

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MAY 16, 2016 TIME: 7:00PM

AGENDA

- 6:00PM – NON-MEETING WITH COUNSEL RE: PROPERTY NEGOTIATIONS & NEGOTIATION OF 1 YEAR EMPLOYMENT AGREEMENT FOR POLICE CHIEF MARA IN ACCORDANCE WITH RSA 91-A:2,I (b)

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

PRESENTATIONS

- 1. Justice John Broderick Re: Change Direction Campaign
- 2. Update Re: Mosquito Control Program
- 3. MapGeo Parcel Viewer Application

V. ACCEPTANCE OF MINUTES – MAY 2, 2016

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS

- A. FOR THE PURPOSE OF DISCONTINUING ANY RIGHTS OF THE CITY OR THE PUBLIC IN THE FOLLOWING TWO PARCELS OF PROPERTY:

A CERTAIN TRIANGULAR TRACT OF LAND BEING LOCATED AT THE NORTHWESTERLY CORNER OF AND WITHIN THE INTERSECTION OF THE DEER STREET AND BRIDGE STREET RIGHTS OF WAY, AND BEING APPROXIMATELY 1,717 SQUARE FEET IN SIZE; AND

A CERTAIN TRAPEZOIDAL TRACT OF LAND BEING LOCATED ALONG THE NORTHERLY BOUNDARY OF SAID TRIANGULAR TRACT OF LAND, BEING APPROXIMATELY FOUR (4) FEET WIDE AND BEING APPROXIMATELY 269 SQUARE FEET IN SIZE

- B. CHAPTER 10 – ZONING ORDINANCE BE AMENDED AS FOLLOWS:

- (1) DELETE THE EXISTING ARTICLE 5A – CHARACTER DISTRICTS IN ITS ENTIRETY AND INSERT IN ITS PLACE THE NEW ARTICLE 5A – CHARACTER DISTRICTS DATED 5/2/2016

- (2) AMEND ARTICLES 4, 5, 11, 12 & 15 OF THE ZONING ORDINANCE AS SET FORTH IN THE DOCUMENT TITLED "CONFORMING AMENDMENTS TO ZONING ORDINANCE" DATED 5/2/2016
- (3) AMEND THE ZONING MAP AS SET FORTH IN THE FOLLOWING MAPS DATED MAY 2, 2016:
 - (A) MAP 10.5A21A – CHARACTER DISTRICTS AND CIVIC DISTRICTS;
 - (B) MAP 10.5A21B – BUILDING HEIGHT STANDARDS;
 - (C) MAP 10.5A21C – SPECIAL REQUIREMENTS FOR FAÇADE TYPES, FRONT LOT LINE BUILDOUT & USES
- (4) AMEND THE ZONING MAP BY CHANGING THE ZONING DESIGNATION OF 52 PARCELS AS SET FORTH IN THE DOCUMENT TITLED "PROPOSED ADDITIONAL WEST END ZONING CHANGES" DATED 5/2/2016 AND AS SHOWN ON THE MAP TITLED "ADDITIONAL WEST END ZONING CHANGES – SECOND READING – MAY 2, 2016"

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading proposed Ordinance to amend Chapter 10 – Zoning Ordinance – Article 4 – Zoning Districts and Use Regulations, Section 10.410 – Establishment and Purpose of Districts, Transportation Corridor – To provide for future transportation uses and related facilities as well as recreational trail use
- B. Second reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance as follows:
 - (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 5/2/2016
 - (2) Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled "Conforming Amendments to Zoning Ordinance" dated 5/2/2015
 - (3) Amend the Zoning Map as set forth in the following maps dated May 2, 2016:
 - (A) Map 10.5A21A – Character Districts and Civic Districts;
 - (B) Map 10.5A21B – Building Height Standards;
 - (C) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses

- (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled "Proposed Additional West End Zoning Changes" dated 5/2/2016 and as shown on the map titled "Additional West End Zoning Changes – Second Reading – May 2, 2016"

