

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MARCH 4, 2024 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_RCsNdOL3RxGrbX_WikUNAw

AGENDA

- 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**

MAYOR'S AWARDS

1. Portsmouth High School Boys Ski Team Division II State Champions
2. Elijah Josey 190 lbs. Wrestling Division II State Champion

VII. **ACCEPTANCE OF MINUTES – JANUARY 2, 2024 AND JANUARY 16, 2024**

VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

1. Written Progress Report of the Cemetery Committee (no verbal presentation)

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**

Continued Public Hearing – Capital Improvement Plan (CIP) / Adoption of CIP: (*Continued Public Hearing that was held open per action of the City Council at the February 5, 2024 meeting*)

- A. *CAPITAL IMPROVEMENT PLAN (CIP) FY 2025-2030
 - **PRESENTATION** (*Presentation was held at the January 17, 2024 Work Session*)
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

First Reading of Ordinance:

- B. First reading of Ordinance amending Chapter 7, Vehicles, Traffic and Parking, Article I – Parking Meters, Section 7.102 – Parking Meter Zones and Parking Meter Rates (***Sample motion – move to pass first reading and schedule a public hearing and second reading at the March 18, 2024 City Council meeting to amend Chapter 7, Vehicles, Traffic and Parking, Article I – Parking Meters, Section 7.102 – Parking Meter Zones and Parking Meter Rates***)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

- 1. *Amendments to Capital Improvement Plan FY2025-2030
- 2. Sewerline and Grading and Sightline Easements for Property Located at 375 Banfield Road
- 3. Drainage Easements for Property at Shearwater Drive
- 4. Waterline License Agreement for Property Located at 569 Submarine Way and 214 Leslie Drive
- 5. *Request to Postpone Public Necessity Hearing for Property Located at 90 Maplewood Avenue

XII. CONSENT AGENDA

- A. Letter from Heidi Carrington Heath, Seacoast Outright, requesting permission to hold the 10th Portsmouth PRIDE Celebration on Saturday, June 22, 2024 (***Anticipated action – move to refer to the City Manager with Authority to Act***)

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Chet Schrader, Lithermans Brewing Company, requesting permission to hold a one-time special event with Andrew North performing on their outdoor patio Saturday, July 20, 2024 from 4:00 p.m. – 7:00 p.m.
- C. Planning Board recommendations for Rockingham Planning Commission Transportation Advisory Committee representatives (***Sample motion – move to appoint Eric Eby to the Rockingham Planning Commission Transportation Advisory Committee as the Portsmouth representative and Jillian Harris, as an alternate***)

- D. Letter from Josh Denton, Commander and Jonathan Day, Senior Vice Commander, VFW, regarding Meeting House License Agreement Letter of Intent (***Sample motion – move to the City Manager to report back on a process by which the City would consider lease or sale of the property***)

XIV. MAYOR McEACHERN

1. *Appointments to be Voted:
- Appointment of Chuck Raye to the Citywide Neighborhood Committee
 - Appointment of Elisabeth “Betsy” Blaisdell to the Energy Advisory Committee
 - Appointment of Tracey Cameron to the Energy Advisory Committee
 - Appointment of Herb Lloyd to the Energy Advisory Committee
 - Appointment of Thomas Nies to the Zoning Board of Adjustment

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. *Thank you to Study Circle Participants

B. COUNCILOR COOK

1. Governance Report Back and Further Actions (***Sample motions – 1) move to approve the draft explanatory note to be placed on the cover page of the City Charter and 2) move to request the Governance Committee work with the staff to review current training processes for City volunteers and develop a more robust training program targeted towards all City volunteers including elected officials***)
2. Cultural Plan (***Sample motion – move to approve and adopt the 2023 City of Portsmouth Cultural Plan presented in your packet***)

C. COUNCILOR COOK & COUNCILOR DENTON

1. Israel and Gaza Resolution (***Sample motion – move to adopt the draft resolution on Israel and Gaza***)

D. COUNCILOR DENTON & COUNCILOR BLALOCK

1. Solar Energy Panel Amendments (***Sample motion – move to hold First Reading on April 1, 2024, to amend Chapter 10, Article 6, Section 10.633.20 by adding a new numbered paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alternations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alternations to existing structures”***)

E. COUNCILOR MOREAU

1. Chairman Chellman and Chairwoman Ruedig, plan to give a brief update to council on the joint meeting and be available to answer any questions the council might have about the plan moving forward

F. COUNCILOR COOK, COUNCILOR BAGLEY & COUNCILOR MOREAU

1. *Verbal Report out on our tour of the Dover NH Police Department
2. *Motion to amend BI-15-PD-14: New Police Department Facility FY25 \$25,000,000.00

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from Service Credit Union to Support Refreshments at Veterans Coffee Afternoons - \$1,500.00

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Report Back on State Street Two-Way Redesign
2. Coalition Communities 2.0 Update on Rand Decision Regarding Excess Swept
3. Community Policing Facility – Update and Responses to Questions

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

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

**Indicates verbal report*

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

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: TUESDAY, JANUARY 2, 2024

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER

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

II. ROLL CALL

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

III. INVOCATION

Reverend Jennifer Mazor of the North Church provided the Invocation this evening.

POSTING OF THE COLORS

Members of the Portsmouth Police and Fire Departments Honor Guard held a procession and posted the colors.

IV. PLEDGE OF ALLEGIANCE – IAN COOK, EAGLE SCOUT CANDIDATE

Eagle Scout Candidate Ian Cook led in the Pledge of Allegiance.

○ STAR-SPANGLED BANNER

Performed by the Portsmouth High School Singers under the Direction of Nate Wotton.

Congressman Pappas Remarks

Congressman Pappas provided remarks in recognition of the ceremony this evening and extended his congratulations to all elected officials.

Senator Hassan Remarks

Senator Hassan gave remarks in honor of the ceremony this evening and extended her congratulations and well wishes to all elected officials.

Senator Shaheen Remarks

City Clerk Barnaby read remarks from Senator Shaheen in honor of this joyous occasion.

OATH OF OFFICE

City Clerk Barnaby administered the Oath of Office to the following officials who were elected at the November 7, 2023 Municipal Election.

A. FIRE COMMISSION

Commissioner Michael Hughes

B. POLICE COMMISSION

Commissioner Francesca Marconi Fernald

C. SCHOOL BOARD

City Clerk Barnaby announced that School Board Member Elect Christiana “Pip” Clews is ill this evening and unable to be with us.

Patricia “Tish” Campbell, Byron Matto and David Leigh Hudson

D. CITY COUNCIL

1. Councilors John Tabor, Kate Cook, Josh Denton, Rich Blalock, Andrew Bagley, Beth Moreau and Vincent Lombardi
2. Assistant Mayor JoAnna “Jo” Kelley
3. Mayor Deaglan McEachern recited the Oath of Office administered by City Clerk Barnaby

V. INAUGURAL ADDRESS BY MAYOR DEAGLAN McEACHERN

Thank you, Kelli, for this evening and for all that you do in preserving democracy here in Portsmouth. Your efforts embody the spirit of our community.

Ladies and gentlemen, esteemed guests, and my cherished fellow citizens of Portsmouth.

As I stand before you today, embarking on another term as your Mayor, alongside a council committed to our city’s welfare, I am filled with a profound sense of pride and optimism. We gather not just to mark the beginning of a new term but to honor and continue a legacy that spans an incredible 400 years. This legacy of resilience, community, and shared progress is one that each of us is a part of and responsible for carrying forward.

This historic moment is made even more special by the re-election of our entire council. I am privileged to continue our work alongside Assistant Mayor Kelley, Councilor Tabor, Councilor Cook, Councilor Denton, Councilor Blalock, Councilor Bagley, Councilor Moreau and Councilor Lombardi. Their wisdom, experience, and unwavering commitment to Portsmouth set the stage for another two years of impactful service.

I extend my heartfelt thanks to Congressman Pappas, Senator Hassan, and representatives for Senator Shaheen. Your presence today underscores the robust collaboration we value at all levels of government, and I am personally grateful for everything you do for Portsmouth.

To my family, whose boundless love and support make this journey not only possible but deeply meaningful: Lori, your advice and strength are my guiding light; Tiernan and Aurelia, you are the embodiment of why we work so hard, our future; and Mom, your legacy of love for people and hard work, shared with Dad, continues to inspire me every day. I trust Paul would be proud.

Karen Conard, our city manager, and the unsung heroes of our city staff, your resilience and dedication are nothing short of the heartbeat of Portsmouth. Today, the simple yet profound act of assembling indoors is a testament to your tireless efforts in overcoming the adversity of Covid and keeping our community healthy and strong. Portsmouth is indeed fortunate to have such incredible staff.

As we open our doors tonight, our city's motto, 'the city of the open door,' resonates with unprecedented power. It embodies the spirit of inclusivity, hard work, and innovation that defines Portsmouth. As we embark on the next 400 years, we are acutely aware that keeping our doors open means addressing the challenges we face head-on, particularly the housing crisis and the urgent threat of climate change.

The dream of affordable housing is at the heart of our vision for a community where every citizen, regardless of their economic background, has a safe and affordable place to call home. It is quite simply the character of Portsmouth, more than any brick or cobblestone could be. Our unwavering commitment to affordable housing will see us partnering with the PHA, engaging with the business community, and implementing zoning reforms that ensure sustainable, affordable living for all. This is not just an economic imperative but a moral one, ensuring that the 'city of the open door' remains a haven of hope and opportunity.

Equally pressing is the challenge of climate change, a reality that endangers the very fabric of our seaside community. Our mission is clear: Portsmouth will not only adapt but lead in environmental stewardship. We will implement a comprehensive climate action plan that champions sustainable practices, reduces our carbon footprint, and safeguards our environment for future generations. The actions we take today will define the legacy we leave for tomorrow, and I am committed to ensuring that legacy is one of hope, resilience, and responsible stewardship of our planet.

In this spirit, I speak directly to each of you, the citizens of Portsmouth, about the power and importance of your involvement. Our city thrives on the participation of each individual. Every voice in Portsmouth is a thread in the rich tapestry of our community. When you engage, speak up, and volunteer, you're not just contributing; you're leading. You're shaping the very soul of our city. Your involvement is the lifeblood of our democracy and the key to our collective success.

Therefore, I urge you, citizens of Portsmouth, to embrace the spirit of our motto. Open doors for new ideas, for dialogue, for progress. Volunteer in our schools, speak in this chamber, support local businesses, and engage in our community. Be the neighbor who listens, the citizen who acts, the individual who cares. Your involvement is what makes Portsmouth not simply the open door to our great state, but home for all.

Together, let's build a future where every open door leads to a story of hope, progress, and community—a future where our children and grandchildren can say with pride, 'We are Portsmouth, a city of open doors, open hearts, and open minds.'

Thank you, citizens of Portsmouth, for your unwavering spirit and commitment. Let's step into our next chapter with courage, unity, and an unshakeable belief in the power of working together. Here's to a future as bright and bold as the people who call Portsmouth home.

Thank you, and let's make history together!

Mayor McEachern announced that there will be a reception with light refreshments following the ceremony.

VI. BENEDICTION

Rabba Kaya Stern-Kaufman of Temple Israel provided the benediction for this evening.

VII. ADJOURNMENT

At 7:50 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Moreau and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JANUARY 16, 2024

PORTSMOUTH, NH
TIME: 7:00PM

Councilor Moreau moved to close the Non-Public Session and seal the minutes. Seconded by Councilor Blalock and voted.

III. CALL TO ORDER

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

IV. ROLL CALL

PRESENT: Mayor McEachern, Councilors Tabor, Cook, Denton, Blalock, Bagley (via Zoom); Moreau and Lombardi

ABSENT: Assistant Mayor Kelley

V. INVOCATION

Mayor McEachern asked everyone to join him in a moment of silent prayer.

VI. PLEDGE OF ALLEGIANCE

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

PRESENTATIONS

1. Portsmouth High School Football Team – Celebration of their Season

Mayor McEachern and City Council recognized the Portsmouth High School Football Team for their undefeated season, which is the first time since 1976 to accomplish this feat. Mayor McEachern presented gifts to the four captains of the team for their accomplishment.

2. Holiday Light Contest Winners

Mayor McEachern recognized the top three winners and honorable mention for participating in the event.

Top Three Winners:

- Best Traditional: Molly Wilson
- Most Creative: Kris Kraft
- Kid's Choice: Matt and Nicole Beyer

Honorable Mention Winners:

- Jana Goldstein
- Brent Guillot
- Brian McGuire

Mayor McEachern said this was a wonderful event and thanked all that participated.

PROCLAMATIONS

1. Harold Whitehouse

Mayor McEachern read the Proclamation declaring January 16, 2024 as Harold Whitehouse Day and called upon the residents of Portsmouth to pause and remember his dedication and to model themselves as citizens on the best of what he taught us. Harold's granddaughters accepted the Proclamation with thanks and appreciation.

2. Stalking Awareness Month

Mayor McEachern read the Proclamation declaring January as Stalking Awareness Month and called on our citizens to come together to reaffirm their commitment to ending stalking and supporting survivors. Ryan Grogan, Witness Advocate, accepted the Proclamation with thanks and appreciation.

VII. ACCEPTANCE OF MINUTES – NOVEMBER 9, 2023; NOVEMBER 13, 2023; NOVEMBER 20, 2023 AND DECEMBER 4, 2023

Councilor Moreau moved to approve and accept the minutes of the November 9, 2023; November 13, 2023; November 20, 2023 and December 4, 2023 City Council meetings. Seconded by Councilor Tabor.

On a roll call 8-0, motion passed. Mayor McEachern, Councilors Tabor, Cook, Denton, Blalock, Bagley, Moreau and Lombardi.

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

1. Safe Water Advisory Group (SWAG)

Mayor McEachern thanked the Safe Water Advisory Group for their report and said it would be placed on file.

IX. PUBLIC COMMENT SESSION

Joe Caldarola spoke to the impact climate change is having on our environment. He said he supports solar panels on roof tops in the historic district and throughout the city.

Roy Helse spoke regarding developments in the city and how they are impacting our wetland areas. He recommended we receive a management report from the city manager on when the next audit will be done.

Martin Ryan said he is speaking as a resident and not a member of the Historic District Commission. He said it is misguided to take away solar panel decisions from the HDC. He spoke to the guidelines being followed by the HDC relating to solar panels. He addressed the need for a clean safe environment where one size doesn't fit all situations.

Esther Kennedy said she agrees with comments made by Mr. Ryan. She suggested the need for a work session regarding solar panels. She also addressed the matter of the potential removal of James Hewitt from the Planning Board.

Karen Rosania spoke in support of artists in the city. She said the city has seen a mass exodus of artists because there is not zoning which supports areas of living for artists. She urged the City Council to look at changes to the zoning ordinance to address this matter.

Chris White spoke regarding the impending action to remove James Hewitt from the Planning Board. He spoke opposed to such action by the Council and said it is a way to seek power by the City Council. He said Mr. Hewitt's only error was trying to seek further information for residents and the Planning Board.

Erik Anderson spoke regarding the efforts to remove James Hewitt from the Planning Board. He said whether Mr. Hewitt asked too many questions or did not agree with Planning Board decisions you should make a resolution without a public hearing and let him remain.

Reagan Ruedig said she would like the HDC and Planning Board to come together and work on solar panels. She said it could be more than just solar panels to promote efficiencies in the ordinance. She said she would like to see the guidelines rewritten.

Paige Trace said the City Council packet should not be used to condemn someone. She said it appears as though you have already tried the Planning Board member. She said it looks like a process to achieving a special result.

Peter Whelan (via Zoom) spoke regarding the impending removal of Planning Board member James Hewitt. He said there has been zero process and there are many other issues in the city that require City Council attention. He said Mr. Hewitt should be able to serve out his term on the board.

Pat Bagley (via Zoom) said that these are accusations against Mr. Hewitt and the process lacks dignity. She said Mr. Hewitt's background benefits the Planning Board.

Attorney Jeremy Eggleton for James Hewitt said Mr. Hewitt has done nothing wrong and should be able to serve out his term on the Planning Board. He said Mr. Hewitt has not neglected his duty as a Planning Board member or committed malfeasance.

Chris Dwyer (via Zoom), Public Art Review Committee, said the Public Art Review Committee will be conducting public input sessions regarding the percent for public art at Peirce Island on January 25th and February 15th at 6:30 p.m. at the Library and a Zoom opportunity would be held on February 12th. She said attendees should plan one hour of time for these sessions to bring ideas in for this project.

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

- A. First reading of Ordinance amending Chapter 6, License, Article XVII – Outdoor Dining Encumbrance Permit, Section 6.1701 - 6.1707

Councilor Tabor moved to pass first reading and schedule a public hearing and second reading at the February 5, 2024 City Council meeting to amend Chapter 6, Licenses, Article XVII Outdoor Dining Encumbrance Permit, Sections 6.1701 - 6.1707. Seconded by Councilor Lombardi.

On a unanimous roll call vote 8-0, motion passed.

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Confirmation of City Council Goals

City Manager Conard said she is looking for the City Council to confirm their Citywide Goals for this upcoming fiscal year.

Councilor Cook moved to confirm the FY25 Budget Goals as presented. Seconded by Councilor Moreau.

Councilor Tabor moved to add the City Council plans for a strategic retreat as done in the past. Seconded by Councilor Moreau.

On a unanimous roll call 8-0, motions passed.

2. Proposed Amendment Relative to Solar Panels

City Manager Conard suggested referring a proposed amendment to the Planning Board or both the Planning Board and HDC.

Councilor Denton said the HDC Chair Ruedig was right that a holistic approach should be taken by homeowners to mitigate climate change. He said first a homeowner should seek insulating their home, replacing their windows and if it makes sense go ahead and consider solar panels.

Councilor Denton moved to refer to the Planning Board recommendations amendments to Chapter 10, Article 6, Section 10.633.20, by adding a new numbered paragraph (28) solar energy panels flush mounted to rooftops of existing structures which do not require other alternations to existing structures, and by adding a new numbered paragraph (29) accessory elements to solar energy panels which do not require other alternations to existing structures. Seconded by Councilor Blalock.

Deputy City Attorney McCourt spoke to Councilor Denton's motion which is different from the language in his memorandum to the City Council. He said the City Council has broad authority to regulate what is within and outside of the purview of the Historic District Commission and there is no legal difference in terms of authority between the two ordinances that have been proposed. He said it is just a difference of which the City Council prefers.

Discussion was held by the City Council regarding this matter.

Councilor Moreau moved to request the Planning Board have a Work Session with the Historic District Commission on this matter and come back with recommendations to the City Council. Seconded by Councilor Tabor.

On a unanimous roll call vote 8-0, Councilor Moreau's motion passed.

On a unanimous roll call vote 8-0, the main motion passed.

3. Adoption of Legislative Principles

City Manager Conard recommended that the City Council readopt these policies because it will allow the City to continue to be proactive and have a voice on important legislative matters until such time as the Legislative Subcommittee has an opportunity to meet and to bring forward to the 2024-2025 City Council any updates to these policies.

Councilor Tabor moved to approve the City Council Principles for Legislative Positions and the Legislative Subcommittee's Procedures for Submission of Testimony as presented. Seconded by Councilor Cook.

On a unanimous roll call vote 8-0, motion passed.

4. Revocable License for Arcadis U.S., Inc. for Property Located at 214 Bartlett Street

City Manager Conard reported that monitoring wells are on-site to assess water quality. She said Public Works and the State of New Hampshire have determined that installing two additional monitoring wells near the site will supplement the existing monitoring wells and provide data regarding environmental impacts to the site.

Councilor Moreau moved to authorize the City Manager to negotiate, execute and deliver a Revocable License in a form similar as attached in the Council packet, to allow Arcadis to install monitoring wells to benefit property located at 124 Bartlett Street. Seconded by Councilor Blalock.

On a unanimous roll call vote 8-0, motion passed.

5. City Council and Planning Board Joint Listening Session – Places to Live Study Circle Dialogue Report Out

City Manager Conard recommended a City Council and Planning Board Joint Listening Session where Howard Snyder, Housing Navigator, will report on the engagement process that 160 participants took part in.

Councilor Tabor moved to establish a Joint Listening Session with the Planning Board on Thursday, February 22, 2024 at 6:00 p.m. in the Eileen Dondero Foley Council Chambers. Seconded by Councilor Cook.

On a unanimous roll call vote 8-0, motion passed.

XII. CONSENT AGENDA

- A. Request from Chet Schrader, Rounders Brewing Company d/b/a Lithermans Brewing Company, to install a Projecting Sign at 103 Congress Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning & Sustainability Director, and further, authorize the City Manager to execute the License Agreement for this request***)

Planning Director's Stipulations:

- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of projecting sign, for any reason, shall be done at to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Letter from Maria Stephanou of Alzheimer's Association requesting to hold 2024 Annual Seacoast Walk to End Alzheimer's on Sunday, October 6, 2024

Councilor Moreau moved to adopt the Consent Agenda. Seconded by Councilor Blalock.

On a unanimous roll call vote 8-0, motion passed.

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Community Policing Facility Update – Suzanne Woodland, Deputy City Manager; Peter Rice, Public Works Director; and Mark Newport, Police Chief

Police Chief Newport reported that the focus was to have the new Community Policing Facility at Community Campus, but the Police Department would like to expand the Municipal Complex Police Facility outward. He spoke regarding the reduction of the square footage being requested for the facility to meet the needs of the department rather than their wants. He advised the City Council that an updated budget for the facility would be provided to them.

Public Works Director Rice said that this is a good opportunity to meet the goals of the City Council. He stated that this is purely informational at this time and would come back in April for a Work Session refining what they are doing.

Councilor Blalock said he appreciates we are looking at staying in the perimeters of the budget.

Councilor Lombardi asked if there is discussion of going up one level for the facility.

Police Chief Newport said they're looking at those things moving forward.

Discussion followed among the City Council on this matter.

- B. Letter from Mike Comeau, Portsmouth Water Taxi, requesting permission to attach sign to the chain link fence next to the public docks ramp, also placement of a sandwich board sign on the dock

Councilor Moreau moved to refer this request to the City's Legal Department for a report back. Seconded by Councilor Blalock.

On a unanimous roll call vote 8-0, motion passed.

