served 8 out of 10 years. He addressed how discussion has evolved around practice committees verse standing committees. He believes the support of standing committees has significantly increased overtime. Councilor Denton briefly went over the committees' goals:

- Provide advice and guidance
- Implementation of climate change
- Increasing awareness of sustainable practices
- Standing for environment justice while protecting the ecosystem

Councilor Lombardi believes one of the interesting factors of the Sustainability Committee is its participation of students. He said most are representatives of their schools and not their hometowns.

Councilor Cook wanted to remind the Council that this amendment has already been reviewed by the Sustainability Committee and by the Governance Committee on behalf of Council.

Mayor McEachern spoke in support of the ordinance saying he feels it is a great idea. Further stating that the problem with any Blue Ribbon Committee is the reappointment process by the next elected mayor. He stated he feels that a committee as important as this one should have the ability to have continuity that lasts beyond any singular mayor.

Motion passed.

C. PUBLIC HEARING/SECOND READING of Ordinance amending Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban and Chapter 7, Article X, Towing, Section 7.1002 – Snow Removal Operations

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

Department of Public Works Director Peter Rice stated that the ordinance brought before City Council this evening is an attempt to streamline the notification and messaging system for snow emergencies. Director Rice identified the multiple ways in which the city alerts residents of parking bans such as: banners on channel 22, website banners, and utilization of smart 911. Director Rice stated that the Department of Public Works feels that with all these attempts they dilute the message and often confuse residents and visitors. The streamlined process will allow Public Works to continue to use snow phone, which will continue to call residents using an automated system. Smart 911 is an application that will assist in snow ban alerts as well as additional alerts impacting the city allowing for more unified communication.

Councilor Tabor spoke in support of the ordinance saying he personally feels channel 22 is cumbersome to use. He has concerns that within this proposed amendment there is no mention of utilizing local media groups. Noting that the Seacoast Media Group has roughly 15,000 online subscribers, a large portion of the city's workforce commutes and may be utilizing online media groups, or channel 9.

Director Rice acknowledged Councilor Tabors point and advised that the Department of Public Works has outreached to local media groups and commonly the response back would be of people not wishing to be contacted. He spoke to smart 911 simplifying the process as it allows people who wish to be notified to sign up.

Councilor Moreau spoke in support of smart 911 and mentioned she finds it to be extremely efficient as she is contacted by text message, voicemail, and email. She also noted that her belief is that you do not necessarily need to be a resident to sign up.

Director Rice confirmed this is correct.

Councilor Denton commended Director Rice for his efforts and spoke in support of the ordinance stating the process has come a long way from the days of having to put down your shovel to listen to a voicemail.

Mayor McEachern asked if signage will continue to be placed in affected areas during a snow ban.

Director Rice confirmed this is correct.

Mayor McEachern declared the public hearing open and called for speakers.

After three calls and no speakers in person or via zoom, Mayor McEachern closed the public hearing.

Councilor Bagley spoke in support of Director Rice's efforts to notify residents of parking bans for inclement weather.

Assistant Mayor Kelley moved to pass the second reading, and hold third and final reading at the October 16, 2023 City Council meeting. Seconded by Councilor Tabor

Councilor Cook moved to suspend the rules to bring forward Ordinance amending Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban and Chapter 7, Article X, Towing, Section 7.1002 – Snow Removal Operations for third and final reading. Seconded by Assistant Mayor Kelley.

Mayor McEachern stated his only opposition on bringing the ordinance forward for third and final reading this evening is for residents to have more time to be aware of the change that might be watching at home. He requested the Council table this motion until the October 16, 2023, City Council meeting.

Motion withdrawn by Councilor Cook.

Motion passed.

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. DEPUTY CITY MANAGER WOODLAND

1. Temporary Construction License for 238 Deer Street

Deputy City Manager Woodland stated the owner of 238 Deer Street LLC is making improvements to their property. The owner is constructing a three to four-story mixed-use building with 21 residential units and in order to construct a barrier and provide public safety is requesting four license areas that abut its property. The requested term of the license is approximately 13 months from October 3, 2023 through October 31, 2024

Assistant Mayor Kelley moved to authorize the City Manager to execute the temporary construction license for 238 Deer Street. Seconded by Councilor Lombardi and voted.

XII. CONSENT AGENDA

- A. Request from Justin Perry, Loan Depot, to install a Projecting Sign at 175 Market Street, Unit 104 (*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*)**

- B. Request from Joe Faro, Napoletana Pizzeria & Bar, to install a Projecting Sign at 14 Market Square (***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***)
- C. Letter from Laurie Mantegari, Scarecrows of the Port, requesting permission to place scarecrows in designated locations throughout the Portsmouth Downtown area (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- D. Letter from Chris Carragher, Seacoast Paddleboard Club (SPC), requesting permission to hold the 6th Annual Seacoast Paddleboard event on Sunday, October 29, 2023, from 10:00 a.m. to Noon at the Peirce Island Boat Ramp (***Anticipated action – move to refer to the City Manager with Authority to Act***)

Councilor Blalock moved to adopt the Consent Agenda. Seconded by Assistant Mayor Kelley and voted.

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

B. Email Correspondence

Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Bagley and voted.

- C. Letter from Eric Gold, requesting for exhibition of artwork at City Hall “Growing up Portsmouth”.

Councilor Cook moved to refer to the City Manager with Authority to Act. Seconded by Councilor Lombardi and voted.

- D. Letter from Phil Von Hemert, Sail Portsmouth, requesting the City Split the cost of the Police Department invoice in the amount of \$2,619.95 for their traffic detail.

Councilor Bagley moved for the city to split the cost of the Police Department invoice in the amount of \$2,619.95 for their traffic detail. Seconded by Councilor Tabor and voted.

XIV. MAYOR McEACHERN

1. McIntyre Update

Mayor McEachern confirmed there has been no movement with the GSA. Senator Shaheen met with the GSA Administrator Callahan which prompted a letter saying the GSA continues to interpret the law in which as they did not build a building, they will not transfer the building to the City of Portsmouth. Mayor McEachern had sent two letters requesting for a meeting with a new political appointee GSA

region one, Region General Administrator Fran Thompson as he had originally scheduled and then cancelled the meeting twice and then refused to meet with no reason.

2. Reappointment to be Considered:
 - Kelly Delekta to the Board of Library Trustees.

The City Council considered the reappoint of Kelly Delekta to the Board of Library Trustees which will be acted upon at the October 16, 2023 City Council meeting.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. City Council Work Session on Proposed Police Facility prior to City Council meeting on Monday, November 13, 2023.

Councilor Tabor moved to schedule a Work Session on Proposed Police Facility prior to City Council meeting on Monday, November 13, 2023. Seconded by Assistant Mayor Kelley and voted.

Councilor Tabor briefly spoke to the design team and locations efforts on the Proposed Police Facility.

Councilor Tabor moved to request a report back from City Manager Conard and the Finance Department of year-end financials for FY 2023, and parking revenue. Seconded by Councilor Bagley and voted.

B. COUNCILOR BAGLEY

1. **Action Items Needing Approval by City Council**
 - Portwalk Place, request for renewal of parking licenses, by business owners

Councilor Bagley moved to authorize valet license agreement for Portwalk HI, LLC for a term of 1 year. Seconded by Councilor Blalock and voted.

Councilor Bagley moved to authorize valet license agreement for Parade Resident Hotel, LLC for a term of 1 year. Seconded by Assistant Mayor Kelley and voted.

- Mechanic Street, request for additional parking restrictions between Pickering Street and Hunking Street, by residents

Councilor Bagley briefly spoke to the request for an increase in prohibited parking stating that the city has a parking ordinance for this location that has not been strongly enforced. Recently, complaints have surfaced that Portsmouth Fire Department and Department of Public Works trucks have not been able to maneuver this location easily due to vehicle congestion.

Councilor Tabor has received emails from residents expressing their concern for this enforcement. He said vehicles have been seen parking outside of the marked areas.

Councilor Bagley said the parking enforcement will eliminate the current vehicle markings. The entire stretch of street from either side would be a no parking zone.

Councilor Cook thanked the Parking & Traffic Safety Committee for the work that was put into this.

Councilor Bagley moved to prohibit parking on the land side of Mechanic Street between Hunking Street and Pickering Street. Seconded by Assistant Mayor Kelley and voted.

- Snow Emergency parking ban, request for ordinance updates by Department of Public Works

Councilor Bagley moved to approve recommended changes to Chapter 7 as presented. Seconded by Councilor Blalock and voted.

- Sagamore Avenue, request for bicycle lanes and No Parking from Shaw Road to Wentworth House Road

Councilor Bagley moved to prohibit parking along both sides of Sagamore Avenue between Shaw Road and Wentworth House Road, contingent on no issues with businesses in this location. Seconded by Assistant Mayor Kelley and voted.

Councilor Bagley briefly spoke to the request for prohibited parking along both sides of Sagamore Avenue stating the location is a dangerous area for pedestrians and bicyclists and feels this would aid in making it safer.

Mayor McEachern asked what the contingent to no problems with businesses is.

Councilor Bagley stated the businesses at the lower level of the condominium complex have not yet been asked if this would impact their consumer traffic. He said there is a plan to ask them. If businesses confirm this would not impact their revenue then this will move forward, if the businesses show opposition, than Parking & Traffic Safety Committee will revisit it.

- Parking & Traffic Safety Committee Action Sheet and Minutes of the September 7, 2023 meeting.

Councilor Bagley moved to approve and accept the action sheet and minutes for the September 7, 2023 Parking & Traffic Safety Committee meeting. Seconded by Councilor Tabor and voted.

C. COUNCILOR BLALOCK

1. Recreation Board Update

Councilor Blalock gave a brief update on the meeting with the Recreation Board and operation guidelines and a mission statement has been established. He discussed the progress of the skate park, and encouraging people not to walk through the premises as it is still an active construction site. Councilor Blalock spoke of the individual light transformers for the skate park which saved the City of Portsmouth an estimated \$7,000.00 and donations for the Skateboard Park are still being accepted through the city website. He also spoke to the Site Selection Committee that the City Council voted to create for the sports complex, in which an RFQ process has been completed and both firms were deemed qualified and requested Deputy City Manager Woodland to speak briefly on this subject.

Deputy City Manager Woodland stated that the Site Investigation Committee is a working group still being formed with their first meeting scheduled for mid-October in which representatives from surrounding communities and Pease Development Authority and others to determine public sites and potential private sites which will cost money. Deputy City Manager Woodland is hopeful if the representatives can convene by mid-October, there should hopefully be an update to share with City Council by early November.

Assistant Mayor Kelley asked if the Recreation Board has discussed what other uses for the Skateboard Park location as the park itself only makes up for half of the property.

Councilor Blalock confirmed that discussion on other uses such as a community splash pad has been discussed.

Deputy City Manager Woodland confirmed that the rear of the Skateboard Park property will continue to be used as a lay down area for city projects.

XVI. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of Donation to the Senior Activity Center for the Luncheon Fund - \$500.00

Councilor Lombardi moved to approve and accept the donation as presented. Seconded by Councilor Blalock and voted.

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Consolidated Rail Infrastructure & Safety Improvements (CRISI) Grant Accountment

Deputy City Manager Woodland announced the City has received \$460,000.00 in Grant funds for the Consolidated Rail Infrastructure & Safety Improvements.

2. Pease Development Authority Update

Deputy City Manager Woodland provided a brief update to the September 21, 2023, PDA meeting that City Manager Conard attended. She stated no substantial vote took place and no information on projects or information to share. Deputy City Manager Woodland did confirm that there are two new positions: Environmental Compliance Specialist and Greenskeeper.

3. Outdoor Dining Update

Deputy City Manager Woodland reminded residents and restaurant owners that the outdoor dining season closes on October 9, 2023, concurrent with Indigenous Peoples' Day, outdoor dining set ups need be removed no later than October 10, 2023.

4. Report Back on the Dock Request of Paul and Alison Dunne

Deputy City Manager Woodland advised that Paul and Alison Dunner determined Peirce Island is not an ideal location and will be searching elsewhere for their docking needs.

5. Municipal Alliance for Adaptive Management

Deputy City Manager Woodland said the City of Portsmouth is participating along with other surrounding communities, as it grants an opportunity for communities to discuss issues collectively and efficiently on the topic of water quality. She said the memorandum provided to the Council provides details.

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor Lombardi announced the month of October is America Archive Month.

Councilor Moreau thanked all the sponsors and volunteers for the Portsmouth 400th – Community Picnic On October 1, 2023.

Assistant Mayor Kelley thanked all the sponsors, volunteers, emergency personnel, and community that attended the 2023 BIPOC Festival on September 24, 2023.

XIX. ADJOURNMENT

At 8:38 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Bagley.

Respectfully submitted by:

Administrative Assistant, City Clerk

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 16, 2023

PORTSMOUTH, NH
TIME: 7:00 PM

III. CALL TO ORDER

Mayor McEachern called the meeting to order at 7:00 p.m.

Assistant Mayor Kelley moved to leave Non-Public Session and seal the minutes. Seconded by Councilor Moreau and voted.

IV. ROLL CALL

Present: Mayor McEachern, Assistant Mayor Kelley, Councilor Tabor, Councilor Denton, Councilor Moreau, Councilor Bagley, Councilor Lombardi (via Zoom), Councilor Blalock and Councilor Cook.

V. INVOCATION

Mayor McEachern stated that Brandon Clark passed away unexpectedly and will be missed.

VI. PLEDGE OF ALLEGIANCE

Mayor McEachern led the Pledge of Allegiance.

PROCLAMATION

1. DOMESTIC VIOLENCE AWARENESS MONTH

Councilor Moreau read the Proclamation declaring the month of October as Domestic Violence Awareness Month and asked our citizens to come together to reaffirm our commitment to ending domestic violence and supporting survivors.

2. ITALIAN HERITAGE MONTH

Mayor McEachern read the Proclamation declaring the month of October as Italian American Heritage Month and called upon the residents of Portsmouth to celebrate the Italian Heritage our citizens have come to share with us and to embrace our Friendship City of Santarcangelo with Portsmouth's welcoming, always-open door.

VII. ACCEPTANCE OF MINUTES – *(There are no minutes on for acceptance this evening)*

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

IX. PUBLIC COMMENT SESSION

Mayor McEachern opened the public comment session:

Roy Hesel – spoke regarding development stating that people from other places that come to Portsmouth want to see a unique little town, but it is becoming over-developed and losing that quality.

Mike Daigle of the Friends of Italian Americans, a newly-formed non-profit organization, discussed the recent events held by the organization celebrating and remembering the Italian heritage and history of the Italian immigrants and residents of the north end during the urban renewal in the 1970's. He also requested that the Council approve the donation of the antique fire truck that is on the agenda for approval.

Elyse Gallo – thanked the Council for the Proclamation recognizing Italian Heritage Month. She also expressed her concern with the loss of Columbus Day holiday and being replaced with Indigenous People's Day stating that both can be celebrated and perhaps on different days and asked that Columbus Day be restored.

Rick Becksted – stated he hopes that Keno gets approved at the upcoming election. He also spoke to the collective bargaining non-public session stating that we have already emptied the well on the Police and Fire contracts. Next, he stated that the previous Council allocated funds for the skate park at the 12/22/2021 meeting on a 9-0 vote and the current Council bonded \$2.8 million for it, so wonders where the \$2.2 million from 2021 vote went. He stated the residents and taxpayers deserve to know where it went.

Petra Huda – discussed the upcoming presentation from the Finance Department stating she was looking for information in the Council packet but there was none. She stated she wants to know if the figures being presented tonight are going to be audited numbers or estimates. Next, she discussed the surplus stating that she was blown away that it is the largest it has been in 10 years and the money should go back to the taxpayers. Finally, she discussed the Audit Committee which hasn't met since the Auditor was selected and feels that the city is misrepresenting how the hiring of a new auditor came about.

Paige Trace – stated that the RSA cited for the Non-Public Session for Collective Bargaining Agreements was incorrect. She continued that she is concerned that the public is not being updated on various court cases including the Webber case which the city won on appeal back in June. She concluded stating that she was unable to find Fire Commission minutes on the website and asked when the Audit Committee would be meeting again.

Esther Kennedy – stated she feels the Council should hold an information meeting on the pipeline going across Great Bay as well as the migration of chemicals from Tolend Road to the Madbury Well site. She stated that there needs to be an update given on all of our drinking water sources.

Zelita Morgan – stated she watched the most recent candidates' forum and heard people saying that Accessory Dwelling Units (ADU's) are affordable but she does not agree that they are affordable to working people. She stated she is also disappointed with the process of the Governance Committee in that it is at 10:00 a.m. during a work-day and feels that people aren't able to participate. She concluded stating that there have been 3 votes requesting information on the Climate Action Plan but there has been no follow-up.

Jackie Cali-Pitts – stated she is proud of her Italian-American heritage. Next, she discussed homelessness in the City of Portsmouth and asked what the arrangements will be when it gets cold.

Mayor McEachern stated that Operation Blessing has increased the amount of beds. Jackie Cali-Pitts stated there are still not enough to meet the need and the staffing is also a problem.

Gary Epler – stated he spoke several months ago regarding EV charging stations and there was a unanimous vote to send it to the Planning Board, but there has not yet been a report back. He stated 10/19/2020 there was a vote to send his letter to the Planning Board regarding a 5-acre solar panel farm and again, no action has been taken as of yet. He stated we are in a critical climate crisis and we need an ordinance for EV charging stations.

Seeing no one else wishing to speak, the Mayor closed the Public Comment Session.

Councilor Tabor moved to suspend the rules to bring forward Item X-C, Public Hearing regarding KENO within the City of Portsmouth and Item XIII-A, Financial Update as requested by Councilor Tabor. Seconded by Assistant Mayor Kelley and voted on a 9-0 roll call.

- C. Public Hearing regarding KENO within the City of Portsmouth **(No vote required)**
- **PRESENTATION**
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Michael McIntire of the NH State Lottery gave a brief presentation regarding KENO and how the money is used for various non-profit organizations.

Councilor Tabor asked what the average patron spends on Keno.

Mr. McIntire stated it is hard to track in-person spending but they feel it is not more than \$15.00 during an hour time-frame usually while eating dinner at an establishment.

Mayor McEachern opened the Public Hearing:

George Remick – thanked everyone for putting this on the ballot and explained that the question is on the bottom of the ballot. He stated that there used to be Bingo in the city and this is similar.

Eli Sokorelis – stated he has Keno at this establishment in Seabrook and most people come in and spend \$10.00. He explained that the game is played every 5 minutes and the profits support Kindergarten in the State of NH.

Frank Desper, American Legion – explained all of the different organizations the American Legion supports and that this money will help them to continue doing so.

Lonnie Cherry, Portsmouth Lodge of Elks – stated he would like voters to support Keno as they also are a charitable organization and this would help them continue to support those in need.

Tom Beaudoin – stated that Portsmouth is a wonderful place to live, but people also need help. He stated that Keno would drastically improve what the Elks and other organizations can give back to the community. He urged people to vote yes on Keno.

Paige Trace – stated that this is the third time on the ballot so not everyone is in favor or Keno in Portsmouth. She stated she feels that the time has come and it can do a lot of good for the community.

Seeing no one else wishing to speak, the Mayor closed the public hearing.

Mayor McEachern stated that this has been on the ballot three times and feels that people have many ways to gamble now and feels that this will do good for the city.

A. Financial Update as Requested by Councilor Tabor

A Financial Update presentation for FY23 and Parking Revenues was given by City Manager Conard, Finance Director Judie Belanger and Parking Director Ben Fletcher.

Councilor Bagley asked if Unassigned Fund Balance is a “rainy day” fund.

Finance Director Belanger stated it is a savings which allow flexibility and can be used as a back-up for emergencies and is not designated for any specific purpose. She stated they are trying to get away from the “rainy day” fund terminology.

Councilor Bagley congratulated the Finance Director and staff on maintaining the AAA Bond Rating. He next asked about unfunded positions.

Finance Director Belanger stated that all positions are funded but not filled. She stated there has been a stretch of long-term vacancies and has had a large impact on the surplus.

Councilor Bagley asked about the percentage of on-street parking revenue from Park Mobile. Parking Director Fletcher stated 50% of revenue on 49% of the transactions. He stated that 96% of the usage of the Park Mobile app is non-resident.

Councilor Bagley clarified that the McIntyre parking has always been kept separate from the rest of the parking and for every \$500,000 of assessed value on a home, homeowners save \$340.00 on their tax bill from services provided through the parking fund.

Councilor Blalock stated he appreciated the explanation of the expenditure surplus Skateboard Funding being returned.

Finance Director Belanger clarified the \$2,000,000.00 was part of the expenditure surplus in 2022 of \$4.4 million with \$2 million directly related to the supplemental appropriation that this Council voted to put into the Capital Improvements Plan.

Councilor Cook also congratulated the Finance Department for the 30th year of AAA Bond rating. Next, she asked about stabilization funds which help make sure we don't have large increases depending on costs or spikes. She stated that the Fund Balance also serves as an overall budget stabilization fund.

Finance Director Belanger stated that all of the stabilization funds are sub funds of the General Fund. She stated if there is a surplus in the stabilization funds, they are zeroed out at the end of the year and returned to the general fund.

Councilor Tabor discussed the recent trends of expenses and revenues and the impact on fund balance.

Mayor McEachern called a brief recess at 8:50 p.m. and reconvened at 8:55 p.m.

Councilor Cook moved to suspend the rules to bring forward XVI-A, Acceptance of Donation to the Fire Department of 1920 American LaFrance Fire Truck. Seconded by Assistant Mayor Kelley and voted on an 8-0 roll call vote (Councilor Lombardi did not respond to roll call via Zoom)

- A. Acceptance of Donation to the Fire Department of 1920 American LaFrance Fire Truck (Estimated Value \$40,000.00 - \$60,000.00 subject to final appraisal) to the Portsmouth Fire Department

Assistant Mayor Kelley moved to accept and approve the donation of a 1920 American LaFrance Fire Truck to the Portsmouth Fire Department. Seconded by Councilor Bagley and voted on a 9-0 roll call vote.

X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS

Public Hearing of Ordinances:

- A. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article IX – Conflict of Interest/Mandatory Financial Disclosure, Section 1.902, Election Candidate Financial Disclosure

Councilor Cook moved to pass second reading and hold third and final reading at the November 13, 2023 City Council meeting, seconded by Councilor Blalock.

- **PRESENTATION**

Councilor Cook explained that this will close loopholes and provide more transparency and provide penalties to non-elected individuals that do not comply.

- **CITY COUNCIL QUESTIONS**

Councilor Denton thanked the Governance Committee for bringing this forward and likes the amendments to the ordinance that was last changed 6 years ago. He stated he does have 3 additional amendments that he is looking to bring forward. He stated the first one mirrors State RSA which requires that campaign signs and literature must state the PAC; secondly, full itemization, not just total amount spent; and 3rd, eliminate the \$100.00 threshold and disclose all donations.

Councilor Cook clarified that this ordinance amendment will not be in affect for the upcoming Municipal Election.

Councilor Blalock stated that any transparency is better and people should know if PAC's are involved.

- **PUBLIC HEARING SPEAKERS**

Mayor McEachern read the public hearing notice and called for speakers:

Paige Trace – stated that she has reviewed the previous election Candidate Disclosure forms and found that not all candidates filed the forms. She stated that candidates who are not elected don't always file after the election. She discussed that there are also discrepancies between what a PAC reported in contributions to candidates and what the candidates reported. She stated she feels that this change will make the process more transparent.