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

(There are no items under this section of the agenda)

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from William Moriarty, The Salvation Army requesting to place 1 or 2 donation bins on municipal property ***(Sample motion – move to refer to the City Manager for report back)***
- B. Letter from Kate Loughlin regarding the littering of cigarettes in the downtown area ***(Sample motion – move to refer to the City Manager for report back)***

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Proposed Discontinuing any Rights of the City or the Public in the following Two Parcels of Property Re: 165 Deer Street
2. Renewal of Pool Lease Agreement SIPP
3. Proposed Lease Agreement with Pontine Theatre Re: Plains Schoolhouse
4. Solar Power Agreements
5. Reconsideration of Action of April 18, 2016 City Council Meeting Re: Disposition of the Fire Boat *(Two-thirds vote required)*
6. License Request Re: 64 Market Street

Informational items

1. Events Listing
2. African Burying Ground Anniversary of Reburial Ceremony

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Reappointment of Reagan Ruedig to the Historic District Commission
 - Reappointment of Jonathan Wyckoff to the Historic District Commission
 - Reappointment to John Mayer as an Alternate to the Historic District Commission
2. *Appointment of Deer Street Garage Building Committee
 - John O’Leary, Public Representative
 - Mark McNabb, Public Representative
 - Everett Eaton, Economic Development Commission Representative
 - Brad Lown, City Council Representative
 - Eric Spear, City Council Representative
3. *Proposed Stewardship Committee for African Burying Ground

Proposed Charge

The charge of the Mayor’s Blue Ribbon Committee is to advise the City Council and City Manager on all matters pertaining to the African Burying Ground and Memorial Park. This Committee will sunset on December 31, 2017. In addition, the Committee is charged with the following:

- *Provide guidance on requests for expenditures from the African Burying Ground Trust Fund;*
- *Provide guidance on requests for events and other activities proposed to take place at the African Burying Ground and Memorial Park;*
- *Work to ensure the ongoing interpretation and promotion of the African Burying Ground and Memorial Park*

Members:

- Chris Dwyer, City Council Representative
- Vernis Jackson, Chair Emeritus of African Burying Ground Committee
- *(To be Appointed)*, Community Volunteers Representative
- *(To be Appointed)*, Portsmouth Black Heritage Trail/Portsmouth Historical Society Representative
- *(To be Appointed)*, Seacoast African American Cultural Center Representative
- School Department Ex-officio
- Portsmouth Public Library, Ex-officio
- Community Development Department, Ex-officio

C. COUNCILOR DWYER

1. Prescott Park Master Plan Update

D. COUNCILOR SPEAR

1. Report Back Re: Affordable Housing at Parrott Avenue Parking Lot (*See attached memorandum from City Manager*) (**Sample motion – 1) moved endorsement of concept, and 2) If the concept is endorsed, establish a City Council Work Session**)

E. COUNCILOR CYR

1. *Clarification of May 2nd vote on Maplewood Avenue Zone Change

F. COUNCILOR DENTON

1. *Veterans of Foreign Wars Post 168 (**Sample motion – move to direct the City Manager to report back if City property exists for a potential future location for the Veterans of Foreign Wars Post 168**)

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

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

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. Notification that the minutes of the April 5, 2016 meeting of the Site Review Technical Advisory Committee are now available on the City's website.

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MAY 2, 2016

PORTSMOUTH, NH
TIME: 6:00 PM

At 6:00 P.M., An Anticipated "Non-Meeting" with Counsel was held on Litigation and Personnel in Accordance with RSA 91-A:2, I (b).

At 6:30 P.M., An Anticipated "Non-Meeting" with Counsel was held on Proposed Collective Bargaining in Accordance with RSA 91-A:2, I (b).

I. CALL TO ORDER (7:00PM)

Mayor Blalock opened the meeting at 7:00 p.m.