- C. Letter from Marcia MacCormack regarding appeal to eliminate the Waterfront Business designation from Salter Street

Councilor Moreau moved to refer this request to the City's Legal Department for report back. Seconded by Councilor Blalock.

On a unanimous roll call vote 8-0, motion passed.

- D. Email Correspondence

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

On a unanimous roll call vote 8-0, motion passed.

- E. Request for Public Hearing Pursuant to RSA 673:13 for the Removal of Mr. James Hewitt from the Planning Board

Councilor Blalock moved to schedule a Public Hearing at the February 5, 2024, City Council meeting to determine if Mr. James Hewitt should be removed from the Planning Board pursuant to RSA 673:13. Seconded by Councilor Moreau.

City Attorney Morrell said that this is a first step in the process to make an informed decision and whether a public hearing is the right approach to take. She spoke to the thumb nail approach and the process would be provided to Mr. Hewitt regarding the issues that would be presented at the public hearing. She said it is a hearing specific to the issue at hand and not public comment. She stated that the Legal Department and Mr. Hewitt could present information to the City Council and witnesses could make remarks. She further stated that when the hearing has concluded the City Council will vote on the matter.

Mayor McEachern asked who would be representing the City Council at the public hearing. City Attorney Morrell said it would be outside counsel.

The City Council discussed the date of February 5th and agreed to change it to February 12th.

On a roll call vote 6-2, motion passed to schedule a Public Hearing on February 12, 2024, to determine if Mr. James Hewitt should be removed from the Planning Board pursuant to RSA 673:13. Councilors Tabor, Cook, Blalock, Moreau, Lombardi and Mayor McEachern voted in favor. Councilors Denton and Bagley voted opposed.

XIV. MAYOR McEACHERN

1. Ethics Committee Drawing by Lot

The Ethics Committee Drawing by Lot was held with Councilor Denton being selected to be the City Council representative to the Ethics Committee.

2. Approval of City Council Rules and Orders

Councilor Moreau moved to approve the City Council Rules and Orders. Seconded by Councilor Lombardi.

Councilor Cook moved to amend Rule 30 as outlined in Deputy City Manager Woodland's memorandum as follows:

Rule 30 – Ordinance Procedure

Each Ordinance shall pass through the following stages: There shall be a first reading at which amendments may be made. If the ordinance passes first reading, the Council shall, consistent with public notice requirements of law, set a time and place for a public hearing and second reading. Amendments may also be made at second reading. If amendments materially change the ordinance under consideration, a new public hearing and second reading shall be scheduled. If the ordinance passes second reading, there shall be a third and final reading. Passage of third reading shall constitute final passage. An ordinance may be rejected at any stage in its process.

Seconded by Councilor Denton.

On a unanimous roll call 8-0, motion passed as amended.

3. Ratification of City Council Policies

Councilor Moreau moved to ratify the City Council Policies as presented. Seconded by Councilor Blalock.

On a unanimous roll call vote 8-0, motion passed.

4. Ratification of Blue Ribbon Committees
- African Burying Ground Memorial Park Blue Ribbon Committee
 - Citywide Neighborhood Committee
 - Governance Committee
 - Housing Committee
 - Portsmouth Energy Advisory Committee
 - Safe Water Advisory Group
 - Sister Cities Committee
 - Task Force on Portsmouth Historical Archives

Councilor Blalock moved to ratify the Blue Ribbon Committees as outlined. Seconded by Councilor Moreau.

On a unanimous roll call vote 8-0, motion passed.

5. Reappointments to the Rockingham County Planning Commission:
 - Beth Moreau, City Council Representative
 - Peter Britz, Planning and Sustainability Director (Alternate member)

Councilor Blalock moved to reappoint Beth Moreau, City Council Representative and Peter Britz, Planning and Sustainability Director to the Rockingham County Planning Commission. Peter Britz will serve as an Alternate member of the Commission. Seconded by Councilor Cook.

On a roll call vote 7-0, motion passed. Councilor Moreau recused from voting.

6. Appointments to be Considered
 - Donald Brabant as a regular member of the Audit Committee
 - Jeff Abrams as a regular member of the Cable and Broadband Internet Commission
 - Gary Lowe as a regular member of the Cable and Broadband Internet Commission
 - Talia Sperduto as an alternate member of the Conservation Commission
 - Jody Record reappointment as an alternate member of the Zoning Board of Adjustment

The City Council considered the appointments outlined and action will be taken at the February 5, 2024 City Council meeting.

XV. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR KELLEY AND COUNCILOR TABOR

1. Housing and Sherburne School Next Steps

Councilor Tabor said that the City Council has created a Housing Blue Ribbon Committee this evening. He spoke to the number of things that the Housing Blue Ribbon Committee could do and said that this is a major objective for the City Council. He said the Housing Blue Ribbon Committee would come back in February with recommended appointments and a mission and goals statement.

Councilor Cook said she feels it is important to have this type of committee. She said it would be counter productive to debate options and we need to be mindful of how much time is spent.

Mayor McEachern said that this is a focus on housing in a master plan view. He stated we will make sure we have a position as we move forward to the Planning Board.

Councilor Tabor said Assistant Mayor Kelley and he welcome comments on this and would like to get land use experts on the committee.

Councilor Bagley echoed Councilor Cook's comments and he would prefer that the land revert back to the city and be considered by the Committee.

Councilor Blalock said he echoes Councilor Bagley's comments that he would like to see a 50–100-year lease for the property.

B. COUNCILOR BLALOCK

1. Report Back on Potential Sister City or Friendship City with the City of Nelson, New Zealand

Councilor Blalock said he did work on the part of the City Council and met with Mayor Nick Smith in Nelson, New Zealand and discussed the potential Sister City or Friendship City relationship. He presented to the Nelson City Council this idea and they seemed interested in a relationship with Portsmouth. He spoke to similarities between the two cities, and that Nelson would like to set up a student exchange program for the future.

Councilor Blalock moved to refer to Sister Cities Blue Ribbon Committee a potential Sister or Friendship Sister with the City of Nelson, New Zealand for report back to the City Council. Seconded by Councilor Denton.

On a unanimous roll call vote 8-0, motion passed.

At 9:27 p.m., Mayor McEachern declared a brief recess. At 9:35 p.m., Mayor McEachern called the meeting back to order.

Councilor Bagley no longer participated via Zoom and his items will be brought forward at the next City Council meeting for action.

C. COUNCILOR COOK AND COUNCILOR BAGLEY

1. Meeting Notices Via SMS/Email

Councilor Cook moved to request a report back from the City Manager on the possibility of an SMS or email triggered notice system, based on sign-up by keyword, to alert residents of topics of interest on any public meeting agenda to drive increased resident participation and attendance at city meetings. Seconded by Councilor Moreau.

Councilor Cook said she was approached by a resident on this matter and there is a software program that would alert to a text or email notification. She said this would be explored and a report back would be provided to the City Council.

Motion passed.

F. COUNCILOR MOREAU

1. Gateway Rezoning

Councilor Moreau moved to request that an ordinance amendment be drafted to change the zoning of the “consensus properties” as described in the memorandum and that the drafted ordinance amendment be sent to the Planning Board for its consideration and recommendation in February with the intention to bring back an ordinance amendment for first reading at the City Council meeting in March. Seconded by Councilor Blalock.

Councilor Moreau said this started with close to 60 properties.

Councilor Blalock said all changes made were to allow more opportunities for owners to have housing.

Councilor Moreau said values may go up if owners take advantage of the change.

Motion passed.

2. Home Occupation Definition and Regulations – Zoning Ordinance

Councilor Moreau moved to request a report back from the City Manager on how we might continue to advance the discussion during this next City Council session recognizing and balancing the City Council priorities such as housing, other ordinance amendments that are already further along in the development process, and staff workload. Seconded by Councilor Blalock.

Councilor Moreau said this could be moved along and staff would prioritize it properly.

Councilor Cook said this discussion was sparked by a motion that she put forward in March of 2023. She stated it went to land use because it was urgent, and the new cultural plan will ask for additional artists housing. She indicated that this was a critical need because artists are moving to other communities. Councilor Cook said that this is overdue by 20 years and feels it is more urgent now.

Councilor Lombardi said that this is a very important matter.

Mayor McEachern said it seems like it is an issue of parking, and we need a better plan for traffic and parking.

Councilor Cook said there are many residents that don't realize they could offer classes in their home.

Motion passed.

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to Department of Public Works from Mark Falzone, Scenic America - \$1,500.00 for the Planting of a Memorial Tree in Recognition of Dr. Geoffrey Clark

Councilor Moreau moved to accept and approve the donation to the Public Works Department in the amount of \$1,500.00 for the planting of a Memorial Tree in the right-of-way of 152 Middle Street in Recognition of Dr. Geoffrey Clark. Seconded by Councilor Lombardi and voted.

B. Acceptance of Grant for the Senior Center - \$10,000.00

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

C. Grant for the Police Department - \$12,499.00

Councilor Blalock moved to approve and accept the grant as presented. Seconded by Councilor Moreau and voted.

D. Grant for the Police Department - \$14,403.29

Councilor Moreau moved to approve and accept the grant as presented. Seconded by Councilor Blalock and voted.

E. Donation for the Police Department - \$7,000.00

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

F. Donation for the Police Department - \$2,500.00

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

G. Acceptance of Violence Against Women Act (VAWA) Grant - \$25,025.00

Councilor Moreau moved to approve and accept the grant as presented. Seconded by Councilor Lombardi and voted.

VII. CITY MANAGER'S INFORMATIONAL ITEMS

Report regarding recent Storm (not on agenda)

Public Works Director Rice spoke to the recent storm that resulted in the flooding of areas and reported that the Shaw Building at Prescott Park had twenty-six inches of water as a result of the storm, and they lost two of their boilers that are being replaced.

Report Back on Jones Avenue Scrapyard

Deputy City Attorney McCourt advised the City Council that a more detailed update would be provided at the February 5, 2024 City Council meeting.

Pease Development Authority Update

City Manager Conard provided a brief update regarding the Pease Development Authority recent meeting. She reported that the PDA would not be meeting in February.

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMANING UNFINISHED AT PREVIOUS MEETING

Councilor Cook announced that the Public Art Review Committee will be conducting public input sessions regarding the percent for public art for Peirce Island on January 25th and February 15th at 6:30 p.m. at the Library and a Zoom opportunity would be held on February 12th.

XIX. ADJOURNMENT

At 10:10 p.m., Councilor Moreau moved to adjourn the meeting. Seconded by Councilor Lombardi and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

March 4, 2024
City Council Meeting

2023 Progress Report
Cemetery Committee

Cemetery Committee

Progress Report as of 12/31/23

Cotton Cemetery:

1. Cleaned 400 headstones in 4 Saturdays
2. Repaired 2 of 5 tomb doors
3. Power washed granite wall on Sout St.

Hall Cemetery:

1. Cleared the path and cemetery yard

North Cemetery:

1. NHDHR and UNH used GPR to locate mass grave site from 1798 Yellow Fever
2. Reinternment of discovered remains during 2016 wall restoration

Union Cemetery:

1. Cleaned 157 headstones

Cotton Cemetery South Street



1. Volunteers cleaned 400 headstones on 4 Saturdays.
2. Initiated repair of 2 of 5 tomb doors on South St.
3. Initiated power-washing of granite wall on South St.

Hall Cemetery Project



Between South and Brackett Road

This was an overgrown revolutionary cemetery. The South St. entrance, the path to the cemetery and the cemetery were totally overgrown by trees and invasives. It was inaccessible. It took two different companies 6 days to complete the clearing project. Work managed by Department of Public Works.

Union Cemetery Maplewood Ave



Volunteers cleaned 157 headstones in Union. This picture represents how incredibly dirty the headstones are in the entire cemetery. Most headstones required 4 or more cleanings and take an hour to achieve a readable epitaph. 225 headstones to go.

North Cemetery Maplewood Ave



Working with the Department of Historical Resources and UNH; researchers used Ground Penetrating Radar. This project is an attempt to locate the mass grave site of yellow fever outbreak in 1798.

Pleasant Street Cemetery



DPW thinned out trees and removed lower branches. Now the cemetery is visible to both vehicles and pedestrians. An unexpected benefit of letting more light into the cemetery; reduction of moisture being held against the deteriorating brick wall.

North Cemetery Maplewood Ave



Corin Hallowell and Max Waite of DPW securing the three tubes after the City's Reinterment Ceremony of the unidentified remains that were uncovered in the 2016 restoration of the wall. The tubes are located in the area of their discovery.

Projects in the Pipeline For 2024

Cotton Cemetery:

Restore 3 tomb doors

Repair and straighten headstones

Carve Cotton Cemetery on South St. wall

Hall Cemetery:

Repair and straighten headstones

Rededication Cemetery

North Cemetery:

Embankment Restoration coordinated with DPW project

More projects with State

Union Cemetery:

Wall restoration (grant funds)

Cleaning headstones

Point of Graves:

Determining ground water table level

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Vehicles, Traffic and Parking, Article I – Parking Meters, Section 7.102- Parking Meter Zones and Parking Meter Rates, 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 I: PARKING METERS

Section 7.101: DEFINITION

The word "vehicle" as used herein shall mean any device by which any person or property may be transported upon a highway except those operated upon rails or tracks.

The word "meter" shall mean any device for buying parking time that displays the length of time for which a vehicle may remain legally parked in a parking space. Such devices include but are not limited to public meters such as a meter at an individual parking space or a central meter, or personal meters such as an in-vehicle meter, coupon or any other metering device including mobile phone applications as shall be approved from time to time by the City Council. The display of the parking time purchased may be on the meter itself, a paper receipt or by other duly authorized means of display.

Section 7.102: ~~PARKING METER ZONES AND~~ PARKING METER RATES

The following parking rates shall apply for ~~A~~all of those streets, parts of streets and off-street parking lots, the time for parking upon which is limited by any ordinance of the City of Portsmouth and where parking meter rates apply: ~~are designated as parking meter zones. The rate for such parking shall be:~~

~~A. ZONE A: DOWNTOWN HIGH OCCUPANCY ZONE~~

~~The following streets or parts of streets are within Zone A, the Downtown High Occupancy Zone:~~

- ~~1. Daniel Street, starting at Bow Street through to Market Square~~
- ~~2. Bow Street, starting at Daniel Street through to Market Street~~
- ~~3. Congress Street, starting at Market Square through to Chestnut Street~~
- ~~4. Pleasant Street, starting from Court Street through to Market Square~~
- ~~5. Market Street, starting from Moffatt-Ladd House through to Market Square~~
- ~~6. Deer Street, starting at Market Street through to Maplewood Avenue~~
- ~~7. Fleet Street, starting at Hanover Street through to State Street~~

- ~~8. — Hanover Lot, at intersection with Market Street~~
- ~~9. — Penhallow Street, starting at State Street through to Bow Street~~
- ~~10. — Chapel Street, starting at Daniel Street through to State Street~~
- ~~11. — Hanover Street from Maplewood Avenue to Market Street~~
- ~~12. — Portwalk Place from Deer Street to Hanover Street~~
- ~~13. — High Street from Deer Street to Hanover Street~~
- ~~14. — State Street from Marcy Street to Middle Street~~
- ~~15. — Ladd Street Lot at Hanover Garage~~

~~B. — ZONE B: STANDARD OCCUPANCY ZONE~~

~~Any street outside the Downtown High Occupancy Zone is within the Standard Occupancy Zone, which includes the Bridge Street, Court Street, and Memorial Bridge Off-Street Parking Areas and the worth Lot, excluding those parking spaces subject to contractual agreement with the City.~~

~~C.A. NONRESIDENT PARKING RATES FOR DOWNTOWN HIGH OCCUPANCY ZONE A~~

Parking shall be at the following hourly rates for nonresidents **for all metered parking in Downtown High Occupancy Zone A** during the hours of enforcement Monday through Saturday, from 9:00 a.m. – 8:00 p.m., and Sunday from 12:00 p.m. to 8:00 p.m., holidays excepted:

| | |
|--------------------|------------------|
| Hours 1, 2 and 3 | \$2.00 each hour |
| Hours 4 through 11 | \$5.00 each hour |

~~D. B..RESIDENT PARKING RATES FOR DOWNTOWN HIGH OCCUPANCY ZONE A~~

Portsmouth residents using an approved personal meter device, as defined in Section 7.101, shall be charged reduced hourly parking rates **for all metered parking in the Downtown High Occupancy Zone A**. Proof of residency shall be determined using standards established by the Portsmouth Revenue Administrator. Parking shall be at the following hourly rates for residents during the hours of enforcement Monday through Saturday, from 9:00 a.m. to 8:00 p.m., and Sunday from 12:00 p.m. to 8:00 p.m., holidays excepted:

| | |
|--------------------|--|
| Hours 1, 2 and 3 | \$1. 50 25 each hour |
| Hours 4 through 11 | \$2. 50 25 each hour |

~~E. — NONRESIDENT PARKING RATES FOR STANDARD OCCUPANCY ZONE B~~

~~Parking shall be at the following hourly rates for nonresidents in Standard Occupancy Zone B during the hours of enforcement Monday through Saturday, from 9:00 a.m. to 8:00 p.m. and Sunday from 12:00 p.m. to 8:00 p.m., holidays excepted:~~

| | |
|-------------------------------|-----------------------------|
| Hours 1, 2 and 3 | \$1.50 each hour |
| Hours 4 through 11 | \$3.00 each hour |

~~F. RESIDENT PARKING RATES FOR STANDARD OCCUPANCY ZONE B~~

~~Portsmouth residents using an approved personal meter device, as defined in Section 7.101, shall be charged reduced hourly rates in the Standard Occupancy Zone B. Proof of residency shall be determined using standards established by the Portsmouth Revenue Administrator. Parking shall be at the following hourly rates during the hours of enforcement Monday through Saturday, from 9:00 a.m. to 8:00 p.m., and Sunday from 12:00 p.m. to 8:00 p.m., holidays excepted:~~

~~Hours 1, 2 and 3 ————— \$1.00 each hour
Hours 4 through 11 ————— \$2.00 each hour~~

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



CITY OF PORTSMOUTH

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

Karen S. Conard
City Manager

Date: February 29, 2024

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 March 4, 2024

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

A. Continued Public Hearing – Capital Improvement Plan (CIP) / Adoption of CIP:

In accordance with Section 7.7 of the City Charter, the City Council is continuing the public hearing, initiated at the February 5, 2024 City Council Meeting, at this evening's City Council meeting regarding [the proposed Capital Improvement Plan for FY 2025 – FY 2030](#). As you recall, the City Council held a work session on January 17, 2024. At the work session, a presentation of the proposed CIP was made by City staff. [The proposed CIP and presentation are available on the City's website](#). The City Council is required, in accordance with Section 7.8 of the City Charter, to adopt the Capital Plan subsequent to the public hearing and before the City Manager submits the budget to the City Council.

I recommend that the City Council move to amend the proposed CIP with the recommended reductions as presented under my name as Action Item #1 and adopt as amended.

B. First Reading of Ordinance Amending Chapter 7, Vehicles, Traffic, and Parking, Article I – Parking Meters, Section 7.102 – Parking Meter Zones and Parking Meter Rates:

For first reading is an ordinance amending [Chapter 7, Vehicles, Traffic and Parking, Article I - Parking Meters, Section 7.102 - Parking Meter Zones and Parking Meter Rates](#). The current ordinance established two different parking zones with two different rates. The first is Zone A, the Downtown High Occupancy Zone, which is defined in the ordinance by a list of streets in the downtown area. The second is Zone B, the Standard Occupancy Zone, which includes all on street parking on streets outside the Downtown High Occupancy Zone and metered off-street parking areas (Worth Lot, Bridge Street Lot and the Memorial Bridge Lot). Both of these zones provide for a resident discount hourly rate for residents using the ParkMobile App.

It is the intent of this ordinance amendment to create one parking rate for all metered parking in the City, including all off-street parking areas with metered parking (Worth Lot, Bridge Street Lot and Memorial Bridge Lots).

The amendment to Section 7.102 removes Zone B, the Standard Occupancy Zone, which currently charges nonresidents \$1.50 per hour for the first three hours and \$3.00 per hour for hours 4-11 and residents using the ParkMobile App \$1.00 per hour for the first three hours and \$2.00 per hour for hours 4-11. The parking rate proposed in this amendment is what is currently charged for Zone A, which for nonresidents is \$2.00 per hour for the first three hours and \$5.00 per hour for hours 4 - 11. The amendment also proposes an additional discount of \$.25 for residents using the ParkMobile App, reducing the parking rate for the first three hours from \$1.50 per hour to \$1.25 and reducing the rate for hours 4 - 11 from \$2.50 per hour to \$2.25.

I recommend that the City Council vote to pass first reading and schedule a public hearing and second reading at the March 18, 2024 City Council meeting to amend Chapter 7, Vehicles, Traffic and Parking, Article I - Parking Meters, Section 7.102 - Parking Meter Zones and Parking Meter Rates, to remove the standard Occupancy Zone (Zone B) and increase the parking rate discount for residents using the ParkMobile App.

XI. City Manager’s Items Which Require Action:

1. Amendments to Capital Improvement Plan FY2025-2030:

I would like to suggest the following reductions in the requested Capital Outlay and Information Systems request for FY25.