Petra Huda – spoke to Councilor Denton's proposed amendments to the ordinance and is unclear why they are needed and how this will be enforced.

Esther Kennedy – stated that if the amendments are brought forward this will have to go to another public hearing. She stated that she feels that RSA requirements should be incorporated as well. She concluded stating that receiving contributions is a right of a candidate and is not an ethical issue other than who do you owe for what is given.

Seeing no one else wishing to speak at the public hearing, Mayor McEachern closed the public hearing.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Discussion ensued regarding the proposed amendments brought forward by Councilor Denton. A motion made by Councilor Denton and seconded by Councilor Bagley regarding the amendments was withdrawn.

Councilor Denton moved to refer to legal department to bring back a draft for another 2nd reading at the November 13, 2023 City Council meeting which will be referred to an additional public hearing at the December 4, 2023 City Council meeting. Seconded by Councilor Bagley and passed on a 9-0 roll call vote.

- B. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article IV, Section 1.413 – Sustainability Committee

Councilor Denton moved to pass second reading and hold third and final reading at the November 13, 2023 City Council meeting, seconded by Councilor Cook and voted.

- **CITY COUNCIL QUESTIONS**

Councilor Cook stated that this is an important move as the City Council moves toward adopting a Climate Plan and they will be able to implement the plan as a standing committee.

Councilor Tabor stated that the Energy Advisory Committee would also be a good resource for this committee to work with as they have experts in various fields.

- **PUBLIC HEARING SPEAKERS**

Mayor McEachern read the public hearing notice and called for speakers. Seeing no one wishing to speak, Mayor McEachern closed the public hearing.

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Councilor Denton moved to suspend the rules to pass 3rd and Final reading. Seconded by Councilor Cook and passed on a 9-0 roll call vote.

- C. Public Hearing regarding KENO within the City of Portsmouth (***No vote required***)
(Previously acted upon)

Third and Final Reading of Ordinance:

- D. Third and Final Reading of Ordinance amending Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban and Chapter 7, Article X, Towing, Section 7.1002 – Snow Removal Operations

Councilor Moreau moved to pass third and final reading of the ordinance. Seconded by Councilor Bagley and voted on a 9-0 roll call vote.

- E. Third and Final Reading of Ordinance amending Chapter 1, Article VIII – Code of Ethics, Section 1.802 – Conflicts of Interest, amending Subsection F – Gifts and Favors: No officer or employee shall accept any gift, over \$100.00 per calendar year

Councilor Tabor *moved to pass third and final reading of the ordinance, seconded by Councilor Cook.*

Councilor Bagley stated he will be voting against the ordinance based on the definition of “family”.

Motion passed on a 7-2 roll call vote. Councilor Denton and Councilor Bagley voted opposed.

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Request to Sell Surplus Water Meters

Councilor Moreau moved to authorize the sale of the surplus equipment as presented. Seconded by Assistant Mayor Kelley and voted on a 9-0 roll call.

2. Temporary Construction License for Peirce Block

Councilor Moreau moved to authorize the City Manager to execute and accept the temporary construction license to encumber the sidewalk and roadway along High and Ladd Streets and 6 parking spaces on High Street that abut the Peirce Block as requested, seconded by Councilor Bagley.

Councilor Moreau asked if this is completely blocking parking on High Street.

Public Works Director Rice stated that it was initially going to be walk-under scaffolding but it was unsafe due to debris so the staging is going into the parking spaces and pedestrians will have to go to the other side of the street.

Councilor Lombardi asked if fire and safety vehicles are able to get through. City Manager Conard answered in the affirmative.

Motion passed on a 9-0 roll call vote.

3. Approval of PILOT agreement for Betty's Dream
4. Approval of PILOT agreement for Friends of Lafayette House

City Assessor Lentz explained that PILOT agreements between the city and otherwise exempt organizations are meant to help the municipality to defray the costs of municipal, non-utility, services and relayed the report as follows.

Friends of Lafayette House is a group home facility for adults with developmental disabilities located at 413 Lafayette Road. The Assessor's Office has reviewed the Friends of Lafayette House charitable status and feels they meet the term "charitable" as set forth in RSA 72:23-l.

RSA 72:23-k states the real estate and personal property of charitable, nonprofit community housing and community health care facilities for elderly and disabled persons, if none of the income or profits is used for any purpose other than community housing or community health care, shall be exempt from taxation. This exemption shall apply to housing and health care facilities situated within New Hampshire which are sponsored or owned by nonprofit, charitable corporations or organizations, located within or outside of the state, and to projects organized, operated, or assisted under state law or pursuant to rules and regulations of the United States Department of Housing and Urban Development, the United States Department of Health and Human Services, or any successor agency.

This year, the Assessor's Office reviewed all exempt property applications. Friends of Lafayette House does qualify for charitable status but needed to follow that statute for charitable, nonprofit community housing and community health care facilities for elderly and disabled persons pursuant to RSA 72:23-k as stated above.

This was unexpected for Friends of Lafayette House as they have paid nothing in the past and were not able to budget for a PILOT payment for this year. As such, for Fiscal Year 2024, I would recommend a payment in lieu of taxes be zero. For Fiscal Year 2025 I would recommend a payment in lieu of taxes based on their annual profit before depreciation (total income minus total expenses) as shown in their most recent financial statements. This would be consistent with other PILOT agreements the city has had in the past and would allow them to budget accordingly for next year.

For cause shown and at any time, keeping in mind the nature and purpose of the project, the municipality or the Board of Tax and Land Appeals may refund or abate all or a portion of the payment in lieu of taxes in any year.

Councilor Moreau moved that the City Manager be authorized to enter into a PILOT agreement with Betty's Dream in the amount of \$3,000.00. Seconded by Assistant Mayor Kelley and passed on a 9-0 roll call vote.

Councilor Moreau moved that the City Manager be authorized to enter into a PILOT agreement with the Friends of Lafayette House in the amount of \$0.00. Seconded by Assistant Mayor Kelley and passed on a 9-0 roll call vote.

XII. CONSENT AGENDA

(There are no items on the Consent Agenda)

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Financial Update as Requested by Councilor Tabor (previously acted upon)
- B. Email Correspondence

Assistant Mayor Kelley moved to accept the email correspondence and place on file. Seconded by Councilor Blalock and passed on a 9-0 roll call vote.

XIV. MAYOR McEACHERN

- 1. Resignations:
 - Alison Hamilton from the Citizens Advisory Committee
 - Judith Bunnell from the Citizens Advisory Committee

Mayor McEachern announced the resignations of Alison Hamilton and Judith Bunnell from the Citizens Advisory Committee.

- 2. Appointments to be Considered:
 - Annelise Hartley to the Citizens Advisory Committee
 - Kirsten Barton to the Citizens Advisory Committee
 - Sachiko Akiyama to the Cultural Planning Subcommittee

The aforementioned appointments were considered and will be voted at the November 13, 2023 City Council meeting.

- 3. Reappointment to be Voted – Kelly Delekta to the Board of Library Trustees

Assistant Mayor Kelley moved to accept the reappointment of Kelly Delekta to the Board of Library Trustees with term to expire 10/01/2026. Seconded by Councilor Bagley and voted on a 9-0 roll call.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR BLALOCK

1. Report back from Legal and Planning Departments on the current Demolition Ordinance and any alternatives to consider

Councilor Blalock moved to request a report back from Legal and Planning Departments on the current Demolition Ordinance and any alternatives to consider. Seconded by Councilor Moreau and voted on a 9-0 roll call.

B. COUNCILOR COOK

1. Draft Changes to the Sidewalk Policy

Councilor Cook moved to schedule discussion of the draft changes from the Governance Committee to the City Council Sidewalk Policy at the November 13, 2023 City Council meeting. Seconded by Assistant Mayor Kelley and passed on a 9-0 roll call vote.

2. Ethics and Transparency Policy

Councilor Cook moved to schedule discussion of the draft Ethics and Transparency Policy from the Governance Committee at the November 13, 2023 City Council meeting, seconded by Councilor Moreau.

Councilor Tabor stated that this is a policy not an ordinance and can be changed by future Councils.

Motion passed on a 9-0 roll call vote.

3. Municipal Officials Disclosures

Councilor Cook moved to schedule first reading of the ordinance amendments proposed by the Governance Committee to the Municipal Officials Disclosure ordinance, Chapter 1, Article IX, Section 1.901, at the November 13, 2023 City Council meeting. Seconded by Councilor Moreau and voted on a 9-0 roll call.

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Fire Department of 1920 American LaFrance Fire Truck (Estimated Value \$40,000.00 - \$60,000.00 subject to final appraisal) to the Portsmouth Fire Department (Previously acted upon)

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Report Back on Non-Profit Filing Requirements for Property Tax Exemption

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

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

**Councilor Denton moved to adjourn at 10:18 p.m. Seconded and voted unanimously.
(Councilor Lombardi had left the Zoom)**

Respectfully submitted:

Valerie A. French
Deputy City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 18, 2023 at 7:00 p.m., at the Portsmouth Municipal Complex in the Eileen Dondero Foley Council Chambers, Portsmouth, NH, on the proposed Ordinance amending Chapter 1, Article IV – Commission and Authorities – Public Art Review Committee. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

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IV – Commission and Author-
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review in the Office of the
City Clerk and Portsmouth
Public Library, during regu-
lar business hours.

KELLI L. BARNABY,
MMC/CNHMC
CITY CLERK

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 1, Article IV **COMMISSION AND AUTHORITIES** of the Ordinances of the City of Portsmouth be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

ARTICLE IV: COMMISSION AND AUTHORITIES

Section 1.412: **PUBLIC ART REVIEW COMMITTEE**

- A. **Membership and Term:** The Public Art Review Committee (PARC) will consist of between seven and eleven members. Members shall include one member of city staff to be designated by the City Manager, **a City Councilor in a non-voting capacity**, and the rest shall be community members. Members shall have demonstrated experience in the fine arts, architecture, art criticism, engineering or structural analysis, art history, graphic arts, interior design, landscape architecture, town planning, or other art and design-related fields, or who have demonstrated a strong interest in the visual arts and civic improvement. Other than the City Manager's appointment, the members shall be appointed by the Mayor, with approval from the Council, to staggered terms varying from two to three years.

The PARC shall be chaired by a member of the local arts community and shall interview or make recommendations to fill PARC openings to the Mayor, as they may determine necessary. The term of the chairperson shall be for one year, with eligibility for reelection for two additional terms.

- B. **Public Art Defined:** For purposes of this Public Art Review Committee, "public art" shall be defined as artwork located in or on a public space such as a municipal facility, park, right-of-way, or other municipally owned or controlled property. Artwork includes but is not limited to a painting, mural, inscription, stained glass, fiber work, statue, relief or sculpture, monument, fountain, arch or other structures intended for ornament or commemoration. Also included in this definition is any installation that is technological in nature or includes carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass plastics and other materials. Landscape items include the artistic placement of natural materials and other function art objects. Works of art may be portable as well as permanent.

Public art does not include objects that are mass-produced from a standard design or reproductions of original art works unless of limited edition; decorative, ornamental or functional elements, which are designed by the building architect; landscape architecture and landscape gardening except where these elements are an integral part of the artwork by the artist; directional elements such as super graphics, signage or color coding except where these elements are

integral parts of an original work of art; and logos, corporate identifiers or other forms of branding and advertising.

C. Powers and Duties: The PARC shall have the following responsibilities:

1. To foster development and awareness of public art within the City of Portsmouth, and advise the City Manager and City Council with respect to matters relating to the development of public art awareness within the City of Portsmouth.
2. To accept referrals from the City Council or any other public body concerning public art and art issues generally.
3. To provide input on masterplans, zoning ordinances, strategic planning documents as they relate to public art and art issues generally.
4. To collaborate with the city on the acquisition, maintenance and marketing of its public art and develop a stewardship policy.
5. Establish Guidelines for review of public art based on the Public Art Acquisition Policy.
6. Initiate public forums where appropriate for determining thematic approaches and location options for public art.
7. Determine recruitment strategies to attract qualified artists for public art projects.
8. To review applications for public art following the Public Art Acquisition Policy, select final proposals, and advise the City on issues related to Percent for Art.
9. Review all applications for sponsored works of public art following the same guidelines as those for the Percent for Art program.
10. Advise and oversee public art programs established by the City of Portsmouth in accordance with any policies and guidelines either established by the City or established by the Public Art Review Committee at the request of the City Council.
11. To recommend to the City Council, as requested, replacement members to the PARC when they arise.
12. Identify and solicit funds to supplement the public art budget.
13. Perform further duties related to public art within the City of Portsmouth that the City Manager may request.

- D. Meeting Requirements: The PARC shall meet as necessary, but at least quarterly.
- E. Reporting Responsibility: The Public Art Review Committee (PARC) shall include an annual report of their proceedings and programs to City Council. Details of the report include, but are not limited, to:
 - 1. Assessing available and potential resources in the Public Art Trust.
 - 2. Assessing possible and/or proposed municipal capital projects and criteria that would benefit from the inclusion of an artist in their design.
 - 3. Assessing the impact of and opportunity for public art projects that advance economic development opportunities.
- F. Revenue Development: The PARC may solicit or receive gifts, money or other to be applied to principal or interest, into the Public Art Trust, for either temporary or permanent use for the acquisition, maintenance and/or installation of public art.

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, December 18, 2023 at 7:00 p.m., at the Portsmouth Municipal Complex in the Eileen Dondero Foley Council Chambers, Portsmouth, NH, on a Resolution on a Supplemental Appropriation from Unassigned Fund Balance of \$450,000.00 for Outside Counsel Legal Fees. The complete Resolution is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

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KELLI L. BARNABY,
MMC/CNHMC
CITY CLERK

**CITY OF PORTSMOUTH
TWO THOUSAND TWENTY-THREE
PORTSMOUTH, NEW HAMPSHIRE**

RESOLUTION # -

**A RESOLUTION AUTHORIZING A SUPPLEMENTAL
APPROPRIATION FROM UNASSIGNED FUND BALANCE
FOR NECESSARY EXPENDITURES RELATED TO OUTSIDE
COUNSEL.**

**RESOLVED: BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH,
NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

THAT, the City Council has determined that the sum of **Four
Hundred Fifty Thousand (\$450,000.00) Dollars** is to be
appropriated from Unassigned Fund Balance to defray the expenditures
related to Outside Counsel for the Fiscal Year ending in June 30, 2024.

THAT, to meet this appropriation, the City Manager is authorized to
transfer these funds from Unassigned Fund Balance.

APPROVED BY:

DEAGLAN MCEACHERN, MAYOR

**ADOPTED BY CITY COUNCIL
DATE**

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

SECTION 7.14-AMENDMENTS TO BUDGET AFTER ADOPTION

No appropriation shall be made for any purpose not included in the annual budget as adopted unless voted by a two-thirds (2/3) majority of the Council after a public hearing held to discuss said appropriation. The Council shall, by resolution, designate the source of any money so appropriated.



CITY OF PORTSMOUTH

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

Karen S. Conard
City Manager

Date: December 14, 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 18, 2023

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

A. **Public Hearing and Second 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 second reading and suspend the rules to take up third and final reading, and move to pass third and final reading as presented.

B. **Public Hearing and Adoption of Resolution of a Supplemental Appropriation from Unassigned Fund Balance for \$450,000 for Outside Counsel Legal Fees:**

Attached please find a Resolution in the amount of \$450,000 for outside Counsel legal fees.

I recommend that the City Council move to adopt the Resolution as presented.

XI. City Manager's Items Which Require Action:

1. **Temporary Construction License for 70 Maplewood Avenue:**

EightKph, LLC, ("Owner") is making improvements to property it owns at 70 Maplewood Avenue, shown on the City of Portsmouth's Assessor's Map as Tax Map 125, Lot 17-3 ("Property"). The Owner is constructing a 4-story mixed-use building with a penthouse, commercial space and 14 residential units. To construct the foundation, install conduit under the sidewalk and maintain safe buffer zones for the public, *the Owner is seeking a license to encumber the sidewalks that abut the Property along Maplewood Avenue and Deer Street.* The Owner currently has an encumbrance permit to encumber the sidewalks that will expire on January 10, 2023 (ENCM 23-88). The requested term of the license is approximately 180 days, from January 11, 2024 through July 8, 2024.

Encumbrances for longer than 30 days are subject to the City Council’s policy entitled “License Fee for Encumbrance of City Property.” Under this policy, a daily fee of \$0.05 per square foot of encumbered city property would be assessed for 1,722 square feet of sidewalk for a fee of \$86.10 per day x 180 days for a total license fee of \$15,498.

The License Area is depicted in yellow in the Exhibit attached to EightKph, LLC’s letter requesting the license. This Exhibit will be incorporated as Exhibit A to the license. Note that the sidewalks will not have pass-through staging. The Owner has worked with the Department of Public Works to locate and stripe temporary pedestrian crosswalks along Maplewood Avenue and Deer Street as depicted in the Exhibit in orange. The Owner will ensure appropriate signage is posted to redirect pedestrians when the sidewalk is closed.

The Legal, Planning and Public Works Departments have reviewed and approved the form of the attached License.

If the Council agrees to grant the temporary construction license to encumber the sidewalks along Maplewood Avenue and Deer Street for property located at 70 Maplewood Avenue, an appropriate motion would be:

Move that the City Manager be authorized to execute and accept the temporary construction license to encumber the sidewalks along Maplewood Avenue and Deer Street that abut 70 Maplewood Avenue as requested.

2. Lease Extension for Community Campus Tenants:

The City purchased the Community Campus, property located at 100 Campus Drive, Portsmouth, New Hampshire (“Property” or “Community Campus”) on March 14, 2022 from The Foundation for Seacoast Health (“Foundation”). As was required by the terms of the Purchase and Sales Agreement, the Foundation assigned its interest in its leases with all tenants of Community Campus to the City by entering into an Assignment and Assumption Agreement on March 14, 2022. At the time of the Assignment, there were five tenants at Community Campus, of which four remain: Child Advocacy Center of Rockingham County, Inc., (“CAC”); Krempels Center; Seacoast Outright and The Community Daycare Center, Inc., d/b/a Seacoast Community School (“Community School”).

Under the Lease Agreements, the term for all tenants, except the Community School, expires on December 31, 2023. The City, and the above referenced three tenants, wish to extend the term of the existing Lease Agreements for six (6) months from January 1, 2024 through June 30, 2024 by entering into an Amendment to Lease Agreements. An Amendment for each tenant is attached for Council consideration. Please note that there is only one copy of the original Lease Agreement for CAC attached as the Lease Agreements for the other tenants are similar in format. The attached Amendments only amend the term and all other terms and conditions of the Lease Agreements will remain in full force and effect.

It is beneficial to the City and the tenants to extend the term of the existing Lease Agreements for six (6) months for several reasons. On August 21, 2023, the City Council passed a resolution to use ARPA funds for costs associated with capital improvements to Community Campus. Some of those capital improvements will include reconfiguring the tenants' leased space. Extending the existing Lease Agreements for six months will give the City and its tenants time to assess their needs and finalize the plans for the reconfigured leased space. After the plans are finalized, the City and the tenants will enter into new Lease Agreements. The six-month extension will also make the new Lease Agreements correspond to the City's fiscal cycle (July 1- June 30), as well as the fiscal cycle for the non-profits.

I recommend the City Council move to accept the Amendments to the Lease Agreement(s) with the Child Advocacy Center of Rockingham County, Inc., the Krempels Center and Seacoast Outright to extend the terms through June 30, 2024 as presented.

3. Revocable License for 320 Union Street:

320 Union Realty, LLC, is the owner of property located at 320 Union Street, Tax Map 134, Lot 34 ("Owner"). The Owner proposes to reface an existing retaining wall and to construct a new retaining wall along the border of its property which abuts Union Street. After review of the deed and the City's GIS data, it appears a portion of these retaining walls lie outside the property's boundaries and are within the City's right-of-way (Union Street sidewalk).

The Planning, Public Works and Legal Departments have reviewed the Owner's request (as presented in its building permit BLDG 23- 642) and would support the granting of a revocable license allowing the Owner to reface the existing retaining wall and to construct a new retaining wall consistent with plans submitted with BLDG 23- 642. [Attached as Exhibit A is a proposed Revocable License](#) which will allow the Owner to reface and construct these retaining walls, be responsible for any liability associated with these walls and to remove them if required by the City. [See attached Plans as Exhibit B.](#)

I recommend that the City Council move to authorize the City Manager to execute and deliver a Revocable License allowing the Owner of 320 Union Street to reface their existing retaining wall and construct a new retaining wall on City property.

4. Polling Hours for 2024 Presidential Primary Election:

[Please find attached a memorandum from City Clerk Barnaby](#) requesting polling hours be established for the Presidential Primary Election on January 23, 2024.

I recommend that the City Council move to establish polling hours for the Presidential Primary Election on January 23, 2024 from 8:00 a.m. to 7:00 p.m. as presented by the City Clerk.

5. **Drainage Easement for Property Located at 700 Peverly Hill Road:**

At its regularly scheduled meeting on September 21, 2023, the Planning Board granted a site plan approval to JMK Realty, LLC for the construction of a 3,385 square foot addition to an existing commercial structure along with associated site improvements at 700 Peverly Hill Road. As a part of this vote, the Planning Board recommended the City accept a drainage easement from the property owner so the private drainage system over the property can accept City stormwater from existing City stormwater infrastructure.

The location of this drainage easement is depicted on [the enclosed drawing](#), prepared by Public Works. The City will have the right, but not the obligation, to maintain this infrastructure at the private property owner's expense. Construction and ongoing maintenance of this drainage infrastructure will be the responsibility of the private property owner. The Planning and Legal Departments have reviewed this easement for form, and [the draft negotiated with the property owners is included in the council packet](#).

I recommend that the City Council move to authorize the City Manager to accept and record a drainage easement from JMK Realty, LLC in substantially similar form to the easement provided in the agenda packet.

6. **Access Easement for 201 Kearsarge Way:**

At its regularly scheduled meeting on October 26, 2023, the Planning Board granted amended subdivision approval for a three-lot subdivision to Richard P. Fusegni for property located at 201 Kearsarge Way. As a part of this vote, the Planning Board recommended the City accept an access easement over a portion only of a private driveway for public access and turnaround off Birch Street, a 40', dead-end public right of way.

The location of this drainage easement is depicted on [the enclosed drawing](#), prepared by Public Works. The Planning and Legal Departments have reviewed this easement for form, and [the draft negotiated with the property owners is included in the Council packet](#).

I recommend that the City Council move to authorize the City Manager to accept and record an access easement from Richard P. Fusegni in substantially similar form to the easement contained in the agenda packet.

XIII. Presentations and Written Communications:

A. **Presentation Regarding Portsmouth 2123 Time Capsule:**

Former Mayor Bob Lister and former Assistant Mayor Jim Splaine will provide a brief presentation on Portsmouth's 2123 Time Capsule project at this evening's meeting.

XVI. Approval of Grants/Donations:

A. **Acceptance of Donation to the Fire Department from Brian and Suzanne Engelhardt-\$100:**

Attached please find a donation form outlining a donation to the Fire Department from Brian and Suzanne Engelhardt in the amount of \$100.

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 outlining a donation to the Fire Department from Paul Gormley and Kimi Iguchi in the amount of \$2,500.