II. ROLL CALL

Members Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

Police Chief David Mara lead the Pledge of Allegiance.

PROCLAMATIONS

1. Police Week In Portsmouth

Assistant Mayor Splaine read the Proclamation in recognition of Police Week and Peace Officers' Memorial Day. Mayor Blalock presented the Proclamation to Chief of Police David Mara who accepted with thanks and appreciation.

2. Recognition of National Small Business Week

Councilor Spear read the Proclamation in recognition of National Small Business Week and presented it to Greta Johansson, NH District Director of the US Small Business Administration. Ms. Johansson said a few words regarding the importance of supporting small businesses and accepted the Proclamation with thanks and appreciation. Mayor Blalock also recognized Economic Development Manager Nancy Carmer in the audience.

Mayor Blalock then recognized and welcomed Nancy Colbert Puff from the audience who will be replacing David Allen as Deputy City Manager.

City Manager Bohenko thanked Deputy City Manager Allen for his years of service.

V. ACCEPTANCE OF MINUTES – APRIL 18, 2016

Councilor Lown moved to accept the minutes of April 18, 2016 City Council meeting. Seconded by Councilor Spear and voted.

VI. PUBLIC COMMENT SESSION

Julianna Flintosh, stated she and her husband live directly behind the proposed new lot at 678 Maplewood Avenue and are opposed to the proposed business zoning. She continued that there are other suitable locations for businesses and that there is already an empty strip-mall on Maplewood Avenue. She concluded that she is in favor of single residences that will enhance the neighborhood.

Joe Russell, Attorney representing 678 Maplewood Ridge LLC - read a statement on behalf of his client in short; they are requesting to move business zoning line 133' towards Interstate 95 to build an affordable housing project to include workforce housing, micro units as well as market rate housing units. He continued that since applying to the ZBA in January 2016, people have commended the team for including a variety of housing for various income levels because no one else is doing it. He stated the ZBA suggested they bring this proposed amendment to the City Council. He then presented to the City Council documents which have also been distributed to the Planning Board, for a 20 year deeded development restriction on the property and forces compliance with workforce housing initiatives being proposed to show sincerity in development of workforce housing in the City of Portsmouth. He stated that this is not a business-related development as some naysayers would have them believe and they are requesting the 2nd reading be passed and give them a new and fair Planning Board review. He stated that subsequent to the April 21st Planning Board meeting they identified, in their opinion, a clear conflict of interest, which was undisclosed by a Planning Board member who chose not to recuse himself. He concluded that they have played by the rules and hope this proposal can continue to move forward in a positive direction.

Peter Sommsich – spoke on the proposed ordinance regarding water irrigation meters stating that there should be an additional tier added for people who use less than 10 or even 5 units and feels that the rates should be raised for commercial users as they are making a profit from the use of the meters.

Barbara and Vassilios Pamboukes– spoke representing Cutts Cove Neighborhood Association stating that their small neighborhood is concerned that the traffic will be increased with the proposed 678 Maplewood Avenue project although they are in favor of workforce housing and some growth, but it shouldn't have a negative impact.

Jeff Kisiel – spoke in support of continuing the discussion of the 678 Maplewood Avenue rezoning request in order to allow neighbors to speak and also to allow time for people to look at the construction page which shows the various safety features that will be added in the neighborhood like sidewalks on both sides, bike paths, etc.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE DELETE THE EXISTING ARTICLE 5A – CHARACTER DISTRICTS IN ITS ENTIRETY AND INSERT IN ITS PLACE THE NEW ARTICLE 5A – CHARACTER DISTRICTS DATED JANUARY 11, 2016 *CONTINUED FROM THE MARCH 21, 2016 CITY COUNCIL MEETING*

AMEND ARTICLES 4, 5, 11, 12 & 15 OF THE ZONING ORDINANCE AS SET FORTH IN THE DOCUMENT TITLED “CONFORMING AMENDMENTS TO ZONING ORDINANCE” JANUARY 11, 2016