Suggested Changes to Capital Improvement Plan FY25-FY30

| CIP Page | FY25 Capital Outlay | Planning Board Adopted 12/21/2023 | Suggested Reductions for FY25 Budget | Suggested Use Of ARPA | Proposed FY25 Budget |
|--|---|-----------------------------------|--------------------------------------|------------------------------|---------------------------|
| 78 | Permanent Records Storage Facilities | \$25,000 | (25,000) | | - |
| 83 | Sheltering and Public Health Resources | \$250,000 | | (250,000) | - |
| 87 | City of Portsmouth Master Plan Update | \$150,000 | (150,000) | | - |
| 90 | Existing Outdoor Recreation Field and Facility Improvements | \$75,000 | (25,000) | | 50,000.00 |
| 95 | Pierce Island Recreation Improvements | \$150,000 | (150,000) | | - |
| 102 | City Hall HVAC Improvements | \$200,000 | (200,000) | | - |
| 107 | Sound Barriers in Residential Area Along I-95 | \$50,000 | (50,000) | | - |
| Total Capital Outlay suggested reductions or use of ARPA Funding | | | (600,000) | (250,000) | |
| | FY25 Information Systems | Planning Board Adopted 12/21/2023 | Suggested Reductions for FY25 Budget | Suggested Use Of ARPA | Proposed FY25 Budget |
| 116 | Citywide Information Technology Upgrades & Equipment Replacements | \$829,038 | (261,858) | | 567,180 |
| Total Information Systems suggested reductions or use of ARPA Funding | | | (261,858) | | - |
| Total suggested reductions to Planning Board Adopted CIP FY25-FY30 | | | (861,858.00) | (250,000.00) | |
| Total Combined Reduction | | | (1,111,858.00) | | |
| | | Budget FY24 | After Reduction Proposed FY25 | \$\$ Change from FY24 | % Change from FY24 |
| | Capital Outlay | \$1,820,000 | \$1,638,000 | (\$182,000) | -10% |
| | Information Systems | \$1,172,336 | \$992,180 | (\$180,156) | -15% |

With these reductions and use of ARPA funding totaling \$1,111,858, the FY25 Budget for Capital Outlay and Information Systems will be \$362,156 less than the FY24 Budget.

In addition, funding for the ambulance replacement will be changed from cash rolling stock to bond/lease rolling stock.

I recommend that the City Council move to amend the CIP with the reductions as presented.

2. **Sewer line and Grading and Sightline Easements for Property Located at 375 Banfield Road:**

On October 19, 2023, the Planning Board granted subdivision approval to Robert Graham of Banfield Realty, LLC, for the creation of two new parcels and the development of a new industrial warehouse with office space. As a part of that approval, the Planning Board recommended the City accept a grading and sightline easement, intending to support an existing right of way easement crossing the parcel. The Planning Board also recommended the City grant a sewer line easement to the property owner so it may connect the new building to the existing sewer line crossing the Community Campus parcel. The two easement areas are depicted in [the attached drawing](#).

The Public Works and Planning Departments recommend accepting the grading and sightline easement and granting the sewer line easement. The Legal Department has reviewed [the attached easements](#) for form.

I recommend that the City Council move to authorize the City Manager to accept and record a grading and sightline easement, and to grant and record a sewer line easement in substantially similar form to the easement deeds from Banfield Realty, LLC contained in the agenda packet.

3. **Drainage Easements for Property Located at Shearwater Drive:**

On October 26, 2023, the Planning Board granted subdivision and site plan approval for the creation of nine new parcels, to be improved by single family homes with related infrastructure, on Shearwater Drive to John Madden of Bantry Bay Associates, LLC. As a part of that approval, the Planning Board recommended the City accept drainage easements to support drainage infrastructure which will be relocated as a part of this project. The drainage infrastructure crosses two proposed parcels, and the area is depicted in [the attached drawing](#).

Since receiving approval, Chinburg Development, LLC has emerged as the party likely to complete the approved development. Therefore, Chinburg Development, LLC is the entity which now seeks to grant the City said drainage easements.

The Public Works and Planning Departments recommend accepting the drainage easements. The Legal Department has reviewed [the attached easements](#) for form.

I recommend that the City Council move to authorize the City Manager to accept and record drain line easements in substantially similar form to the easement deed from Chinburg Development, LLC contained in the agenda packet.

4. **Waterline License Agreement for Property Located at 569 Submarine Way and 214 Leslie Drive:**

On January 23, 2024, the Planning Board granted amended site plan approval to the Portsmouth Submarine Memorial Association, granting permission to construct an addition to the visitor center at the Albacore Museum. As a part of that approval, the Planning Board recommended the City accept and record a license agreement memorializing the City's right to utilize a water line easement crossing 214 Leslie Drive. The license area is depicted on [the attached drawing](#).

This license agreement memorializes an agreement between the Portsmouth Submarine Memorial Association, transferring ownership to the City of the water line over and across 569 Submarine Way, 214 Leslie Drive, and the adjacent rights of way. Although the City is the owner of the water line and has improved the water line in recent years, the property owners at 214 Leslie Drive have requested the City purchase an easement directly from them. It is the opinion of the City Legal Department that, pursuant to the New Hampshire Supreme Court's decision in *Arcidi v. Town of Rye*, 150 N.H. 694 (2004), a license from the Portsmouth Submarine Association to the City for use of the existing water line easement would provide the City appropriate legal interest in the area.

The Legal Department has [reviewed the attached license](#) for form and recommends acceptance.

I recommend that the City Council move to authorize the City Manager to accept and record a license agreement in substantially similar form to the license agreement from the Portsmouth Submarine Memorial Association contained in the agenda packet.

5. **Request to Postpone Public Necessity Hearing for Property Located at 90 Maplewood Avenue:**

On February 5, 2024, the City Council voted to hold a public necessity hearing on March 25, 2024. The purpose of that public necessity hearing is to determine whether public necessity exists to acquire easements for the installation of a new drain line over land of CSX, Inc. and 90 Maplewood, LLC. The proposed project would advance the sewer separation project, which is the subject of an Environmental Protection Agency consent decree.

Since the scheduling of the public necessity hearing, Deputy City Attorney McCourt has been in good faith negotiations with both CSX and 90 Maplewood, LLC regarding the needed easements. He has gained some momentum in recent weeks, and as a show of good faith CSX, Inc., has requested postponing the public necessity hearing to provide more time to negotiate before entering eminent domain proceedings. Although City staff would continue to negotiate conveyance of easement following the public necessity hearing, it is the desire of CSX to complete negotiations prior to commencing eminent domain proceedings.

Therefore, as a show of good faith, I recommend postponing the public necessity hearing to April 29, 2024 to allow further negotiations. The Department of Public Works and Regulatory Counsel for the City agree this brief delay would not materially impact the City's obligations pursuant to the consent decree.

I recommend that the City Council move to postpone the public necessity hearing to 5:00 p.m. on Monday, April 29, 2024 in Eileen Dondero Foley City Council Chambers.

XVI. Approval of Grants/Donations:

A. Acceptance of Donation from Service Credit Union to Support Refreshments at Veterans Coffee Afternoons - \$1,500:

Attached please find a [donation form](#) for a donation in the amount of \$1,500 for the Senior Activity Center.

I recommend that the City Council move to approve and accept the donation in the amount of \$1,500.

XVII. City Manager's Informational Items:

1. Report Back on State Street Two-Way Redesign:

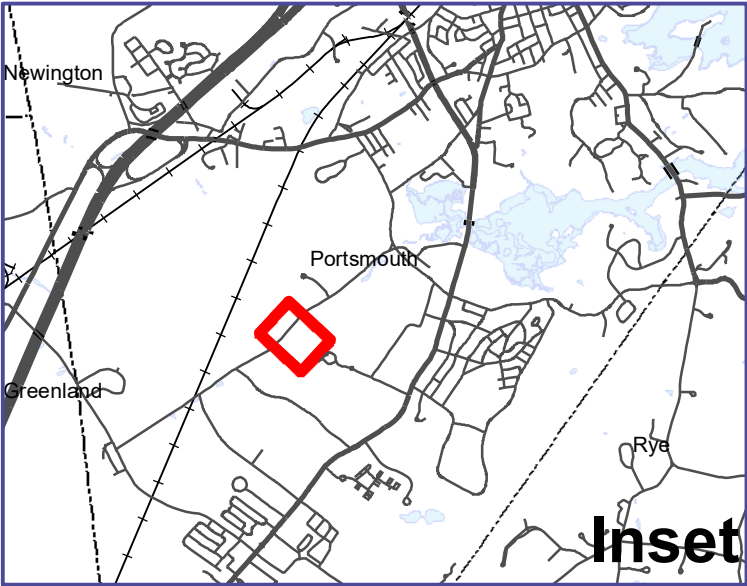
Per the request made by Councilors Cook and Moreau at the February 20, 2024 City Council meeting, [please find attached the proposed element sheet for the State Street Two-Way Redesign.](#)

2. Coalition Communities 2.0 Update on Rand Decision Regarding Excess SWEPT:

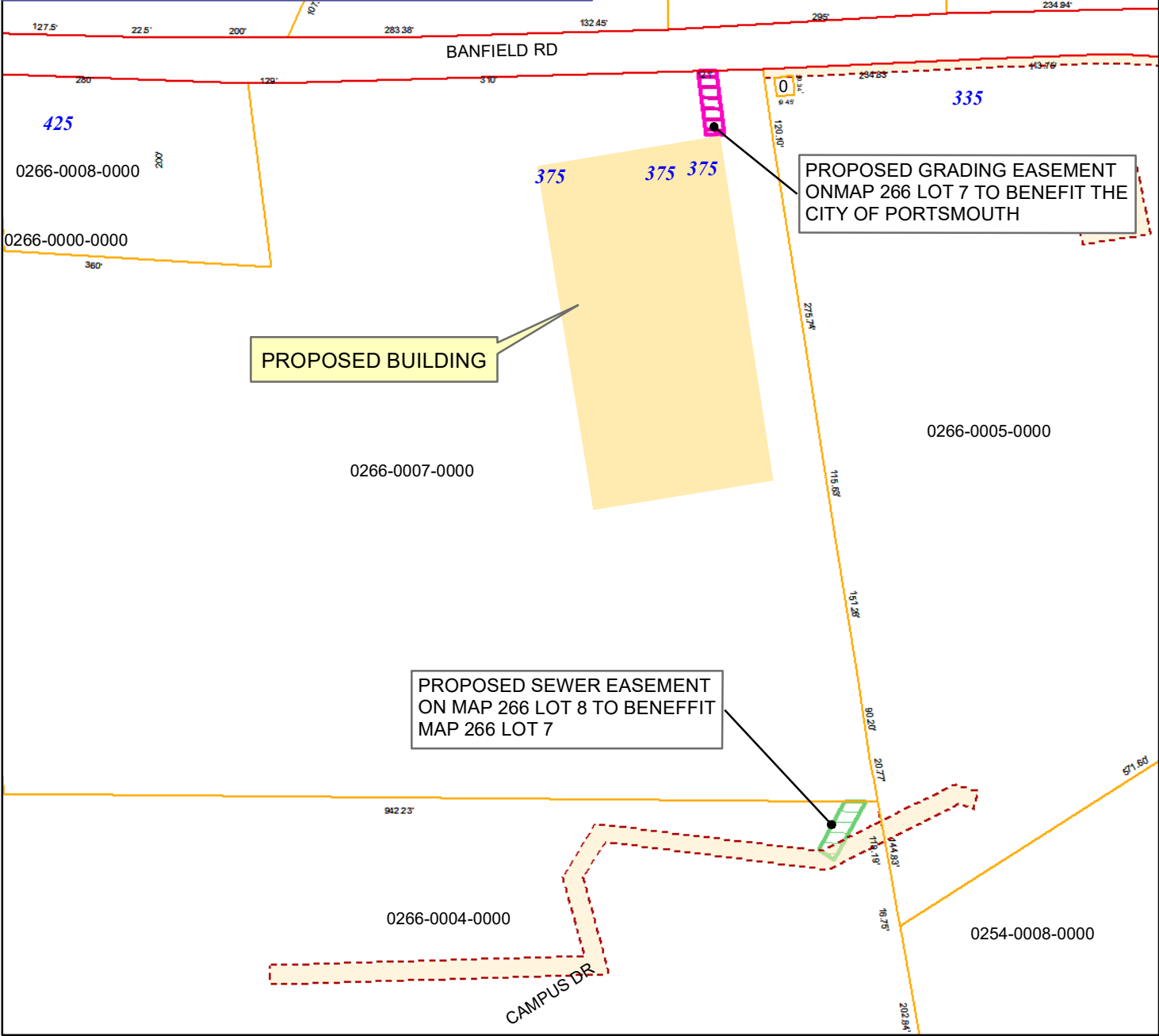
[Attached please find a memorandum from Senior Assistant City Attorney Jane Ferrini](#) regarding an update on the Rand Decision and excess Statewide Education Property Tax (SWEPT).

3. Community Policing Facility – Update and Responses to Questions:

[Attached please find a memorandum from staff regarding the proposed Community Policing Facility.](#)



Inset



**375 Banfield Road
Proposed Easements**

Map prepared by Portsmouth Department of Public Works



After recording, return to:
Office of the City Attorney
City of Portsmouth
1 Junkins Ave
Portsmouth, NH 03801

Property located in Portsmouth, Rockingham County, New Hampshire

SEWER EASEMENT DEED

CITY OF PORTSMOUTH, a municipal body politic, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, (together with its successors and assigns, "**Grantor**"), for good and valuable consideration, grants to **BANFIELD REALTY, LLC**, a New Hampshire limited liability company with an address at 304 Maplewood Avenue, Portsmouth, New Hampshire 03801 (together with its successors and assigns, "**Grantee**"), with QUITCLAIM COVENANTS, the following easement over the Easement Area located on the Grantor's real property ("**Grantor's Property**"), all as more particularly set forth below:

1. **Site Plan:** "**Site Plan**" means that certain plan set entitled "COMMERCIAL SITE PLAN, 'INDUSTRIAL WAREHOUSE,' TAX MAP 266, Lot 7, 375 BANFIELD ROAD, PORTSMOUTH, NH," prepared by Jones & Beach Engineers, Inc. dated _____, last revised on _____, and recorded in the Rockingham County Registry of Deeds simultaneously herewith.
2. **Easement Plan:** "**Easement Plan**" as used herein means that certain easement plan, Drawing No. A1 of the Site Plan and entitled "SUBDIVISION AND EASEMENT PLAN, TAX MAP 266, Lot 7" "SUBDIVISION PLAN, 375 BANFIELD ROAD, PORTSMOUTH, NH 03801.
3. **Easement and Easement Area:** "**Easement**" as used herein, means a perpetual easement for the purpose of installing and maintaining sewer laterals and any associated appliances and appurtenances over that portion of the Grantor's Property as further described herein and as identified on the Easement Plan as "Proposed Sewer Easement On Map 266, Lot 84 to benefit Map 266, Lot 7" and more particularly bound and described as follows (the "**Easement Area**"):

Beginning at a point, on the property line between the City of Portsmouth being Tax Map 266 Lot 84 and Banfield Realty LLC being Tax Map 266 Lot 7, off Banfield Road, so-called, at the most northerly corner of the within described easement, said point being S41°44'36"W, 13.84 feet, from an iron rod with "LLS 717" cap found;

Thence running **S41°44'36"W**, along the southeasterly line of land now or formerly of Banfield Realty LLC a distance of **22.89 feet** to a point;

Thence turning and running **S19°09'53"E**, across land of the City of Portsmouth a distance of **59.28 feet** to a point;

Thence turning and running **N70°50'07"E**, across land of the City of Portsmouth a distance of **20.00 feet** to a point;

Thence turning and running **N19°09'53"W**, across land of the City of Portsmouth a distance of **70.40 feet** to the **point of beginning**.

Containing 1,297 square feet or 0.03 acres

4. **Purpose and Rights:** The Grantee shall have a 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 the sewer laterals and associated appliances and appurtenances as shown on sheet 10, P1, of the Site Plan, for the benefit of Grantee's Property. 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.
5. **Improvements and Restoration:** Prior to commencing any construction, reconstruction, maintenance, repair or relocation work (any such work being referred to herein as "Improvement Work") within the Easement Area as may be permitted or required by this Easement, the Grantee shall, at least thirty (30) days prior to beginning such Improvement Work (except in cases of emergency, when no notice will be required) provide written notice to the Grantor describing in reasonable detail (i) the type of Improvement Work to be performed, and (ii) the area(s) of Grantor's Property that will be impacted by such Improvement Work. Grantee shall exercise all reasonable precautions to prevent injury to persons or property as a result of any Improvement Work. Grantee shall, at its sole expense and within thirty (30) days after substantial completion any of such Improvement Work performed by or on behalf of the Grantee, restore the applicable portions of the Easement Area and Grantor's Property that are affected by such Improvement Work as near as practicable to the condition that existed immediately prior to the commencement of such Improvement Work. If Grantee fails to complete the restoration provisions required by this paragraph within thirty (30) days, the Grantor may provide written notice of such failure. Subject to matters beyond the reasonable control of the Grantee, if, at the end of ten (10) days the restoration work as required by this paragraph has not been completed (other than plantings and landscaping that would be better done during a different season of the year), the Grantor shall be entitled to complete such restoration without any further notice to Grantee, and Grantee shall be liable for the full cost of such work performed to the standards of this paragraph.

6. **Relocation:** In the event the Grantor seeks to use Grantor's Property for some use inconsistent with the location of sewer lines within the Easement Area, Grantor may require the Grantee to relocate, at Grantee's sole cost and expense, the sewer lines to a different location on property of the Grantor. Grantor shall provide a minimum of 90 days' notice to the Grantee of such relocation. Grantor may, at its option, relocate the Grantee's sewer line in accordance with the foregoing, and any costs incurred by the Grantor as a result of relocation shall be paid by the Grantee.
7. **Indemnification:** Grantee shall indemnify and hold the Grantor harmless from all claims and liabilities for damages for bodily injury, including accidental death, and for property damage, which may arise from Grantee's exercise of the easement rights conveyed herein and the operation, use and maintenance of the Easement Area, whether such operation, use or maintenance is performed by the Grantee or by anyone directly or indirectly employed by Grantee.
8. **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.
9. **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 Grantor's Property and shall run with the land.

MEANING AND INTENDING to convey an easement over a portion of the owned by the Grantor and identified as City of Portsmouth, Tax Map 266, Lot 84.

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

[Signature Pages Follow]

DATED this _____ day of _____, 2024.

City of Portsmouth

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

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared this ____ day of _____, 2024, Karen S. Conard, duly authorized City Manager, who acknowledged that she executed the foregoing instrument as her free act and deed for the purposes contained herein.

Before me,

Notary Public
My commission expires:

[Acceptance Signature Page Follows]

Accepted this _____ day of _____, 2024.

BANFIELD REALTY, LLC

By: _____

Name:

Its:

**STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS**

On this the _____ day of _____, 2024, before me, the undersigned officer, personally appeared the above-named _____, _____ of Banfield Realty, LLC who executed the foregoing instrument for the purposes therein contained.

Justice of the Peace/Notary Public

After recording, return to:
Office of the City Attorney
City of Portsmouth
1 Junkins Ave
Portsmouth, NH 03801

Property located in Portsmouth, Rockingham County, New Hampshire

GRADING AND SIGHTLINE EASEMENT DEED

BANFIELD REALTY, LLC, a New Hampshire limited liability company with an address at 304 Maplewood Avenue, Portsmouth, New Hampshire 03801 (together with its successors and assigns, "Grantor"), for good and valuable consideration, grants to the **CITY OF PORTSMOUTH**, a municipal corporation, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, (hereinafter referred to as "Grantee") with QUITCLAIM COVENANTS, the following easement the over the Easement Area located on the Grantor's real property ("Grantor's Property"), all as more particularly set forth below:

1. **Site Plan:** "Site Plan" means that certain plan set entitled "COMMERCIAL SITE PLAN, 'INDUSTRIAL WAREHOUSE,' TAX MAP 266, Lot 7, 375 BANFIELD ROAD, PORTSMOUTH, NH," prepared by Jones & Beach Engineers, Inc. dated _____, last revised on _____, and recorded in the Rockingham County Registry of Deeds simultaneously herewith.
2. **Easement Plan:** "Easement Plan" as used herein means that certain easement plan, Drawing No. A1 of the Site Plan and entitled "SUBDIVISION AND EASEMENT PLAN, TAX MAP 266, Lot 7" "SUBDIVISION PLAN, 375 BANFIELD ROAD, PORTSMOUTH, NH 03801.
3. **Easement and Easement Area:** "Easement" as used herein, means a permanent right and easement over, under, through and on Grantor's Property to maintain sightlines, slopes and embankments at such an angle as will hold the material in the slopes in repose and against ordinary erosion over a portion of Grantor's property identified on the Easement Plan as [_____]and more particularly bound and described as follows (the "Easement Area"):

Beginning at a point, on the southerly sideline of Banfield Road, so-called, at the most northerly corner of the within described easement, said point being S41°23'38"W, 50.30 feet, from an iron rod with "LLS 625" cap found;

Thence running **S54°53'27"E**, across land of Banfield Realty LLC, a distance of **70.00 feet** to a point;

Thence turning and running **S41°23'38"W**, across land of Banfield Realty LLC, a distance of **20.00 feet** to a point;

Thence turning and running **N54°53'27"W**, across land of Banfield Realty LLC, a distance of **70.00 feet** to a point on the southerly sideline of Banfield Road, so-called;

Thence turning and running **N41°23'38"E**, along the southerly sideline of said Banfield Road, so-called, a distance of **20.00 feet** to the **point of beginning**.

Containing 1,392 square feet or 0.03 acres

4. **Maintenance Responsibilities.** Grantee shall have the exclusive responsibility to maintain the roadway and the easement area; Grantor has no duty to install or maintain such improvements.
5. **Grantee's Responsibility to Restore.** Disturbed areas within the Easement Area that are not utilized for the intended purposes described above shall be back-filled and restored. Usual and typical landscaping materials that do not reasonably interfere with the easement uses and that are removed by the Grantee during the course of exercising its rights under this instrument shall be restored at the Grantee's expense. Paving and curbing and similar materials shall also be restored at the Grantee's expense when those paving and curbing materials that are installed with the approval of the Grantee.
6. **Grantor's Retained Rights.** Grantor retains the right to freely use and enjoy its interest in that portion of the Easement Area that is not improved as a public road. Grantor may maintain grass and other vegetation that does not impair the sightline for the intersection (plants shall be less than 30" in height). Grantee reserves the right to trim vegetation that exceeds the height limit. Grantor shall not erect any building, shed, deck or other structure within the permanent easement area, or substantially change the grade or slope, or install any pipes within the Easement Area.

Meaning and intending to grant easement rights over a portion of the property conveyed to Grantee by deed recorded in the Rockingham Registry of Deeds at Book 6081/2150.

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

[Signature Pages Follow]

In WITNESS WHEREOF, the undersigned has hereunto set his hand on this _____ day of _____ 2024.

BANFIELD REALTY, LLC

By: _____
Name:
Its:

**STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS**

On this the _____ day of _____, 2024, before me, the undersigned officer, personally appeared the above-named [_____], who executed the foregoing instrument for the purposes therein contained.