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

C. **Acceptance of Moose License Plate Conservation Grant - \$9,695.80:**

The Finance Department is pleased to announce that the City of Portsmouth has been awarded one of the FY2023/2024 Moose License Plate Conservation Grants from the New Hampshire State Library in the amount of \$9,695.80 for the conservation project Preservation, Microfilming and Digitalization of Three Portsmouth Taxation Documents Dated 1909-1911. These monies will help preserve legally required and historically significant documents held by the Finance Department that initially were intended to be financed through the City's Capital Improvement Program.

The New Hampshire State Library's (NHSL) FY2023/2024 Conservation License Plate Grant Program is designed to help municipalities as well as other public organizations preserve their historic documents. The NHSL Grant awards up to \$10,000 to applicants to conserve publicly owned documents. The program aims to aid in the preservation of New Hampshire's historic manuscripts as well as increase their availability to the public. The Grant requires that these documents not only be professionally preserved, but also scanned to preserve microfilm as well as digitized documents.

This is the seventh Moose License Plate Conservation Grant awarded to the City for a total of \$65,473.80. In FY23, the City was awarded a grant for \$9,682 to preserve five historic documents dated 1881-1888. The City is grateful to receive this grant which will increase resident access to historic City documents, as well as offset capital dollars needed to complete this required work.

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

D. Acceptance of a Grant to the Fire Department from the Department of Safety, Division of Fire Standards, Training and EMS - \$16,575:

At the recent Fire Commission meeting, the Board of Fire Commissioners voted unanimously to accept the New Hampshire Department of Safety, Division of Fire Standards and Training and Emergency Medical Services Grant application for Trench Rescue Technician and Confined Space Rescue Technician trainings in the amount of \$16,575.

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

XVII. City Manager's Informational Items:

1. Report Back on the Demolition Ordinance:

At the request of the City Council at their October 16, 2023 meeting, [please find attached a report back on the City's Demolition Ordinance](#), along with a [memorandum dated November 15, 2023 from Deputy City Attorney McCourt to Chairperson Eldridge of the Zoning Board of Adjustment](#).

2. Parking Signs for the McIntyre Lot:

Please find attached [a report back regarding parking signage as it relates to the McIntyre Lot](#), which was requested at the December 4th City Council meeting.

EightKph LLC
233 Vaughan Street, Unit #301
Portsmouth, New Hampshire 03801

Date: December 7, 2023

To: City of Portsmouth City Council

Re: 70 Maplewood, Portsmouth, New Hampshire Sidewalk Encumbrance Permit

We are hereby requesting a 180-day license to supplement the sidewalk encumbrance permit at 70 Maplewood Ave. The 30-day sidewalk encumbrance permit expires on January 10, 2024.

The encumbrance of the sidewalk is necessary to facilitate the installation of footings and forms for the building foundation as well as the installation of high voltage primary conduit for Eversource under the sidewalk per the approved site plan for 70 Maplewood Ave.

Per the CMMP agreement, executed with the City of Portsmouth, temporary sidewalk crossings will be striped across Maplewood and Deer Street as depicted in the Plan attached to the license prior to encumbering the sidewalk. The locations of these temporary sidewalks have been reviewed and approved by the City's Traffic Engineer, Eric Eby. The existing crossings at the signaled intersection of Deer and Maplewood will remain functional per the CMMP.

We expect that the sidewalk can be returned to service once structural steel is complete, but we would certainly like to retain the right to apply to extend the license if necessary for brick façade and brick sidewalk work pending consultation with the awarded contractor.

Sincerely,



Thomas Balon Jr.
EightKph LLC, Manager

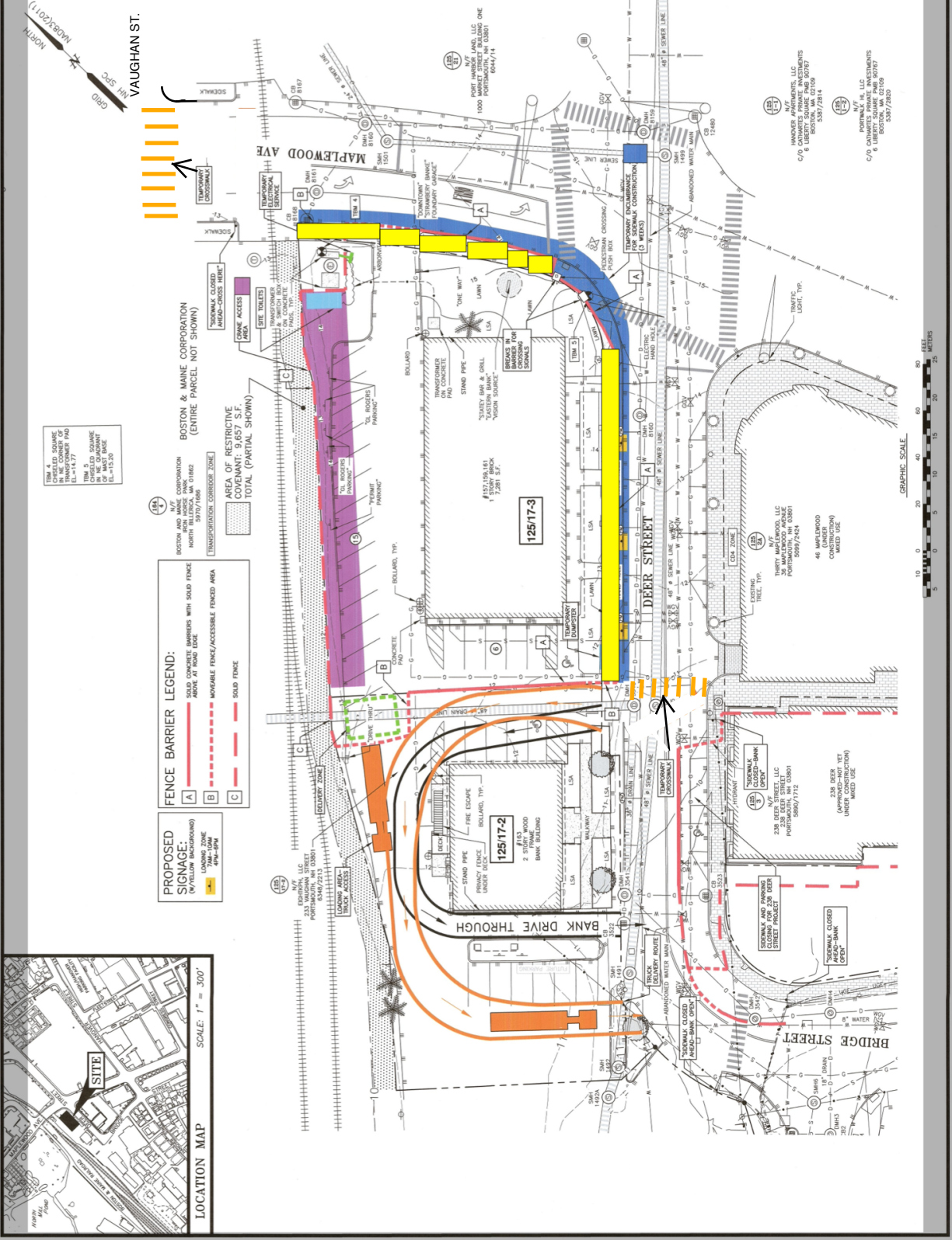
- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSORS MAP 125 AS LOT 17-3.
 - 2) OWNER OF RECORD: EIGHTKPH, LLC
 700 WASHINGTON STREET
 SUITE 301
 PORTSMOUTH, NH 03801
 604/872313
 - 3) PARCEL IS LOCATED IN CHARACTER DISTRICT 2 ZONE, DOWNTOWN OVERLAY, NORTH END INCENTIVE OVERLAY & HISTORIC DISTRICTS.
 - 4) DIMENSIONAL REQUIREMENTS: SEE ZONING TABLE.
 - 5) LOT AREA: 22,467 S.F.
 0.504 ACRES
 - 6) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 3001002059P, EFFECTIVE JANUARY 29, 2021
 - 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE DISTINGUISHING CONSTRUCTION ELEMENTS.
 - 8) WORKER PARKING WILL BE OFFSITE.

**SITE DEVELOPMENT
 EIGHTKPH, LLC
 70 MAPLEWOOD AVENUE
 PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
2	SITE TOILET LOCATION, FENCING	8/21/23
1	FENCING/SIGNAGE	8/10/23
0	ISSUED FOR COMMENT	4/26/23

REVISIONS	
NO.	DESCRIPTION

SCALE: 1" = 20'
 AUGUST 2022
CMi
 EXISTING SITE
 CMMF PLAN



LICENSE AGREEMENT
EIGHTKPH, LLC AT 70 MAPLEWOOD AVENUE

The City of Portsmouth (hereinafter "City"), a municipal corporation with a principal place of business of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, for good and valuable consideration as set forth herein, hereby grants this Revocable License to EIGHTKPH, LLC (hereinafter "Licensee" or "Owner") with a principal place of business at 233 Vaughan Street, Unit 301, Portsmouth, NH, pursuant to the following terms and conditions:

1. **Area of License and Use:** The Owner owns the property located in the City of Portsmouth, Rockingham County, State of New Hampshire, at 70 Maplewood Avenue, shown on the City of Portsmouth's Assessor's Map as Tax Map 125, Lot 17-3 ("Property"). For the Owner's title to the Subject Property, see Rockingham County Registry of Deeds at Book 6348, Page 2213.

License Area: The City authorizes Licensee to temporarily use 1,722 square feet of sidewalk that abuts the Property along Maplewood Avenue and Deer Street more particularly described and highlighted in yellow in Exhibit A attached.

2. **Use:** Licensee shall make use of the License Area for the purpose of facilitating the Licensee's construction of a four-story building with commercial space, dwelling units and a penthouse.

3. **Term:**

License Area: The license for License Area shall be for approximately 180 days, from January 11, 2024 through July 8, 2024.

Licensee may terminate this License prior to the end of the term by returning the License Area to safe and effective use by the public prior to the expiration of the term of this License. The Licensee shall contact the Director of Public Works for a determination that the License Area has been returned to safe and effective use. Failure to remove all vehicles, barriers, materials and equipment and to return the License Area to the

City in the manner prescribed under this License at the end of the term may result in enforcement action by the City.

4. **Notice:** Licensee shall provide notice to the City's Director of Public Works when Licensee assumes control and use of the License Area and again when it returns the License Area to the City's control and use.
5. **License Fees:** The Owner shall pay to the City a license fees in accordance with City Council Policy No. 2018-02 entitled "License Fee for Encumbrance of City Property". The License Fee Policy provides that the Owner will be charged a daily fee for the sidewalk encumbered by this license of \$0.05 per square foot per day.

License Fee Calculation: The total license fee for the License is $\$0.05 \times 1,722 \text{ square feet} = \$86.10 \text{ per day} \times 180 \text{ days} = \mathbf{\$15,498}$. The License Fee shall be paid in full prior to the start of the term of the License.

Because it is in the City's interest that the Licensed Area be returned to the public use as soon as possible, if the License Area is returned to the City prior to the end of the License Term, the City will refund the Licensee the portion of the License Fee paid but not used.

6. **Indemnification:** Licensee agrees to indemnify and hold harmless the City of Portsmouth for any and all property damage, bodily injury or personal injury which arises as a result of its utilization of the Licensed Area. This obligation survives termination or revocation of this Agreement.
7. **Insurance:** At all times the Licensee shall maintain insurance for bodily injury and property damage in the amount of at least \$1,000,000 per occurrence. Licensee will provide proof of insurance to the City during the term of this Agreement and the City will be named as an additional insured.
8. **Maintenance of Area:** During the term of this Agreement, Licensee shall maintain the License Area in a safe, neat and orderly fashion and shall take such actions as are necessary to protect the public safety. The Licensee shall secure the perimeter of the License Area and take such other measures as may be necessary for pedestrian and vehicular safety during use of the Licensed Area. This shall include pedestrian signage and working with the City's Department of Public Works to temporarily stripe new crosswalks for pedestrians as highlighted in orange in Exhibit A.

Owner is required to apply for separate Flagging Permits that are outside the scope of this License when closing roads that abut the Property and

shall advise abutters of all Flagging Permit applications in advance. Owner is also required to provide weekly updates to abutters regarding construction activity for the following week until the project is complete.

9. **Damage:** Licensee agrees to remedy any damage to the License Area caused by the Licensee's activities. The work will be performed by Licensee to City specifications and survive the terms of this Agreement. The City may elect to accept reasonable reimbursement from the Licensee in lieu of Licensee's repairing the damage.
10. **Compliance with Other Laws:** This Agreement does not relieve Licensee from compliance with any other local, state or federal laws or regulations or conditions imposed by any local board. Failure to abide by any local, state or federal laws or regulations or any condition of a site plan may, at the City's discretion, result in revocation.
11. **Revocation:** The City may terminate this Agreement or any provision contained in this agreement on 72 hours written notice if Licensee fails to meet the terms and conditions of this License or if the public interest requires such termination. No 72 hour written notification is required by the City if it is an emergency.
12. **Contractor and Subcontractor Parking:** Licensee understands and agrees that its contractors and subcontractors for the project shall not use on-street parking. Language will be inserted in Licensee's vendors and suppliers Purchase Orders and Trade Subcontracts that make the prohibition against parking on City streets mandatory. Contractors shall limit/ manage construction vehicles and deliveries to avoid disruption to businesses, particularly during the holiday season. Contractors may use loading zones for active loading and unloading of materials, equipment and tools.

Dated this _____ day of _____, 2023

City of Portsmouth

By: _____
Karen Conard
City Manager

Pursuant to vote of the City Council
of .

Dated this _____ day of _____, 2023.

EIGHTKPH, LLC

By: _____

Thomas H. Balon, Jr., Manager

h/jferrini/license//70maplewood

AMENDMENT TO LEASE AGREEMENT

WHEREAS, the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire, and having a usual place of business at 1 Junkins Avenue in Portsmouth, New Hampshire (the “City” or “Lessor”), and **Child Advocacy Center of Rockingham County, Inc.**, (“CAC” or “Lessee”), a nonprofit agency the works with community partners to advocate and provide social services for child victims of crime for residents of Rockingham County, are parties to a Lease Agreement and Assignment and Assumption Agreement for real property located at 100 Campus Drive, Portsmouth, New Hampshire (the ‘Premises” or “Community Campus”). See attached Exhibits A and B;

WHEREAS, CAC leases a portion of Community Campus (“Leased Premises”) from the City pursuant to terms of the Lease Agreement;

WHEREAS, the City will be constructing improvements to Community Campus for all of its tenants and the City and CAC desire to reconfigure and remodel its Leased Premises;

WHEREAS, the Lease Agreement terminates on December 31, 2023, and the parties believe it is in their best interest to enter into this Amendment to Lease Agreement to extend the existing terms of the Lease Agreement for six (6) months (commencing January 1, 2024 and terminating June 30, 2023);

WHEREAS, by extending the existing terms of the Lease Agreement for six (6) months, the City and CAC, and all other tenants of the Community Campus, will have sufficient time to assess and negotiate the new Leased Premises that incorporates the reconfigured and remodeled portion of the leased space, and thus a six (6) month extension of the Lease Agreement is recommended; and

WHEREAS, prior to the expiration of the term set forth in this Amendment to Lease Agreement, the City and CAC will draft and submit a new Lease Agreement for Council approval.

NOW THEREFORE, the terms of the Lease Agreement are amended as follows:

1. Paragraph 1.2 is deleted and replaced with the following:

The “Commencement Date” of this Lease shall be January 1, 2024.

2. Paragraphs 2.1 and 2.2 are deleted in their entirety and replaced with the following:

The term of this lease is for six (6) months, beginning on January 1, 2024 and terminating on June 30, 2024.

All other terms of the Lease Agreement not amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Lease Agreement on _____, 2023.

WITNESS:

CITY OF PORTSMOUTH

Karen S. Conard, City Manager

Approved by vote of the City Council on

WITNESS:

**CHILD ADVOCACY CENTER OF
ROCKINGHAM COUNTY, INC.**

Name: Maureen Sullivan, DA, MBA,
Executive Director

Duly Authorized by Vote of the Board on

DRAFT

ASSIGNMENT AND ASSUMPTION AGREEMENT (RE: LEASES)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is made as of this 14th day of March, 2022, by and between The Foundation for Seacoast Health, a New Hampshire non-profit corporation ("Assignor") and City of Portsmouth, a body politic, ("Assignee").

WITNESSETH:

WHEREAS, Assignee has this date purchased from Assignor certain real property (the "Premises"), known as 100 Campus Drive, Portsmouth, New Hampshire, all more particularly described on Exhibit A attached hereto made a part hereof; and

WHEREAS, under the terms and conditions of the Purchase and Sale Agreement pursuant to which the Premises were purchased, it was contemplated that Assignor and Assignee would enter into this Assignment.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

1. Assignor hereby transfers and assigns to Assignee all right, title and interest of Assignor, if any, in and to the following described property:

(a) All leases, subleases, tenancy at will agreements and other occupancy agreements relating to or affecting the Premises, together with all guarantees of obligations of tenants and other parties under such leases and agreements, said leases and other agreements being more fully described in Exhibit B attached hereto and hereby made a part hereof (all together, the "Leases"); and

(b) The current outstanding balance of all security deposits, key deposits, and prepaid rents, together with all interest accrued thereon, as more fully described on Exhibit C hereto (collectively, the "Deposits");

TO HAVE AND TO HOLD all of the foregoing unto the Assignee, its successors and assigns, from and after the date hereof, subject to the terms, covenants, conditions and provisions contained herein.

2. Assignee hereby accepts the foregoing assignment of the Leases and Deposits and does hereby covenant that with respect thereto:

(a) Assignee shall indemnify and defend Assignor against, and hold Assignor harmless from, any and all claims, liabilities and costs arising out of or relating to Assignee's failure to perform any duty or obligation of Assignee under the Leases or with

respect to the Deposits attributable to the acts or omissions of Assignee and arising with respect to the period after the date hereof.

(b) Assignee hereby assumes all the duties and obligations of Assignor accruing with respect to the period from and after the date hereof under the Leases and with respect to the Deposits.

3. Assignor shall indemnify and defend Assignee against, and hold Assignee harmless from any and all claims, liabilities and costs arising out of or relating to Assignor's failure to perform any duty or obligation accruing with respect to the period before the date hereof under the Leases or with respect to the Deposits.

4. This Agreement and the obligations of the parties hereunder shall survive the closing of the transactions referred to in the Purchase and Sale Agreement, shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns and shall be governed by and construed in accordance with the laws of the State of New Hampshire and may not be modified or amended except by written agreement signed by both parties.

IN WITNESS WHEREOF, the parties have executed this agreement under seal on the day and year first above written.

ASSIGNOR:

**The Foundation for Seacoast Health, a
New Hampshire non-profit corporation**

By: _____
Timothy J. Durkin
Its: Chair of the Board of Trustees

ASSIGNEE:

The City of Portsmouth, a body politic

By: KS Conrad
Name: *Karen S. Conrad*
Title: *City Manager*

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION AGREEMENT (LEASES)

DESCRIPTION OF REAL PROPERTY

A certain tract or parcel of land situate in Portsmouth, Rockingham County, New Hampshire shown as “Remaining Land of Foundation for Seacoast Health, Area = 37.062 Acres” on the plan entitled “Lot Line Revision Plan, Campus Drive, Banfield & Peverly Hill Roads, Portsmouth, New Hampshire, Assessor’s Parcels 254-8, 266-4, 266-5, 266-6 for City of Portsmouth, N.H. & Foundation for Seacoast Health”, prepared by James Verra and Associates, Inc. dated October 24, 2016, revised through December 14, 2016, and recorded with the Rockingham County Registry of Deeds on December 16, 2016, as Plan No. D-39897, to which Plan reference may be made for a more particular description.

EXHIBIT B TO ASSIGNMENT AND ASSUMPTION AGREEMENT (LEASES)

LEASES

Lessee	Term	Amendment & Renewals
Seacoast Community School	1/1/2020 - 12/31/2024	Amend 1/2020, 2/2021
RCA/SNHS	1/1/2020 - 12/31/2021	Amend 1/2021; Renewal 1/1/2022-12/31/2023
Seacoast Child Advocacy Center	1/1/2020 - 12/31/2021	Renewal 1/1/2022-12/31/2023
Krepfels	1/1/2020 - 12/31/2021	Renewal 1/1/2022-12/31/2023
Seacoast Outright	10/1/2021 Month-to-Month	

EXHIBIT C TO ASSIGNMENT AND ASSUMPTION AGREEMENT (LEASES)

**OUTSTANDING BALANCE OF ALL SECURITY DEPOSITS, KEY DEPOSITS,
AND PREPAID RENTS. TOGETHER WITH ALL INTEREST ACCRUED THEREON**

Foundation
Copy

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made by and between the **Foundation for Seacoast Health** of 100 Campus Drive, Suite 1, Portsmouth, New Hampshire, 03801 ("Lessor") and **Child Advocacy Center of Rockingham County** of 100 Campus Drive, Portsmouth, New Hampshire, 03801 ("Tenant"). Lessor and Tenant may be referred to jointly as the "Parties."

RECITALS

A. The Lessor is the owner of a multi-unit building of approximately 92,407 Rentable Square Feet, which includes building Common Areas, known as the Community Campus (the "Community Campus"), located on Campus Drive in Portsmouth, New Hampshire. See **SECTION 8.1** for the definition of Common Areas.

B. The Lessor and Tenant desire to enter into this Lease Agreement whereby the Parties have agreed on the terms and conditions upon which Lessor shall let to Tenant a portion of the Building.

NOW THEREFORE, in consideration of the covenants herein contained and other valuable consideration, the receipt of which is hereby acknowledged, Lessor and Tenant hereby agree as follows:

1 LEASED PREMISES

1.1 Lessor hereby leases to Tenant and Tenant hereby leases from Lessor, upon and subject to the terms and provisions of this Lease, an area of approximately **One Thousand Nine Hundred Six (1,906) Rentable Square Feet ("RSF")**, which includes Tenants Useable Square Feet ("USF") and an allocation of building Common Areas for use in common with others. The USF is identified on **Exhibit A** attached hereto and hereby made a part hereof. The RSF, also referred to as the "Leased Premises" herein, provides a nonexclusive right with others to use common space, including but not limited to entrances, exits, elevators, lobbies, cafe, all conference and meeting rooms, gymnasium, restrooms, corridors, passageways, and parking areas, all as may be applicable, and referred to as the Common Area (as that term is defined in **SECTION 8.1** hereafter). The Leased Premises is a part of the Community Campus which is located upon a lot or parcel of land situated in Portsmouth, County of Rockingham, New Hampshire (the "Land").

1.2 The "Commencement Date" of this Lease shall be January 1, 2022.

2 TERM OF LEASE

2.1 The term of this Lease is for a period of two (2) years (the "Term"), which period will commence on the Commencement Date.

- 2.2 The term "Lease Year," as used herein, shall commence with the Commencement Date and shall terminate on the last day of the twelfth (12th) calendar month after such commencement.
- 2.3 If Tenant holds over after the expiration of the Term without objection from Lessor, then such holding over will not extend the term of this Lease, but will create a month-to-month tenancy under the same conditions as this Lease except that rent shall be paid in the amount of one hundred fifty percent (150%) of the rent set forth in SECTION 4.1 hereof.
- 2.4 Subsequent lease negotiations will be made in good faith, providing the Tenant is not in default and has met all requirements of the previous lease period.

3 OPTION TO RENEW

- 3.1 There is no option to renew this Lease.