AMEND THE ZONING MAP AS SET FORTH IN THE FOLLOWING MAPS DATED JANUARY 11, 2016;

- (a) MAP 10.5A21A – CHARACTER DISTRICTS AND CIVIC DISTRICTS;
- (b) MAP 10.5A21B – BUILDING HEIGHT STANDARDS;
- (c) MAP 10.5A21C – SPECIAL REQUIREMENTS FOR FAÇADE TYPES, FRONT LOT LINE BUILDOUT & USES

Mayor Blalock stated this public hearing is continued from March 21 2016.

Planning Director Rick Taintor explained the history of the ordinance to date stating that there have been several opportunities for public input and comment. He stated that Portsmouth Listens held study circles and some of their suggestions have been incorporated into the new draft ordinance. He stated the version that the Planning Board reviewed at the April 21, 2016 meeting is very different from the first draft and therefore, the ordinance should be substituted as a whole and re-advertised for another public hearing.

City Manager Bohenko stated he recommends that the public hearing be held this evening and continued to May 16th with the City Council making the amendment by substitution later in the agenda.

Mayor Blalock read the public hearing notice and continued the public hearing asking for speakers:

Esther Kennedy – stated she is glad the public hearing will be kept open until May 16th as she feels there is a lot of misconception and confusion in the public regarding this ordinance and the changes that have been incorporated. She stated that there should be a public information session as well as a thorough explanation on the city website.

Larry Lariviere – stated he participated in the study circles and stated that there were over 60 people who spent many hours collectively reviewing this. He urged the Council to listen to the people and not just Planning Board recommendations.

Seeing no other speakers, Mayor Blalock stated the public hearing will remain open to the May 16, 2016 City Council meeting.

- B. RESOLUTION AUTHORIZING THE ISSUANCE OF REFUNDING BONDS OF UP TO THIRTEEN MILLION (\$13,000,000.00) DOLLARS TO REFINANCE CERTAIN OUTSTANDING BONDS OF THE CITY SO AS TO REDUCE INTERESTS COSTS, AND TO PAY ALL COSTS INCIDENTAL AND RELATED THERETO

Mayor Blalock read the public hearing notice and opened the public hearing asking for speakers. Seeing none, Mayor Blalock closed the public hearing.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Approval and Acceptance of Donation Re: Memorial Bench

Councilor Lown moved to accept the donation of a memorial bench from Kim and Holly Cedarstrom in honor of Caitlin Cedarstrom Morris. Seconded by Councilor Spear and voted.

- B. Donations in Support of the Explorer Cadets:
- Kittery Lion Club in appreciation for a speech given to the Club by Cadet Acadia Spear - \$202.00
 - Ms. Vivienne B. Vanluven - \$20.00
 - Ms. Susan J. and Mr. John D. Herney - \$20.00
 - Dr. David Ferland and Ms. Lynda Cadieux - \$82.00

Councilor Spear moved to accept the donations totaling \$324.00 in support of the Police Explorer Cadets. Seconded by Councilor Dwyer and voted.

- C. Grant from the NH Office of Highway Safety for Portsmouth Bicycle/Pedestrian Patrol - \$6,195.20

Councilor Lown moved to accept and approve the grant in the amount of \$6,195.20. Seconded by Councilor Dwyer and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 10 – Zoning Ordinance Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated January 11, 2016 *Continued from the March 21, 2016 City Council meeting*

Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled “Conforming Amendments to Zoning Ordinance” January 11, 2016

Amend the Zoning Map as set forth in the following maps dated January 11, 2016;

- (a) Map 10.5A21A – Character Districts and Civic Districts;
- (b) Map 10.5A21B – Building Height Standards;
- (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses

Councilor Spear moved to recess the public hearing to May 16, 2016 City Council meeting, seconded by Councilor Lown.