Justice of the Peace/Notary Public

[Acceptance Signature Page Follows]

Accepted this _____ day of _____, 2024.

City of Portsmouth

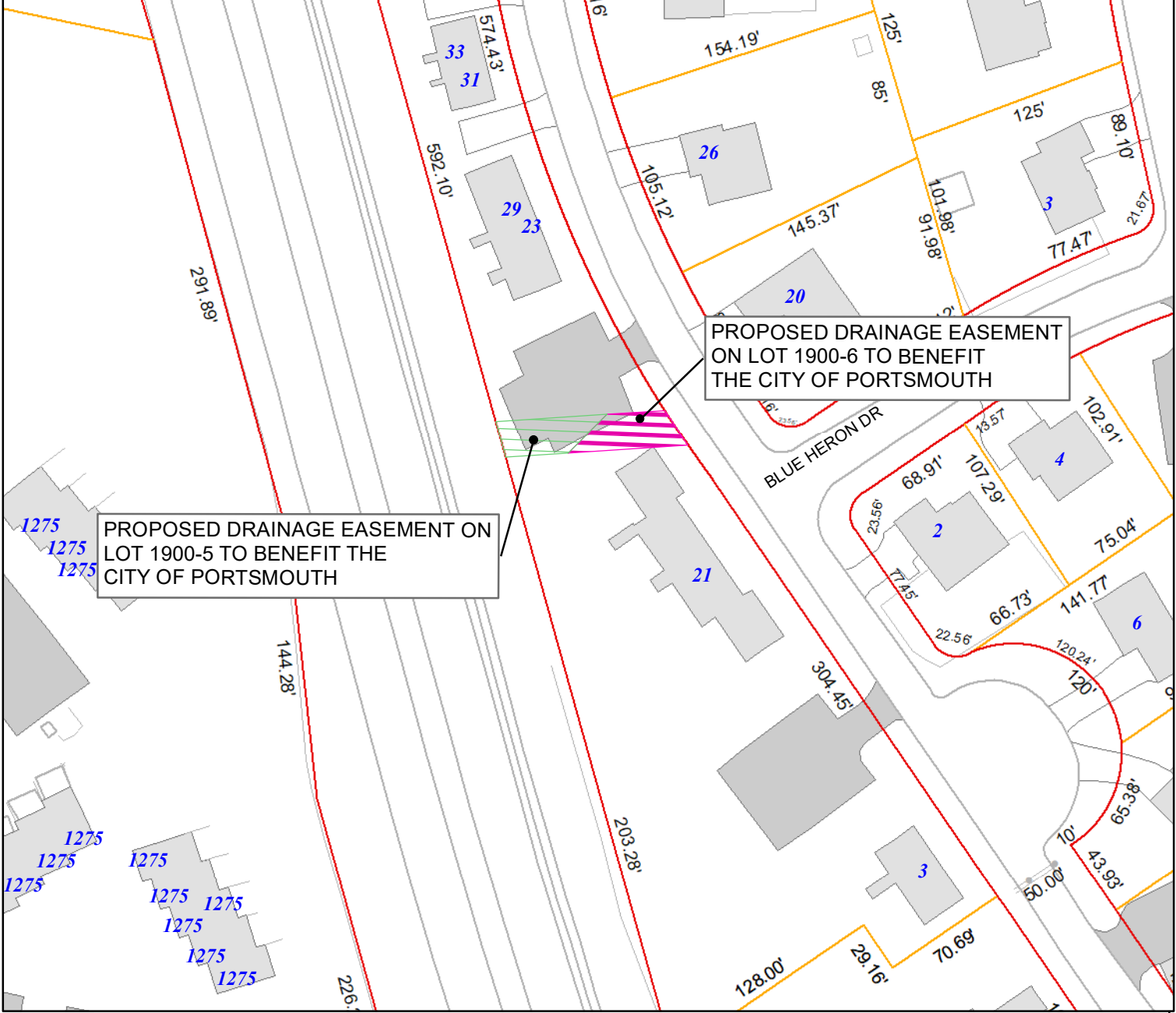
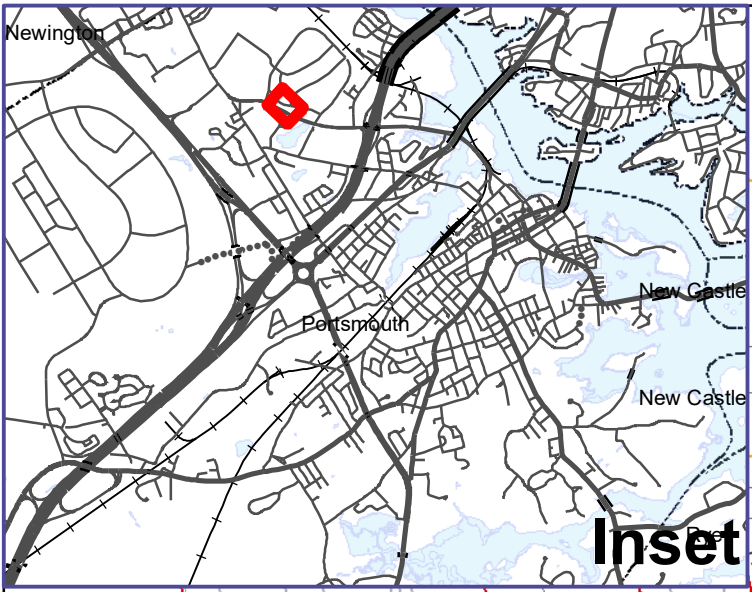
By: _____
Karen S. Conard, City Manager
Pursuant to vote of the City Council dated
_____.

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared this ____ day of _____, 2024, Karen S. Conard, duly authorized City Manager, who acknowledged that she executed the foregoing instrument as her free act and deed for the purposes contained herein.

Before me,

Notary Public
My commission expires:



**Shearwater Drive
Proposed Easements**



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

DRAINAGE EASEMENT DEED

CHINBURG DEVELOPMENT, LLC a New Hampshire limited liability company , with an address of 3 Penstock Way, New Castle, County of Rockingham, State of New Hampshire 03854, hereinafter “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, hereinafter, "Grantee," with QUITCLAIM COVENANTS, the following easements with respect to Grantor's real property situate on the southerly side of Shearwater Drive in the City of Portsmouth, State of New Hampshire :

1. **Permanent Easement Areas:** Two permanent easements for the purpose of a drainage pipe, outfall and storm water flowage over land of Grantor being Lots 1900-5 through 1900-8, labled Drainage Easement ‘C’ and Drainage Easement ‘D’ and shown on a plan entitled, “Subdivision Plan – Assessors Map 217 Block 2 Lot 19, Shearwater Drive, Portsmouth, New Hampshire”, prepared for Bantry Bay Assoc. LLC c/o JCM Management CO. Inc, prepared by Greenman-Pedersen, Inc, dated January 12, 2023, as may be further amended and recorded (hereinafter the “Plan”). The Plan to be recorded herewith. The Easement Areas are more particularly described in **Exhibit A** attached hereto.
2. **Temporary Easement Area for Construction Purposes:** The Grantee shall have a temporary construction easement consisting of 5 feet on either side of Easement Areas as shown on the Plan for purposes of installing and maintaining a drainage pipe and outfall.
3. **Purpose and Rights:** The Grantee shall have a permanent and non-exclusive easement and right of way in, under, across and over the Permanent Easement Areas for the purpose of installing, maintaining, inspecting, removing, repairing, and replacing a drainage pipe with its associated outfall, swales and storm water fPow. 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.
4. **Grantee's Responsibility to Restore:** Disturbed areas within the Permanent Easement Area and the Temporary Easement Area shall be back-filled and restored at the Grantee's expense.

5. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Permanent Easement Area and the Temporary 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 Permanent Easement Area, substantially change the grade or slope, install any pipes, or pave or asphalt the Permanent Easement Area without prior written consent of the Grantee.

6. **Personal Property.** It is agreed that the pipes and related facilities installed within the Permanent 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 Premises and shall run with the land.

MEANING AND INTENDING to convey an easement over a portion of the premises conveyed to the within Grantor by deed of Bantry Bay Associates LLC dated January __, 2024 and recorded in Book _____, Page ____ of the Rockingham County Registry of Deeds.

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

DATED this _____ day of January, 2024.

CHINBURG DEVELOPMENT, LLC

By: _____
 Name: Eric J. Chinburg, Manager

STATE OF NEW HAMPSHIRE
 ROCKINGHAM, SS

The instrument was acknowledged before me on January __, 2024, by Eric J. Chinburg, as the duly authorized Manager of Chinburg Development, LLC.

 Notary Public
 My Commission Expires:

 Justice of the Peace/Notary Public
 Printed Name:
 My Commission Expires:

Exhibit A
Legal Description of Permanent Easement Areas

Drainage Easement ‘C’

A certain drainage easement situated in the City of Portsmouth, County of Rockingham, State of New Hampshire, bounded and described as follows:

Commencing at a point on the southerly line of Shearwater Drive, said point being the northeasterly most corner of Lot 1900-5 on a plan entitled “Subdivision Plan – Assessors Map 217 Block 2 Lot 19, Shearwater Drive, Portsmouth, New Hampshire”, prepared for Bantry Bay Assoc. LLC c/o JCM Management CO. Inc, prepared by Greenman-Pedersen, Inc; thence S18°59'10"W a distance of twenty-six and fifty-three hundredths (26.53’) feet to the point of beginning; thence

S18°59'10"W a distance of twenty-one and thirty-four hundredths (21.34’) feet to a point; thence

S46°55'30"W a distance of forty-two and forty-one hundredths (42.41’) feet to a point; thence

S34°58'51"E a distance of nine and ninety-three hundredths (9.93’) feet to a point; thence

N62°23'26"W a distance of twenty-one and one hundredths (21.01’) feet to a point; thence

N46°55'30"E a distance of sixty-nine and sixty-one hundredths (69.61’) feet to the point of beginning.

The above-described drainage easement contains 608 square feet, more or less. Said drainage easement is shown as “Drainage Easement ‘C’ Located on Lot 1900-5” on a plan entitled “Easement Plan” Owned By Bantry Bay Assoc. LLC c/o JCM Management Co. Inc.; 540 N. Commercial St.; Manchester, NH 03101. Prepared by Greenman-Pedersen, Inc; dated January 12, 2024.

Drainage Easement ‘D’

A certain drainage easement situated in the City of Portsmouth, County of Rockingham, State of New Hampshire, bounded and described as follows:

Commencing at a point on the southerly line of Shearwater Drive, said point being the northwesterly most corner of Lot 1900-6 on a plan entitled “Subdivision Plan – Assessors Map 217 Block 2 Lot 19, Shearwater Drive, Portsmouth, New Hampshire”, prepared for Bantry Bay

Assoc. LLC c/o JCM Management CO. Inc, prepared by Greenman-Pedersen, Inc; thence Southeasterly along a curve to the left having a radius of six hundred eighty-one and fifty-two hundredths (681.52') feet, an arc length of fifteen and thirty-eight hundredths (15.38') feet and a delta angle of 01°17'34" to the point of beginning, said point being a point of curvature; thence

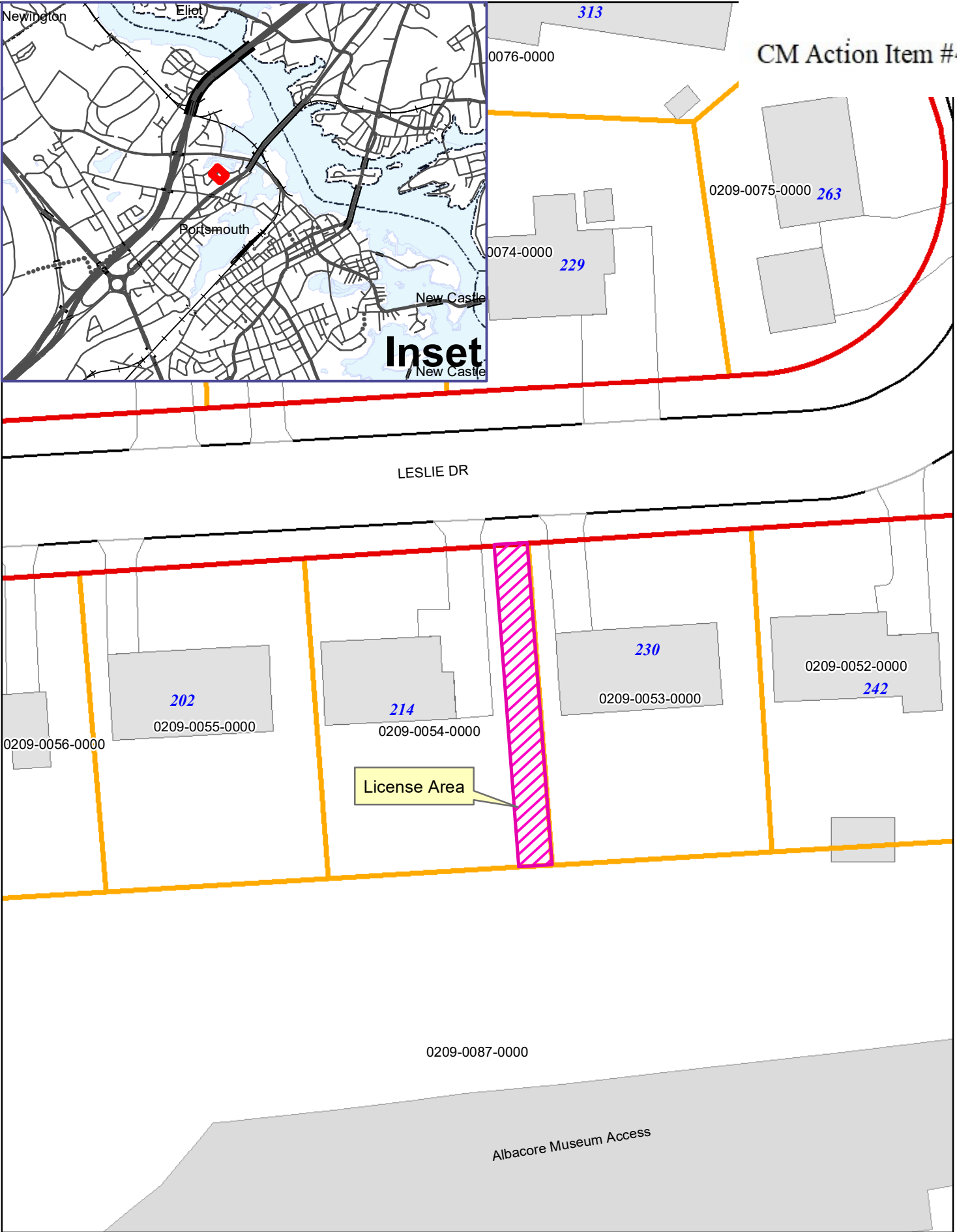
Southeasterly along a curve to the left having a radius of six hundred eighty-one and fifty-two hundredths (681.52') feet, an arc length of twelve and fifty-six hundredths (12.56') feet and a delta angle of 01°03'22" to a point of non-tangency; thence

S46°55'30"W a distance of fifty-eight and ninety-five hundredths (58.95') feet to a point; thence

N18°59'10"E a distance of twenty-one and thirty-four hundredths (21.34') feet to a point; thence

N46°55'30"E a distance of thirty-two and forty-nine hundredths (32.49') feet to the point of beginning.

The above-described drainage easement contains 457 square feet, more or less. Said drainage easement is shown as "Drainage Easement 'D' Located on Lot 1900-6" on a plan entitled "Easement Plan" Owned By Bantry Bay Assoc. LLC c/o JCM Management Co. Inc.; 540 N. Commercial St.; Manchester, NH 03101. Prepared by Greenman-Pedersen, Inc; dated January 12, 2024.



**214 Leslie Drive
Existing Easement**

Map prepared by Portsmouth Department of Public Works



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

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “License”) is dated as of _____, 2024, and is by and between the PORTSMOUTH SUBMARINE MEMORIAL ASSOCIATION, a New Hampshire voluntary corporation with an address of 569 Submarine Way, Portsmouth, New Hampshire 03801 (“Licensor”) and the City of Portsmouth, a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (“Licensee”).

WHEREAS, Licensor holds a beneficial 10’ water easement (the “Easement”) over the property located at 214 Leslie Drive (Tax Map 209, Lot 54) by virtue of the deed from PSMA’s predecessor in title, the Albacore Trust, to Carla P. Marvin recorded in the Rockingham County Registry of Deeds at Book 2870, Page 1379, as shown on Plan C-12849; and

WHEREAS, Licensee maintains a water line within the Easement through which it provides municipal water services; and

WHEREAS, Licensor wishes to confirm its grant of authority to Licensee to use the Easement for such municipal water services in accordance with the terms of this License.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

1. Licensor hereby grants to Licensee the right to enter upon and to use the Easement for the purpose of supplying municipal water, installing, maintaining, inspecting, removing, repairing, and replacing a water line with its associated pipes and appurtenances located therein.
2. This License is conditioned upon and subject to Licensee continuing to provide municipal water services through the Easement.
3. Licensor shall not be liable to Licensee or any other person on or about the Licensed Premises or the Property for any damage either to person or property, or for any loss incurred on or about the Easement, except in the case of gross negligence on the part of the Licensor, its agents, employees, directors and officers.

4. This License Agreement shall be governed in accordance with the laws of the State of New Hampshire, and is binding upon the parties hereto and their respective heirs, successors and assigns. This document contains the entire agreement with the parties hereto. All previous discussions and agreements are merged herein and superseded hereby. No amendment to this License shall be effective unless in writing executed by both parties hereto.

Executed as a sealed instrument as of the date first set forth above.

LICENSOR:
PORTSMOUTH SUBMARINE MEMORIAL
ASSOCIATION

By: _____
Name: Kenneth Latchaw
Title: President

STATE NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS. _____, 2024

Then appeared the above-named Kenneth Latchaw, President of Portsmouth Submarine Memorial Association known to me or satisfactorily proven through proof of identification to be the individual who executed the foregoing instrument, and acknowledged same to be his/her voluntary act and deed in said capacity. Before me,

Notary Public/Justice of the Peace
Print Name: _____
My Commission Expires: _____

LICENSEE:
CITY OF PORTSMOUTH

By: _____

Name:

Title:

STATE NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS. _____, 2024

Then appeared the above-named _____, _____ of the City of Portsmouth known to me or satisfactorily proven through proof of identification to be the individual who executed the foregoing instrument, and acknowledged same to be his/her voluntary act and deed in said capacity. Before me,

Notary Public/Justice of the Peace

Print Name: _____

My Commission Expires: _____



Seacoast Outright

P.O. Box 842 Portsmouth, NH 03802 - (603) 552-5824
www.SeacoastOutright.org - mail@SeacoastOutright.org

February 28, 2024

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

Dear Mayor McEachern and Council Members:

I am writing on behalf of Seacoast Outright, our Board of Directors, LGBTQ youth and allies, and residents of Portsmouth and surrounding towns, to thank the City for its ongoing support of our annual Portsmouth PRIDE Celebration. We are grateful for the efforts of the Council and staff to ensure a joyful (and safe) event each and every year.

Last year's event exceeded all of our expectations. We had record attendance (around 10,000 people), over 100 vendors, and more! Aside from a rainy day, nothing went awry and a great day was had all by all.

This year marks our 10th year hosting this signature event, as we welcome thousands of folks to Portsmouth as a celebration of our community – adults, youth, families parade; our non-profit partners and local businesses gather and offer their services and wares; and of course, it is also our primary fundraising event. We are requesting Saturday, June 22nd for our event.

We have already begun planning, and working to plan our route to the Strawberry Banke Museum field. We are also partnering with our colleagues at Gather and Fill the Hall as they celebrate their tenth year as well. We are hopeful this year's parade will step off from the Music Hall in celebration of our mutual work.

We look forward to answering your questions and meeting with the City to approve plans celebrating a decade of Portsmouth Pride.

Thank you,

Heidi Carrington Heath, Executive Director

Executive Director: Heidi Carrington Heath

Board of Directors:

Michael Haley, Chair
Kelsey Boucher, Board Member
Caitlin Thayer, Board Member
Lloyd Ziel, Board Member

Christine Stilwell, Treasurer
Alissa Cannon, Vice Chair
Joyce Kemp, Board Member
Kelsey Boucher, Board Member
James Costigan, Board Member

Sarah Buckley, Secretary
Linda Fishbaugh, Board Member

CITY COUNCIL E-MAILS

Received: February 15, 2024 (after 5:00 p.m.) – February 29, 2024 (before 9:00 a.m.)

March 4, 2024 Council Meeting

Submitted on Thu, 02/15/2024 - 17:45

Full Name

charlie griffin

Email

charlesgriffinesq@gmail.com

Address

210 Hillside Drive

Message

Mayor McEachern and Members of the Council,

Having just finished watching the conclusion of the special meeting to determine whether James Hewitt should be removed from his seat on the Planning Board because of alleged malfeasance , I wanted to take this opportunity to commend each of you for the way you conducted yourselves beginning with Councilor Denton's decision to recuse himself and concluding with the thoughtful and eloquent manner in which each of you articulated your position during the deliberations.

Like each of you, I found myself going back and forth as to what the outcome should be as I listened to each side present its case and was glad that I was not in your position in having to vote on the outcome.

. As someone who usually e-mails you to complain about a pending matter or vote, I wanted to take this opportunity to say that you handed this very difficult and painful matter with sensitivity ,dignity and respect for Mr. Hewitt and the City.

Well done !!!

Charlie Griffin

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

Submitted on Tue, 02/20/2024 - 22:35

First Name

Mary Grace

Last Name

Allen

Email

marygracekatherine@gmail.com

Address

87 Portland Avenue

Dover, New Hampshire. 03820

Message

I'm writing in support of the ceasefire resolution, because I don't want to live in a world where governments can commit mass murder, with millions of people watching, and get away with it.

When social media is flooded with real time footage of bombing, starvation, mass graves, and dying children, the bare minimum we can do is to call this unacceptable.

The fact that our country is the one funding this horror is shameful, AND it puts us citizens in a unique position to stand against it. Your position on this board puts you in a position of power to stand against it, and if we don't act on our human instinct to protect those in danger, we will only end up sick.