4 RENT

- 4.1 Tenant shall pay Lessor as the annual rent the amount of \$10.47 per square foot for the Leased Premises during the first year of this Lease, for an annual sum totaling **Nineteen Thousand Nine Hundred Fifty-Six Dollars (\$19,956)**, payable in equal monthly installments of **One Thousand Six Hundred Sixty-Three Dollars (\$1,663)**.
- 4.2 Rent for the second year of the lease period shall increase by a rate of five percent (5%). Tenant shall pay Lessor as the annual rent the amount of \$10.99 per square foot for the Leased Premises during the second year of this Lease, for an annual sum totaling **Twenty Thousand Nine Hundred Fifty-Two Dollars (\$20,952)**, payable in equal monthly installments of **One Thousand Seven Hundred Forty-Six Dollars (\$1,746)**.
- 4.3 Rent is based on Tenant's **Rentable Square Feet (RSF)**, which includes Tenants Useable Square Feet (USF) and an allocation of building Common Areas for use in common with others.
- 4.4 All rent is payable **in advance**, without demand, in fixed monthly installments as set forth above, **on or before the first day of each and every month** during the term hereof.

5 OPERATING EXPENSES

- 5.1 Rent outlined in ARTICLE 4 also represents Tenant's contribution toward base operating expenses of the facility including costs associated with the following:
- 5.1.1 Wages, salaries and other costs of retaining the employees **directly** engaged

in the operating, maintenance, repair, replacement and security of the building.

- 5.1.2 All supplies and materials used in the operating, maintenance, repair, replacement and security of the building.
 - 5.1.3 Cost of all utilities supplied to the building, including electricity, gas, water and sewer.
 - 5.1.4 Cost of management, maintenance and service agreements with third parties, including agreements for HVAC, food service, environmental services, grounds keeping, snow plowing and removal, waste removal and recycling, security, alarm service, elevator maintenance and wireless access to the building.
 - 5.1.5 Cost of casualty and general liability insurance applicable to the building and land.
 - 5.1.6 The property is considered tax exempt and therefore is not subject to additional charges for property tax.
- 5.2 Utility Cost Escalator - Under the terms of this lease, utilities are provided to tenants up to a cost of \$3.16 per RSF for each lease year based on total RSF as described in **RECITAL A**. If the actual cost of utilities for a lease year exceeds the cost of \$3.16 per RSF by more than 2.0%, each tenant will share in the excess cost based on the tenant's percentage of the RSF of the building.
- 5.2.1 Utility costs include water & sewer, electricity and natural gas.
 - 5.2.2 The utility cost per RSF included in the lease is based on historic expenses (calculated as an average of 2017 through 2020 actual and 2021 projected).
 - 5.2.3 A fee to cover the overage, if any, will be assessed after the end of each lease year when total annual utility costs are known.
 - 5.2.4 The tenant may pay the fee in a lump sum or over a period of months not to exceed six months after receipt of the amount due.

6 SECURITY DEPOSIT

- 6.1 For new Tenants, the sum of One Thousand Dollars (\$1,000) shall be deposited with the Lessor upon execution of this Lease Agreement by Tenant as security for the faithful performance of all the covenants and conditions of this Lease Agreement on Tenant's part. In the event that all covenants and conditions have been satisfactorily performed over the course of the initial term, the sum deposited as security shall be returned, without interest, to Tenant.

7 QUIET ENJOYMENT

7.1 Lessor shall put Tenant into possession of the Leased Premises on the Commencement Date, and Tenant, upon paying the Rent and observing the other covenants and conditions herein, upon its part to be observed, shall peaceably and quietly hold and enjoy the Leased Premises.

8 COMMON AREAS OF THE BUILDING; MAINTENANCE & USE THEREOF

8.1 The term "Common Area" is defined for all purposes of this Lease as that part of the Community Campus and the Land designated by Lessor as intended for the common use of all tenants, including among other facilities all entrances, exits, elevators, lobbies, café, all conference and meeting rooms, gymnasium, tennis court, athletic fields, playgrounds, kitchen areas, restrooms, corridors, passageways, parking areas, private streets, landscaping, curbs, loading areas, sidewalks, hallways, lighting facilities, and such other areas as may be designated as Common Area by the Lessor from time to time. Lessor reserves the right to manage, control, and regulate all aspects of the Common Area. Tenant, its employees, and invitees shall have the nonexclusive right to use the Common Area as constituted from time to time by reserving the space through the Foundation for Seacoast Health administrative office or, following the sale of the building, the Recreation Director or City Designee in advance. Such use shall be in common with Lessor, other tenants in the Community Campus, and other persons permitted by Lessor to use the same, and shall be subject to such rules and regulations governing use as Lessor in its sole discretion may from time to time prescribe, including the designation of specific areas within the Community Campus or the Land in which automobiles owned or used by Tenant, its employees, and invitees shall be parked. Tenant shall not take any action which would interfere with the rights of other persons to use the Common Area. Lessor may temporarily close any part of the Common Area for such periods of times as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights. Lessor shall be responsible for the operation, management, and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole discretion of Lessor.

8.2 It is the desire of the Lessor to keep the outside premises at a high standard of maintenance and cleanliness. Anything seeming to create a hazard or unsightly appearance including, but not limited to, discarded equipment and trash, is prohibited.

8.3 Tenant shall furnish to Lessor upon request a complete list of license numbers of all automobiles operated by Tenant and its employees. Tenant agrees that if any

automobile or other vehicle owned by Tenant or any of its employees or invitees shall at any time be parked in any area, other than the specific areas designated by Lessor from time to time for employee parking, Lessor shall be and is hereby authorized to cause such automobile or other vehicle to be removed to such other location, either within or beyond the Building area. Tenant agrees to indemnify Lessor, its employees, and agents and hold each of them harmless from any and all claims of whatsoever nature which may arise by reason of such removal.

9 CONDITION OF LEASED PREMISES; REPAIRS

- 9.1** Subject to the terms of **ARTICLE 1** of this Lease, Tenant accepts the Leased Premises and the Common Area and any improvements, and any equipment or fixtures on or in the Leased Premises “as is” and in their then existing condition and agrees that no representation, statement or warranty, express or implied, has been made by or on behalf of Lessor as to such condition, or as to the use that may be made of such property.
- 9.2** Lessor shall be responsible for all capital maintenance associated with the Leased Premises.
- 9.3** Tenant shall take good care of the Leased Premises and keep the same free from waste at all times. Tenant shall keep the Leased Premises neat, clean, and free from dirt or rubbish at all times, and shall store all trash and garbage within the Leased Premises in the manner and areas prescribed by Lessor. Tenant shall not operate an incinerator or burn trash or garbage within the Community Campus or any part of the Land. Tenant shall procure at its sole expense all permits and licenses required for the transaction of business in the Leased Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations affecting the Leased Premises, including those relating to Hazardous Waste or Substance (hereinafter defined) now in force or that may be hereafter enacted or promulgated.
- 9.4** Lessor is responsible for what is considered by Lessor to be usual and customary janitorial services (**Exhibit B**). Anything above and beyond what Lessor provides is the sole responsibility of Tenant (subject to approval of Lessor). Lessor is responsible for preventive pest control/extermination services. However, any pest control services required due to the Tenant’s negligence (including improper storage of food and/or dry goods) will be billed directly to the Tenant.
- 9.5** Tenant is solely responsible for properly disposing, at its sole expense, of any medical waste, biowaste, and other waste not considered by Lessor to be usual and customary, in compliance with all applicable laws, rules and regulations.

10 IMPROVEMENTS BY TENANT

10.1 Tenant shall not make or allow to be made any alterations, installations, additions or improvement in or to the Leased Premises, or place safes, vaults or any other heavy furniture or equipment within the Leased Premises, without Lessor's prior written consent, such consent to be given or withheld in Lessor's sole discretion. In addition to any and all other conditions imposed by Lessor, any such alterations, additions or improvements to the Leased Premises shall be governed by the following terms:

10.1.1 No such alteration, addition or improvement lessens the fair market value of the Leased Premises or the Community Campus and all such improvements are performed in class and quality at least equal to the original construction work;

10.1.2 All work for any such alteration, addition or improvement shall be performed by a contractor approved by Lessor prior to the commencement of the work, and Lessor shall approve the construction contract which shall be between the Tenant and the approved contractor. In some instances, Lessor facility staff may complete an improvement project on behalf of the Tenant. If the project cannot be completed within the normal working hours of Lessor facility staff, any overtime incurred will be charged to Tenant;

10.1.3 Prior to the commencement of work on any such alteration, addition or improvement, Tenant shall procure, at its own cost and expense, all necessary permits; furthermore, the plans and specifications covering the same will have been submitted to and approved in writing by (i) Lessor, (ii) all municipal or other governmental departments or agencies having jurisdiction over the subject matter thereof, and (iii) any mortgagee having an interest in or lien upon the Leased Premises or the Community Campus if required by the terms of the mortgage;

10.1.4 In carrying out all such alterations, additions and improvements, Tenant shall comply with the standards, guidelines, and specifications imposed by all municipal or other governmental departments and agencies having jurisdiction over the same, including without limitation, all building codes;

10.1.5 Prior to the commencement of work on any such alteration, addition or improvements, Tenant shall have procured and delivered to Lessor the policy of Builder's Risk insurance hereinafter referred to in **SECTION 22.2** hereof or additional fire and extended coverage insurance as required by **SECTION 22.3** hereof, whichever is applicable;

10.1.6 All work shall be completed promptly and in a good and workman like manner and shall be performed in such a manner that no mechanics, materials or other similar liens shall attach to Tenant's leasehold estate, and in no event shall Tenant permit, or be authorized to permit, any such liens or other claims to be asserted against Lessor or Lessor's rights, estate, and interest with respect to the Leased Premises or the Community Campus; and at the completion of all work Tenant shall obtain waivers of mechanics and materialmen's liens from all persons performing work on or on furnished material to the Leased Premises; and

10.1.7 Any such alteration, addition or improvement made by Tenant pursuant to the terms hereof shall, at the expiration of the Term become and remain the property of Lessor, provided, however, that Lessor may, at its option and upon notice to Tenant, require Tenant to remove any such alterations, additions, and improvements and to restore the Leased Premises to their condition as at the beginning of the Term hereof, reasonable wear and tear, taking by eminent domain, and damage due to fire or other casualty insured against excepted.

11 MACHINERY AND EQUIPMENT - TRADE FIXTURES

11.1 All alterations, installations, additions or improvements, other than moveable furniture and moveable trade fixtures, made by Tenant to the Leased Premises shall remain upon and be surrendered with the Leased Premises and become the property of Lessor at the expiration or termination of this Lease or the termination of Tenant's right to possession of the Leased Premises; provided, however, that Lessor may require Tenant, at Tenant's cost, to remove any and all of such items that are not, in the Lessor's discretion, appropriate to the premises within ten (10) days following the expiration or termination of this Lease, or the termination of Tenant's right to possession of the Leased Premises. Tenant, at its sole cost and within ten (10) days following the expiration or termination of this Lease, shall remove all of Tenant's property from the Leased Premises. Any such property which may be removed pursuant to the preceding sentence and which is not so removed prior to the expiration or earlier termination of this Lease may be removed from the Leased Premises by Lessor and stored for the account of Tenant; and if Tenant fails to reclaim such property within thirty (30) days following such expiration or earlier termination of this Lease, then such property will be deemed to have been abandoned by Tenant, and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without notice to Tenant and without obligation to account therefor. Tenant shall pay to Lessor the cost incurred by Lessor in removing, storing, selling, destroying or otherwise disposing of any such property.

12 UTILITIES

- 12.1** Lessor shall pay when due all charges for gas, oil, electricity, water, light, heat, air conditioning, sewer and power used on or about or supplied to the Leased Premises. Lessor shall not be liable for any failure of water supply or electric current or of any service by any utility; or injury to persons (including death) or damage to property resulting from steam, gas, electricity, water, rain or snow which may flow or leak from any part of the Leased Premises or from any pipes, appliances or plumbing works, on the street or subsurface, or from any other place; or for interference with light or other easements, however caused.
- 12.2** Tenant shall be solely responsible and pay any and all charges associated with installation, service, and maintenance of telephone, communications, and any other data equipment to the Leased Premises. Tenant must receive prior written approval of Lessor before installing this equipment.

13 USE OF LEASED PREMISES

- 13.1** Without the prior written consent of Lessor, Tenant may use the Leased Premises only to provide services consistent with the Tenant's charitable purpose as filed with the Office of the New Hampshire Attorney General Charitable Trusts Unit, within the Seacoast area, and for no other purpose whatsoever without Lessor's prior written consent, which consent shall be granted or withheld in Lessor's sole discretion.
- 13.2** In its use of the Leased Premises, Tenant shall comply with all statutes, ordinances, and regulations applicable to the use thereof, including, without limiting the generality of the foregoing, the Zoning Ordinances of the City of Portsmouth, New Hampshire, as now in effect or as hereafter amended.
- 13.3** Tenant shall not injure or deface, or commit waste with respect to the Leased Premises nor occupy or use the Leased Premises, or permit or suffer any part thereof to be occupied or used, for any unlawful or illegal business, use or purpose, nor for any business, use or purpose deemed to be disreputable or extra-hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose nor in any manner in violation of any present or future laws, rules, requirements, orders, directions, ordinances or regulations of any governmental or lawful authority including Boards of Fire Underwriters. Tenant shall, immediately upon the discovery of any such unlawful, illegal, disreputable or extra-hazardous use, take, at its own cost and expense, all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove the subtenants, occupants or other persons guilty of such unlawful, illegal, disreputable or extra-hazardous use.

13.4 Tenant shall procure any licenses or permits required by any use of the Leased Premises by Tenant.

14 HAZARDOUS WASTE OR SUBSTANCES

14.1 Tenant shall not use the Leased Premises for the generation, storage or treatment of hazardous waste or substances, and hereby certifies that its operations or other use of the Leased Premises will not involve same. For purposes of this Lease, the term "Hazardous Waste or Substances" is defined by cumulative reference to the following sources as amended from time to time: (1) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. §901 et seq (RCRA); (2) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq; (3) Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §6901 et seq; (4) CPA Federal Regulations promulgated thereunder and codified in 40 C.F.R. Parts 260-265 and Parts 122-124; (5) New Hampshire R.S.A. ch 147 and 147-A; (6) New Hampshire Regulations promulgated thereunder by any Agency or Department of the state.

14.2 Tenant warrants and acknowledges that at no time have funds been expended from the State of New Hampshire's hazardous waste cleanup fund established under RSA 147-B with respect to any of Tenant's property located within New Hampshire which would entitle the State to a so-called superlien under RSA 147-B:10 III. Tenant also acknowledges same with respect to similar laws of any other state which liens might possibly affect the Leased Premises. Tenant shall indemnify Lessor and hold Lessor harmless for any liability imposed should the provisions of this SECTION 13.2 be or become untrue. The warranty of this section will survive the expiration or termination of this Lease.

15 ASSIGNMENT; SUBLEASING

15.1 Tenant shall not, voluntarily, by operation of law, or otherwise, assign, transfer, mortgage, pledge or encumber this Lease or sublease the Leased Premises or any part thereof, or grant a right to any person other than Tenant, its employees, agents, servants, and invitees to occupy or use the Leased Premises or any portion thereof, without the express prior written consent of Lessor and in the sole discretion of Lessor. Any attempt to do any of the foregoing without such written consent shall be null and void and of no effect, and shall further constitute a material default under this Lease. If Tenant so requests Lessor's consent, said request shall be in writing specifying the duration of said desired sublease or assignment, the date same is to occur, the exact location of the space affected thereby and the proposed rentals on a square foot basis chargeable thereunder, and shall be submitted to Lessor at least sixty (60) days in advance of the date on which Tenant desires to

make such assignment or sublease or allow such occupancy or use. Upon such request, Lessor may, in its sole discretion, **(i)** grant such consent subject to Lessor's approval of the assignee, transferee, subtenant or mortgagee, or **(ii)** deny such consent, or **(iii)** elect to terminate this Lease.

15.2 It is the responsibility of the Tenant to ensure that any sublessee is fully informed and compliant with all Campus Rules and Regulations. However, the Tenant shall, despite any permitted assignment or sublease, remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder, and Lessor shall be permitted to enforce the provisions of this Lease against Tenant or any assignee or sublessee without demand upon or proceeding in any way against any other person.

15.3 Consent by Lessor to a particular assignment or sublease shall not be deemed a consent to any other subsequent transaction. If this Lease is assigned or if the Leased Premises are subleased without the permission of Lessor, then Lessor may nevertheless collect rent from the assignee or sublessee and apply the net amount collected to the rent payable hereunder, but no such transaction or collection of rent or application thereof by Lessor shall be deemed a waiver of any provision hereof or a release of Tenant from the performance of the obligations of the Tenant hereunder.

16 TAXES AND ASSESSMENTS

16.1 The Community Campus and the Land thereon are considered tax exempt and therefore are not subject to real estate taxes as referenced in **SUBSECTION 5.1.6**. In the event that Tenant uses the Leased Premises and Community Campus in such a way as to subject the Community Campus or the Land to real estate taxes, Tenant shall be responsible for such taxes.

17 MECHANIC'S LIEN

17.1 In the event of the filing in the Rockingham County Registry of Deeds of any notice of a builder's, supplier's or mechanic's lien on the Leased Premises or the Building arising out of any work performed by or on behalf of Tenant, Tenant shall cause without delay proper proceedings to be instituted to test the validity of the lien claimed, and before the end of the term to discharge the same by the posting of bond or otherwise; and during the pendency of any such proceeding, Tenant shall completely defend and indemnify Lessor against any such claim or lien and all costs of such proceedings wherein the validity of such lien is contested by Tenant, and during the pendency of such proceeding such lien may continue until disposition of such proceeding, and after disposition thereof, Tenant shall cause said lien to be released and discharged.

18 EMINENT DOMAIN

18.1 If the Leased Premises is lawfully condemned or taken by any public authority either in its entirety or in such proportion that it is no longer suitable for the intended use by Tenant, then this Lease will automatically terminate without further act of either party hereto on the date when possession of the Leased Premises is taken by such public authority, and each party hereto will be relieved of any further obligation to the other except that Tenant shall be liable for and shall promptly pay to Lessor any rent or other payments due hereunder then in arrears or Lessor shall promptly rebate to Tenant a pro rata portion of any rent or other such payments paid in advance. In the event the proportion of the Leased Premises so condemned or taken is such that the Leased Premises is still suitable for its intended use by Tenant, this Lease will continue in effect in accordance with its terms and a portion of the rent and other payments due hereunder will abate equal to the proportion of the rental value of the Leased Premises so condemned or taken. In either of the above events, the award for the property so condemned or taken will be payable solely to Lessor without apportionment to Tenant, except that Tenant shall be entitled to a separate award, if any, for moving expenses.

19 LIABILITY AND GENERAL INDEMNIFICATION BY TENANT

19.1 Tenant agrees to indemnify, defend and hold harmless Lessor against and from any and all claims, actions, judgments, damages, penalties, fines, assessments, costs and expenses, liabilities and losses (including sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees) as a result of the action and/or inaction of the Tenant, including but not limited to matters resulting or arising as follows:

19.1.1 from Tenant's use and/or occupancy of the Leased Premises and the Community Campus;

19.1.2 from any condition of the Leased Premises;

19.1.3 from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease Agreement, or from any act or omission of Tenant, or any of Tenant's agents, contractors, servants, employees, licensees or invitees; or

19.1.4 from any accident, injury, loss or damage whatsoever caused to any person or property occurring during the term of this Lease Agreement, on or about the Leased Premises and the Building.

20 RULES AND REGULATIONS

20.1 Tenant, its servants, employees, agents, visitors, invitees, and licensees, shall observe faithfully and comply strictly with the Rules and Regulations set forth in **Exhibit C** hereto, and shall abide by and conform to such further Rules and Regulations, pertaining to the Leased Premises and Building, as Lessor may from time to time, in its sole discretion, make, amend, or adopt (both at the time of execution of this Lease or in the future).

21 LESSOR'S INSURANCE

21.1 Lessor shall carry such property insurance, boiler insurance, public liability, and property damage insurance, rent insurance and any other insurance (including both types of insurance and amounts of coverage) with respect to the Building which, from time to time, Lessor deems appropriate.

21.2 In the event of loss, Lessor shall promptly initiate action to effect a settlement with the insurer. Tenant shall cooperate with Lessor and any mortgagee in connection with the proceeding and collection of claims, and shall execute and deliver to Lessor such proofs of loss, releases and other instruments as may be necessary to settle any such claims and obtain the proceeds thereof, and in the event Tenant fails or neglects to so cooperate or to execute and deliver any such instrument, Lessor may, as the agent or attorney-in-fact of Tenant, execute and deliver any such instrument, and Tenant hereby nominates and appoints Lessor the proper and legal attorney-in-fact of Tenant for such purpose, hereby ratifying all that Lessor may lawfully do as such attorney-in-fact.

21.3 If and to the extent permitted without prejudice to any rights of Lessor under the applicable insurance policies, Tenant shall be held free and harmless from liability for loss or damage to the Leased Premises by fire, the extended coverage perils, sprinkler leakage, vandalism and malicious mischief if and to the extent actually insured against, whether or not such loss or damage is the result of the negligence of Tenant, its employees or agents. This subsection does not impose any added obligation or expense upon Lessor nor require that it carry any insurance of any kind and is to be construed only as a limitation upon the rights of the insurance carriers to subrogation.

22 TENANT'S INSURANCE

22.1 Tenant shall, throughout the term hereof, procure and carry at its own expense comprehensive liability insurance on the Leased Premises with an insurance company authorized to do business in New Hampshire and acceptable to Lessor. Such insurance will be carried in the name of and for the benefit of Tenant and

Lessor; shall specifically name Lessor as an additional insured; will be written on an “occurrence” basis; and shall provide coverage for bodily injury and property damage under a combined single limit of at least **One Million Dollars (\$1,000,000.00)** Each Occurrence Limit and with a General Aggregate of at least **Two Million Dollars (\$2,000,000.00)**. If applicable, Tenant shall comply with the requirements of the Boilers and Unfired Pressure Vessels Law (RSA 157-A), and in such event the policy or policies referred to above shall contain an endorsement providing pressure vessels insurance coverage and naming Lessor as either a Named Insured or a Loss Payee. Tenant shall furnish to Lessor a certificate of such insurance which must provide that the insurance indicated therein will not be cancelled without at least thirty (30) days prior written notice to Lessor.

- 22.2** During any period or periods of construction by Tenant on the Leased Premises, the construction of which **(a)** is of a type to which Builder’s Risk Insurance is applicable and **(b)** requires the advance written approval of Lessor Pursuant to **ARTICLE 10** hereof, Tenant shall obtain and maintain in effect standard Builder’s Risk Insurance written on a completed value basis, including extended coverage, and utilizing a maximum value at date of completion not less than the greater of **(y)** the aggregate contract price or prices for the construction of such facilities or **(z)** the amount which may be required by a mortgagee which is financing such construction. Such insurance shall be obtained from an insurance company authorized to do business in New Hampshire and acceptable to Lessor, and Tenant shall furnish to Lessor a certificate of such insurance which shall provide that the insurance indicated therein shall not be cancelled without at least thirty (30) days prior written notice to Lessor. If such construction by Tenant is of a type to which Builder’s Risk Insurance is not applicable, Tenant shall provide the necessary additional coverage under the policies referred to in this **ARTICLE 22**.
- 22.3** Tenant shall procure and continue in force during the term hereof, all-risk insurance which contains fire and extended coverage on a full value, repair or replacement basis upon facilities, machinery, equipment and appurtenances constructed, erected or installed on or in the Leased Premises by Tenant and which have or may become the property of Lessor pursuant hereto. The policies evidencing such insurance must provide that loss, if any, payable thereunder will be payable to Lessor and/or Tenant and/or mortgagee of the Leased Premises or the Building as their respective interests may appear, and all such policies together with evidence of payment of the premiums thereon will be delivered to Lessor and/or any such mortgagee. All such policies must be obtained with such responsible companies authorized to do business in New Hampshire as Lessor

shall approve (which approval shall not be unreasonably withheld) and must be in form satisfactory to Lessor and Tenant shall furnish to Lessor a certificate of such insurance which shall provide that the insurance indicated shall not be cancelled without at least thirty (30) days prior written notice to Lessor.