Councilor Dwyer clarified that the changes that have been incorporated are in the ordinance labeled “New” and requested that the “Old” document not continue to be published as this may be causing the confusion.

City Manager Bohenko stated he will do more to get the “New” version out to the public and the old document will not be published after this meeting.

Councilor Perkins stated that the Planning Board had a work session on the responses from Portsmouth Listens and all of that information is on line as well.

Motion passed.

Councilor Perkins moved to substitute the original ordinance as recommended by the Planning Board for the version of the amended ordinance (labeled “new”), seconded by Councilor Dwyer.

Councilor Spear stated he understands that amendments to the new version can be made after the 2nd reading on May 16th, but he would like to express some concerns at this time. He stated he hopes the presentation will go into more depth on the differences of opinions on square footage, height issues and on street versus off street parking for residences. He stated that people always say they want to preserve the character of the neighborhood as it exists today, but the parking issue currently is that not all residents have off-street parking and this helps keep neighborhoods more affordable and exciting and he wants to make sure that we don't do more harm than good.

Councilor Dwyer stated she would like to add to the list the prohibition of ground floor residential uses and the real nature of the exceptions.

Motion passed.

Councilor Lown moved to postpone second reading of the substituted ordinance to the May 16, 2016 City Council meeting. Seconded by Councilor Spear and voted.

- B. Third and final reading of Ordinance amending Chapter 11, Section II, Section 11.216:B – Sewer User Charges/Records/Hook-up to Allow an Approved Irrigation System and a Water Meter at a Monthly Service Fee in addition to the Consumption Charge, said Fee to be Determined by the City Council during its Annual Budget Process

Councilor Spear moved to pass third and final reading of the proposed ordinance as presented, seconded by Councilor Lown.

Councilor Denton stated at some point he would like to revisit this but feels it is a good starting point.

Councilor Dwyer asked what we do about the people with existing meters who do not meet the requirements of the new ordinance.

City Manager Bohenko stated letters will go out to these homeowners who will be grandfathered until the houses transfer ownership.

Motion passed.

- C. Adoption of Resolution Authorizing the Issuance of Refunding Bonds of up to Thirteen Million (\$13,000,000.00) Dollars to Refinance certain Outstanding Bonds of the City so as to Reduce Interests Costs, and to Pay all Costs Incidental and related thereto

Councilor Spear moved to adopt the Resolution Authorizing the Issuance of Refunding Bonds of up to Thirteen Million (\$13,000,000) Dollars to Refinance Certain Outstanding Bonds of the City so as to reduce interest costs, and to pay all costs incidental and related thereto. Seconded by Councilor Dwyer and passed on a 9-0 roll call vote.

X. CONSENT AGENDA

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Pearson and voted.

- A. Request for License to install Projecting Sign:
- Christi Watson owner of Fringe Hair Studio, LLC, for property located at 3 Market Square, 2nd Floor (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

Planning Director's Stipulations:

- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost 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 Josh Pierce, Seacoast Area Bicycle Riders, requesting permission to hold the Bike/Walk to Work Day in the Seacoast on Friday, May 20, 2016 (***Anticipated action – move to refer to the City Manager with power***)

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Steve Leonard, Portsmouth Girls Softball Association President, requesting permission to hang a banner on the backstop at the Pease 1 field

Councilor Lown moved to refer to the City Manager with power, seconded by Councilor Spear.

Councilor Dwyer asked for clarification that there is not a new field being built. City Manager Bohenko stated no, it is a renovation of one of the 2 existing fields.

Motion passed.

- B. Letter from Jeffrey Keefe, Portsmouth Athenaeum, requesting permission to hold parade on one of the following dates: Saturday, June 24th, Saturday, September 16th, Saturday, October 7th or Saturday, October 14th, all in 2017 in the downtown at 11:00 a.m.

Councilor Cyr moved to refer to the City Manager with power. Seconded by Councilor Pearson and voted.