Before I close, I'd like to address any council members who worry how your support for the resolution could affect your image. I beg you to embrace discomfort, and to prioritize human life above anything else. If your social circle is hostile to the belief that genocide is wrong, maybe you were never firmly planted in that circle to begin with. Please know that the people who spoke tonight represent hundreds of others in southern New Hampshire, who will stand alongside you. With your support, Portsmouth can be remembered as a leader among other cities in the call for a ceasefire.

I ask you again to please vote in favor of a ceasefire resolution, because there are many people still alive in Palestine, struggling to survive, and they need us. Thank you.

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

Submitted on Thu, 02/22/2024 - 07:26

First Name

David

Last Name

Speltz

Email

dspeltz@speltz.com

Address

579 Sagamore Ave #108

Message

Although and end of the war in Gaza would be almost anyone's preferred choice, I do not support a cease fire that simply kicks the can down the road for eliminating the terrible, horrible threat from Hamas to Israel. Stay out of the way and let Israel do what it has to to protect its future. And stay out of national and international politics. That is not what we elected you to do.

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

Submitted on Thu, 02/22/2024 - 14:25

First Name

Burt

Last Name

Cohen

Email

burt@burtcohen.com

Address

PO Box 208 27 Beach Hill Rd

New Castle, New Hampshire. 03854

Message

Please add my voice to those asking the Portsmouth City Council to support a call for a cease fire in Gaza. History shows that real change comes from the bottom up. Municipalities across America are issuing this plea for the Israeli state to immediately cease hostilities which have already taken some 28,000 mainly innocent lives in Gaza. As a Jewish American I believe in justice and what that government is doing is terribly unjust. It is the abused having become the abusers. A cease fire will help free the hostages as their captors have no incentive thus far to release them. I ask that the city councilors join so many other communities across America in calling for a ceasefire. Thank you all for the work you do.

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

Submitted on Sun, 02/25/2024 - 10:10

First Name

Jack

Last Name

Holzman

Email

jholzman@comcast.net

Address

115 Nathaniel Dr

Message

Hello, I'm writing to express my opinion on the possible vote regarding a cease fire in Gaza. I do not support the proposal. First, I recommend that the city council stay out of international issues. As a council, you are responsible to the citizens of Portsmouth only. If you do decide to take the vote, then a no vote is appropriate for the following reasons.

1. Israel didn't start this war, Hamas did. Hamas is a terrorist organization, recognized as such by most of the free world, including the US.
2. There is no genocide happening. If there were, there would be no Palestinians left in Gaza. Israel is taking great pains to avoid civilian casualties, but they are at war. Again, a war they did not start. Hamas does nothing to protect civilians, in fact, they use them as shields.
3. A yes vote is a vote in favor of continued terrorist attacks against Israel by Hamas. Hamas is a proxy of Iran. A yes vote ultimately expresses support for Iran and its terrorist proxies in the mid-east. Iran and its proxies have as their stated goal to eliminate Israel, and therefore Jews. That would be genocide.
4. The US (and this council if you take the vote) cannot stay neutral in war involving its allies. Israel is our strongest ally in the middle east and they are the only functioning democracy in the middle east. Not supporting our ally in a war they did not start would be a travesty.

5. It sounds good on the surface right, I mean who doesn't support an end to war and killing. Unfortunately, that is the reality of the current situation, again, not started by Israel. Remember, Israel left Gaza in 2005. Hamas was elected to run Gaza. They have since squandered billions of aid dollars on tunnels and weapons to destroy Israel, not on building a functioning society that supports the Palestinian people. Do the right thing as a local city council and decline to take the vote. However, if you do decide to vote, vote no on a cease fire and show your support for our strongest ally in the region, Israel.

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

Submitted on Sun, 02/25/2024 - 22:08

First Name

Joyce

Last Name

Ingari

Email

joyceingari@gmail.com

Address

62 Cranberry Point Road
Sandwich, New Hampshire. 03259

Message

I am writing today to urge the city of Portsmouth to support a ceasefire resolution for an immediate ceasefire in Gaza. Every day I am witnessing families being torn apart by violence and starvation and terror through my phone screen. I have seen babies missing parts of their skulls, children with legs shredded off, mothers sobbing over their dead children, fathers carrying their children's body parts in plastic bags. Beyond the incessant bombing (of hospitals, schools, places of worship, civilian infrastructure and much more), there are also hundreds of thousands of people currently being starved to death in northern Gaza because aid trucks are being blocked and the road to the north is under siege. It is our moral duty to stand against this genocide that our tax dollars are currently funding. As all the council members sleep in warm beds with full stomachs surrounded by people they love, innocent civilians in Gaza are being starved, dismembered and terrorized and America is complicit. There is no doubt that we are witnessing a genocide on the Palestinian people. The only appropriate response is to demand an immediate end to the violence. CEASEFIRE NOW!

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

Submitted on Mon, 02/26/2024 - 11:57

First Name

Tessa

Last Name

Hollister

Email

tessavhollister@gmail.com

Address

123 madbury road
Durham, New Hampshire. 03824

Message

Dear Portsmouth

I am a Durham resident of 8 years, and in that time I've developed a deep love of Portsmouth in history and culture. Recently, in response to Israel's ongoing genocide of Palestine and erasure of Palestinian culture and stories, brave and upstanding citizens of New Hampshire have been gathering in public to voice our utter horror and discontent.

I'm writing this message to solemnly urge you to follow my hometowns lead and consider a Ceasefire Resolution. You don't need me to detail the inhumanity that is happening—we can all watch it any hour of the day online.

Thank you very much for your time and I greatly hope you will consider my words.

Sincerely,

~Tessa Hollister

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

Submitted on Mon, 02/26/2024 - 12:37

First Name

Rebecca

Last Name

Fabian

Email

rebeccafabian88@gmail.com

Address

9 Willey st

ROCHESTER, New Hampshire. 03867

Message

Hello I am in support of local nh ceasefire resolutions. Our elected officials need to start listening to us NOW in wake of Aaron Bunnell lighting himself on FIRE because you all won't listen to us!!! Ceasefire now!!!

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

Submitted on Wed, 02/28/2024 - 12:09

First Name

Ashlynn

Last Name

Xiarhos

Email

xiarhosashlynn@gmail.com

Address

19 foyes lane

Kittery point , Maine. 03905

Message

I would like to bring attention to Gold Star family military license plates and for Portsmouth to please inform their staff that these are military plates. When I first moved up here I received multiple parking tickets and they would not remove them because Portsmouth didn't understand what Gold Star plates were. I informed them what they were and didn't get a nice response which is unfortunate. Ten years later and I receive a ticket downtown and they refuse to take care of it because I have prior tickets. Wrongfully ticketed and now I have to pay the ticket? Do better Portsmouth, this could be a good learning experience for everyone and get informed if you're going to offer free parking for those with military plates

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

February 22, 2024

RE: Special Event – Lithermans Brewing Company

Dear Sir or Madam :

In November 2023, Lithermans Brewing Company opened its second location at 103 Congress Street in Portsmouth, NH. Lithermans has a long standing, positive relationship with Andrew North & the Rangers – who has frequently played at our Concord, NH relationship. He is also shown to be a vital member of the Portsmouth music scene.

Andrew North has expressed a desire to perform on our anticipated outdoor patio at our Portsmouth location on July 20, 2024 from 4-7pm.

Please accept this as a formal request to the City for a one-time “special event” to be held at the above location during the above date & time.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'Chet Schrader', with a stylized flourish at the end.

Chet Schrader
Owner, Lithermans Brewing Company

M E M O R A N D U M

TO: Karen Conard, City Manager
FROM: Peter Stith, Planning Manager
DATE: February 16, 2024
RE: Planning Board recommendation for RPC Transportation Advisory Committee representative.

At the February 15, 2024 meeting, the Planning Board voted to recommend the City Council appoint Eric Eby to the Rockingham Planning Commission Transportation Advisory Committee as the Portsmouth representative and Jillian Harris, as an alternate.

January 24, 2024

Rick Chellman, Chair
Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, NH, 03801

Dear Mr. Chellman,

As we welcome the start of a new year, we are excited to announce that we are making some welcomed changes to the Transportation Advisory Committee (TAC). The TAC is one of two standing committees of the Rockingham Metropolitan Planning Organization (MPO). The MPO is a federally designated entity, staffed by Rockingham Planning Commission (RPC), that administers the urban transportation planning process for the 27 communities of the RPC.

The purpose of the TAC is to provide technical advice and recommendations to the MPO's Policy Committee concerning transportation issues that have a bearing on the region. Specifically, this often involves prioritizing transportation improvement projects, reviewing studies, and providing input to New Hampshire DOT and other agencies. The TAC has one appointed member from each community.

Portsmouth is currently an active member of the TAC. Your representative is Eric Eby, however, his term expired in 2021. Please confirm that Mr. Eby still wishes to participate in the TAC for the 2-year period of January 1, 2024, to December 31, 2025, by completing the attached form. You must also complete a formal nomination process according to the following procedures: the Planning Board nominates a TAC representative for consideration by the Selectmen and the Selectmen make the appointment. RPC is then informed in writing by the Selectmen of the appointment. The date of appointment, name, address, telephone number, and e-mail address of the newly appointed commissioner should be included in the notification letter to RPC.

If Mr. Eby cannot or no longer wishes to serve on the TAC, a new representative can be appointed following the procedures outlined above. TAC members are often town/city planners, planning board members, public works employees, or other members of community leadership. Residents interested in transportation may also be appointed.

TAC meetings are normally held monthly on the fourth Thursday of the month at the Rockingham Planning Commission offices. Beginning in 2024, meetings will take place at 12:00 and lunch will be provided. In the new year, we will also be offering TAC members with and updated orientation and training session, guest speakers, and opportunities to provide input on State Ten Year Plan priorities, the Long Range Transportation Plan, and the development of a Regional Safety Action Plan.

We look forward to your community's continued participation on this important committee and we thank you for your time. Please do not hesitate to contact the RPC office if you have any questions.

Sincerely,



David Walker, Assistant Director

cc: Rick Chellman, Planning Board
Karen Conard, Town Administrator
Peter Britz, Beth Moreau, John Tabor, Deaglan McEachern, RPC Commissioners
Eric Eby, Current TAC Member

EXISTING APPOINTEE(S)

Name:
Address:

Home Phone:
Cell/Work Phone:
Email:

Alternate

Name:
Address:

Home Phone:
Cell/Work Phone:
Email:

Please check one of the following:

- The signature of the Appointing Official below confirms the above-named Existing Appointee(s) shall continue as the TAC representative(s) of the Rockingham MPO Transportation Advisory Committee for the 2-year period of January 1, 2024 to December 31, 2025. This person will officially be nominated to the position using the procedures outlined in the attached letter.
- The signature of the Appointing Official below confirms the above-named Existing Appointee(s) will no longer serve as the TAC representative(s) of the Rockingham MPO Transportation Advisory Committee. A new representative will be selected for the 2-year period of January 1, 2024 to December 31, 2025, using the procedures outlined in the attached letter.

Board of Selectmen

Date

****Please return this form by February 16, 2024.**



February 19, 2024

VFW Post #168
POB 1663
Portsmouth, NH 03802

Karen Conard
City Manager
City of Portsmouth
1 Junkins Ave
Portsmouth, NH 03801

Subject: Meeting House License Agreement Letter of Intent

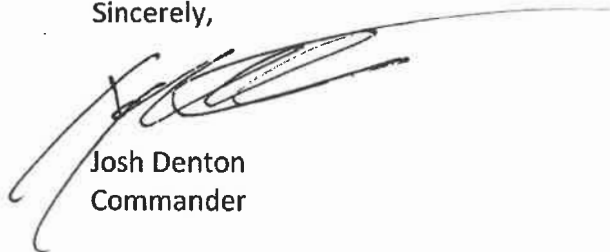
Dear City Manager Conard,

We are excited to write that VFW Post #168 voted to send this nonbinding letter of intent expressing our interest in pursuing a License Agreement for the Meeting House located at 280 Marcy Street.

Per our Congressional Charter Bylaws, all members present may vote on such motions. The February 14 vote during our regular scheduled meeting was unanimous to express our interest in spending up to \$500,000.00 for the City to bring the Meeting House up to code in exchange for an approximately seventeen-year lease of the property and associated parking. Members all understood that the lease duration would likely change due to the upcoming property revaluation and were asked not to discuss any potential license agreement with any non-members. Our initial intent is to use the property as our meeting location, office, and private club. As previously discussed, we would like any license agreement to allow us the opportunity to do affordable housing for veterans at the location as well. The final License Agreement will need to be voted on by our membership during our regular monthly meeting.

We look forward to hearing back and beginning the process of pursuing a Meeting House License Agreement. Likewise, our members are very excited to see the property at some point during the process.

Sincerely,



Josh Denton
Commander



Jonathan Day
Senior Vice Commander

VFW POST 168

February 27, 2024

Governance Report Back

The Governance Committee reviewed the City Council request to consider a preliminary paragraph for the City Charter to explain the City's legal interpretation of our legal documents in relation to state law. The Governance Committee recommends adoption of the following language outlined below, drafted by the Legal Department, as a preliminary paragraph on the cover page of the Charter. Since this is not a Charter amendment but simply an explanatory note, it does not need to go before the voters for approval.

CHARTER EXPLANATORY NOTE

The law is clear that where there is a direct conflict between State law, the City Charter and City Ordinances, the priorities between them in interpretation would be generally determined in that order. However, because State law, the City Charter and City Ordinances have developed independently over centuries and are continuing to do so it is necessary to analyze the timing of the adoption of any particular State law, Charter or Ordinance provision to ascertain whether apparent contradictions cannot be understood to coexist, lawfully. Such determinations are made as necessary, in the first instance, by the City Legal Department.

(Sample motions – 1) move to approve the draft explanatory note to be placed on the cover page of the City Charter, and 2) move to request that the Governance Committee work with the staff to review current training processes for City volunteers and develop a more robust training program targeted towards all City volunteers including elected officials)

Approved by the City Council:

Date:



RULES AND ORDERS OF THE PORTSMOUTH CITY COUNCIL

CHARTER EXPLANATORY NOTE

The law is clear that where there is a direct conflict between State law, the City Charter and City Ordinances, the priorities between them in interpretation would be generally determined in that order. However, because State law, the City Charter and City Ordinances have developed independently over centuries and are continuing to do so it is necessary to analyze the timing of the adoption of any particular State law, Charter or Ordinance provision to ascertain whether apparent contradictions cannot be understood to coexist, lawfully. Such determinations are made as necessary, in the first instance, by the City Legal Department.

February 27, 2024

Cultural Planning Subcommittee

The Cultural Planning Subcommittee in conjunction with the Mayor's Blue Ribbon Arts and Nonprofits Committee completed their work on the new Cultural Plan for the City of Portsmouth in December 2023. Their work was then formatted, along with the work of the City's consultant, the Arts Consulting Group, for the City Council to formally review and approve. The committees request your vote to approve and adopt the new 2023 City of Portsmouth Cultural Plan.

(Sample motion – move to approve and adopt the 2023 City of Portsmouth Cultural Plan presented in your packet)

Approved by the City Council:

Date:



Portsmouth, NH Cultural Plan

*A Product of the Mayor's Blue Ribbon Committee
on Arts and Culture Nonprofits
Including the Cultural Plan Subcommittee*



Approved by City Council, December 2023
Report Published, 2024



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*Cover: Endeavor sculpture in Bohenko Gateway Park
Photo Credit: Monte Bohanan*

*Inside Cover: African Burying Ground
Photo Credit: Kenneth Goldman*



A Letter from Our City Council

Dear Portsmouth Friends and Neighbors,

Arts and culture are a critical part of the fabric of Portsmouth—they showcase our history, our hearts, and our welcoming spirit. From neighborhood block parties to professional theater, street musicians to world-class jazz shows, historic preservation to modern art galleries, arts and culture are omnipresent in Portsmouth, and we are honored to have such a diverse and talented cultural community at our doorstep.

Our arts and cultural institutions are a significant driver of our economic prosperity, employing over 1250 talented individuals, and serving as a harbinger of our community's future success, generating over \$70.2 million in revenue in 2022 alone. According to the 2022 Americans for the Arts study, over half of that amount, \$41.1 million, was spent directly by audiences at Portsmouth businesses. Our arts and cultural institutions generated \$50.1 million in household incomes in 2022 and \$13.1 million in tax revenues. This robust investment in our local economy places Portsmouth's arts and cultural community on par with cities three and four times our size.

We are pleased to share with you our new Cultural Plan which highlights the importance of the arts and culture in Portsmouth, and sets the stage for the next 10 years of investment and growth in this crucial part of our City. Under the leadership of our Arts and Nonprofits Committee, the City Council appointed a Cultural Plan Subcommittee to oversee the process of developing a new Cultural Plan. This dedicated group of volunteers worked tirelessly with our consultants, Arts Consulting Group (ACG), to engage with our community and gather input from community members, including youth, artists, and City leaders. Through this process, they engaged in a broad community dialogue, gathering information from surveys, focus groups, tours, and individual meetings. Thank you to these volunteers for their dedicated service to our City. The end result is a Cultural Plan that reflects the priorities of our community members for our Arts and Cultural sector.

Our Cultural Plan provides a vision and recommendations for how our City government and our partners can best sustain and strengthen our arts and cultural community, and invest in our youth, artists, and institutions to make sure our cultural community remains strong and vibrant. We hope that this roadmap will help guide our newly established Arts & Cultural Commission in its stated mission of encouraging support for arts and culture within the wider Portsmouth community.

As we move into our implementation phase, we look forward to working closely with the Arts & Cultural Commission and all our community stakeholders to achieve the stated goals of this Plan and realize the potential of our arts and cultural community in Portsmouth. Together we can make sure our cultural future is bright!

Mayor Deaglan McEachern
Assistant Mayor Joanna Kelley
City Councilor John Tabor
City Councilor Kate Cook, Arts Liason
City Councilor Josh Denton

Councilor Rich Blalock
City Councilor Andrew Bagley
City Councilor Beth Moreau
City Councilor Vince Lombardi



Foundry Garage

Photo Credit: Kenneth Goldman

Executive Summary

The Cultural Plan Subcommittee first met on February 6, 2023. The overarching goal of the subcommittee was to produce a Cultural Plan to be presented to City Council for inclusion in the 2025-2035 City Master Plan. Of paramount concern was gathering/inviting the input of as many individuals as possible.

The subcommittee created an Overall Project Plan based on seven phases:

1. Preparation;
2. Information Gathering and Research;
3. Assessment and Analysis;
4. Organization and Consultation;
5. Writing the Plan;
6. Finalization and Adoption; and
7. Implementation and Beyond.

To best meet these objectives, working groups were created from its members to address six specific areas:

1. Review of the 2002 Cultural Plan and other municipal cultural arts plans;
2. Review the activities of Artspeak, created post 2002 Cultural Plan; consider alternative structures for a new City arts agency;
3. Create a Steering Committee to manage the overall project plan and spearhead the Consulting Request for Proposals (RFP) process;
4. Develop and implement a communications plan;
5. Research and plan all forms of community engagement; and
6. Identify IT group or person to help with all IT related tasks pertaining to the subcommittee.

These work groups were instrumental in kick-starting the process of plan development and directly resulted in the passage of an Arts Commission Ordinance, hiring Arts Consulting Group (ACG), an outside consultant specializing in arts management and community engagement, and inviting considerable community feedback and gathering background information to support the work.

Using multiple methods and tools, ACG canvassed the Greater Portsmouth region to solicit input from a wide swath of individuals. Special attention was paid to ensure that broad demographics of our communities were included. ACG was able to collect 762 survey responses and include 125 community members in both virtual and in-person discussions for which ACG was on-site in Portsmouth for a week in October 2023. Focus groups were categorized in the following interest groups:

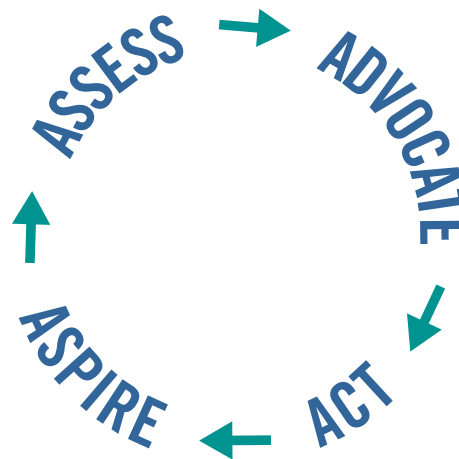
- Residents;
- Creative economy professionals;
- Independent artists;
- Young professionals;
- Youth Wellness Coalition;
- Nonprofit leaders; and
- Local officials.

Once the input was collated, analyzed, and discussed, the following five pillars became the core for the Cultural Plan:

1. Resources for the Cultural Community;
2. Diversity, Inclusion & Access;
3. Communication & Community Engagement;
4. Education; and
5. Preserving Portsmouth’s Historical Identity.

The Portsmouth Committee on Arts and Nonprofits and the Cultural Plan Subcommittee agreed that the optimal outcome would be to create a roadmap for the future of arts and cultural development to present to the City to be used as a foundational starting point for the newly created Arts & Cultural Commission.

The plan was created in a way that encourages a four-step cycle of work that can be accomplished by the City, the new Arts & Cultural Commission, and/or by independent artists, arts organizations, or community members. Each section of the plan encourages an **assessment** of existing resources, **advocacy** for arts and culture throughout our community, **actions** that can be taken to accomplish the goals of the plan, and a vision to which we can **aspire**.



The hopes and aims for the future are that the City and Arts & Cultural Commission will use this document, adjust and improve where necessary, and ensure that arts and culture remain the bedrock of Portsmouth’s identity.



Prescott Park Arts Festival

Photo Credit: David J. Murray/ClearEyePhoto.com



“Reflections of Portsmouth” Foundry Window Art Project

Methodology and Planning Process

The Cultural Plan Subcommittee, in collaboration with the Portsmouth Committee on Arts and Nonprofits, the City of Portsmouth’s Economic and Community Development Department and ACG, spent most of 2023 in discussion with the arts, culture, and history communities with the intention of designing a shared, forward-looking Cultural Plan for future expansion and improvement. The Plan was completed in advance of the City’s master planning process scheduled to commence in 2024.