22.4 Tenant shall procure and continue in force during the term hereof both workers' compensation and employer's liability policies in coverage amounts acceptable to Lessor. Payment of premiums by Lessor will not be deemed a waiver or release by Lessor of the default by Tenant in failing to pay the same or of any action which Lessor may take hereunder as a result of such default. Tenant shall neither violate, nor allow its agents or employees to violate any of the terms, conditions and provisions of such policies.

22.5 Upon receipt of a copy of notice of cancellation of any insurance which is the responsibility of Tenant hereunder, Lessor may pay the premiums necessary to reinstate the same. The amount so paid will constitute Additional Rent payable by Tenant at the next rental payment date. Payment of premiums by Lessor will not be deemed a waiver or release by Lessor of the default by Tenant in failing to pay the same or of any action which Lessor may take hereunder as a result of such default. Tenant shall neither violate, nor allow its agents or employees to violate any of the terms, conditions and provisions of such policies.

22.6 If and to the extent permitted without prejudice to any rights of Tenant under the applicable insurance policies, Lessor shall be held free and harmless from liability for loss or damage to personal property of Tenant in the Leased Premises by fire, the extended coverage perils, sprinkler leakage, vandalism and malicious mischief if and to the extent actually insured against, whether or not such loss or damage is the result of the negligence of Lessor, its employees or agents. This subsection does not impose any added obligation or expense upon Tenant nor require that it carry any insurance of any kind and is to be construed only as a limitation upon the rights of the insurance carriers to subrogation.

23 DESTRUCTION OR DAMAGE

23.1 In the event that the Leased Premises is totally destroyed by fire or other casualty insured against, or is so damaged that repairs and restoration cannot, in the opinion of Lessor in its sole discretion, be accomplished within a period of one hundred twenty (120) days from the date of such destruction or damage, this Lease will automatically terminate without further act of either party hereto, and each party shall be relieved of any further obligation to the other except for the rights and obligations of the parties under **ARTICLES 21 and 22** hereof, and except that Tenant shall be liable for and shall promptly pay Lessor any Rent then

in arrears or Lessor shall promptly rebate to Tenant a pro rata portion of any Rent paid in advance. In the event that the Leased Premises is so damaged that repairs and restoration can be accomplished within a period of one hundred twenty (120) days from the date of such destruction or damage, this Lease will continue in effect in accordance with its terms; such repairs and restoration will, unless otherwise agreed by Lessor and Tenant, be performed as closely as practicable to the original specifications (utilizing therefor the proceeds of the insurance applicable thereto without any apportionment thereof for damages to the leasehold interest created by this Lease), and until such repairs and restoration have been accomplished, a portion of the Rent will abate equal to the proportion of the Leased Premises rendered unsuitable for the ordinary activities of the Tenant by the damage. Lessor's obligation to restore, replace or rebuild such facilities will not exceed in amount the sum of the insurance proceeds paid to it and/or released to it by any mortgagee with which settlement was made. In the event the Leased Premises may be repaired and/or restored within the aforementioned one hundred twenty (120) day period, but the cost of such repair or restoration exceeds the available insurance proceeds, at Lessor's discretion, this Lease will be terminated in which event the rights and duties of the parties shall be governed by the first sentence of this **SECTION 23.1**. Tenant shall execute and deliver to Lessor all instruments and documents necessary to evidence the fact that the right to such insurance proceeds is vested in Lessor. In the event of damage or destruction, partial or total, to or of machinery, equipment and appurtenances constructed or installed on or in the Leased Premises by Tenant, Tenant, provided it then be in full compliance with **ARTICLE 22** hereof, will be entitled to receive an apportionment of the insurance proceeds in accordance with the relative damage or destruction to or of (a) the Leased Premises as it exists at the beginning of the term hereof and (b) the machinery, equipment and appurtenances, if any, constructed or installed on or in the Leased Premises by Tenant at its expense after the beginning of the term hereof and which could have been removed by Tenant pursuant to **ARTICLE 11** hereof. Notwithstanding anything contained herein to the contrary, in the event that the damage to the Leased Premises results from the fault or negligence of Tenant, its agents, employees, licensees or invitees, Tenant shall not be entitled to any abatement or reduction of any Rent or other sums due hereunder, and such damage shall be repaired by Tenant, or at Lessor's option by Lessor at Tenant's expense.

24 REPOSSESSION BY LESSOR

24.1 At the expiration of this Lease or upon the earlier termination of this Lease for any cause herein provided for, Tenant shall peaceably and quietly quit the Leased

Premises and deliver possession of the same to Lessor together with the improvements thereon at the beginning of the term hereof and all improvements constructed thereon by Tenant which are not removed pursuant to the terms hereof, and all machinery, equipment and appurtenances installed therein which have become part of the Leased Premises, or which are not to be removed pursuant to **ARTICLE 10** hereof. At the time of delivery of possession to Lessor at the expiration of this Lease any and all machinery, equipment and appurtenances constructed or installed on or in the Leased Premises by Tenant at its expense after the beginning of the term hereof, which constitute fixtures and which have become the property of Lessor pursuant to **ARTICLE 10** hereof will be free and clear of any mortgage, lien, pledge or other encumbrance or charge.

25 MORTGAGE LIEN

25.1 This Lease and all rights of Tenant hereunder are and will remain subject and subordinate to the lien of **(a)** any mortgage(s) constituting a lien on the Building, or any part thereof, at the date hereof, and **(b)** the lien of any mortgage(s) hereafter executed to a person, bank, trust company, insurance company or other recognized lending institution to provide permanent financing or refinancing of the facilities on the Community Campus and/or the Land, and **(c)** any renewal, modification, consolidation or extension of any mortgage or deed of trust referred to in clause **(a)** or **(b)**. Tenant shall, upon demand at any time or times, execute, acknowledge and deliver to Lessor, any and all instruments that may be necessary or proper to subordinate this Lease and all rights of Tenant hereunder to the lien of any mortgage, deed of trust or other instrument referred to in clause **(b)** or clause **(c)** of the preceding sentence, and, in the event that Tenant shall fail or neglect to execute, acknowledge and deliver any such subordination instrument notwithstanding its receipt of a reasonable subordination, non-disturbance and attornment agreement (see below) from said mortgagee, Lessor, in addition to any other remedies, may, as the agent or attorney-in-fact of Tenant, execute, acknowledge and deliver the same, and Tenant hereby nominates, constitutes and appoints Lessor as Tenant's proper legal attorney-in-fact for such purposes; provided, however, that the subordination of this Lease shall be conditioned upon the execution and delivery by the mortgagee or trustee of an agreement **(i)** that so long as Tenant is not in default under the terms of this Lease the mortgagee or trustee, or any person succeeding to the rights of the mortgagee or trustee, or any purchaser at a foreclosure sale under said mortgage or deed of trust, shall not disturb the peaceful possession of Tenant hereunder, and **(ii)** that the proceeds of insurance policies received by it in settlement of losses under insurance policies

held by it will be applied to the cost of repairs and restoration in those instances in which Lessor is obligated to repair and restore pursuant to the provisions hereof.

- 25.2 Tenant shall execute and acknowledge a certificate containing such information as may be reasonably requested for the benefit of Lessor, any prospective purchaser or any current or prospective mortgagee of the Building within ten (10) days of receipt of same. In the event Tenant fails to deliver such certificate to Lessor, Tenant irrevocably appoints Lessor as Tenant's attorney-in-fact to execute the same.

26 DEFAULT

- 26.1 In the event that (a) any installment of Rent or Additional Rent is not paid within ten (10) days after the same is due and payable and remains unpaid for ten (10) days after written notice has been given or sent to Tenant by Lessor, or (b) Tenant defaults in the performance or observance of any other covenant or condition in this Lease and such default remains unremedied for ten (10) days after written notice thereof has been given or sent to Tenant by Lessor, or (c) activities are conducted in the Leased Premises or Building or on the grounds of the Building by Tenant or its invitees which are not specifically authorized by Lessor or which activities are in violation of the rules and regulations in effect at the time, or (d) the Tenant loses its IRC 501(c)(3) status or (e) the Tenant and the use it makes of the Leased Premises and/or the Community Campus no longer is determined by Lessor (in its sole discretion) to be "charitable" in accordance with New Hampshire R.S.A. 72:23-/Definition of Charitable (as amended) or otherwise entitled to property tax exemption in accordance with R.S.A. 72:23 Real Estate and Personal Property Tax Exemption (as amended) or (f) the Tenant, including its invitees and others at the Leased Premises and/or the Community Campus conducts itself in a manner which, in the sole discretion of Lessor, is disruptive to other activities and tenants in the Community Campus or (g) Tenant makes an assignment for the benefit of creditors, is generally not paying its debts as such debts become due, a custodian is appointed or takes possession of its assets other than a trustee, receiver or agent appointed or authorized to take charge of less than substantially all of the property of Tenant for the purpose of enforcing a lien against such property, commences any proceeding relating to Tenant or any substantial part of its property arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or there is commenced against Tenant any such proceeding which remains undismissed for a period of sixty (60) days, or any order approving the petition in any such proceeding is entered, or Tenant by any act indicates its consent to, or acquiescence in, any such proceeding or the appointment of any receiver or

trustee for Tenant or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days, or any party holding a security interest in any of Tenant's fixtures or personal property of any nature whatsoever that are located on the Leased Premises institutes or gives notice of foreclosure against any such property, or **(h)** Tenant shall have assigned or sublet the Leased Premises without the prior written consent of Lessor, or **(i)** Tenant shall abandon or vacate or shall commence to abandon or vacate the Leased Premises or any substantial portion of the Leased Premises or shall remove or attempt to remove, without the prior written consent of Lessor, all or a substantial portion of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property, Lessor may immediately or at any time thereafter and without demand or notice enter upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of Lessor's former estate and expel Tenant and those claiming through or under Tenant and remove their effects forcibly if necessary, without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of Rent or preceding breach of covenant, and upon such entry this Lease will terminate, and in case of such termination or in case of termination under the provisions of statute by reason of the default of Tenant, Tenant shall remain and continue liable to Lessor in an amount equal to the total Rent reserved for the balance of the Term less the net amounts (after deducting the expenses of repair, renovation or demolition) which Lessor realizes, or with due diligence should have realized, from the reletting of the Leased Premises, plus all costs associated with the termination of the Lease, including Lessor's reasonable attorneys' fees. Lessor will have the right from time to time to relet the Leased Premises upon such terms as it deems fit, and if a sufficient sum is not thus realized to yield the net Rent required under this Lease, Tenant shall satisfy and pay all deficiencies as they may become due during each month of the remaining term of this Lease. Nothing herein contained will be deemed to require Lessor to await the date on which this Lease would have expired had there been no default by Tenant, or no such termination or cancellation. Lessor's rights and remedies under this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Lessor, will be deemed to be in exclusion of any of the others herein or by law or equity provided. Nothing contained in this Section will limit or prejudice the right of Lessor to prove and obtain, in proceedings involving the bankruptcy or insolvency of, or a composition with creditors by, Tenant the maximum allowed by any statute or rule of law at the time in effect.

operating order at all times. Upon the expiration or earlier termination of this Lease, Tenant shall remove the sign and restore the surface to which the sign was attached to its original condition at Tenant's expense. In the event Tenant fails to remove the sign within three (3) days from expiration or earlier termination of this Lease, the sign shall become the property of Lessor without any credit or compensation to Tenant, and Lessor may, but is not obligated to, remove and store or dispose of the sign and Tenant shall be liable to Lessor for all costs incurred by Lessor in connection therewith. Tenant shall indemnify and hold Lessor harmless from all loss, damage, cost, expense and liability in connection with such removal, storage or disposal.

30 NO BROKER

30.1 The parties covenant that no broker was involved in any capacity in bringing about the relationship evidenced by this Lease; and further agree that if any claim on behalf of any broker or agent is made or upheld, then the party against or through whom such claim is made shall defend (with counsel reasonably acceptable to the other party), indemnify and hold the other harmless against any damages, costs or expenses in any way attributable to such claim, including without limitation reasonable attorneys' fees.

31 WARRANTIES AND REPRESENTATIONS OF TENANT

31.1 Tenant warrants and represents to Lessor that Tenant's entrance into this Lease does not violate any other contracts, agreements, Leases or any other arrangements of any nature whatsoever that Tenant has with any third parties.

31.2 If Tenant is a business entity, Tenant represents and warrants to Lessor that Tenant **(i)** is duly organized, validly existing under the laws of the state of its formation and in good standing under the laws of the state of its formation and the laws of the State of New Hampshire, **(ii)** has paid all franchise and other taxes, if any, required to maintain the corporate existence of Tenant, and **(iii)** is not the subject of voluntary or involuntary proceedings for the forfeiture of the business formation documents for its dissolution and **(iv)** is and shall remain during the Term of this Lease Agreement a IRC 501(c)(3) organization.

32 SUCCESSION

32.1 This Lease is binding upon and will inure to the benefit of the heirs, executors, administrators, successor and permitted assigns of the parties hereto.

33 SUBORDINATION

33.1 This Lease is subject and subordinate to any real estate mortgages to any lender and all related loan documents to any lender from any owner of the Leased Premises prior to or subsequent to the date of execution and delivery of this Lease and to all renewals, modifications, consolidations, replacements or extensions thereof, provided that each such mortgagee enters into a non-disturbance and attornment agreement in its usual and customary form, recognizing the Tenant under this Lease, and that Tenant shall remain undisturbed if there is no default as to this Lease. In confirmation of the foregoing, Tenant shall, within fifteen (15) business days of any request from Lessor, or any subsequent purchaser or owner of the Leased Premises, execute and deliver all such instruments consistent with this Section 33 as may be appropriate to subordinate this Lease to any mortgage and related documents, and to all advances made thereunder, and to the interest thereon and all renewals, replacements and extensions thereof.

34 WAIVER

34.1 Any consent, express or implied, by Lessor to any breach by Tenant of any covenant or condition of this Lease will not constitute a waiver by Lessor of any prior or succeeding breach by Tenant of the same or any other covenant or condition of this Lease. Acceptance by Lessor of Rent or other payment with knowledge of a breach of or default under any condition hereof by Tenant will not constitute a waiver by Lessor of such breach or default.

35 GOVERNING LAW

35.1 This Lease will be construed and interpreted in accordance with the laws of the State of New Hampshire.

36 COUNTERPARTS

36.1 This Lease may be executed in two (2) or more counter-parts, each of which will be deemed an original and all collectively but one and the same agreement.

37 MODIFICATION; ENTIRE AGREEMENT

37.1 This Lease contains and embraces the entire agreement between the parties hereto and no part of it may be changed, altered, amended, modified, limited or extended orally or by agreement between the parties unless such agreement is expressed in writing and signed by Lessor and Tenant or their respective successors in interest.

38 SECTION HEADINGS

38.1 The headings at the beginning of each of the Sections in this Lease are solely for purposes of convenience and identification and are not to be deemed or construed to be part of this Lease.

39 SEVERABILITY

39.1 If any term, clause or provision of this Lease is judged to be invalid and/or unenforceable, the validity and/or enforceability of any other term, clause or provision in this Lease will not be affected thereby.

40 ADDITIONAL PROVISIONS

40.1 The additional provisions contained in the Addendum, attached hereto and made a part hereof are additional provisions of this Lease with the same binding effect as though stated herein.

IN WITNESS WHEREOF, the parties execute this Lease as of the day and year acknowledged below.

Notary Hodgdon
Witness

Foundation for Seacoast Health

By: Debra S. Grabowski
Debra S. Grabowski, Its Duly Authorized
Chief Executive Officer

[Signature]
Witness

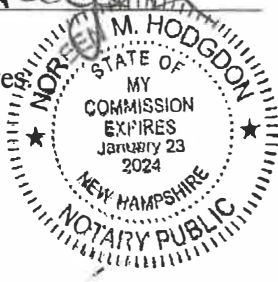
Child Advocacy Center of Rockingham

By: Maureen Sullivan
_____, Its Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 9th day of November 2021, by Debra S. Grabowski, Chief Executive Officer of the Foundation for Seacoast Health, a New Hampshire corporation, on behalf of said corporation.

Notary Hodgdon
Notary Public
My Commission Expires: _____
Notary Seal or Stamp:
[Sign in Black Ink]



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this _____ day of November 2021, by [Signature] (Name) _____ (Title) of _____

Child Advocacy Center of Rockingham County a New Hampshire corporation, on behalf of said corporation.

Notary Public
My Commission Expires:
Notary Seal or Stamp:
[Sign in Black Ink]

AMENDMENT TO LEASE AGREEMENT

WHEREAS, the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire, and having a usual place of business at 1 Junkins Avenue in Portsmouth, New Hampshire (the “City” or “Lessor”), and **the Krempels Center**, (“Krempels Center” or “Lessee”), a nonprofit agency which provides in person and online post-rehab community based programming to survivors of acquired brain injuries to residents of Rockingham County, are parties to a Lease Agreement and Assignment and Assumption Agreement for real property located at 100 Campus Drive, Portsmouth, New Hampshire (the ‘Premises” or “Community Campus”). See attached Exhibits A and B;

WHEREAS, the Krempels Center leases a portion of Community Campus (“Leased Premises”) from the City pursuant to terms of the Lease Agreement;

WHEREAS, the City will be constructing improvements to Community Campus for all of its tenants and the City and the Krempels Center desire to reconfigure and remodel its Leased Premises;

WHEREAS, the Lease Agreement terminates on December 31, 2023, and the parties believe it is in their best interest to enter into this Amendment to Lease Agreement to extend the existing terms of the Lease Agreement for six (6) months (commencing January 1, 2024 and terminating June 30, 2023);

WHEREAS, by extending the existing terms of the Lease Agreement for six (6) months, the City and the Krempels Center, and all other tenants of the Community Campus, will have sufficient time to assess and negotiate the new Leased Premises that incorporates the reconfigured and remodeled portion of the leased space, and thus a six (6) month extension of the Lease Agreement is recommended; and

WHEREAS, prior to the expiration of the term set forth in this Amendment to Lease Agreement, the City and the Krempels Center will draft and submit a new Lease Agreement for Council approval.

NOW THEREFORE, the terms of the Lease Agreement are amended as follows:

1. Paragraph 1.2 is deleted and replaced with the following:

The “Commencement Date” of this Lease shall be January 1, 2024.

2. Paragraphs 2.1 and 2.2 are deleted in their entirety and replaced with the following:

The term of this lease is for six (6) months, beginning on January 1, 2024 and terminating on June 30, 2024.

All other terms of the Lease Agreement not amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Lease Agreement on _____, 2023.

WITNESS:

CITY OF PORTSMOUTH

Karen S. Conard, City Manager

Approved by vote of the City Council on

WITNESS:

KREMPELS CENTER

Name: Renee Couture, MSW, Executive Director

Duly Authorized by Vote of the Board on

DRAFT

AMENDMENT TO LEASE AGREEMENT

WHEREAS, the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire, and having a usual place of business at 1 Junkins Avenue in Portsmouth, New Hampshire (the “City” or “Lessor”), and **Seacoast Outright**, (“Seacoast Outright” or “Lessee”), a nonprofit agency which serves, supports and advocated for LGBTQ+ youth who are residents of Rockingham County, are parties to a Lease Agreement and Assignment and Assumption Agreement for real property located at 100 Campus Drive, Portsmouth, New Hampshire (the ‘Premises’ or “Community Campus”). See attached Exhibits A and B;

WHEREAS, Seacoast Outright leases a portion of Community Campus (“Leased Premises”) from the City pursuant to terms of the Lease Agreement;

WHEREAS, the City will be constructing improvements to Community Campus for all of its tenants and the City and Seacoast Outright desire to reconfigure and remodel its Leased Premises;

WHEREAS, the Lease Agreement terminates on December 31, 2023, and the parties believe it is in their best interest to enter into this Amendment to Lease Agreement to extend the existing terms of the Lease Agreement for six (6) months (commencing January 1, 2024 and terminating June 30, 2023);

WHEREAS, by extending the existing terms of the Lease Agreement for six (6) months, the City and Seacoast Outright, and all other tenants of the Community Campus, will have sufficient time to assess and negotiate the new Leased Premises that incorporates the reconfigured and remodeled portion of the leased space, and thus a six (6) month extension of the Lease Agreement is recommended; and

WHEREAS, prior to the expiration of the term set forth in this Amendment to Lease Agreement, the City and Seacoast Outright will draft and submit a new Lease Agreement for Council approval.

NOW THEREFORE, the terms of the Lease Agreement are amended as follows:

1. Paragraph 1.2 is deleted and replaced with the following:

The “Commencement Date” of this Lease shall be January 1, 2024.

2. Paragraphs 2.1 and 2.2 are deleted in their entirety and replaced with the following:

The term of this lease is for six (6) months, beginning on January 1, 2024 and terminating on June 30, 2024.

All other terms of the Lease Agreement not amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Lease Agreement on _____, 2023.

WITNESS:

CITY OF PORTSMOUTH

Karen S. Conard, City Manager

Approved by vote of the City Council on

WITNESS:

SEACOAST OUTRIGHT

Name: Heidi Carrington Heath, Executive Director

Duly Authorized by Vote of the Board on

DRAFT

Return To:
Legal Department
City Hall
1 Junkins Ave.
Portsmouth, NH 03801

REVOCABLE LICENSE

The City of Portsmouth (hereinafter "City"), a municipal corporation with a principal place of business of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, hereby grants this Revocable License to 320 Union Realty, LLC, (hereinafter "Landowner") owner of property at 320 Union Street, Portsmouth, New Hampshire, identified on the City's Tax Map at Map 134, Lot 34 (hereinafter "Property") pursuant to the following terms and conditions:

WHEREAS, Landowner's proposes to reface its existing retaining wall and construct a new retaining wall along the border of the of the Property and Union Street ("Improvements"). A portion of these retaining walls appear to lie outside the Property's boundaries and are within the City's right-of-way (Union Street); and

WHEREAS, the Landowners will construct these Improvements consistent with Building Permit BLDG 23-642.

NOW THEREFORE, the parties agree as follows:

1. The City hereby authorizes and licenses Landowner to construct and maintain the Improvements within the City's right-of-way.
2. Landowners shall be responsible for all costs related to the Improvements, including construction, maintenance and insurance.
3. Landowners, their successors and assigns, jointly and severally agree to indemnify and hold harmless the City of Portsmouth and its agents and

employees from any and all liability for any and all property damage or loss, bodily injury or personal injury which arise as a result of the construction, maintenance, operation, ownership and use of the Improvements. This obligation survives termination or revocation of this agreement.