- C. Letter from Michael Dolan requesting to set up a small table in the downtown area for street performing

City Manager Bohenko explained that Mr. Dolan would prefer to be in the downtown area, but he feels that the Vaughan Mall area, closer to Congress Street, will be a more suitable location and will work with Mr. Dolan accordingly.

Councilor Spear moved to refer to the City Manager with power. Seconded by Councilor Lown and voted.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request for First Reading Re: Proposed Zoning Amendment - Transportation Corridor District

Councilor Spear moved to authorize the City Manager to bring back the proposed Ordinance for first reading at the May 16, 2016 City Council meeting, as recommended by the Planning Board. Seconded by Councilor Dwyer and voted.

2. Report Back Re: Request to Rezone Land at 678 Maplewood Avenue and an adjacent parcel (Assessors Map 220, Lots 89 and 90) from Single Residence B (SRB) to Business (B)

City Manager Bohenko clarified that this is not an ordinance and therefore it is not a first reading and there is not going to be a second reading.

Planning Director Taintor reviewed the history of the request to rezone land at 678 Maplewood Avenue and an adjacent parcel from Single Residence B (SRB) to Business (B). He stated at its meeting on March 14, 2016, the City Council voted to refer to the Planning Board a letter from Joseph R. Russell, attorney for Maplewood Ridge LLC, requesting that two parcels on Maplewood Avenue be rezoned from Single Residence B (SRB) to the Business (B) district. The stated purpose of the requested rezoning is to allow the development of the combined parcels for "affordable housing in the form of town houses and apartments, including micro-units and designated (deed restricted) workforce housing units." These parcels were the subject of similar requests that were considered by the Planning Board in 2012 and 2013, as well as an application for several zoning variances that was considered by the Zoning Board of Adjustment in February 2016. In all three cases, these prior requests for rezoning or variances were denied.

He continued the Planning Board considered this request at a meeting on March 17, 2016, and held a public hearing on the request at its meeting on April 21, 2016. Much of the discussion at the public hearing focused on the uncertainty of the development potential under the proposed zoning. For example, the Business district does not currently permit townhouses, and only permits multifamily residences as part of a mixed-use development in which business uses constitute at least one-third of the total floor area. Therefore, even if the parcels were rezoned as requested, the owner would need to apply to the ZBA for variances in order to achieve the stated purpose. Furthermore, since contract zoning is not allowed in New Hampshire, the City cannot ensure that the site will be developed as described in the request letter. Instead, a rezoning would open the parcels up to the full range of uses allowed in the Business district. Thus, while the Board continues to support the

objective of providing additional affordable housing in the City, there would be no guarantee that a rezoning to Business would achieve that objective. In addition, concern was expressed about the residential density allowable under the proposed Business zoning. Alternative rezoning approaches that would permit a lower density of multifamily residential development might be more acceptable. Following extensive public comment at the April 21st public hearing, and based on the above considerations, the Board voted unanimously to recommend that the City Council not rezone the parcels as requested.

Councilor Dwyer stated this was a good summary and feels that people were confused and feels that had we had the bandwidth the last time we were rezoning, we could have looked at rezoning this as well. She stated there has been a question of conflict of interest but feels it would be appropriate for the Planning Board to look at it again without considering a proposed project but to look at the parcel. She stated we may need zoning that we don't have yet and look at what restrictions are appropriate.

Councilor Perkins stated she is the Council representative to the Planning Board and agrees that there was interest in this by the Planning Board but it was the business aspect that was important to the determination of the vote and feels that this motion is appropriate.

Councilor Dwyer moved to accept the Planning Board recommendation to not rezone the parcels as business and to refer back to the Planning Board to examine other options for rezoning, seconded by Councilor Spear.

Councilor Lown stated for 30 years we have been talking about affordable housing and we have been asking developers to come forward with workforce housing, micro units, etc. and this developer should be commended for coming forward with this. He stated he is in favor of sending this back to Planning Board and understands their concerns, but they are willing to sign and record a restrictive covenant that would be an enforceable restriction subject to gaining a variance. He concluded that every time this comes up, people say they are in favor of it, but not in their neighborhood.