From the start, the overarching goals of this planning process were defined as:

- Celebrate, strengthen and grow the City’s diverse artistic and cultural identities;
- Work with the community to identify goals and priorities that will inform short, medium and long-term strategies for the advancement of arts and culture; and
- Articulate a shared vision for the future: serve as a blueprint for the preservation and expansion of arts and cultural venues, activities, and initiatives.

In this cultural planning process, we prioritized diversity and inclusion by actively seeking broad participation to better understand how the community interacts with arts, culture, and history. In the span of six months, discussions took place with small focus groups, one-on-one interactions, in-person and online sessions, all to connect in a meaningful way with arts and culture community members.



Photo Credit: Kenneth Goldman

Partnered with the international expertise of ACG, the City undertook a series of steps to gather input and data from a range of internal and external sources through the following activities:

- Collaborating with the Cultural Plan Subcommittee and Portsmouth Committee on Arts and Nonprofits;
- Collecting and compiling the City’s planning, culture and program background materials and related data, such as Portsmouth 2025 Master Plan; City of Portsmouth Cultural Plan (2002); Americans for the Arts’ Arts & Economic Prosperity (AEP5) Studies for Greater Portsmouth Area; and various economic surveys, updates and reports;
- Conducting an internal assessment survey with 33 respondents: 45% from the Cultural Plan Subcommittee, 24% from the Portsmouth Committee on Arts and Nonprofits, 15% from the Public Arts Review Committee, 9% from Council members, 3% from staff, and 3% from members of the Chamber of Commerce;
- Conducting a 65-question community survey with 762 respondents: 60% residents, 11% visitors/ tourists, 11% commuters, 3% artists, 1% art/culture/ history organization staff, and 12% who identified themselves as other community members;
- Conducting one interview and six focus group discussions virtually, reaching forty-three people, including five residents, two young professionals, six local government officials, two civic leaders, twenty-four Cultural Plan Subcommittee members, and four members of the Chamber Collaborative of Greater Portsmouth; and
- Assembling four in-person focus groups and one town hall meeting. In total, seventy-one individuals participated: thirty-nine artists, six creative economy professionals, sixteen members of the Youth Wellness Coalition and ten additional stakeholders.

Overview: Cultural Plan Pillars and Goals

Pillar 1: Resources for Arts and Culture

Focused Objective: *To understand Portsmouth’s arts and culture community (the institutions, the people, and the places) and address its needs and challenges by leveraging opportunities that align with the goals of the community at large.*

The primary goals of this Pillar are:

- To better understand the community’s existing inventory of arts spaces, whether studio space, arts schools and classrooms, performance venues, and more. During the cultural planning process, we learned from the community that there are often gaps of knowledge about what exists and what could be created in the future; and
- Identify new opportunities for arts spaces and partnerships/ collaborations.

Pillar 2: Diversity, Inclusion, and Access (DIA)

Focused Objective: *We will create an arts and culture environment that welcomes and supports the creative interests of all.*

The primary goals of this Pillar are:

- To identify ways to improve physical accessibility to Portsmouth’s arts and culture venues, facilities, and events;
- Ensure that our arts and culture offerings welcome diverse audiences and participants and leverage the arts to help all people feel welcome in our community; and
- Address issues of affordability to ensure the arts are accessible to all in our community.



Rock Street Park Photo

Pillar 3: Communication and Community Engagement

Focused Objective: *Portsmouth is an actively engaged arts community. Residents, arts organizations, artists and other consumers of arts and cultural offerings report a need for efficient, streamlined communication about arts and cultural events, programming, education and resources.*

The primary goals of this Pillar are:

- Use existing resources to coordinate communications from the wide variety of arts organizations and independent artists in ways that improve visibility to all areas of our community; and
- Ensure that local artists and arts organizations are connected to City and community leaders.

Pillar 4: Education

Focused Objective: *Increase availability, diversity, and accessibility to arts and cultural educational offerings and experiences in safe and inclusive environments.*

The primary goals of this Pillar are:

- Provide a community resource that informs our residents of the wide variety of existing arts and culture opportunities;
- Identify professional development resources for local independent artists;
- Encourage and increase involvement in arts education for community youth; and
- Grow opportunities for adult arts education for both amateurs and professionals.

Pillar 5: Preserving Our Historical Identity

Focused Objective: *To connect diverse constituencies to our historic spaces and artifacts for the purpose of reflection, enjoyment, understanding, and inspiration; and to champion resources to ensure their long-term care and preservation.*

The primary goals of this pillar are:

- To better understand and communicate our current preservation efforts with the community at large; and
- Support funding and education for historic preservation initiatives.



Photo Credit: Kenneth Goldman

Cultural Plan Pillars

Pillar 1: Resources for Arts and Culture

FOCUSED OBJECTIVE:

To understand Portsmouth's arts and culture community (the institutions, the people, and the places) and address its needs and challenges by leveraging opportunities that align with the goals of the community at large.



*Street a.k.a Museum mural by Herakut
Photo Credit: Kenneth Goldman*

Physical Spaces

- a. Compile a database and map of existing physical spaces for Portsmouth's arts and culture sector with relevant details related to these spaces (ownership, size, affordability, flexibility, etc.) and develop a process to keep the database/map updated.
 - i. Spaces include but are not limited to: existing studio spaces, traditional arts spaces, non-traditional spaces, potentially available art spaces, rentals, studios, community art spaces, City-owned properties, buildings, sites, and open spaces contributing to Portsmouth's history, unique character, and culture.
- b. Seek opportunities to utilize a variety of spaces in our community for artmaking opportunities, based on learnings from the data.
 - i. Repurpose underutilized spaces for artmaking, including identifying opportunities for artists and arts organizations to use spaces for free or affordable cost;
 - ii. Adopt City guidelines that expand opportunities and reduce barriers for performance artists throughout the City, including street performers;
 - iii. Facilitate collaborations between downtown businesses and the Chamber of Commerce to activate neighborhoods and find creative ways to showcase works;
 - iv. Bring theater and music groups to local parks and community centers;
 - v. Advocate for additional artist live-work space to retain local talent; and
 - vi. Expand the arts and culture scene to include the neighborhoods and all parts of Portsmouth.
- c. Advocate for zoning changes/adaptations as necessary to:
 - i. Eliminate barriers to creating artmaking and arts education spaces throughout the City;
 - ii. Allow more flexibility for in-home instruction space for music, visual arts, and other cultural education programs; and
 - iii. Encourage historic preservation and open space, including overlay districts.



CreativeMornings PKX at The Music Hall Lounge

Photo Credit: Emily McNair

Partnership and Collaboration Initiatives

- a. Provide opportunities to connect artists with community resources.
 - i. Connect with neighborhood groups, after-school programs, and others to augment their programs;
 - ii. Convene or collaborate with partners and regional/State organizations to offer best practices programs on professional development, etc;
 - iii. Establish connections with neighboring communities where Seacoast artists may live or have studios, and where properties developable as arts spaces may be located; and
 - iv. Encourage local funders to think outside the box about collaborating with arts and nonprofit partners.



En plein air painting at Strawberry Banke Museum

Photo Credit: Lennie Mullaney

Cultural Plan Pillars

Pillar 2: Diversity, Inclusion, and Access (DIA)

FOCUSED OBJECTIVE:

We will create an arts and culture environment that welcomes and supports the creative interests of all.



*Colson Whitehead at The Music Hall
as part of the Writers on a
New England Stage series
Photo Credit: Will Zimmermann*

Physical Accessibility

- a. Assess the status of the arts and culture community in relation to DIA initiatives. Identify all arts and culture-related buildings, programs, and events, and consider all future locations;
- b. Utilize existing accessibility reports and resources, and in the absence of existing reports, investigate accessibility or partner with Accessibility Navigators to do so;
- c. Create a report of accessibility challenges, including gaps and shortfalls;
- d. Develop a plan to mitigate gaps and shortfalls;
- e. Create relationships between organizations to share accessibility resources, i.e. list of ASL interpreters; and
- f. Work with the City to improve accessible public transportation networks, and parking.

Diversity

- a. Recruit for diverse representation on Portsmouth's Arts & Cultural Commission;
- b. Identify underrepresented groups and increase outreach to those communities and organizations;
- c. Encourage a diverse range of arts and culture programming, including cross-cultural offerings;
- d. Expand the arts and cultural scene to include all geographic areas of Portsmouth (not just the downtown areas);
- e. Work with organizations throughout the state that provide resources and support for diversity, inclusion, and access;
- f. Curate a series of workshops to share skills and build capacity across the arts and culture community (for individual artists and arts and culture organizations); and
- g. Encourage creative leaders to participate in DIA training.



Dan Brown's Wild Symphony and Chestnut Street Fair at The Music Hall

Photo Credit: Will Zimmermann

Affordability

- a. Lobby for zoning changes to allow for artist live/workspace in the community;
- b. Identify potential spaces for art instruction, with a focus on affordability (including spaces that are already equipped to be used as classrooms);
- c. Identify potential low-cost studio space within the City, and ways to preserve that space for artists' use;
- d. Promote community resources that reduce costs for economically disadvantaged audiences, i.e., library passes;
- e. Promote free arts and culture offerings and opportunities in the City;
- f. Identify funding sources to sponsor memberships and event attendance for economically disadvantaged individuals;
- g. Conduct outreach to lower income communities, specifically working with the Portsmouth Housing Authority; and
- h. Reduce barriers to participation and access to financial resources.

Cultural Plan Pillars

Pillar 3: Communication and Community Engagement

FOCUSED OBJECTIVE:

Portsmouth is an actively engaged arts community. Residents, arts organizations, /artists and other consumers of arts and cultural offerings report a need for efficient, streamlined communication about arts and cultural events, programming, education, and resources.



street.life400!

Photo Credit: Will Zimmermann

Improve gaps in current communications about Portsmouth's arts and cultural resources and programming

- a. Identify and leverage existing pathways and communication channels.
 - i. continuously assess emerging technologies as a means to enhance communications related to arts and culture events.
- b. Encourage use of all current Citywide communication channels by arts and cultural organizations.

Communication and Visibility Initiatives

- a. Publicize via central hubs (City of Portsmouth, Chamber Collaborative) and existing media channels and platforms that have fostered engaged audiences and sustain awareness of emerging technologies and interest groups; and
- b. Establish official lines of communication between the Commission and local, regional, State, and Federal organizations/agencies which channel resources for artists (NH State Council on the Arts, New England Foundation for the Arts, NH Humanities Council, Institute of Library and Museum Services, National Endowment for the Arts, etc.) to identify best practices and to advocate for resources.

Connect artists and cultural organizations to community and City leaders

- a. Invite community leaders at the local and state level to milestone arts and cultural celebrations and grand openings to reinforce the importance of funding and support;
- b. Engage each relevant City department (Planning & Sustainability, DPW/Parking, City Manager's Office, Schools, Recreation, etc.) in ongoing dialogue with the Commission to further support arts and culture in their work; and
- c. Promote and foster collaboration among City arts/culture-related commissions, relevant City Departments, individual artists, arts and culture organizations, and businesses for communication purposes.



Summer in the Street

Photo Credit: Courtesy of Pro Portsmouth

Cultural Plan Pillars

Pillar 4: Education

FOCUSED OBJECTIVE:

Increase availability, diversity, and accessibility to arts and cultural educational offerings and experiences in safe and inclusive environments.

Compile a list of existing arts and culture education opportunities (from beginner to professional development levels) to better understand needs, gaps, or barriers in these suggested focus areas:

- a. Public and private school arts offerings (including whether AP art classes are offered);
- b. Nonprofit community arts education offerings; and
- c. For-profit arts education businesses.

Identify resources and collaborate to support various networking and professional development opportunities in arts and culture:

- a. Utilize City resources such as the Public Library, and partnership with nonprofits and local businesses to foster professional development opportunities for professional artists;
- b. For arts and cultural organizations and businesses on City processes and resources;
- c. For community arts leaders on ‘how to’ set up and promote arts and cultural programs;
- d. Encourage and connect artists/art educators with reputable programs to enhance skills and gain certifications in areas such as mental health and first aid; and
- e. Support monthly/bi-monthly gatherings or other networking series for local independent artists and arts organizations.



Elephant in the Room Series

Photo Credit: *Courtesy of New Hampshire Theatre Project*



Prescott Park Arts Festival Kick-off

Photo Credit: Terri Nulph

Collaborate to increase exposure and encourage participation and involvement in arts and culture in the following areas:

- a. Youth
 - i. Encourage for profit and nonprofit venues to increase opportunities for community youth to attend performances. Mental health (of youth or education participants).
- b. Adult learning
 - i. Investigate the potential for bringing back adult education programs in our community to include Continuing Education opportunities for arts professionals and amateurs and
 - ii. Encourage the continued development of Creative Aging programs that are accessible to retirees.
- c. School systems
 - i. Expand Science, Technology, Engineering, and Math (STEM) principles to Science, Technology, Engineering, Arts, and Math (STEAM) in our local schools;
 - ii. Ensure public school scheduling affords all students the opportunity to participate in arts education courses without negatively impacting their access to non-arts studies;
 - iii. Foster relationships with local colleges/universities that include opportunities for youth artists to participate in college courses where appropriate; and
 - iv. Offer college credits for art classes in high schools as they do for Math and Science.
- d. Mentorship opportunities
 - i. Encourage local schools to develop Apprenticeship/Mentorship/Artist-in-Residence opportunities for youth with professional artists; and
 - ii. Support the development of an arts education program that provides short-term stays for developing artists to work with teachers to further their craft.

Cultural Plan Pillars

Pillar 5: Preserving Our Historical Identity

FOCUSED OBJECTIVE:

To connect diverse constituencies to our historic spaces and artifacts for the purpose of reflection, enjoyment, understanding, and inspiration; and to champion resources to ensure their long-term care and preservation.



*African Burying Ground Memorial Park
Photo Credit: Kenneth Goldman*

Compile and maintain a database on previous and current preservation efforts and identify gaps, needs, and opportunities for public/private partnerships in the following areas:

- a. Historic markers;
- b. Existing wayfinding maps;
- c. Archival preservation and storage;
- d. Initiatives;
- e. Establish communication channels with the City related to history and preservation; and
- f. Information exchange about historic preservation and related initiatives.

Identify spaces/sites, funding and areas of programmatic support and education for historical preservation initiatives.

- a. Space/Sites
 - i. Preserve buildings and open spaces contributing to Portsmouth's unique character;
 - ii. Nominate sites for the National Register of Historic Places; and
 - iii. Collaborate with City entities and preservation groups to create a plan to help.
- b. Funding and incentives to support historic preservation initiatives
 - i. Incentives to developers to preserve historic structures and to provide public access to properties of cultural significance;
 - ii. Property owners;
 - iii. Communal funds for local projects; and
 - iv. Regular meetings with business leaders to incorporate such initiatives into their work.



History Through Art Mural of Ruth Blay

Photo Credit: Kenneth Goldman

Identify spaces/sites continued...

- c. Programmatic support and education for Portsmouth history and culture
 - i. Support Portsmouth Historical Society welcome center;
 - ii. Promote Portsmouth as a destination to host conferences and meetings for historic and preservation organizations;
 - iii. Support new organizations promoting historic education and preservation, with special attention to 20th and 21st century histories and marginalized histories;
 - iv. Promote inclusion of historical subjects in artwork by collaborating with Public Art Review Committee;
 - v. Encourage developers to promote and share historical significance of their sites;
 - vi. Work with the City on future historical markers along the lines of those already in the City;
 - vii. Engage businesses with the history of Portsmouth; and
 - viii. Distribute info to local businesses, kiosks, and other public venues.

Where applicable, work in concert with HDC and others to support Historical Preservation.

Evaluation and Adjustment

The Cultural Plan Subcommittee proposes the following:

- Update and adjust the Cultural Plan as needed and synchronize with the timeline associated with the Master Plan for the City of Portsmouth;
- Present a progress report semi-annually for 2024 and annually thereafter to City Council; and
- Continue to seek input from the community and key stakeholders (referenced in this Cultural Plan) to ensure objectives are being prioritized and accomplished in a timely manner.

Data Appendices

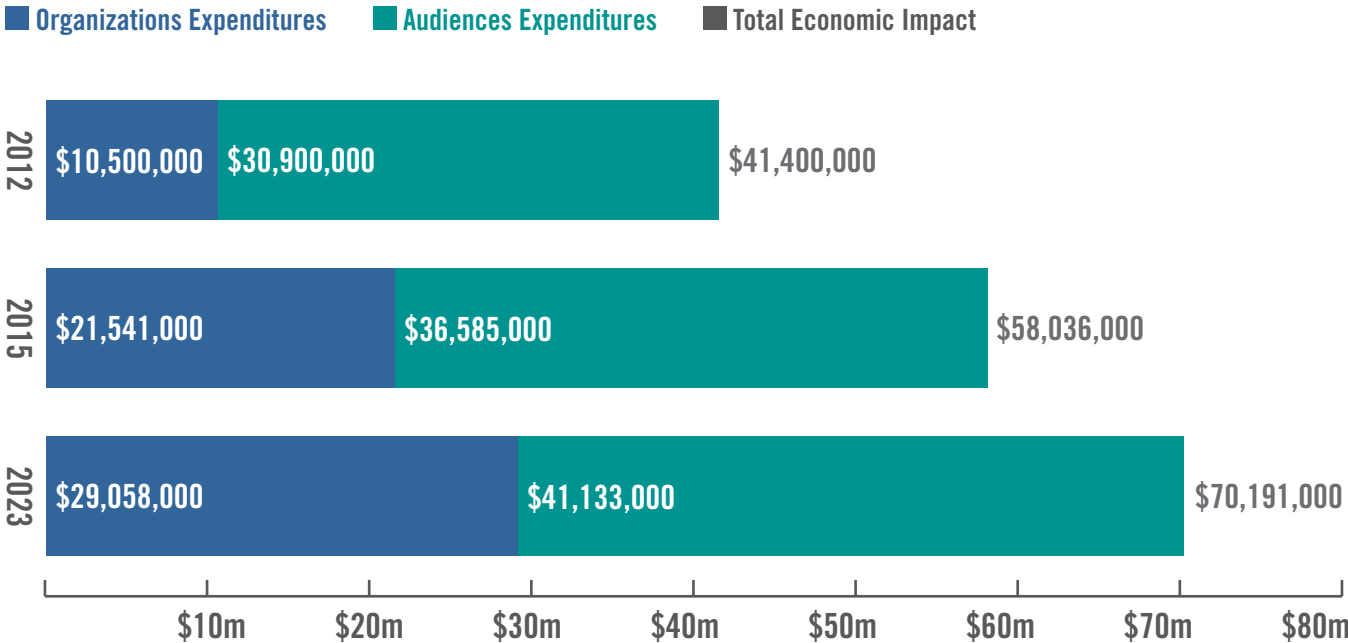


Scan the QR code or visit portsnh.co/2023CulturalPlan to see community engagement feedback shared during focus groups, interviews and surveys.

Arts & Economic Prosperity (AEP) Trends

Arts spending from Americans for the Arts Arts & Economic Prosperity Surveys taken every five years show the economic impact of the arts and cultural sector on Portsmouth’s economy.

For more information visit portsnh.co/2023CulturalPlan.



Acknowledgments

This report was made possible with support from:

Portsmouth City Council
City Manager Karen Conard,
Assistant City Manager Sean Clancy

The following individuals led the process in creating this version of the Cultural Plan:

Cultural Plan Subcommittee:

Co-Chairs: Alan Chace and Karen Rosania
Secretary: Jeffrey Cooper
Sachiko Akiyama, Karen Battles, Councilor Kate Cook, Suzanne Danforth, Ellen Fineberg, Gerardo Gonzalez, Tom Kaufhold, Amanda Kidd-Kestler, John Mayer, Robin Lurie-Meyerkopf, Ed Simeone, Emma Stratton, Linnea Grim

Portsmouth Committee on Arts and Nonprofits:

Co-Chairs: Russ Grazier and Barbara Massar
Genevieve Aichele, Robin Albert, JerriAnne Boggis, Councilor Kate Cook, Nicho Gallo, Renee Giffroy, Jason Goodrich, Beth Falconer, Courtney Perkins, Tina Sawtelle, Larry Yerdon
Ben VanCamp, Chamber Collaborative of Greater Portsmouth

Arts Consulting Group (ACG):

Co-leads: Heran Sereke-Brhan and Nagham Wehbe
Vanessa Kestner

In Spring 2023 a Cultural Plan Subcommittee work group drafted a City Ordinance for City Council approval to create an Arts & Cultural Commission within City government. Special thanks to the Councilors for their timely, unanimous approval on September 5, 2023.

Focus Group Host Organizations:

Thank you to the Portsmouth Historical Society, Portsmouth Music and Arts Center and Sash and Solder at the Button Factory for hosting the in-person focus groups.

Focus Group Participants:

The following individuals provided valuable input during phone interviews or in-person focus groups. We apologize for any names that may have been inadvertently left off this list.

Samantha Areson, Andrew Bagley, Kristen Barton, Jennifer Benn, Fran Berman, Robin Bettencourt, Kathleen Boduch, Thomas Bolko, Denise Brown, Jordan Brown, Christine Burke, Alice Carroll, Don Chick, Wendy Clement, Rich Clyborne, Maureen Conley, Laurie Contrino, Jason Crigler, Jo Anne Coles, Dave Cosgrove, Alistair Dacy, Janet Davis, Jonathan Day, Kelly Delekta, Drew DeSimone, Jessica Dickey, Nicole Falcaro, Monique Foote, Priscilla French, Kaley Gagne, Vivienne Gale, Margherita Giacobbi, Paul Gilson, Lisa Gray, Linnea Grim, Kim Harty, Nate Hastings, Todd Henley, Stephanie Rohwer Hewson, Anna Howard, Sabina Ion, Jane James, Sandi Kaddy, Eli Kaynor, Melissa Kershaw, Dusty Knight, Peter Labrie, Cheryl Lesser, Vince Lombardi, Eric MacDonald, Colin McKenna, Reiley McLaughlin, Lynn White McMahon, Maureen Mills, Jennifer Minicucci, Elizabeth Moreau, Brian Murphy, Kate Murray, Kerry Nolte, Alex Nunn, Anna Nuttall, Maureen O’Leary, Fred Orlando, Darlene Furbush Ouelette, Nancy Pearson, Dave Pelletier, Linda Plumer, Jillian Richmond, Zach Robidou, Valerie Rochon, Sean Robinson, Nicole Seaward, James Shanley, Josh Sheets, Cantey Smity, Kathleen Soldati, Lori Soloway, Kathy Somsich, Katie Soule, Colleen Spear, Jennifer Stevens, Diane Stradling, John Tabor, Gabriel Tise, Michael J. Tobin, Michael Rodriguez Torrent, Ben Van Camp, Joe Watts

Others who have contributed in meaningful ways:

Kaitlyn Huwe for the graphic design and Southport Printing for the printing of this report; Monte Bohanan, Kenneth Goldman, Emily McNair, Lennie Mullaney, David J. Murray, New Hampshire Theatre Project, Terri Nulph, Pro Portsmouth, Michael Sterling, and Will Zimmermann for photography. Michelle Holt Shannon at NH Listens, Ginni Lupi and Lisa Burk-McCoy at NH State Council on the Arts and Nate Bernitz UNH Cooperative Extension Service for their sage advice; Seacoast Media Group/Portsmouth Herald for helping spread the word about the project; and Monte Bohanan and Stephanie Seacord for communications assistance.