4. There is no fee or charge associated with this Revocable License.
5. This Revocable License shall continue until it is revoked by the City in its sole discretion through the City Manager, at any time, without cause. If reasonable under the circumstances, the City will provide as much notice as reasonably practicable prior to revocation.
6. This Revocable License is assignable to Landowners' successor and assigns upon written notice to the City. Notice shall be directed to the City Manager with a copy to the City Attorney.
7. Upon termination of this Revocable License, whether by revocation or otherwise, Landowners shall remove the Improvements at their sole cost if requested by the City on demand. In the event Landowners fails to remove the Improvements, the City shall have the right to enter Landowners' property and remove the Improvements.

This is an exempt transfer pursuant to RSA 78-B:2(I).

IN WITNESS WHEREOF, City (Licensor) and Landowner (Licensee) have executed this Revocable License as set forth, below.

City of Portsmouth

By: _____
Karen Conard, City Manager
Pursuant to vote of the City Council
dated _____.

320 Union Realty, LLC, Landowner

By: _____
Samantha D. King, Manager

ACKNOWLEDGEMENTS

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this ____ day of _____, 2023, before me, the undersigned notary public, personally appeared **Karen S. Conard, City Manager of the City of Portsmouth**, New Hampshire, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or document, and acknowledged to me that she signed it in her capacity as stated therein and voluntarily for its stated purpose.

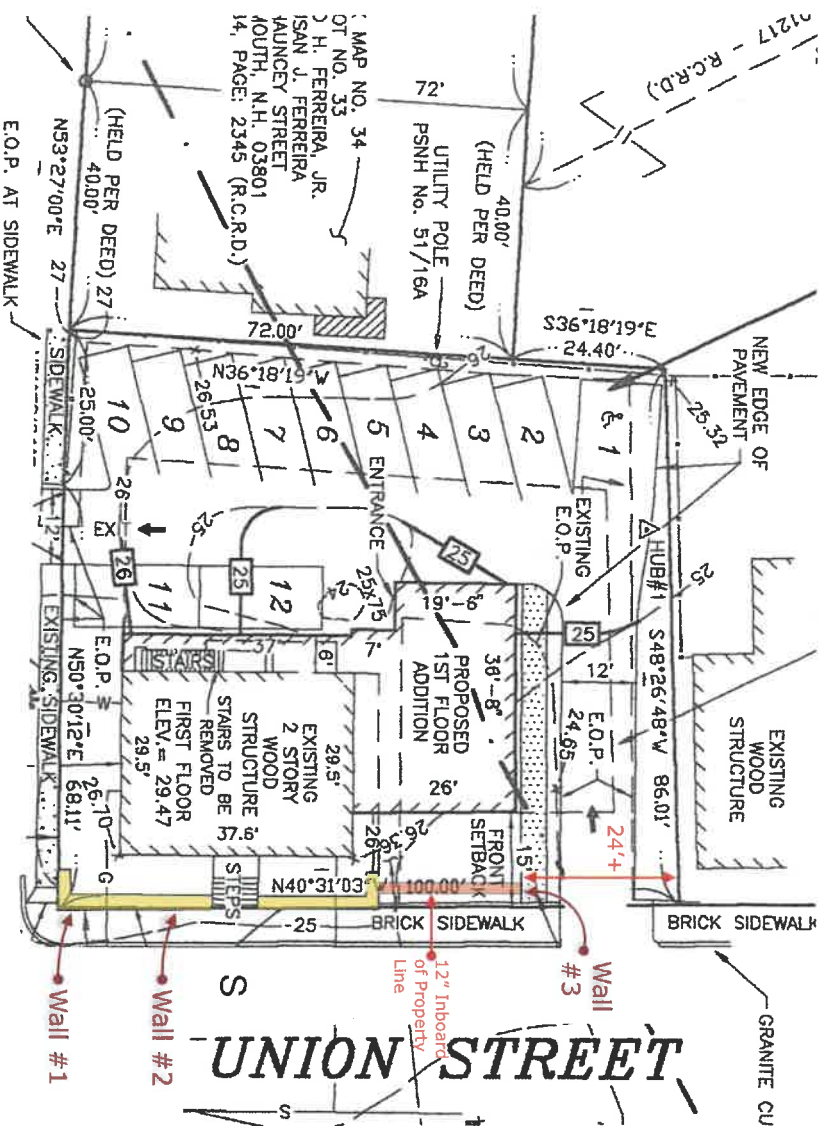
Notary Public:
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

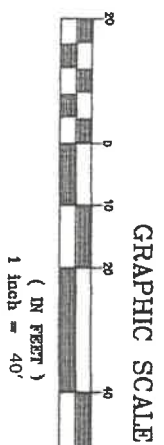
On this ____ day of _____, 2023, before: me, the undersigned notary public, personally appeared **Samantha D. King, Manager of 320 Union Realty, LLC**, of Portsmouth, New Hampshire, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

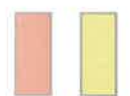
320 Union Street Portsmouth NH



Site Plan Text
Removed For
Clarity



Proposed Site Plan Diagram



Replace Existing In-Kind
(Size, Width & Height)
New Wall to Match Existing
(In-Kind = Size, Width & Height)

Material to be Revised:
Existing walls are made of brick with concrete top.

Proposed Re-surfaced walls #1 & #2 to be granite top with veneer stone facing. New material to adhere to existing concrete base

Proposed new wall #3 to be granite top with veneer stone facing. New material to adhere to new concrete base retaining wall

Site Data:

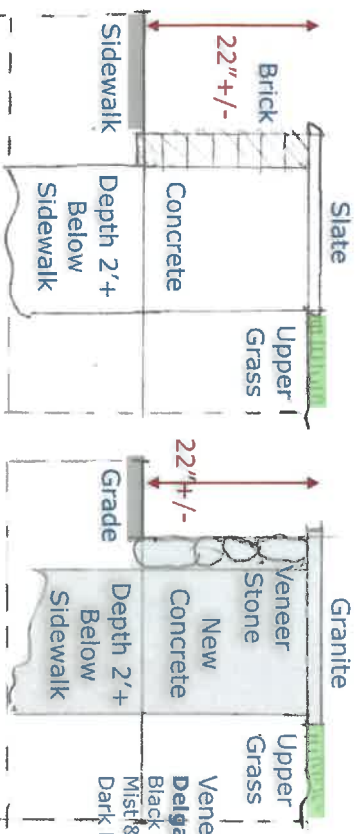
- Zone GRA
- Setbacks:
 - Front: 0'
 - Side: 5'
- Existing & Proposed meet requirements

SR, SRA, SRB	GRA			
	Front Yard	Side or Rear Yard	Front Yard	Side or Rear Yard

Building Elements	Maximum Projection Into Regu			
Terraces, decks, steps and stoops that are uncovered and unenclosed and less than 3 feet in height and less than 100 square feet in area	5'	5'	0'	5'

Retaining Walls:

- Wall #1 = 61 SF +/- (Existing)
- Wall #2 = 44 SF +/- (Existing)
- Wall #3 = 40 SF +/- (Proposed)



Existing Wall

Proposed Wall

6-8-2023

CITY OF PORTSMOUTH



OFFICE OF THE CITY CLERK – ELECTION DIVISION

TO: KAREN CONARD, CITY MANAGER

FROM: KELLI L. BARNABY, CITY CLERK

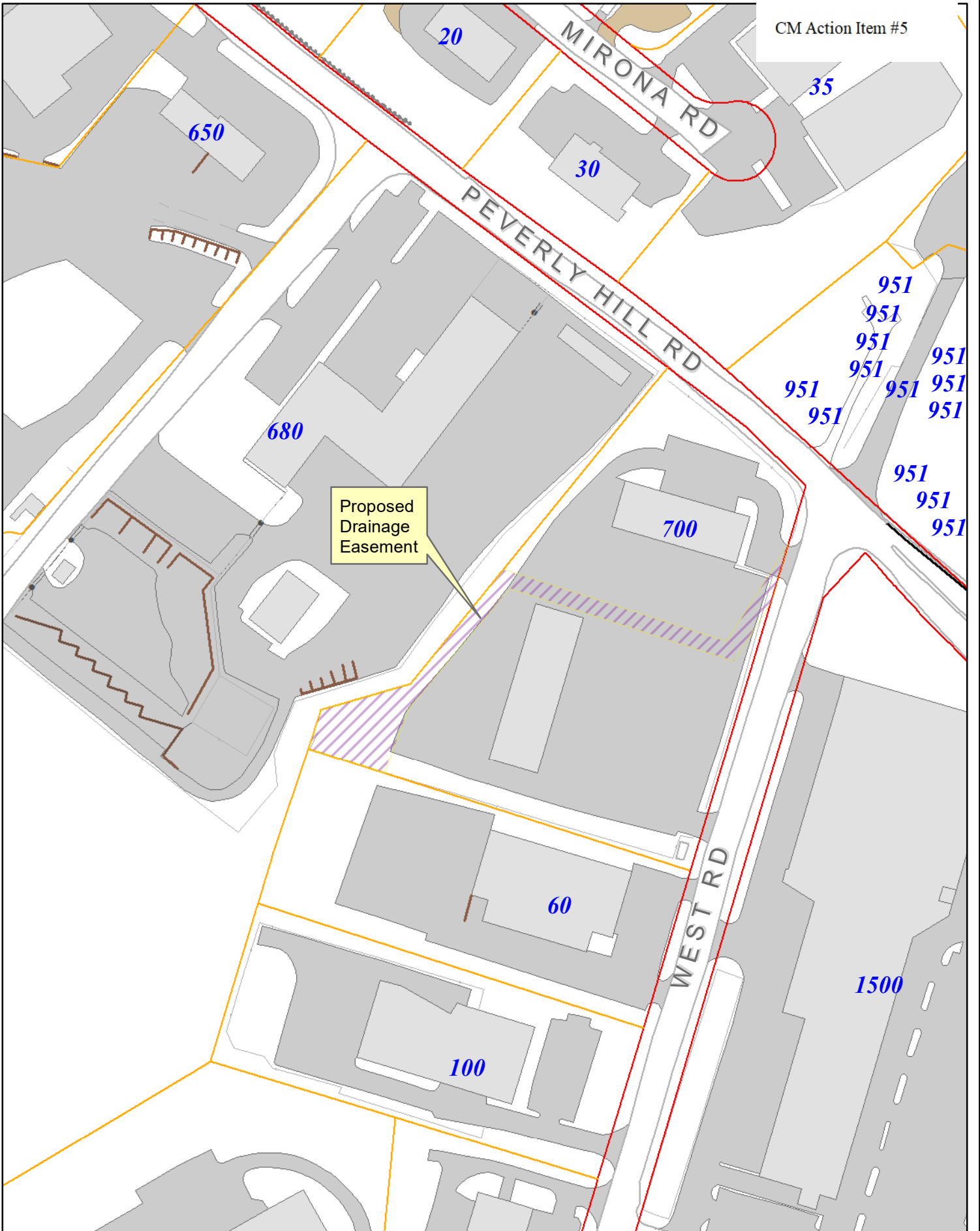
DATE: DECEMBER 11, 2023

SUBJECT: POLLING HOURS FOR PRESIDENTIAL PRIMARY ELECTION

In accordance with RSA 659:4, the City Council shall determine the polling hours for the election. I would request that the polling hours for the Presidential Primary Election on January 23, 2024, be established from 8:00 a.m. – 7:00 p.m. The reason for not recommending an additional hour for voting is due to this being a primary election.

Please be advised the request for the Presidential General Election will be to extend the hours until 8:00 p.m. due to the considerably greater voter turnout. Also, because this is a Presidential Election the extra hour would be consistent with past practices.

If you have any questions, please do not hesitate to contact me.



**700 Peverly Hill Road
Proposed Drainage Easement to City**

Map prepared by Portsmouth Department of Public Works

Legend

 Proposed Drainage Easement to City



Printed: 11/27/2023

Return To:
Legal Department
City Hall
1 Junkins Ave.
Portsmouth, NH 03801

DRAINAGE EASEMENT DEED

JMK REALTY, LLC, a New Hampshire limited liability company with a mailing address of 400 Spaulding Turnpike, Portsmouth, New Hampshire 03802 (the "Grantor") for consideration paid, grants to the **CITY OF PORTSMOUTH**, a municipal body politic, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the "Grantee") with QUITCLAIM COVENANTS, the following easement with respect to Grantor's real property situate on the southerly side of Peverly Hill Road in the City of Portsmouth, State of New Hampshire :

1. **Permanent Easement Area:** A permanent easement for the purpose of a drainage pipe, outfall and storm water flowage over the land of GRANTOR, being shown as "Proposed 20' Drainage Easement to City 19,578 S.F." on a plan entitled, "Easement Plan" dated April 2023, prepared by Ambit Engineering, Inc., as Project No. 5010265-3576 (the "Plan"). The Easement Area is more particularly bounded and described on the Plan as follows:

Beginning at a 5/8" iron rod at the southwesterly corner of the Grantors property; thence running N16°31'13" E a distance of 49.27 feet to a point at land of the City of Portsmouth, thence turning and running along land of the City of Portsmouth N 76°33'43" a distance of 114.93 feet and N 38°30'12" a distance of 183.71 feet; thence turning and running across land of the Grantee S 73°22'39" E a distance of 118.94 feet, S 73°07'50" E a distance of 172.26 feet, and N 32°00'38" E a distance of 151.51 feet to the westerly sideline of West Road; thence turning and running along the westerly sideline of West Road S 16°31'13" W a distance of 74.89 feet; thence turning and running across land of the Grantee S 32°00'38" W a distance of 94.65 feet, N 73°07'52" W a distance of 187.48 feet, N 73°22'39" W a distance of 106.52 feet, S 39°45'01" W a distance of 191.16 feet, and S 20°44'29" W a distance of 81.55 feet to land now or formerly of Samuel and Marilyn Hanscom; thence turning and running along land of Hanscom N 73°28'47" w a distance of 99.33 feet to the point of beginning, containing 19,578 Square Feet, more or less.

2. **Purpose and Rights:** The Grantee shall have a permanent and non-exclusive easement and right of way in, under, across and over the Easement Area for the purpose of installing, maintaining, inspecting, removing, repairing, and replacing a drainage pipe with its associated outfall, outlets, swales and storm water flow. The Grantee shall have the right to remove trees, bushes, undergrowth and other obstructions interfering with the

activities authorized herein and to take such other actions as may be necessary, useful or convenient for the enjoyment of the easement rights herein granted.

- 3. **Grantee's Responsibility to Restore:** Disturbed areas within the Easement Area shall be back-filled and restored at the Grantee's expense.
- 4. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Easement Area insofar as the exercise thereof does not endanger or interfere with the purpose of this instrument. Grantor shall not, however, erect any building, shed, deck or other structure within the Easement Area, substantially change the grade or slope, install any pipes, or pave or asphalt the Easement Area without prior written consent of the Grantee.
- 5. **Personal Property.** It is agreed that the pipes and related facilities installed within the Easement Area, whether fixed to the realty or not, shall be and remain the property of the Grantee.
- 7. **Easement to Run with Land:** All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executor, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the property and shall run with the land.

MEANING AND INTENDING to convey an easement over a portion of the premises conveyed to the Grantor by Warranty Deed of Robert F. Fleischmann, dated October 11, 2001, and recorded at the Rockingham County Registry of Deeds at Book 3656, Page 744.

This is an exempt transfer per RSA 78-B:2(I).

DATED this _____ day of _____, 2023.

JMK REALTY, LLC

By: _____

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by _____ the duly authorized Manager of JKM Realty, LLC.

Justice of the Peace/Notary Public
My Commission Expires:

City of Portsmouth

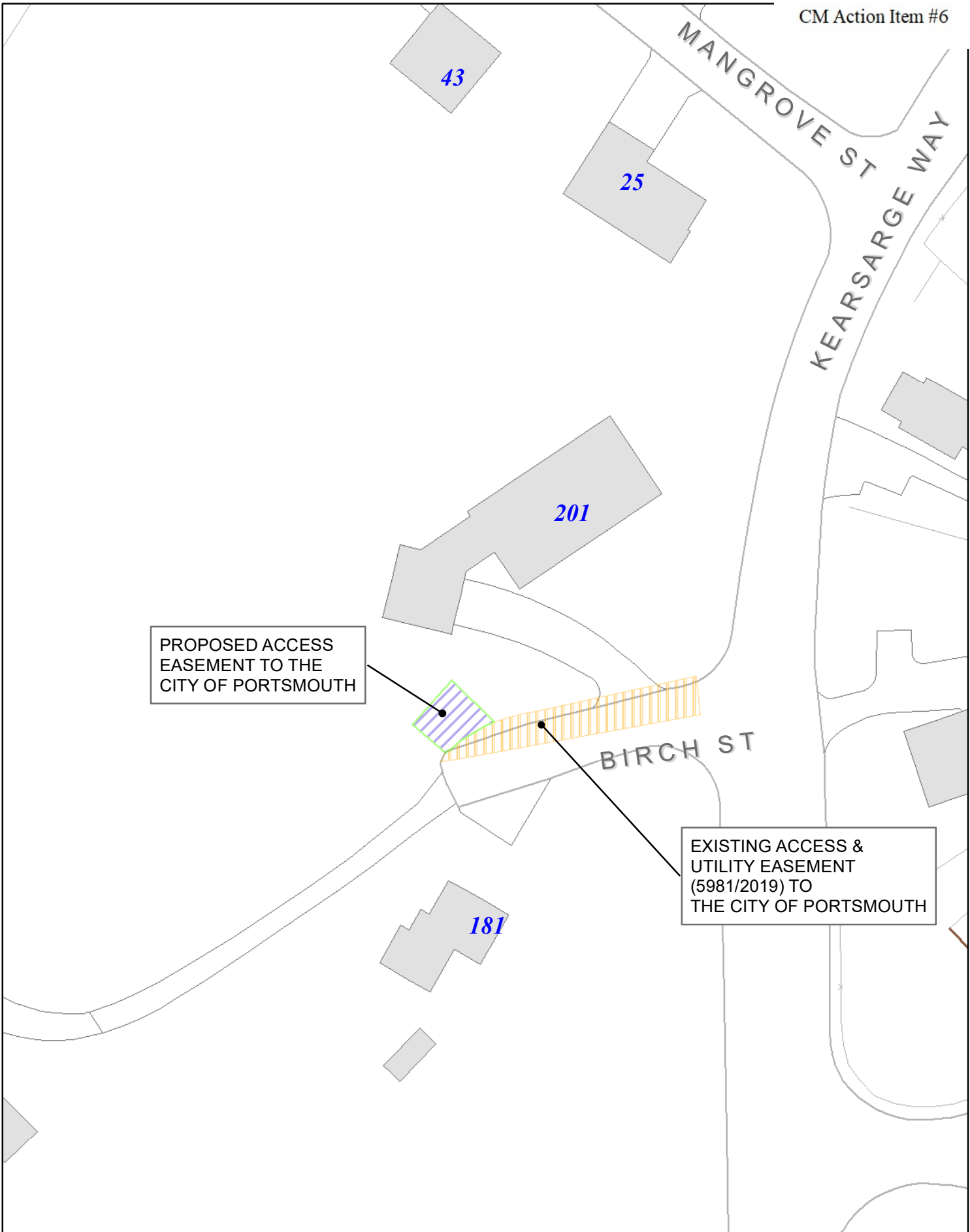
Witness

By: _____
Karen S. Conard, City Manager
As approved by vote of the Portsmouth
City Council on: _____

STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY, SS.

On this _____ day of _____ 2023 before me personally appeared Karen S. Conard, City Manager of the City of Portsmouth, whose name is subscribed on the foregoing instrument and who executed the within instrument for the purposes therein contained of her own voluntary act and deed, and in her said capacity.



Notary Public/Justice of the Peace
My Commission Expires:



PROPOSED ACCESS
EASEMENT TO THE
CITY OF PORTSMOUTH

EXISTING ACCESS &
UTILITY EASEMENT
(5981/2019) TO
THE CITY OF PORTSMOUTH

**201 Kearsarge Avenue
Proposed Access Easement to City**

-  Proposed Access Easement
-  Existing Access & Utility Easement



Return to:
City of Portsmouth
Attn: Legal Department
1 Junkins Avenue
Portsmouth, NH 03801

EASEMENT DEED

Richard P. Fusegni, a single person, with a mailing address of 201 Kearsarge Way, Portsmouth, NH 03801, (herein called "Grantor") for consideration paid, grants to the CITY OF PORTSMOUTH, a municipal body with a mailing address of 1 Junkins Avenue, Portsmouth New Hampshire 03901 (hereinafter "Grantee"), with QUITCLAIM COVENANTS, upon the conditions hereafter set forth, a permanent access easement (hereinafter the "Easement") over and upon land of the Grantor located in the City of Portsmouth, County of Rockingham State of New Hampshire.

Said Easement being shown as "Proposed Access Easement to the City of Portsmouth." on a plan entitled, "Subdivision Plan Tax Map 218-Lot 5, Owner: Richard P. Fusegni, 201 Kearsarge Way, City of Portsmouth, County of Rockingham, State of New Hampshire", prepared by Ambit Engineering, Inc. dated June 2022 and recorded in the Rockingham County Registry of Deeds as Plan # _____ said Easement being more particularly bounded and described as follows:

Beginning at a point on the northerly side of the existing access and utility easement appurtenant to Birch Street which is N 46°02'10" E a distance of 10.01 feet from an iron rod at an angle point in Birch Street; thence turning and running over and across the land of the Grantor N 48°13'46" E a distance of 19.25 feet; N 41°46'14" E a distance of 23.59 feet and S 46°58'50" E a distance of 26.65 feet to the existing access and utility easement appurtenant to Birch Street; thence running along said access and utility easement on a curve to the left with an arc length of 24.29 feet, a radius of 70.00 feet, and a delta angle of 19°52'46" to the point of beginning.

The above described easement containing 519 square feet, more or less (hereinafter "Easement Area") and connects to the existing access and utility easement in favor of Grantor described in Easement Deed dated February 12, 2019 and recorded in the Rockingham County Registry of Deeds at Book 5981, Page 2019, et seq.

Grantor grants to Grantee non-exclusive access over, across and under the easement area for all purposes for which roads are customarily used, including but not limited to vehicular, pedestrian and equipment access and travel and the installation and maintenance of utilities. The Grantee shall promptly repair damage to portions of the driveway or other improvements built within the Easement Area caused by the Grantee's use of the easement at Grantee's sole cost and expense.

Reserving to Grantor, their successors and assigns, and Grantee, their successors and assigns, access and utility rights in the Easement Area, together with the use and enjoyment of said Easement Area for such purposes only as will in no way interfere with the perpetual use thereof by the Grantee, its successors and assigns for the purposes contained herein; and to that end, the Grantor, its successors and assigns shall not erect any building, structures sidewalks, parking areas, surface curbs, landscaping and other similar

improvements on said Easement Area; provided however, that Grantor may install underground utility structures or systems within the Easement Area which do not interfere with Grantee's use of the Easement Areas and with prior written agreement of the Grantee, Grantor reserves all rights to cross the Easement Area and all rights and easements necessary or desirable for the use, occupation, repair, maintenance and replacement of any improvements now or hereafter located upon Grantor's remaining land. The Grantor shall promptly repair damage to portions of the Easement Area or other improvements built within the Easement Area caused by the Grantor's use of the easement at Grantor's sole cost and expense.

This Easement Deed and the rights and privileges granted hereby are perpetual and shall run with the land.

The easements, covenants and conditions herein shall be binding and/or to the benefit of the parties hereto, their heir, successors and assigns.