Councilor Spear asked why they went for a business and not residential zone.

Planning Director Taintor said that Business was the zoning next to them and if they asked for something different it may appear as spot zoning.

Councilor Spear continued that from a process standpoint, can't the Planning Board on its own initiative decide to make it a different zone without coming back to Council.

Planning Director Taintor stated it was briefly discussed, but due to timeliness to report back to Council, they did not.

Councilor Pearson stated she supports finding a creative solution and lives in a neighborhood with mixed uses and a lot of the fears that have been articulated aren't always the case. She continued that businesses aren't always gas stations, but can be small businesses that enhance the neighborhood.

Councilor Cyr stated he lives on Maplewood Avenue, but on the other side of 95 and not near this area and has received many comments regarding this proposal. He stated people are concerned with traffic density and also feels there is a fear of the unknown, especially with business. He stated that we have to start recognizing that we can't always get our own way but also need to make sure that neighbors have their say and are heard and find a happy medium.

Assistant Mayor Splaine stated he lives in an area where there are 42 very affordable units which are next to businesses and he is very comfortable there. He continued that there is a need for affordable housing throughout the city and feels there has to be a way to collaborate with developers to make something work. He stated we should learn more of neighborhood concerns as this will be affecting every part of the city and now is the opportunity to make it right. He asked when this would come back before the Council.

Planning Director Taintor stated that the Planning Board meets next on May 19th and then the Planning Board can schedule a public hearing for the June meeting and they can try to reach out in other ways as well. He stated it would probably not come back to the Council until July.

Assistant Mayor Splaine stated it would be good to find a consensus instead of being contentious.

Councilor Cyr stated that what he was hearing from the neighbors was that “they are doing this to us again” and feel that they have already fought this fight. He agrees that the tone needs to be changed.

Motion passed.

3. Outdoor Sidewalk Café Providing Alcohol Service – Birdseye Lounge, LLC

Councilor Cyr moved to authorize the City Manager to enter into an Area Service Agreement with Birdseye Lounge, LLC for Outdoor Alcohol Service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafés providing alcohol service, seconded by Councilor Spear.

Councilor Cyr asked if there is any allowance for outdoor music at these outdoor service locations.

City Attorney Sullivan stated that if the music was heard off-property, it would be in violation of the ordinance.

Motion passed.

4. Traffic Signal Easement Re: 361 Islington Street

Councilor Cyr moved to authorize the City Manager to accept a traffic signal easement from Lucky Thirteen Properties LLC over property located at 361 Islington Street. Seconded by Councilor Lown and voted.

5. Proposed Deer Street Garage Building Committee

City Manager Bohenko stated he is recommending Mayor and City Council appoint a five member Building Committee for the proposed garage at 165 Deer Street. He stated he would like to suggest that the membership be (2) City Council Members, (1) Economic Development Commission Member, and (2) members from the public. He stated this would be similar to the Library Building Committee and would be advisory only. He stated it is not a necessity but it is good to have.

Councilor Dwyer clarified that there is no statutory authority and would be advisory only.

Assistant Mayor Splaine stated he agrees that this is a good idea but wants to clarify the difference between advisory and making decisions, stating that the City Council makes the decisions.

City Manager Bohenko stated that under the Charter, once the project is approved, it is under his authority anyway. He stated that this committee will only be advisory but he does take it seriously as it is another viewpoint.

Assistant Mayor Splaine moved to allow Mayor Blalock to appoint members to the Deer Street Garage Building Committee. Seconded by Councilor Cyr and voted.

6. Request for Disposal of 1987 Fire Engine

Fire Chief Achilles stated that the Fire Engine was purchased 30 years ago for \$150,000 and has been a front line vehicle up until last year. He stated it was kept in reserve but they are ready to go out to bid on it and estimates approximately \$10,000 - \$20,000.00.