Portsmouth, NH Cultural Plan



Darlene Furbush Ouellett at her studio in the Button Factory

Photo Credit: Michael Sterling Photography

**THE CITY OF PORTSMOUTH
TWO THOUSAND TWENTY FOUR
PORTSMOUTH, NEW HAMPSHIRE**

ISRAEL AND GAZA RESOLUTION

RESOLUTION #

WHEREAS, the City of Portsmouth prides itself on being a diverse and inclusive community that values empathy, understanding, and the well-being of all its residents; and

WHEREAS, the City of Portsmouth is the “City of the Open Door,” and seeks to ensure the basic human rights of every person, to counter prejudice and eliminate discrimination without distinction of any kind, such as race, color, creed, religion, national or social origin, or ancestry, among others; and

WHEREAS, the City of Portsmouth is a community enriched by its diverse populace, including Palestinian, Israeli, Muslim, Jewish, and residents of various other backgrounds; and

WHEREAS, the ongoing conflict in Israel and Gaza has caused significant distress among many of our residents, leading to feelings of pain, fear, and concern for their loved ones in the region; and

WHEREAS, the ongoing conflict in Israel and Gaza has not only directly affected our Palestinian American and Jewish American residents but also those who, regardless of their own heritage, have family, friends, or other connections in the affected region; and

WHEREAS, the City of Portsmouth recognizes that such an international issue, while outside our municipal governance scope, resonates deeply and impacts the emotional well-being of many within our community; and

WHEREAS, the City of Portsmouth is resolutely committed to combating all forms of discrimination, including Islamophobia and antisemitism, which pose a threat to the safety, dignity, and equality of our residents; and

WHEREAS, the City of Portsmouth expresses its unwavering support for all Arab, Israeli, Palestinian, Jewish, Muslim, and all other members of the Portsmouth community who are impacted, each of whom has the right to learn, work, worship, gather, advocate, mourn, and celebrate free from intimidation, harassment, and fear of violence; and

WHEREAS, the City of Portsmouth expresses its deep concern at the rapidly deteriorating humanitarian situation in and around Gaza and its impact on the civilian populations there, underlining the need for timely and safe humanitarian access into and throughout the Gaza Strip and takes note of the concerning reports from the United Nations and humanitarian organizations in this regard; and

NOW, THEREFORE, be it resolved:

1. The City of Portsmouth acknowledges the profound impact of the ongoing Israel-Hamas conflict in Gaza and Israel on not only our Palestinian American and Israeli

American residents but also on our Muslim, Jewish, and other community members who feel a connection to the region.

2. The City of Portsmouth firmly condemns Islamophobia, antisemitism, and all forms of hate, bigotry, and discrimination, reaffirming its commitment to a community where all individuals are respected and protected, regardless of their faith, ethnicity, or connections to global issues.
3. The City of Portsmouth encourages open and respectful dialogue within our community, promoting an atmosphere of peace, empathy, and mutual respect, while recognizing the varied and deeply personal connections many residents have to the Israel-Hamas conflict in Gaza and Israel.
4. The City of Portsmouth urges all members of our community to engage in constructive discussions and support each other, reinforcing our collective resilience against divisiveness, hatred, and misunderstanding.
5. The City of Portsmouth reiterates its dedication to being a welcoming community for all residents, advocating for mental and emotional well-being, and standing against any form of bigotry or hatred.

BE IT FURTHER RESOLVED the City of Portsmouth calls upon the President of the United States, United States Senators Jeanne Shaheen and Maggie Hassan, and United States Representative Chris Pappas to continue to pursue the safe release of all hostages, pursue the provision of humanitarian aid to civilians in Gaza, and pursue a durable bilateral ceasefire among the parties to the conflict in Gaza and Israel.

A copy of this resolution will be sent to the President of the United States and Members of the Congressional Delegation to urge them to take action toward this end.

APPROVED:

DEAGLAN MCEACHERN, MAYOR

ADOPTED BY THE CITY COUNCIL
, 2024

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

Motion to hold First Reading on April 1, 2024, to amend Chapter 10, Article 6, Section 10.633.20 by adding a new a new numbered paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alterations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alternations to existing structures.”

10.633.20 Exemptions from Certificate of Approval

The following activities shall not require a Certificate from the Commission but require review and certification by the Code Official:

- (1) Ordinary maintenance and repair of any exterior architectural feature, which does not involve a change in design, materials or outer appearance thereof;
- (2) Painting or repainting structures without regard to color;
- (3) Maintenance and repair of exterior walls, chimney repairs, entryway repairs, or deck repairs provided these are of the same design and material (including the use of lime-based mortar for repointing historic brick);
- (4) Placement or replacement of shutters that are (1) constructed of wooden material, (2) one-half the width of the sash they are covering, (3) installed with hinges and dogs, and (4) louvered, paneled or constructed of boards as appropriate to the style of the building;
- (5) Replacement roofing on existing structures provided that (1) the roof plane and remains the same and the material remains the same regardless of color, or (2) asphalt roofing is replaced with slate, composite-slate, or wood shingles;
- (6) Replacement of an exterior door, window or storm window, provided that (1) the same design and materials are used, or (2) materials are used that restore the original architectural features, including but not limited to the number and arrangement of window lights; using true and non-removable divided lights; and ensuring that the size of the opening does not change;
- (7) Placement or replacement of roof-mounted mechanical or electrical equipment and ventilation terminators where the equipment (1) is not located on a roof surface that faces or is visible from a public way, (2) does not exceed 27 cubic feet, and (3) does not extend more than 3 feet above the roof plane;

- (8) Placement or replacement of wall-mounted mechanical or electrical equipment and ventilation terminators where the equipment (1) is painted a similar color to match or blend with the wall color, (2) does not extend more than six inches out from the wall plane, and (3) does not vent directly into a public way; and where (4) all duct work or equipment feeds enter the building's interior at ground level so as not to be visible;
- (9) Placement or replacement of ground-mounted mechanical or electrical equipment (including a generator) where (1) the equipment is located behind the structure and is not in public view, and (2) all duct work or equipment feeds are located in the building's interior or immediately adjacent to the equipment;
- (10) Placement or replacement of storm windows, storm doors, screen windows and screen doors, provided they are constructed with wood frames, with any metal or vinyl tracks concealed by the wood frames. Window guards provided they are constructed with bars or rods of wrought iron, or metal formed and painted to resemble wrought iron. Mesh guards are not exempt;
- (11) Placement or replacement of chimney caps or bishop pots that are constructed of masonry or bluestone, or of other material with a black, dark brown or copper finish;
- (12) Placement or replacement of gas and electric meters if mounted on an exterior wall, not facing or visible from a public way. **Landscaping** or fencing may be used as a visual screen;
- (13) Construction, **alteration** or **demolition** of any **structure** or element of a **structure** that the **Code Official** documents as being necessary to avoid an immediate health or safety emergency prior to the Commission convening a meeting to consider the matter. In such instance, the **Code Official** shall immediately provide written notification to the Commission of such action;
- (14) New **signs** and refacing of existing **signs**, except that new freestanding **signs** and **signs** requiring review and approval by the **Board** of Adjustment shall not be exempt;
- (15) Awning replacement if a canvas fabric is used and no **alterations** (including but not limited to the wall fittings and fastenings) are made to the **structure**;
- (16) Placement of a temporary toilet, trailer, tent or tensile **structure**;
- (17) Accessible ramp systems on **single-family** or **two-family dwellings** provided the ramp and rail system consists of black metal modular components;

- (18) The placement, removal or replacement of wood or metal fence (except for chain-link which may only be removed) provided the replacement fence is in substantially the same location with substantially the same height, material, and design;
- (19) The replacement of exterior lighting provided the replacement lighting is substantially in the same in location with substantially the same height, material, and design;
- (20) The replacement or restoration of wood siding (including removal of non-wood materials) provided the replacement siding is the same exposure, material, and design;
- (21) Placement or replacement of terraces, walks, **driveways**, and **sidewalks** and in-ground swimming pools provided that any such element is substantially at the existing grade plane of the property;
- (22) Placement or replacement of building accessories and décor, such as window-mounted portable air conditioning units, play equipment, residential trash enclosures, snow guards, benches, trellises, non-commercial boat rack storage **structures**, window boxes, raised planters, mailboxes less than 18” in all dimensions, flags, hose reels, door bells and knockers, weathervanes, bells, wind chimes, birdfeeders, artwork, sculpture, and other similar exterior décor;
- (23) New or replacement piers, floats, docks or gangways for **single-family and two-family dwellings** provided any vertical handrail support systems are constructed with metal, wire, rope or wood;
- (24) Placement or replacement of wood, brick or granite steps or landings;
- (25) Placement or replacement of a commercial solid waste enclosure provided the enclosure: (1) is fully enclosed with the use of gates; (2) is constructed of wood or stone material; and (3) is no greater than 60” in height or 100 sq. ft. in area;
- (26) Placement or replacement of wood or copper gutters and downspouts.
- (27) Parking ticket kiosks, freestanding signs and other site elements related to public parking in private parking lots when authorized;
- (28) Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alterations to existing structures;
- (29) Accessory Elements to Solar Energy Panels which do not require other alternations to existing structures.

Gift and Donation Submission Form

[cc051523wsag-v2.pdf \(cityofportsmouth.com\)](#) 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: | 2/16/24 |
| Department/ Contact Person: | Senior Activity Center, Nicole Finitis |
| Donation Amount: | \$1,500 |

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

Senior Activity Center Luncheon Fund 13

Is there a particular purpose intended with this donation:

This donation is from the Service Credit Union meant to support refreshments our Veterans Coffee Afternoons weekly at the center.

Other Information/Special Conditions:

Donor Information

| | |
|--------------------|---|
| First & Last Name: | Jaime Yates, Assistant VP of Community Development |
| Business Name: | Service Credit Union |
| Address*: | 3003 Lafayette Rd., Portsmouth, NH 03801 |
| Phone*: | 603-422-8300 |
| Email*: | jyates@servicecu.org |

TSM-25-PW-XX: State Street Two-Way Redesign

| | |
|----------------------------|---|
| Department | Public Works-Highway Division |
| Project Location | State Street, from Middle to Memorial Bridge |
| Project Type | Construction or Expansion of a Public Facility, Street or Utility |
| Commence FY | FY25, Construction FY26 |
| Priority | (A) Implement within 3 years |
| Impact on Operating Budget | Moderate – \$50,001 to \$100,000 |

Description: Consultants assessed converting State Street from one way to two-way traffic flow between Middle Street and Scott Avenue. The initial cost estimate for this work is \$1.5M. This only includes reconstruction of traffic signals, minor intersection changes, and contingency and does not address all the necessary roadway and streetscape modifications which will be determined as part of a design effort.

It is important to note, the consultant’s assessment “does not evaluate impacts on non-vehicular modes (bicyclists and pedestrians), emergency vehicles, and loading zones. Currently, truck loading has been observed to fully or partially block the travel lane due to trucks exceeding the width of loading areas, not fully pulling into loading areas, or using the travel lane instead of loading areas. Additional loading zones and possibly wider loading zones may be required, which would have impacts on the number of parking spaces or the sidewalk widths. Shifting the curb to accommodate wider loading zones would have significant cost implications”.

The actual cost of this project will not be known until a design is completed. FYI - it is anticipated to be significantly higher than \$1.5M.

| Evaluation Criteria | Qualify? |
|---|----------|
| Responds to Federal or State Requirement | |
| Addresses a Public Health or Safety Need | |
| Alleviates Substandard Conditions or Deficiencies | |
| Eligible for Matching Funds with Limited Availability | |
| Timing or Location Coordinate with Synergistic Project | |
| Identified in Planning Document or Study | Y |
| Improves Quality of or Provides Added Capacity to Existing Services | |
| Reduces Long-Term Operating Costs | |
| Provides Incentive for Economic Development | |
| Responds to a Citywide Goal or Submitted Resident Request | |

| |
|---|
| Studies Identified & Useful Website Links: |
| <ul style="list-style-type: none"> • Wall Consultant Group - State Street Two-Way Study of 8/23/23 |

| |
|---|
| Notes of Changes in Funding Plan from FY24-29 CIP: |
| New project for FY25 (Added through the City Council Process at 3-4-24 Meeting) |

| | | FY25 | FY26 | FY27 | FY28 | FY29 | FY30 | Totals 25-30 | 6 PY's Funding | Totals |
|-------------|---------------|------------------|--------------------|------------|------------|------------|------------|--------------------|----------------|--------------------|
| GF | 0% | | | | | | | \$0 | \$0 | \$0 |
| Fed/ State | 0% | | | | | | | \$0 | \$0 | \$0 |
| Bond/ Lease | 100% | \$500,000 | \$1,500,000 | | | | | \$2,000,000 | \$0 | \$2,000,000 |
| Other | 0% | | | | | | | \$0 | \$0 | \$0 |
| Revenues | 0% | | | | | | | \$0 | \$0 | \$0 |
| PPP | 0% | | | | | | | \$0 | \$0 | \$0 |
| | Totals | \$500,000 | \$1,500,000 | \$0 | \$0 | \$0 | \$0 | \$2,000,000 | \$0 | \$2,000,000 |

CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM

DATE: February 27, 2024

TO: KAREN CONARD, CITY MANAGER

FROM: JANE FERRINI, SENIOR ASSISTANT CITY ATTORNEY ^{JF}

RE: INFORMATIONAL ITEM- COALITION COMMUNITIES 2.0 UPDATE ON RAND DECISION REGARDING EXCESS SWEPT

The November 20, 2023 Final Order in the *Rand* case (*Steven Rand, et al. v. The State of New Hampshire, Rockingham County Superior Court Docket No. 215-2022-CV-00167*) enjoins the State from permitting communities to retain excess SWEPT and for excess SWEPT communities to remit the excess SWEPT to the State. The Coalition Communities 2.0 (“CC2”) filed a Motion to Stay the Court’s Order pending appeal to the New Hampshire Supreme Court. The attached Order On Pending Motions Concerning SWEPT Claims denied CC2’s Motion to Stay. Also attached is CC2’s press release issued February 26, 2024 in response to the Judge Ruoff’s Order denying its Motion to Stay, along with a February 24, 2024 article published by InDepthNh.org in response to CC2’s press release.

The CC2 Joint Board will be meeting on March 5, 2024 to discuss appealing the Rand decision to the New Hampshire Supreme Court and how the Court’s Order denial of its Motion to Stay will impact CC2 communities pending appeal. The CC2 communities have reached out to the DRA and DOE for further guidance and will continue to seek further guidance from these State agencies, along with CC2’s counsel. City staff will report back to the Council after the CC2 meeting and will continue to update the Council on the status of CC2’s appeal to the Supreme Court, any advice CC2 receives from State agencies and any legislation filed in response to the recent decisions in education funding lawsuits.

For a copy of the *Rand* Final Order and the Order on Pending Motions Concerning SWEPT Claims, along with the Final Order and Order on Post-Trial Motions in the ConVal education funding case, see <https://www.cityofportsmouth.com/legislative-subcommittee/coalition-communities-20>.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

ORDER ON PENDING MOTIONS CONCERNING SWEPT CLAIMS

In this case, the plaintiffs challenge the manner in which the State carries out education-related obligations imposed by the State Constitution. See Doc. 17 (Pls.' Am. Compl.). On November 20, 2023, the Court granted the plaintiffs' motion for partial summary judgment, concluding that certain practices concerning the Statewide Education Property Tax ("SWEPT") are unconstitutional, and enjoining the State from continuing those practices "[b]eginning with the budget cycle commencing in late-2023 and culminating in budget votes in March or April 2024[.]" See Doc. 86 (the "SWEPT Order"). The State now moves for a stay of the SWEPT Order pending appeal. See Doc. 91. To expedite the appellate process, the State also seeks a ruling that the SWEPT Order constitutes a final decision on the merits. See Doc. 92 (the "Rule 46(c) Request"); see also Super. Ct. R. 46(c). The Coalition, an intervenor representing certain New Hampshire cities and towns, joins in the State's motions, see Doc. 93, and moves for partial reconsideration of the SWEPT Order, see Doc. 94. The plaintiffs object to reconsideration and the requested stay, but assent to the Rule 46(c) Request. See Doc. 95. After review, the Court finds and rules as follows.

Background

The SWEPT Order includes a detailed summary of New Hampshire's education funding jurisprudence. See Doc. 86 at 2–9. To the extent relevant, that summary is incorporated by reference here. By way of brief background, "Part II, Article 83 of the State Constitution imposes a duty on the State to . . . define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability." Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 156–57 (2021) ("ConVal") (citations and quotations omitted). Pursuant to Part II, Article 5 of the State Constitution, "constitutional taxes" must "be proportionate and reasonable—that is, equal in valuation and uniform in rate." Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) ("Claremont II") (citations and quotations omitted)).

Over time, the legislature has crafted several tax schemes aimed at complying with the above-described constitutional obligations. See, e.g., id. In resolving questions regarding those tax schemes, the New Hampshire Supreme Court has also clarified the nature of the State's constitutional obligations. In Claremont II, for example, the court explained that because taxes intended to raise education funds serve a "State purpose"—i.e., fulfilling the State's duty "to provide a constitutionally adequate education . . . and to guarantee adequate funding"—such taxes must be "proportional and reasonable throughout the State in accordance with" Part II, Article 5. Id. at 469–70 (emphasis added). The supreme court reaffirmed this ruling in Opinion of the Justices (School Financing), concluding that a proposed "special abatement" intended to offset excess tax revenues—that is, education tax revenues generated by a given community above the amount necessary for that same community "to provide the legislatively

defined 'adequate education' for its children"—would run afoul of Part II, Article 5. 142 N.H. 892, 899–902 (1998). One year later, the Supreme Court tripped down on the requirement that education tax schemes be uniformly applied, concluding that the State could not perpetuate the unconstitutional application of such a tax via a five-year phase-in of the uniform tax rate. Claremont Sch. Dist. v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999) (“Claremont III”).

Today, RSA 198:40-a, II, sets forth the annual per-pupil cost of providing the opportunity for a constitutionally adequate education (“adequacy aid”). The State raises adequacy aid funds via the SWEPT. See ConVal, 174 N.H. at 159. Since 2011, the State has allowed communities that raise SWEPT revenues above their respective adequacy aid levels to retain the excess. See Laws 2011, 258:7 (eff. July 1, 2011) (eliminating requirement that communities pay excess SWEPT funds to Department of Revenue Administration (“DRA”) for deposit in education trust fund). For certain other locations, the DRA has set negative local education tax rates to offset the applicable SWEPT rate. See Doc. 86 at 10. In December of 2022, the plaintiffs successfully moved for summary judgment with respect to their claim that both practices result in an effective SWEPT tax rate that is not uniform, in violation of Part II, Article 5. See Doc. 50 (Pls.’ Mem. Law) at 3, 14; Doc. 86 (SWEPT Order) at 15–16 (“[T]here can be no meaningful dispute that allowing communities to retain excess SWEPT funds lowers the effective SWEPT rate paid by those communities”); id. at 16–18 (emphasizing that public education system benefits entire State, and concluding that “setting of negative local education tax rates which offset the SWEPT . . . runs afoul of Part II, Article 5”). As a result, the Court enjoined the State from continuing either practice. See id. at 21.

Analysis

As noted at the outset, the State and the Coalition have filed several motions concerning the SWEPT Order. See, e.g., Doc. 94. The Court will first address the Coalition's motion for partial reconsideration. See id. Notably, this motion does not challenge the substance of the legal rulings set forth in the SWEPT Order, but rather the remedy provided in response to those rulings. See id. In particular, the Coalition suggests that an immediate suspension of the practices at issue—i.e., allowing communities to retain excess SWEPT funds or to avoid such an excess via negative tax rates—will cause substantial hardship to those communities that have benefitted from these unconstitutional practices for the past twelve years. See id. at 2. In addition, the Coalition argues that it would be too disruptive to adjust local budgets in response to the SWEPT Order at the current stage of that process. See id. at 3–6 (arguing this shift will result in voter confusion and prevent communities from completing important projects). Given these concerns, the Coalition argues that the “public interest and balance of harms” weigh against injunctive relief. See id. at 7–8 (noting excess SWEPT funds would be held in escrow pending appeal, and citing Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 534 (1987) in support of claim that if enjoined party “would suffer injury” and injunction “does not remedy” plaintiffs’ harm, “injunction should be denied”).

This is not the first time the Coalition has raised these concerns. Rather, the Coalition voiced substantially similar concerns in connection with a November 28, 2022 hearing on the plaintiffs’ request for preliminary injunctive relief. See Doc. 41 (Coalition’s Obj. Pls.’ Mot. TRO & Prelim. Injunct.). At that stage of the proceedings, the Coalition argued that the “mere” fact that the plaintiffs’ “constitutional rights . . . have

been allegedly violated" did not amount to irreparable harm. See id. at 4. Moreover, in comparing the plaintiffs' claimed injuries to the potential fiscal impact on Coalition members, the Coalition took the position that the relevant harms were "obviously one-sided[.]" Id. at 6. Significantly, however, that view was premised on the Coalition's perception that preliminary injunctive relief would put "dozens of communities in 'crisis' and facing a million-dollar deficit in sixty days." Id.