Meaning and intending to convey an easement over a portion of the premises conveyed to Richard P. Fusegni by Elda Fusegni dated September 5, 2013 and recorded on September 6, 2013 in the Rockingham County Registry of Deeds at Book 5476 Page 2661.

Executed this ____ day of _____, 2023.

Witness:

Richard P. Fusegni

State of New Hampshire
County of Rockingham

This instrument was acknowledged before me on this ____ day of _____, 2023 by Richard P. Fusegni.

Notary Public/Justice of the Peace



December 4, 2023

Portsmouth NH City Council
C/o City Manager's Office
1 Junkins Ave
Portsmouth NH 03801

Dear Ms. Griffin,


My name is Jennie Halstead. I am the Executive Director of My Breast Cancer Support, and the Race Director of the **Celebrate Pink 5k Walk & Run**.

I am writing this letter to ask the City Council consider approval of our 15th Annual race which we propose take place on Sunday, September 22, 2024. Registration for the race begins at 7.30 am and the race will commence at 9 AM from the Portsmouth Middle School, provided state guidelines allow.

Thank you for your consideration, as well as the support you have provided for this event over the last 14 years.

Best Regards,

Jennie Halstead

Jennie Halstead
Executive Director, Survivor 



Millennium Running
138 Bedford Center Rd.
Bedford, NH 03110
Tel: 603-488-1186
www.millenniumrunning.com

December 5, 2023

Karen S. Conard, Town Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Event Request - St. Paddy's 5k/10k

Dear Ms. Conard,

I am writing you, on behalf of Millennium Running with the permissions of the Pease Development Authority, for the City of Portsmouth's approval to host the 2024 St. Paddy's 5k/10k on Sunday, March 10 at 10:00 AM.

Just as we do for other events in the City of Portsmouth and in the State of NH, we will work in complete cooperation with our local municipal Police and Fire Departments and venue partners to ensure a safe event.

The St. Paddy's 5k/10k has a start and finish at 200 & 222 International Blvd and will be run entirely within the Pease Tradeport. All permissions have been granted by our venue partner's ownership and management group as well as the appropriate applications have been submitted to the City of Portsmouth.

The course map can be viewed at <https://connect.garmin.com/modern/course/90918991>

This event will be making charitable donations to our official charity, The Special Olympics, as well as numerous local high school organizations from Exeter, Winnacunnet, Oyster River, and Portsmouth High Schools. To date, Millennium has distributed over \$1.3 Million to local organizations from our signature events. We look forward to producing safe, first-class events for our running community while raising funds for our charitable partners.

Further information on the race can be found at <http://www.millenniumrunning.com/stpaddys> or by contacting me directly with any questions and/or concerns.

Thank you for your support of our event and the running community!

Thank you,

John Mortimer, Owner & Founder
Millennium Running

Attached: - Course Map
- Turn-by-Turn Directions & Timeline

2024 Course Map



St. Patty's

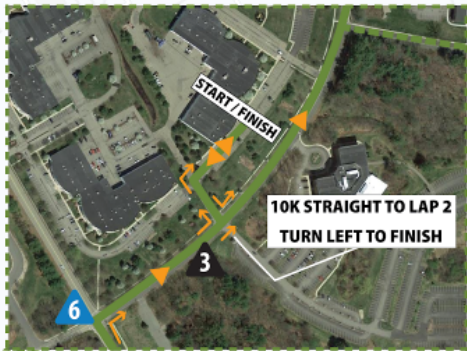
5K | 10K

GARMIN
COURSE MAP

DISTANCE: 3.1 MILES (5K)
6.2 MILES (10K)

DISTANCE MEASURED ON GARMIN® DEVICE

- MILE MARKERS (5K)
- MILE MARKERS (10K)
- 10K ONLY (LAP 2)
- AID STATION
- MEDICAL
- POST-RACE FOOD



10K STRAIGHT TO LAP 2
TURN LEFT TO FINISH

STRAIGHT ON LAP 1
TURN ON LAP 2 FOR 10K

10K STRAIGHT TO LAP 2
TURN LEFT TO FINISH

START / FINISH

St. Patty's 5k/10k Turn-by-turn

Mileage	Instruction	First Runner	Last Runner
0	Start @ 200 International Drive Driveway	10:00 AM	10:03 AM
0.08	LEFT onto International Drive	10:00 AM	10:04 AM
0.22	Continue STRAIGHT on International Drive at Oak Ave	10:01 AM	10:07 AM
0.5	Continue STRAIGHT on International Drive at Rye St	10:02 AM	10:13 AM
1	RIGHT onto Corporate Drive	10:05 AM	10:24 AM
1.14	Continue STRAIGHT on Corporate Drive at Goose Bay Dr	10:05 AM	10:27 AM
1.17	Continue STRAIGHT on Corporate Drive at Redhook Way	10:05 AM	10:28 AM
1.5	Continue STRAIGHT on Corporate Drive at Goose Bay Dr	10:07 AM	10:35 AM
1.65	Continue STRAIGHT on Corporate Drive at Rye St	10:08 AM	10:38 AM
2.09	Continue STRAIGHT on International Drive at Oak Ave	10:10 AM	10:48 AM
2.3	Continue STRAIGHT on Corporate Drive at Ashland Rd	10:11 AM	10:53 AM
2.74	Continue STRAIGHT on Corporate Drive at Grafton Rd	10:13 AM	11:02 AM
2.92	RIGHT onto International Drive	10:14 AM	11:06 AM
3.01	5k LEFT to FINISH / STRAIGHT to START LAP 2 of 10k	10:15 AM	11:08 AM
3.1	5k FINISH	10:15 AM	11:10 AM
3.16	RIGHT onto Oak Ave	10:16 AM	11:00 AM
3.23	U-TURN on Oak Ave	10:16 AM	11:02 AM
3.32	RIGHT onto International Drive	10:17 AM	11:03 AM
3.6	Continue STRAIGHT on Corporate Dr at Rye St	10:18 AM	11:08 AM
4.1	RIGHT onto Corporate Drive	10:21 AM	11:18 AM
4.24	Continue STRAIGHT on Corporate Drive at Goose Bay Dr	10:22 AM	11:20 AM
4.27	Continue STRAIGHT on Corporate Drive at Redhook Way	10:22 AM	11:21 AM
4.66	Continue STRAIGHT on Corporate Drive at Goose Bay Dr	10:24 AM	11:28 AM
4.75	Continue STRAIGHT on Corporate Drive at Rye St	10:24 AM	11:29 AM
5.18	Continue STRAIGHT on International Drive at Oak Ave	10:27 AM	11:37 AM
5.41	Continue STRAIGHT on Corporate Drive at Ashland Rd	10:28 AM	11:42 AM
5.83	Continue STRAIGHT on Corporate Drive at Grafton Rd	10:30 AM	11:49 AM
6.02	RIGHT onto International Drive	10:31 AM	11:53 AM
6.11	LEFT into Parking Lot @ 200 International Drive	10:32 AM	11:54 AM
6.2	10k FINISH	10:32 AM	11:56 AM



Millennium Running
138 Bedford Center Rd.
Bedford, NH 03110
Tel: 603-488-1186
www.millenniumrunning.com

December 1, 2023

Karen S. Conard, Town Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Event Request - Eastern States 20 Miler & Half Marathon

Dear Ms. Conrad,

I am writing you, on behalf of Millennium Running, for the City of Portsmouth's approval for the Eastern States 20 Miler & Half Marathon to be held in the City of Portsmouth on Sunday, March 17, 2024.

Just as we do for other events in the City of Portsmouth and in the State of NH, we will work in complete cooperation with our local municipal Police and Fire Departments and venue partners to ensure a safe event.

The Eastern States 20 Miler & Half Marathon has been a legacy event for the area for over 20 years. The event starts in Kittery, ME and runs predominately along Route 1A to the Town of Hampton, MA while winding through the Towns of Portsmouth, Rye, North Hampton, before ending in Hampton.

The course map can be viewed at <https://www.mapmyrun.com/routes/view/5460428053/>

This event will be making charitable donations to our official charity the Special Olympics NH, as well as numerous local high school organizations from Exeter, Winnacunnet, Oyster River, and Portsmouth High Schools. To date, Millennium has distributed over \$1.3 Million to local organizations from our signature events. We look forward to producing safe, first-class events for our running community while raising funds for our charitable partners.

Further information on the race can be found at <http://www.millenniumrunning.com/easternstates> or by contacting us directly (Permits@MillenniumRunning.com) with any questions and/or concerns.

Thank you,

Cullen Madden, Director of Operations
Millennium Running



Millennium Running
138 Bedford Center Rd.
Bedford, NH 03110
Tel: 603-488-1186
www.millenniumrunning.com

December 6, 2023

Karen S. Conard, Town Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Event Request - Restore New Castle 10k

Dear Ms. Conard,

I am writing you, on behalf of Millennium Running with the permissions of the Town of New Castle, for the City of Portsmouth's approval to host the 2024 Restore New Castle 10k on Sunday, April 28 at 9:30 AM.

Just as we do for other events in the City of Portsmouth and in the State of NH, we will work in complete cooperation with our local municipal Police and Fire Departments and venue partners to ensure a safe event.

The has a start and finish at Great Island Common in New Castle, NH. A 1.7 mile portion of the famous 6.2 mile course runs through the City of Portsmouth using Sagamore Avenue, South Street, and New Castle Avenue.

The course map can be viewed at <https://connect.garmin.com/modern/course/86903275>

This event will be making charitable donations to our official charity, The Special Olympics, as well as numerous local high school organizations from Exeter, Winnacunnet, Oyster River, and Portsmouth High Schools. To date, Millennium has distributed over \$1.3 Million to local organizations from our signature events. We look forward to producing safe, first-class events for our running community while raising funds for our charitable partners.

Further information on the race can be found at <https://www.millenniumrunning.com/newcastle> or by contacting me directly with any questions and/or concerns.

Thank you for your support of our event and the running community!

Thank you,

John Mortimer, Owner & Founder
Millennium Running

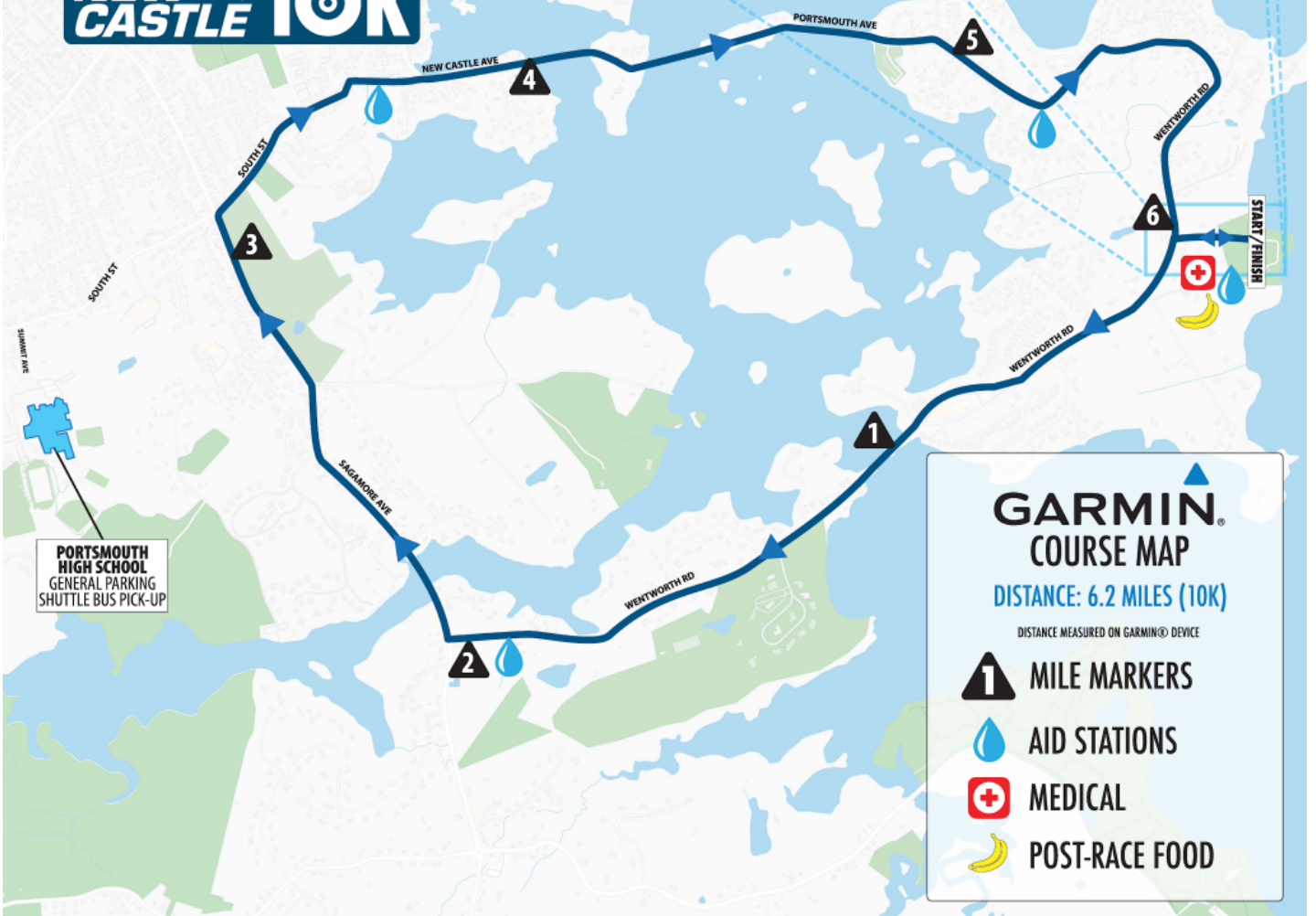
Attached: - Course Map
- Turn-by-Turn Directions & Timeline

2024 Course Map



restore hyper wellness
NEW CASTLE 10K

GREAT ISLAND COMMON | RACE HQ



GARMIN[®] COURSE MAP

DISTANCE: 6.2 MILES (10K)

DISTANCE MEASURED ON GARMIN[®] DEVICE

- 1 MILE MARKERS
- Water drop AID STATIONS
- Red cross MEDICAL
- Banana POST-RACE FOOD

Restore New Castle 10k Turn-By-Turn Direction and Timeline.

Mileage	Instruction	First Runner	Last Runner
0	START on Tabutt Memorial Way / Great Island Common	9:30 AM	9:33 AM
0.18	LEFT onto Wentworth Rd	9:30 AM	9:36 AM
2.08	RIGHT onto Sagamore Ave/ Rt 1A	9:40 AM	10:09 AM
3.15	RIGHT onto South St	9:45 AM	10:28 AM
3.57	RIGHT onto New Castle Ave	9:47 AM	10:36 AM
3.73	RIGHT to continue on New Castle Ave/ Rt 1B	9:48 AM	10:39 AM
4.28	Continue STRAIGHT onto Portsmouth Ave/ Rt 1B	9:51 AM	10:49 AM
5.16	Stay LEFT to continue onto Cranfield St/ Rt 1B	9:55 AM	11:04 AM
5.34	RIGHT to continue onto Main St/ Rt 1B	9:56 AM	11:07 AM
5.65	RIGHT onto Wentworth Rd/ Rt 1B	9:58 AM	11:13 AM
6.03	LEFT onto Tabutt Memorial Way / Great Island Common	10:00 AM	11:20 AM
6.2	FINISH	10:01 AM	11:23 AM

Greenleaf Rec Center
195 Greenleaf Avenue
Portsmouth, NH 03801

December 1, 2023

Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801
Attention: Mayor McEachern and the Portsmouth City Council

Subject: Proposed Event - the Greenleaf Rec Challenge
Date: May 11, 2024
Location: Greenleaf Rec Center, 195 Greenleaf Avenue Portsmouth

To Mayor McEachern and the Portsmouth City Council:

In compliance with the Portsmouth event approval process, I submit the following information for your consideration.

Description:

This event will be a family centered event with services, attractions and activities for children (6-10) through teens and young adults. Specifically the event will feature:


- Family service organizations;
- Civic organizations with community service opportunities;
- Educational and skills development organizations;
- Businesses recruiting employees for direct employment, internships and summer employment;
- Competitive athletic (and fun) events for individuals and teams;
- Food vendors;

Route to location: The Greenleaf Rec Center on Greenleaf avenue is accessible from Route 1 south 1 mile from the Portsmouth Traffic Circle.

Street closure: While we'll defer to your advice, we do not anticipate any street closures.

Parking: Limited parking is available along the entrance to the Rec Center. Overflow parking space is targeted be in the Comcast building parking lot across from the Rec Center and the Townsend Energy building abutting the Rec Center. (Initial contact has been made with both businesses but no confirmation reached)

Thank you for your consideration. We look forward to working with you on this project. Please let me know if you have any questions.

Respectfully,
Rob Cimini 
Greenleaf Rec Center Teens Program Leader
racimini@comcast.net
603-431-4764

Cc: Karen Conrad, Portsmouth City Manager
Craig Welch, Portsmouth Housing Authority
Tammy Joslyn, Operation Blessing

CITY COUNCIL E-MAILS

Received: December 4, 2023 (after 5:00 p.m.) – December 14, 2023 (before 9:00 a.m.)

December 18, 2023 Council Meeting

Submitted on Tue, 12/05/2023 - 21:57

Full Name

James Hewitt

Email

samjakemax@aol.com

Subject

New Police Station

Address

726 Middle Road

Message

Dear Mayor McEachern and City Councilors:

After attending the first hour of tonight's work session and viewing the rest at home, I am now certain the only way the nine of you will obtain the unbiased truth on what size police station Portsmouth needs is to tour recently completed ones. Dover is the obvious choice as it's only six years old and twenty minutes away. Based on the links below, you will see Dover went through the exact same process that Portsmouth is going through now.

Dover Police Facility: Concept to Construction - YouTube (my favorite part is at 7 min 25 secs)

Slide 1 (nh.gov)

Dover Police Department_Concept Design Book.pdf (nh.gov)

A City Council field trip / fact finding mission to Dover will provide you with real world information about what a modern police station actually needs. The architect designing Portsmouth's police station is the same one that designed Dover's, so I am confident appropriate introductions and tour arrangements can be made.

I realize only \$70 million dollars is at stake, but for those of us that are going to pay for it, we really hope you'll make the effort.

Regards,

Jim Hewitt

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.

Yes

received
12/7/23

75 Kent Street
Portsmouth, NH 03801
December 7, 2023

Mayor Deaglan McEachern
City Hall
1 Junkins Avenue
Portsmouth, NH 03801

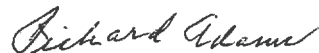
Dear Mayor McEachern,

This is to notify you of my intention to resign from the Trees and Public Greenery Committee effective as of the last day of 2023.

I have served on the committee ever since its inception twenty years ago and feel that it is now time to step aside and give someone else the opportunity to offer fresh ideas and enthusiasm to the committee.

It has been a pleasure and honor to have served on the committee for so many years. I'm certain that you won't have any difficulty in finding an eager, knowledgeable volunteer to serve in my place.

Cordially,



Richard Adams

cc: Peter Loughlin

HDC SOLAR ENERGY PANEL AMEDMENT

Intent to hold First Reading on Tuesday, January 16, 2024, to amend Article IV: Commissions and Authorities, Section 1.403: Historic District Commission, C. Powers and Duties, by adding the following sentence at the end of paragraph 1: "The review of solar energy panels is not within the purview of the Historic District Commission's powers and duties."

ARTICLE IV: COMMISSIONS AND AUTHORITIES

Section 1.403: HISTORIC DISTRICT COMMISSION

There is hereby established an Historic District Commission and it shall have the powers prescribed in RSA 31:89a - 31:89(l) together with any amendments hereinafter enacted by the General Court and as further defined in this Section and in Article X, Chapter 10 of the Zoning Ordinances of the City of Portsmouth.

A. Membership and Term

1. Membership: The Historic District Commission shall consist of seven members and two alternates appointed by the Mayor with the approval of the City Council. One of the members shall be a City Council member and another may be a Planning Board member as provided by State Law. At least two members shall be residents of the Historic District and at least one member shall be a person owning or being employed in a business within the Historic District. All appointees must be residents of Portsmouth. All members are required to have demonstrated interest in and commitment to promote the purposes of historic districting as stated in this Ordinance. A member's term serving at the time of enactment of this Ordinance shall not be affected. Future appointments, however, shall be filled in accordance with the provision of this Section. (Amended 9/21/98; Amended 11/22/2010; amended 03/15/2021)

2. Term: The members of the Commission shall be appointed for three-year terms. In the event a vacancy is created, an interim appointment shall be made in accordance with the procedures described above to complete the unexpired term. All members shall serve without compensation.

3. Attendance: Records of attendance shall be kept by the Commission. The attendance records shall be reported to the City Council on an annual basis. If a member notifies the Chair of the Commission prior to a meeting that s/he/they will not be able to attend the meeting due to sickness, vacation, or business obligations such absence will be considered an excused absence and so noted in the minutes of the meeting. The appointed alternate shall serve in the absence of a member. The City Council shall declare vacant the office of any member who has unexcused absences from twenty-five percent or more of the regularly scheduled meetings of the Commission in any quarter.

B. Organization, Meetings and Rules

1. The Commission shall annually elect a Chair, Vice-Chair and Secretary from the appointed members and create and fill such other offices, as it may deem necessary to fulfill its work

during the first meeting of July. The Commission shall meet at the call of the Chair and at such other times as the majority of the Commission may determine, and shall adopt rules for the orderly conduct of meetings. Minutes of all meetings shall be kept and all records and meetings of the Commission shall be open to the public.

2. Quorum: In order for the Historic District Commission to issue a Certificate of Approval or Notice of Disapproval, at least five members must be present to constitute a quorum for the conduct of such business, and a majority of the members voting in the affirmative shall be required to issue a Certificate of Approval. (Adopted 9/25/89)

C. Powers and Duties

1. The Historic District Commission, consistent with the powers specified in the preamble of this Section, shall review and approve or disapprove all applications for construction, alteration, repair, moving and/or demolition of buildings or structures located within an historic district(s) before any building, demolition, or other permit may be issued by the Building Inspector, subject, however to the provision of the Scope of Review as specified in Article X, Section 10:1004. The review shall be limited to the exterior of the building(s) or structures and shall not apply to the interiors thereof. **The review of solar energy panels is not within the purview of the Historic District Commission's powers and duties.**

2. The Building Inspector shall notify the Chair of the Historic District Commission within seven working days after receipt of any application for permit, which is subject to the Scope of Review and conditions of this Ordinance.

3. It shall be the duty of the Commission to file with the Building Inspector or other duly delegated authority, either a Certificate of Approval or a Notice of Disapproval following the review and determination of the application. Said certificate shall be filed with the Building Inspector within thirty calendar days after the filing of the application for said certificate, unless the applicant shall agree in writing to a longer period of time. No building permit shall be issued until a Certificate of Approval signed by the Chair or Vice-Chair has been filed with the Building Inspector. In the case of disapproval, such notice shall be binding upon the Building Inspector and no permit shall be issued. Failure to file said certificates within the specified period of time shall be deemed to constitute approval of the Historic District Commission.

4. The Commission may request reports and recommendations regarding the feasibility of the applicant's proposal from the Planning Board, Fire Chief, Building Inspector, Health Officer and such other administrative officials who may possess information pertinent to the application. The Commission may request advice from such professional, educational, cultural or other groups as may be deemed necessary for the determination of a reasonable decision. The Historic District Commission may request the City Manager to have persons present whose input is deemed necessary.

5. The Commission may request such technical assistance and consultants as may be deemed necessary to carry out the purpose of this Ordinance subject to funding, if necessary, by the City Council.