In denying the plaintiffs' request for preliminary injunctive relief, the Court was persuaded by the Coalition's time-based arguments, noting:

The Court in no way wishes to minimize the significance of the plaintiffs' claimed constitutional injuries. Nevertheless, the Court cannot ignore the substantial, immediate, and concrete harm that the Coalition members and their constituents would suffer if the Court were to grant the plaintiffs' request for preliminary injunctive relief. Because the Commissioner [of the DRA] is responsible for carrying out the State's education funding scheme, the Court cannot fault the Coalition members for relying on the Commissioner's years-long practice of allowing them to retain excess SWEPT funds or offset their respective SWEPT rates.

Doc. 48 (Dec. 5, 2022 Order) at 11; see UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987) (explaining that in exercising discretion concerning requests for injunctive relief, courts consider circumstances of each case and apply principles of equity).

In the Court's view, however, the equitable scales have shifted. As an initial matter, the Court remains both unpersuaded and deeply troubled by the characterization of the plaintiffs' injuries as a "mere" violation of their constitutional rights. See Doc. 41 at 4; see also Doc. 94 at 7–8 (arguing plaintiffs "will not gain any benefit from" injunction because excess SWEPT revenues will be held in escrow pending appeal). New Hampshire Supreme Court Rule 42E requires that every attorney admitted to practice law in New Hampshire "take and subscribe an oath to

support the constitutions of New Hampshire and of the United States.” Further, as the Claremont III court recognized, “[t]he New Hampshire Constitution is the supreme law of this State,” and “[e]very person chosen governor, councilor, senator, or representative in this State is solemnly committed by oath taken pursuant to Part II, Article 84 to ‘support the constitutions’ of the United States and New Hampshire.” 143 N.H. at 158. Against that backdrop, the Court concludes that although the plaintiffs will not sustain an immediate fiscal benefit from the disgorged funds, they will derive significant benefit from injunctive relief that cures the above-described constitutional violations.

In weighing that benefit against the concerns raised by the Coalition, the Court notes that the Coalition has now been involved in this litigation for well over a year. In addition, having reached the merits of the plaintiffs’ Part II, Article 5 SWEPT claims, the Court is persuaded that the clarity of the relevant legal landscape should have inspired Coalition members to plan for the fiscal impacts of the SWEPT Order during the pendency of this action. See, e.g., Opinion of the Justices (School Financing), 142 N.H. at 899–902 (concluding “special abatement” intended to offset excess education tax revenues would run afoul of Part II, Article 5). As the Court previously recognized, it might have been imprudent or impractical for communities to collect additional tax revenues during prior budget cycles in anticipation of the rulings set forth in the SWEPT Order. See Doc. 86 at 20. Given the substantial jurisprudence supporting the plaintiffs’ claims, however, it would have been both prudent and practical for those communities to consider the fiscal impact of the plaintiffs’ SWEPT claims when planning for this budget year. See Doc. 50 at 1–3 (explaining plaintiffs moved for partial summary judgment in December of 2022 so communities could plan for “next property tax year”).

In the Court's view, any failure to prepare for the foreseeable suspension of unconstitutional practices does not justify the continuation of those practices. See Claremont III, 143 N.H. at 158 ("Absent extraordinary circumstances, delay in achieving a constitutional system is inexcusable. The legality of the education funding system in this State has been questioned for at least the past twenty-seven years The controlling legal principles are plain."); see also Lanfear v. Home Depot, Inc., 679 F.3d 1267, 1270 (11th Cir. 2012) (citing Aesop, "The Ant and the Grasshopper," Aesop's Fables Together with the Life of Aesop 115 (Rand McNally 1897) in support of proposition that if people are "wise like Aesop's ant, during the summer and autumn of their lives they store up something for the winter"). Accordingly, the Coalition's motion for partial reconsideration is **DENIED**.

In moving for a stay of the injunctive relief set forth in the SWEPT Order, the State and the Coalition raise similar arguments concerning the wisdom of directing the DRA to collect excess SWEPT funds and hold them in escrow pending appeal. See Docs. 91, 93. For the reasons outlined above, those arguments are unavailing. In addition, the State also maintains that holding excess SWEPT funds in escrow will prove overly complicated. See Doc. 91 ("The DRA will have to segregate those excess funds by local jurisdiction and . . . account for excess SWEPT that municipalities were unable to collect"). The Court is, again, unpersuaded. The DRA is well-versed in determining tax revenues to be collected from individual communities, and tracking amounts collected and owed. The Court is thus confident that the DRA can readily devise a system for recording the amount of excess SWEPT revenues generated by and collected from individual communities while this matter is pending appeal. To the

extent any communities fail to remit the requisite level of excess SWEPT revenues, the Court is similarly confident that the DRA can follow existing protocols to obtain the missing amounts or offset them through other means.¹

Consistent with the foregoing, the motions seeking a stay of the remedy set forth in the SWEPT Order pending appeal are **DENIED**.

The final pending SWEPT motion is the State's Rule 46(c) Request. See Doc. 92; see also Super. Ct. R. 46(c). Rule 46(c)(1) provides:

When, in a civil action that presents more than one claim for relief . . . , the court enters an order that finally resolves the case as to one or more, but fewer than all, claims . . . , the court may direct that its order . . . be treated as a final decision on the merits as to those claims . . . if the court:

- (A) explicitly refers to this rule;
- (B) identifies the specific order or part thereof that is to be treated as a final decision on the merits;
- (C) articulates the reasons and factors warranting such treatment; and
- (D) finds that there is an absence of any just reason for delay as to the party or claim that is to be severed from the remainder of the case.

As noted at the outset, all parties assent to the State's Rule 46(c) Request. See Docs. 93–94. Upon review, the Court agrees that the relief requested in that filing is warranted. In particular, while the SWEPT Order pertains to the manner in which the DRA collects education tax revenues from local communities, see Doc. 92 ¶ 2, the plaintiffs' remaining claims concern the sufficiency of the education funding the State provides to local communities. See id. ¶¶ 2–3. Those issues implicate distinct legal

¹ The State and the Coalition seemingly suggest that the DRA cannot compel communities to collect or remit excess SWEPT revenues. The Court views this suggestion with extreme skepticism. Though the Court has heard no evidence concerning this issue, the Court would be surprised to learn that communities collect and remit State taxes on a purely voluntary basis. Rather, common sense suggests that the DRA has mechanisms in place to enforce the tax scheme, perhaps by offsetting uncollected or improperly retained amounts via a reduction in State grants or aid. If the State wishes to further contest the DRA's authority in this context, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing regarding this narrow issue.

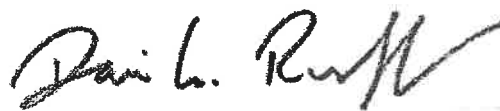
questions. Moreover, given the compelling interests involved, there is no just reason to delay appeal of the SWEPT Order. Accordingly, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92. The Court thus directs that the SWEPT Order is to be treated as a final decision on the merits with respect to the plaintiffs' Part II, Article 5 challenge to the administration of the SWEPT. See Super. Ct. R. 46(c)(1).

Conclusion

Consistent with the foregoing, the Coalition's motion for partial reconsideration is **DENIED**. See Doc. 94. The State's motion for a stay of the injunctive relief set forth in the SWEPT Order, see Doc. 91, and the Coalition's joinder in that motion, see Doc. 93, are also **DENIED**. As set forth above, if the State wishes to contest the DRA's authority to enforce the relevant aspects of the tax scheme, it may file a timely motion for reconsideration, following which the Court will schedule an evidentiary hearing concerning that narrow issue. Finally, the State's Rule 46(c) Request is **GRANTED**. See Doc. 92.

SO ORDERED.

Date: February 20, 2024



Hon. David W. Ruoff
Rockingham County Superior Court

Clerk's Notice of Decision
Document Sent to Parties
on 02/20/2024

COALITION COMMUNITIES, 2.0

PRESS RELEASE

**CONTACT: MARK DECOTEAU, CHAIR
COALITION COMMUNITIES, 2.0
603-254-8303**

LOWER COURT UPSETS TWELVE-YEAR STATUS QUO AND ORDERS THE STATE TO REINSTITUTE FAILED DONOR-RECEIVER MODEL; LEGISLATURE “HITS” THE PAUSE BUTTON ON SAME ISSUE

Concord – In a recent Order, the Rockingham Superior Court decided that it would not delay its previous decision that the State and local municipalities must collect and remit to the State all revenues from the statewide education property tax. The earlier decision misinterpreted the New Hampshire Constitution and the Supreme Court’s Claremont school funding decisions. The latest decision threatens to create multi-million-dollar holes in municipal budgets and delay or cancel critical projects all around the State.

“The latest Superior Court decision ignores the real-world effects on municipalities all across New Hampshire,” said Mark Decoteau, Waterville Valley Town Manager and Chair of the Coalition Communities 2.0. “Our towns presented compelling evidence that ordering the remission of SWEPT to the State would threaten vital town and school services. If this Order goes into effect, towns in our coalition may have to lay off teachers, forego renovations of school facilities, and cancel plans to fix roads and old bridges, and update sewer and water services to comply with state and federal regulations.” Decoteau explained, “This is not just a problem for a few select towns, but will be felt all over the state. Towns on the Seacoast will not be able to carry out environmental projects on coastal waterbodies that are needed to keep beaches open in the summer. Towns in the Lakes Region will not be able to modernize their sewer systems to prevent algae and bacterial bloom in their lakes and ponds. These are state resources being threatened.” Decoteau continued, “The Legislature decided over twelve years ago to use statewide educational property tax revenues to fund local schools. Municipalities relied on that longstanding law when planning their budgets, assessing taxes, and planning projects important for their residents and the entire State.” The court’s decision “upends all of those plans and once again pits towns against each other. And this comes at the worst possible time, right when municipalities are holding Town Meeting and trying to finalize their budgets. Even the NH House of Representatives recognizes these flaws when it voted yesterday to table a bill to require Towns to remit SWEPT revenue to the State.”

“Besides overlooking the real-world effects of changing the decade-plus status quo, the Court’s decision also gets the New Hampshire constitution wrong. The Legislature’s 2011 decision to end the failed donor-receiver model is not a tax but a spending decision by the

Legislature. Under our Constitution, the Legislature has the authority to fund education and wisely decided to spend education tax dollars in the local communities where the taxes were raised. The courts and unelected judges are not supposed to be a super-legislature deciding how Granite Staters' hard-earned taxes are spent."

Coalition Communities 2.0 is an association of municipalities that have shared concerns regarding state education funding proposals, chief among them reconsideration of the settled law requiring property tax dollars be spent in local communities. Decoteau went on to say, "The unfair redistribution of property tax revenue being raised in one town and expended in another has been tried in the past and it was an utter failure in terms of fairness and fiscal responsibility. The State needs a new education formula that has a structure or guardrails, so the State and its communities do not find themselves with a similar unfair funding system from the early 2000's. Coalition Communities 2.0 appreciates the challenges in addressing school funding in our State. We care deeply about ensuring a quality education for our children and we will continue our advocacy for a fair and comprehensive approach for education funding in New Hampshire. Working with legislators, community leaders and the general public, our members are confident that an appropriate resolution can be developed that does not treat different towns disproportionately or differently."

COURTS & CORRECTIONS

NH Communities Say Court Ruling Disrupts Local Budget Process

By GARRY RAYNO, InDepthNH.org 14 mins ago



LinkedIn photo

Mark Decoteau, Waterville Valley town manager and chair of the Coalition Communities 2.0.

By GARRY RAYNO, InDepthNH.org

CONCORD — A superior court judge’s decision not to delay implementation of his order on the Statewide Education Property Tax will disrupt the local school budget process for many communities, claim those affected by the order.

The Statewide Education Property Tax was instituted to address the Supreme Court’s Claremont education ruling and currently is assessed at \$1.44 per \$1,000 of equalized valuation to produce \$363 million annually.

Last week, Rockingham County Superior Court Judge David Ruoff, rejected motions by the state and the Coalition Communities to delay his order until a final decision by the state Supreme Court of an appeal, which has yet to be filed.

“The latest Superior Court decision ignores the real-world effects on municipalities all across New Hampshire,” said Mark Decoteau, Waterville Valley town manager and chair of the [Coalition Communities 2.0](https://coalitioncommunitiesnh.com/). “If this Order goes into

effect, towns in our coalition may have to lay off teachers, forego renovations of school facilities, and cancel plans to fix roads and old bridges, and update sewer and water services to comply with state and federal regulations.”

Ruoff had ruled the state’s collection method for the SWEPT by allowing property wealthy communities to keep excess funds and negative tax rates for small unincorporated places was unconstitutional because the effect was to have differing tax rates for communities while the constitution requires taxes to be proportional and reasonable.

In his order, Ruoff said the communities should have planned for a change in the way the state administers the statewide property tax. “The clarity of the relevant legal landscape should have inspired Coalition members to plan for the fiscal impacts of the SWEPT order during the pendency of this action,” he writes.

Ruoff also criticized the group’s attorney. “The court remains both unpersuaded and deeply troubled by the characterization of the plaintiffs’ injuries as a ‘mere’ violation of their constitutional rights,” the judge said, because they will not immediately benefit from changing how the tax is administered.

“The Court concludes that although the plaintiffs will not sustain an immediate fiscal benefit from the disgorged funds they will derive significant benefit from injunctive relief that cures the above-described constitutional violations,” he writes.

And he noted everyone admitted to practice law in New Hampshire has to take an oath and subscribe to the New Hampshire and United States constitutions.

Decoteau said the problems do not affect just a few towns but will be felt all over the state.

He said Seacoast towns will not be able to carry out environmental projects on coastal water bodies that are needed to keep beaches open in the summer, while Lakes Region towns will not be able to modernize their sewer systems to prevent algae and bacterial bloom in their lakes and ponds.

The change in administering the SWEPT would have the state collect about \$24 million from about 25 cities and towns, and small unincorporated places with few or no children. The unincorporated places account for about \$200,000 of the total figure.

Andru Volinsky, an attorney bringing the suit *Rand versus the State*, said their argument that the tax was unconstitutional was first raised before a Grafton County Superior Court judge in October 2022 and the coalition’s attorney was at that hearing as was the deputy city manager of Portsmouth.

Since that time, the coalition communities have not done anything to prepare for the ruling that Ruoff issued in November, Volinsky said.

“The Legislature decided over 12 years ago to use statewide educational property tax revenues to fund local schools. Municipalities relied on that longstanding law when planning their budgets, assessing taxes, and planning projects important for their residents and the entire state,” Decoteau said.

The judge’s decision not to stay his order comes at the worst time possible, he said, when towns and school districts are holding their annual meetings and trying to finalize their budgets.

“Even the NH House of Representatives recognizes these flaws when it voted (last week) to table a bill to require towns to remit SWEPT revenue to the state,” Decoteau said.

He, the coalition’s attorneys and the state contended during trial that the legislature’s 2011 decision to end the donor-receiver model is not a tax but a spending decision by the legislature.

“Under our Constitution, the Legislature has the authority to fund education and wisely decided to spend education tax dollars in the local communities where the taxes were raised,” Decoteau said. “The courts and unelected judges are not supposed to be a super-legislature deciding how Granite Staters’ hard-earned taxes are spent.”

The court rejected their argument that it was a spending and not a taxing decision.

Although the coalition communities claim they are donor communities, the plaintiffs’ attorneys argued the state collects the tax through the communities on every property owner in the state regardless of where they live and that requires the rate to be proportional and reasonable under the state constitution.

Both the Rand decision, and the ConVal School District decision that the state failed to pay for an adequate education and instead used local property taxes to cover its share of the cost, making the system unconstitutional with varying property tax rates, are expected to be appealed to the State Supreme Court.

Garry Rayno may be reached at garry.rayno@yahoo.com (<mailto:garry.rayno@yahoo.com>).
Garry Rayno is InDepthNH.org’s State House bureau chief.

CITY OF PORTSMOUTH MEMORANDUM

DATE: February 28, 2024

TO: KAREN S. CONARD, CITY MANAGER

FROM: SUZANNE M. WOODLAND, DEPUTY CITY MANAGER AND REGULATORY COUNSEL
PETER RICE, DIRECTOR OF PUBLIC WORKS
JOE ALMEIDA, FACILITIES MANAGER, DEPARTMENT OF PUBLIC WORKS

RE: COMMUNITY POLICING FACILITY UPDATE AND RESPONSES TO QUESTIONS

At the City Council meeting of January 17, 2024, Police Chief Newport explained staff's interest in exploring a new option at the City Hall campus for locating a community policing facility. That proposed new location is in front of the existing police station entrance extending towards Junkins Avenue. The City Council indicated its support for the staff to work with the consultants to evaluate this option further. This Memorandum provides a brief update and responds to some of the outstanding questions.

UPDATE

By way of update, geotechnical work has commenced, permitting requirements have been evaluated, (more on that below) adjacency needs of various police functions are being evaluated, code requirements are being considered, and the determination of what can and should be reused/renovated in the existing building is underway. The consultant and staff team are of the opinion that enough information will likely be available sometime in April to hold another work session with the City Council.

OUTSTANDING QUESTIONS

- 1. Could you explain the difference between a Risk Category IV rated facility and Risk Category III or lower rated facility?**

Risk Category IV buildings are considered by municipal leaders to be essential in that their continuous use is needed, particularly in response to disasters. Hospitals, fire stations, police stations and emergency vehicle garages typically must remain operational during and after major disaster events. Major disaster-type events may include severe weather events such as ice storms and hurricanes, as well as earthquake events. The International Building Code, excerpted below, uses the phrase “designated as essential facilities.” This language allows jurisdictions the latitude to identify specific facilities that should be considered essential in responding to various types of emergencies.

Risk Category III buildings include those occupancies that have relatively large numbers of occupants because of the overall size of the building. They also include uses that pose an elevated life-safety hazard to the occupants, such as public assembly, schools, or colleges. In addition, Risk Category III includes uses where the occupants' ability to respond to an emergency is restricted, such as jails or otherwise impaired, such as nursing homes.

EXCERPTS FROM IBC CHAPTER 3
Occupancy Classification and Use

| RISK CATEGORY | NATURE OF OCCUPANCY |
|------------------|---|
| I | <p>Buildings and other structures that represent a low hazard to human life in the event of failure, including, but not limited to:</p> <ul style="list-style-type: none"> • Agricultural facilities • Certain temporary facilities • Minor storage facilities |
| II | Buildings and other structures except those listed in Risk Categories I, III and IV |
| III | <p>Buildings and other structures that represent a substantial hazard to human life in the event of failure, including but not limited to:</p> <ul style="list-style-type: none"> • Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300. • Buildings and other structures containing elementary school, secondary school or day care facilities with an occupant load greater than 250. • Buildings and other structures containing adult education facilities, such as colleges and universities, with an occupant load greater than 500. • Group I-2 occupancies with an occupant load of 50 or more resident care recipients, but not having surgery or emergency treatment facilities. • Group 1-3 occupancies. • Any other occupancy with an occupant load greater than 5000. • Power-generating stations, water treatment facilities for potable water, waste water treatment facilities and other public facilities not included in Risk Category IV. • Buildings and other structures not included in Risk Category IV containing quantities of toxic or explosive materials that: <ul style="list-style-type: none"> ○ Exceed maximum allowable quantities per control area as given in Table 307.1(1) or 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>, and ○ Are sufficient to pose a threat to the public if released. |

| | |
|----|---|
| IV | <p>Buildings and other structures designated as essential facilities, including but not limited to:</p> <ul style="list-style-type: none"> • Group 1-2 occupancies having surgery or emergency treatment facilities. • Fire, rescue, ambulance and police stations and emergency vehicle garages. • Designated earthquake, hurricane or other emergency shelters. • Designated emergency preparedness, communications and operation centers and other facilities required for emergency response. • Power generating stations and other public utility facilities required as emergency back up facilities for Risk Category IV structures. • Buildings and other structures and other containing qualities of highly toxic materials that: <ul style="list-style-type: none"> ○ Exceed maximum allowable qualities per control area given in Table 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>. ○ Are sufficient to pose a threat to the public if released. • Aviation control towers, air traffic control centers and emergency aircraft hangars. • Buildings and other structures having critical national defense functions. • Water storage facilities and pump stations required to maintain water pressure for fire suppression. |
|----|---|

2. Is the new police facility required to be a Risk Category IV?

No. The City is not required to construct a Risk Category IV building. However, the Police Department and the Public Works Department staff along with the consultants highly recommend a Risk Category IV building because the City would want the facility to remain operational during emergency and disaster events. City Hall is not a Risk Category IV building. The City’s currently designated Emergency Operation Center is at Fire Station 2, which is Risk Category IV. Having the new police facility structure be a Risk Category IV building will give the City additional capacity. Fire Chief McQuillen too would support an additional building with a Category IV rating.

3. Given setback requirements from the South Mill Pond and permitting requirements, can a new structure fit in front of the existing PD front door?

Yes. Based on a site walk, described below, and the City’s experience with the New Hampshire Department of Environmental Services (NHDES) land use permitting requirements, the proposed structure will be permissible in this location.

There are three important setbacks for environmental permitting:

- 250' Protected Shoreland Buffer – Proposed structure is within this setback and a NHDES Shoreland Permit is anticipated.
- 100' Tidal Buffer Zone – Building structure is outside of this setback. Grading impacts may also be outside this limit (TBD). If grading impacts are required within the 100' Tidal Buffer Zone, an NHDES wetlands permit would be required, but the work is anticipated to be permittable.
- 50' No Structure Setback – No work is proposed within this limit. No impacts/encroachment anticipated.

From a site walk and review with the City Planning and Sustainability Department on January 31, 2024, there was consensus that no project impacts would be proposed within 60' of the high tide elevation on South Mill Pond. This gives a 10' buffer from the 50' no structure set back.

4. What is the current proposed size of the Police Chief's office and how does it compare to Dover Police Chief's exiting office?

The size and the location of the Police Chief's office is not fixed at this time. Size is dependent in part on agencies and location. The present program design for the Police Chief's office 200 +/- Net Square Footage (NSF). The Dover Police Chief's office is 250+/-NSF.

cc: Police Chief Mark Newport
Fire Chief William McQuillen