6. The Historic District Commission shall have the power to adopt by-laws, rules and regulations necessary for the conduct of business providing the same have been approved by the City Council. The Commission also shall prepare and issue guidelines to assist the applicants in determining the appropriateness of the applicant's proposal.

D. Appeal: Any person aggrieved by a final decision of the Historic District Commission shall have a right of appeal to the Board of Adjustment as provided by State Law. Any such appeal shall be filed with the Board of Adjustment within thirty days of the date of final decision of the Historic District Commission. Any person aggrieved may apply to the Commission for a rehearing. Upon the filing of application for rehearing, which must include a written statement with reasons for the request, the Commission shall either grant or deny the same. In the event such a rehearing is granted, the Commission shall schedule the rehearing for the next regularly scheduled Commission meeting, except at the request of the Petitioner. (Adopted 9/25/89)

DRAFT

CITY COUNCIL REPORT
DECEMBER 18, 2023



GOVERNANCE COMMITTEE YEAR-END UPDATE



WORK ACCOMPLISHED

- Completed a review of the Committee Structure of the City Council
- Reviewed and made additional changes to the Ethics Ordinance around Conflict of Interest, and made recommendations to the Council for adoption, including a new Ethics and Transparency Policy
- Reviewed Election and General disclosure requirements in Administrative Ordinance, approved by Council
- Reviewed the City Sidewalk Policy and a proposed Donations Policy, approved by Council
- Reviewed the composition of the Fee Study Committee, and reviewed ordinances for the Cemetery Committee and Economic Development Commission
- Recommended Blue-Ribbon Committee conversions for the Arts & Cultural Commission and Sustainability Committees, approved by Council
- Recommended language updates to the Administrative Ordinance and member rotation, including a provision to require election of Committee Chairs annually

ONGOING WORK

- Review the Charter for any needed changes
- Review additional committee needs, including a few potential Blue Ribbon Committee conversions, like the Citywide Neighborhood Committee and Energy Advisory Committee
- Review the Sign Ordinance with guidance from the Legal Department for recommendations to the Council
- Review the remaining sections of the Administrative Code for any required updates, including purchasing procedures, city communication systems, budget preparation dates, municipal enforcement procedures, municipal fund balance and leave at termination fund, adoption of fees, and payment by credit card
- Review the City Council rules for any additional changes for the 2024-2025 Council term

Gift and Donation Submission Form

Donations received by the City of Portsmouth must be accepted by the City Council. Please complete this form and submit it to the City Manager for inclusion on an upcoming agenda.

Date:	12.7.23
Department/ Contact Person:	Portsmouth Fire Department Fire Chief William McQuillen
Donation Amount:	\$100.00

Are Funds to be directed to a particular department, program or fund? – If yes, please provide detail below:

Yes. Portsmouth Fire Department in gratitude for the assistance the EMS Team on 10/27/23 provided.

Is there a particular purpose intended with this donation:

No. At Department Discretion

Other Information/Special Conditions:

Donor Information

First & Last Name:	Brian & Suzanne Engelhardt
Business Name:	
Address*:	13 Harry Ave Reading, PA 19607
Phone*:	
Email*:	

Please note that gifts/donations to individual employees with a value of \$100 or more are not permitted. Information with an asterisk () indicates it will not be publicly distributed.*

Gift and Donation Submission Form

Donations received by the City of Portsmouth must be accepted by the City Council. Please complete this form and submit it to the City Manager for inclusion on an upcoming agenda.

Date:	11.4.2023
Department/ Contact Person:	Portsmouth Fire Department Fire Chief William McQuillen
Donation Amount:	\$2,500.00

Are Funds to be directed to a particular department, program or fund? – If yes, please provide detail below:

Yes. Portsmouth Fire Department

Is there a particular purpose intended with this donation:

No. At Department Discretion

Other Information/Special Conditions:

Donor Information

First & Last Name:	Paul Gormley & Kimi Iguchi
Business Name:	
Address*:	56 Salter Street Portsmouth NH 03801
Phone*:	
Email*:	

Please note that gifts/donations to individual employees with a value of \$100 or more are not permitted. Information with an asterisk () indicates it will not be publicly distributed.*

FINANCE DEPARTMENT



MEMORANDUM

TO: Karen Conard, City Manager

FROM: Judie Belanger, Director of Finance and Administration

DATE: December 12, 2023

RE: Moose License Plate Conservation Grant

The Finance Department is pleased to announce that the City of Portsmouth has been awarded one of the FY2023/2024 Moose License Plate Conservation Grants from the New Hampshire State Library in the amount of \$9,695.80 for the conservation project *Preservation, Microfilming and Digitalization of Three Portsmouth Taxation Documents Dated 1909-1911*. These monies will help preserve legally required and historically significant documents held by the Finance Department that initially were intended to be financed through the City's Capital Improvement Program.

The New Hampshire State Library's (NHSL) FY2023/2024 Conservation License Plate Grant Program is designed to help municipalities as well as other public organizations preserve their historic documents. The NHSL Grant awards up to \$10,000 to applicants to conserve publicly owned documents. The program aims to aid in the preservation of New Hampshire's historic manuscripts as well as increase their availability to the public. The Grant requires that these documents not only be professionally preserved but also scanned to preservation microfilm as well as digitized.

This is the City's seventh Moose License Plate Conservation Grant the city has been awarded, for a total of \$65,473.80. Last Fiscal Year the City was awarded a grant for \$9,682 to preserve five historic documents dated 1881-1888. The Finance Department is grateful to have been awarded this grant which will aid in both increasing resident access to historic city documents as well as to offset capital dollars needed to complete this required work.

Pursuant to City Charter, please place on the December 18th City Council Agenda under Grants/Donations for approval.

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name Department of Safety, Division of Fire Standards & Training and EMS		1.2. State Agency Address 33 Hazen Drive, Concord, NH 03305	
1.3. Grantee Name City of Portsmouth Fire Department		1.4. Grantee Address 170 Court St., Portsmouth, NH 03801	
1.5 Grantee Phone # 603-427-1515	1.6. Account Number 02-23-23-54090000-072	1.7. Completion Date 06/30/2024	1.8. Grant Limitation Not to exceed \$16,575.00
1.9. Grant Officer for State Agency Pam Urban Morin		1.10. State Agency Telephone Number 603-271-7033	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Grantee Signature 1		1.12. Name & Title of Grantee Signor 1	
Grantee Signature 2		Name & Title of Grantee Signor 2	
Grantee Signature 3		Name & Title of Grantee Signor 3	
1.13 State Agency Signature(s)		1.14. Name & Title of State Agency Signor(s)	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required)			
By:		Assistant Attorney General, On: / /	
1.16. Approval by Governor and Council (if applicable)			
By:		On: 10/04/2023 / /	

2. **SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as “the State”), the Grantee identified in block 1.3 (hereinafter referred to as “the Grantee”), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as “the Project”).

Grantee Initials _____ Date _____

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 (“the Effective Date”).
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as “the Completion Date”).
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3. In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
- 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee’s normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, “Grantee” includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions
- 8.
- 8.1. PERSONNEL.
The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
- 9.
- 9.1. DATA: RETENTION OF DATA: ACCESS.
As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations,
- computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as “Events of Default”):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 Give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the “Termination Report”) describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee’s breach of its obligations hereunder.
- 12.3. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
- 12.4. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

Grantee Initials _____
Date _____

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
 15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
 16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
 17. INSURANCE.
 - 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
 - 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
 - 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
 - 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
 18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
 19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
 20. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
 21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
 22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
 23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
 24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

Grantee Initials _____ Date _____

**EXHIBIT A
SCOPE OF SERVICES**

The Department of Safety, Division of Fire Standards & Training and Emergency Medical Services (hereinafter referred to as “the State”) is awarding the City of Portsmouth Fire Department (hereinafter referred to as “the Grantee”) not to exceed the amount of \$16,575.00 for the purpose of reimbursing overtime and/or backfill costs for agency first responders to attend the following training.

NAME	NAME OF PROGRAM	DATES	MAXIMUM AMOUNT
Todd R. Nicholson	Trench Rescue Technician	10/30/23 – 11/02/23	\$ 3,900.00
Ethan D. Grover	Trench Rescue Technician	10/30/23 – 11/02/23	\$ 3,900.00
Todd R. Nicholson	Confined Space Rescue Technician	11/29/23 – 12/01/23	\$ 2,925.00
Casluh M. Chamberlain	Confined Space Rescue Technician	11/29/23 – 12/01/23	\$ 2,925.00
Ethan D. Grover	Confined Space Rescue Technician	11/29/23 – 12/01/23	<u>\$ 2,925.00</u>
TOTAL			not to exceed \$16,575.00

The grantee agrees the allowable cost under this grant for reimbursement costs for above students and courses. Reimbursement is for actual class time only. Travel time and/or mileage are not eligible.

“The Grantee” agrees that the project grant period ends on June 30, 2024. All expenses must be incurred and paid out within 60 days of the end of the program and reimbursement requests submitted using the NH SHSGP Overtime/Backfill forms located at https://www.nh.gov/safety/divisions/fstems/documents/otbf_packet.pdf, requests for reimbursements must be submitted to the Department of Safety, Division of Fire Standards and Training and Emergency Medical Services, within 60 days of the end of the training program.

“The Grantee” agrees to comply with all applicable federal and state laws, rules, regulations, and requirements.

EXHIBIT B
GRANT AMOUNT AND METHOD OF PAYMENT

Payment Schedule: “the Grantee” agrees that the total payment by “the State” under this grant agreement shall not exceed the amount of \$16,575.00.

“The State” shall reimburse up to \$16,575.00 to “the Grantee” upon “the State” receiving appropriate documentation of expended funds (i.e: copies of payroll documentation and proof of payment) submitted following the requirements outlined in the Overtime/Backfill packet located at <https://www.nh.gov/safety/divisions/fstems/>.

EXHIBIT C
SPECIAL PROVISIONS

“The Grantee” shall maintain financial records, supporting documents, and all other pertinent records for a period of 3 years from the grant period end date.



State of New Hampshire

DEPARTMENT OF SAFETY
 JAMES H. HAYES BLDG. 33 HAZEN DR.
 CONCORD, N.H. 03305
 (603) 271-2791

EDDIE EDWARDS
 ASSISTANT COMMISSIONER

STEVEN R. LAVOIE
 ASSISTANT COMMISSIONER

ROBERT L. QUINN
 COMMISSIONER

August 10, 2023

His Excellency, Governor Christopher T. Sununu
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

G&C #90
 10-04-2023
 Approved
 10-04-2023

REQUESTED ACTION

Authorize the New Hampshire Department of Safety, Division of Fire Standards and Training and Emergency Medical Services, to enter into grant agreements, as listed with local entities in the amount of not to exceed \$129,675.00 for State Homeland Security Training Grants to municipalities effective upon Governor and Council approval, full contract execution, and grantee funding acceptance upon approval through August 31, 2024. 100% Federal Funds.

Funds are available in the SFY 2024 operating budget as follows:

02-23-23-231010-54090000 – Dept. of Safety – FSTEMS - HLS Training Grants SFY 2024
 072-500574 - Grants to Local Gov't – Federal \$129,675.00

<u>Grantee</u>	<u>Vendor Code</u>	<u>Number of eligible students</u>	<u>Maximum Award Amount</u>
Town of Bedford Fire Department	177359	3	\$9,750.00
Concord Fire Department	177376	3	\$9,750.00
Town of Hampton Fire Rescue	177399	2	\$7,800.00
Town of Hooksett Fire Rescue	177412	1	\$3,900.00
Town of Londonderry Fire Dept	177430	5	\$17,550.00
Manchester Fire	177433	3	\$11,700.00
Merrimack Fire	177436	2	\$7,800.00
Town of Milford	177503	3	\$9,750.00
Nashua Fire Rescue	177441	8	\$28,275.00
Town of Pittsfield	177460	1	\$2,925.00
City of Portsmouth	177463	5	\$16,575.00
Salem Fire Department	177472	1	\$3,900.00
TOTAL:		37	\$129,675.00

EXPLANATION

The grants listed above are awarded to local agencies across NH to attend training programs offered through the Division of Fire Standards and Training and Emergency Medical Services that are authorized under the Homeland Security grant. These training programs are targeted to first responders to expand local capabilities in the areas of hazardous materials, technical rescue, incident command and EMS in the Warm Zone. These programs teach each

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
August 10, 2023
Page 2 of 2

of the participates the foundational knowledge that is needed to perform these skills on all hazards incidents throughout the State. This grant will reimburse the local agencies for the cost of personnel salaries and benefits to either send students to authorized training programs or to backfill personnel so an on-duty member can attend training.

Due to the time required to fully execute and accept funding at the county and municipal level, combined with the timing of Governor and Executive Council meetings, the Department of Safety, Division of Fire Standards and Training and Emergency Medical Services, requests authorization to enter into the grant agreements listed above using the grant agreement form attached to this request. Governor and Executive Council approval of this authorizing item will permit grant agreements to become effective after being fully executed and accepted at the county and municipal level, without requiring further action by the Governor and Executive Council. These agreements will remain subject to a review of form and execution by the Attorney General's Office prior to final execution and approval by the Department of Safety.

Highway Funds or General Funds will not be used to support this program should Federal Funds become unavailable.

Respectfully submitted,



Robert L. Quinn
Commissioner of Safety

GRANT AGREEMENT

The State of New Hampshire and the Grantee hereby
Mutually agree as follows:
GENERAL PROVISIONS

I. Identification and Definitions.

1.1. State Agency Name		1.2. State Agency Address	
1.3. Grantee Name		1.4. Grantee Address	
1.5. Grantee Phone #	1.6. Account Number	1.7. Completion Date	1.8. Grant Limitation \$
1.9. Grant Officer for State Agency		1.10. State Agency Telephone Number	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Grantee Signature 1		1.12. Name & Title of Grantee Signor 1	
Grantee Signature 2		Name & Title of Grantee Signor 2	
Grantee Signature 3		Name & Title of Grantee Signor 3	
1.13. State Agency Signature(s)		1.14. Name & Title of State Agency Signor(s)	
1.15. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required)			
By: _____ Assistant Attorney General, On: / /			
1.16. Approval by Governor and Council (if applicable)			
By: _____ On: / /			

2. **SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), the Grantee identified in block 1.3 (hereinafter referred to as "the Grantee"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as "the Project").

3. **AREA COVERED.** Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. **EFFECTIVE DATE; COMPLETION OF PROJECT.**
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 ("the Effective Date").
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").
5. **GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.**
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3. In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS.** In connection with the performance of the Project, the Grantee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. **RECORDS and ACCOUNTS.**
- 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions.
8. **PERSONNEL.**
- 8.1. The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. **DATA; RETENTION OF DATA; ACCESS.**
- 9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. **CONDITIONAL NATURE OR AGREEMENT.** Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. **EVENT OF DEFAULT; REMEDIES.**
- 11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 Give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. **TERMINATION.**
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.
- 12.3. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
- 12.4. **CONFLICT OF INTEREST.** No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. **GRANTEE'S RELATION TO THE STATE.** In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
15. **ASSIGNMENT AND SUBCONTRACTS.** The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
16. **INDEMNIFICATION.** The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
17. **INSURANCE.**
- 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
- 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
- 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
- 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
18. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
19. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
20. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
21. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
22. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
23. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
24. **SPECIAL PROVISIONS.** The additional or modifying provisions set forth in Exhibit A, hereinafter incorporated as part of this agreement.

Sample

CITY OF PORTSMOUTH**LEGAL DEPARTMENT****MEMORANDUM**

DATE: DECEMBER 12, 2023

TO: KAREN S. CONARD, CITY MANAGER

FROM: PETER BRITZ, DIRECTOR OF PLANNING AND SUSTAINABILITY
SHANTI WOLPH, CHIEF BUILDING INSPECTOR
TREVOR P. MCCOURT, DEPUTY CITY ATTORNEY

RE: DEMOLITION ORDINANCE

As you know, at the October 16, 2023 City Council meeting, the City Council voted to request a report back from the Legal and Planning Departments regarding the current Demolition Ordinance and any alternatives to consider. What follows is that memorandum. For an overview of demolition in the City more generally, please see my memorandum addressed to Phyllis Eldridge, Chair of the Zoning Board of Adjustment, enclosed.

Current Demolition Ordinance

Chapter 14, Article II of the City Ordinance contains the Demolition Ordinance. When a property owner applies for a building permit for the demolition of a structure, the Demolition Review Ordinance may apply. Review under the Demolition Review Ordinance exempts buildings less than 50 years in age, demolitions of “dangerous buildings” and “minor” demolitions, and the demolition of any building which was part of an approval at the Historic District Commission, Planning Board or Zoning Board of Adjustment.

Although the express purpose of the Demolition Ordinance is to “encourage the preservation of buildings and places of historic, architectural and cultural value”, the effect of the ordinance is to provide a public forum. This forum is for the discussion of historic structures prior to demolition by the property owner. Acknowledging that projects subject to review by the HDS, BOA and Planning Board already include a public forum, the Demolition Review Ordinance provides a public forum for the remaining instances.

Under certain correct circumstances, the Demolition Ordinance can provide for a delay in the demolition of a structure for no longer than six months but cannot outright prevent the demolition of any structure. The City’s authority to prevent the demolition of structures for preservation purposes is limited to the Historic District. The City has no authority to prevent the demolition of any structure not owned by the City outside the Historic District.

The Demolition Review Ordinance, as presently drafted, is in direct conflict with RSA 676:13, which states “[u]pon the submission of a completed application, the building inspector shall act to approve or deny a building permit within 30 days”. Despite this, because the delay is relatively minor and most demolitions are subject to other land use board approvals, no one has yet challenged the Demolition Ordinance.

Alternatives

There are several alternatives to the Demolition Ordinance which the City could employ in order to avoid any potential court challenge to its enforceability. In the event the City Council would like to take up the Demolition Review Ordinance, Staff’s recommendation would be to schedule a work session in the new year to provide guidance. Without endorsing any individual option, options that staff could identify are as follows:

- Repeal the Demolition Review Ordinance;
- Incorporate a version of the Demolition Review Ordinance into the Building Code which could not require a delay of more than 30 days;
- Expand the current historic district;
- Create a second historic district.

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: NOVEMBER 15, 2023

TO: PHYLLIS ELDRIDGE, CHAIR, ZONING BOARD OF ADJUSTMENT

FROM: TREVOR P. MCCOURT, DEPUTY CITY ATTORNEY *TPM*

RE: DEMOLITION REVIEW

At your request, this memorandum provides a brief overview of how the City reviews and processes demolition of structures, explaining the procedures followed by both land use boards and City staff. This memorandum does not address review by any state or federal agencies, environmental concerns, or the handling or disposition of hazardous materials.

Based upon commentary by the public and by members of the Board, it seems an overview of how demolitions are handled under City ordinances could be helpful. This memorandum provides, in general terms, an explanation of the process. A more detailed explanation can be provided upon request.

When a property owner proposes demolition of a structure, the baseline requirement is that the property owner apply for a demolition permit. Demolition permit applications are reviewed by Planning staff for compliance with local ordinances, and by Building Inspections and Fire Department staff for compliance with applicable codes.

In addition to this threshold review, demolitions can then be fairly broken into two categories – those within the Historic District and those outside the Historic District. Each are addressed in turn.

Historic District

When a property owner proposes to demolish a structure within the Historic District, that application is subject to rigorous review as against those standards defined by ordinance. See City Ordinance Chapter 10, Section 10.631.30. This review is enabled by statute. See RSA 674:46. The Historic District Commission (HDC) has authority to deny demolition applications under certain circumstances. For example, the Rockingham County Superior Court recently upheld a decision of the HDC and the Zoning Board of Adjustment (BOA) denying a property owner's application to demolish the so-called Times building located at 278 State Street.¹

¹ See Peter N. Floros as Trustee of the PNF Trust of 2013 v. Zoning Board of Adjustment of the City of Portsmouth, Docket No. 218-2018-CV-00177 (May 11, 2023).

Outside the Historic District

The City's ability to apply criteria, other than safety, to applications for the demolition of structures outside the Historic District is limited. The City can only consider safety factors when reviewing applications for demolitions outside the Historic District. Therefore, the current regulatory process only seeks to provide a public forum for the discussion of demolition. If a property owner needs relief from the BOA or approval from the Planning Board as a part of a project including the demolition of a building, a public hearing will be held pursuant to state statute with notices delivered to abutters, and concerned parties will have the opportunity to voice concerns about a proposed demolition before it occurs.

Likewise, recognizing the historic nature of the City and the desire of residents to voice concerns regarding demolition, the City created the Demolition Review Committee (DRC) in order to fill the void between the land use boards. See generally, City Ordinance Chapter 14, Article II. Therefore the DRC provides the opportunity for a public forum for those demolition applications outside the Historic District and which do not require relief from a land use board. The DRC provides a notice, delay, and a public hearing in circumstances prescribed by ordinance for the discussion of demolition of buildings in the City. The DRC acts as a bridge between land use boards, offering a public platform for discussing demolition applications outside the Historic District. It is important to note the DRC has no authority to prevent the demolition of any structure.

Appeals

Any aggrieved party seeking to appeal a decision of the BOA, the Planning Board or the Chief Building Inspector must follow the process set by statute.² For the Planning Board and BOA, that means appealing to Superior Court, the Housing Appeals Board or the BOA, as appropriate. The issuance of a building permit may be appealed to the Building Code Board of Appeals. RSA 674:34. Please note that any recommendation made by the DRC is advisory only and non-binding on property owners. Therefore, the final step of review by the DRC is issuance of a demolition permit, appealable to the Building Code Board of Appeals. The DRC is not an appellate body, and cannot accept appeals or review decisions made by other land use boards or City officials.

cc: Karen S. Conard, City Manager
Susan G. Morrell, City Attorney
Peter Britz, Director of Planning and Sustainability

² See, generally RSA 674:14, RSA 676:5, and RSA Chapter 677.

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: December 12, 2023

TO: KAREN CONARD, CITY MANAGER

FROM: JANE FERRINI, SENIOR ASSISTANT CITY ATTORNEY JF
ERIC EBY, TRAFFIC ENGINEER

RE: PARKING SIGNS FOR MCINTYRE LOT

At the December 4, 2023 City Council meeting, there was a request for a report back regarding the City's ability to erect signs on public property outside the McIntyre Lot and whether the City can regulate parking signs in the private McIntyre Lot.

The answer to both questions is yes. The City may erect parking signs on City property outside the McIntyre Lot and regulate parking signs on the private McIntyre Lot through City ordinance Chapter 7, Article I, Section 7.115, **Sign Permit Required for Private Parking Lot**. The ordinance provides, in part, that the Department of Public Works shall review and approve, through a sign permit application, the location, style, color, size and lettering for signage for public parking on private lots and may further require signs to include information stating that the lot is privately owned, operated and maintained, and that it is the private owner's responsibility for parking enforcement, not the City's.

The City has received a sign permit application for public parking at the McIntyre Lot. The City's Traffic Engineer, Eric Eby, is working with the applicant to review and erect parking signs in the McIntyre Lot similar to the attached. Given this pending application, staff does not recommend that the City erect additional signs on City property outside the private McIntyre Lot at this time. Further, the City Manager has directed the City's Traffic Engineer to work with all other existing owners/managers of private lots that provide public parking to revise and improve their signage throughout the City.

24 in

**Privately Owned
Hours & Rules Differ
From Municipality**

Parking

P



36 in