Councilor Lown moved to authorize the City Manager to dispose of the 1987 Fire Engine either through the sealed bid process or through GovDeals an online auctions site, in which the equipment is sold to the highest bidder. Seconded by Councilor Dwyer and voted.

City Manager Bohenko then discussed the Fire Boat which was recently approved to be transferred to the Town of Gilford. He continued that the City has been contacted from Selectmen in New Castle concerned with that transfer so he has held off to this point. He continued that the boat needs repairs and improvements, but he would entertain an agreement of at least 5 years with any interested communities, for \$10,000 each for repairs and upkeep. He stated if that happens, he will come back to the Council with legal documents.

Assistant Mayor Splaine stated he is pleased that this is being reconsidered as he was opposed to this at the time. He then asked if we have been working with Pat Ford regarding her concerns with the Isles of Shoals.

Chief Achilles stated yes, he has reached out to the Town of Rye Fire Chief as the Isles of Shoals is located in Rye. He stated that Dartmouth has a med-flight option that can get out there faster than we can as well as the Coast Guard is available to them. He stated we originally reached out to other communities to regionalize the boat but no one was interested.

Councilor Pearson stated that another vessel was discussed and asked if that would be available or is it too small for that use. Chief Achilles stated it would be too small and is meant to limited river responses in Portsmouth.

7. Water Line Easement – Nimble Hill Road, Newington

Councilor Spear moved to authorize the City Manager to accept a waterline easement from Dennett Farm LLC to serve the minor subdivision off of Nimble Hill Road. Seconded by Councilor Pearson and voted.

Informational items

1. Events Listing
2. Household Hazardous Waste Day
3. Update Re: C-PACE

City Manager Bohenko stated there is a Budget Work Session on Saturday, May 7, 2016 at the Levenson Room at the Library from 8:00 a.m. – 2:30 p.m. as well as the Budget Public Hearing on May 11, 2016 beginning at 6:30 p.m. in the City Council Chambers.

Councilor Spear asked about the African Burying Ground connection to Vaughan Mall and is there going to be an easement needed from TD Bank. City Manager Bohenko stated that Assistant City Manager Moore is working with representatives from TD Bank and the condominiums on this.

Councilor Dwyer stated there is a sketched plan and TD Bank is being very cooperative and it is planned to come up to the Music Hall plan recently presented.

Mayor Blalock stated May 23rd is the one year anniversary of the African Burying Ground and he will be laying a wreath at 9:00 a.m. at the memorial. He stated he will also be appointing a stewardship committee for the African Burying Ground for the term of this Council.

B. MAYOR BLALOCK

1. Resignation – David Witham of the Zoning Board of Appeal

Mayor Blalock stated Mr. Witham has been a real asset to the City and has served on the ZBA for 16 years, many as Chairman. He stated he ran the meetings well which was difficult under sometimes controversial issues.

Councilor Lown stated that Mr. Witham is an unsung hero and we were lucky to have him. He stated we will accept the resignation with regret.

Councilor Spear moved to accept the resignation of David Witham from the Zoning Board of Adjustment (effective July 1, 2016) with thanks and regret. Seconded by Councilor Pearson and voted.

C. COUNCILOR PERKINS

1. Housing Committee Overview


Councilor Perkins stated she was appointed by Mayor Blalock to Chair the Housing Committee to build upon work done by staff and past efforts, but not reinvent the wheel. She stated they will be working with neighborhoods to get their voices heard and to proactively look at the city as a whole.

Mayor Blalock commended Councilor Perkins on the memorandum as it was well-written and set clear objectives.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

Councilor Lown moved to adjourn at 8:55 p.m. Seconded and passed unanimously.



Valerie A. French
Deputy City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 16, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH for the purpose of discontinuing any rights of the City or the public in the following two parcels of property:

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size.

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk

LEGAL NOTICE

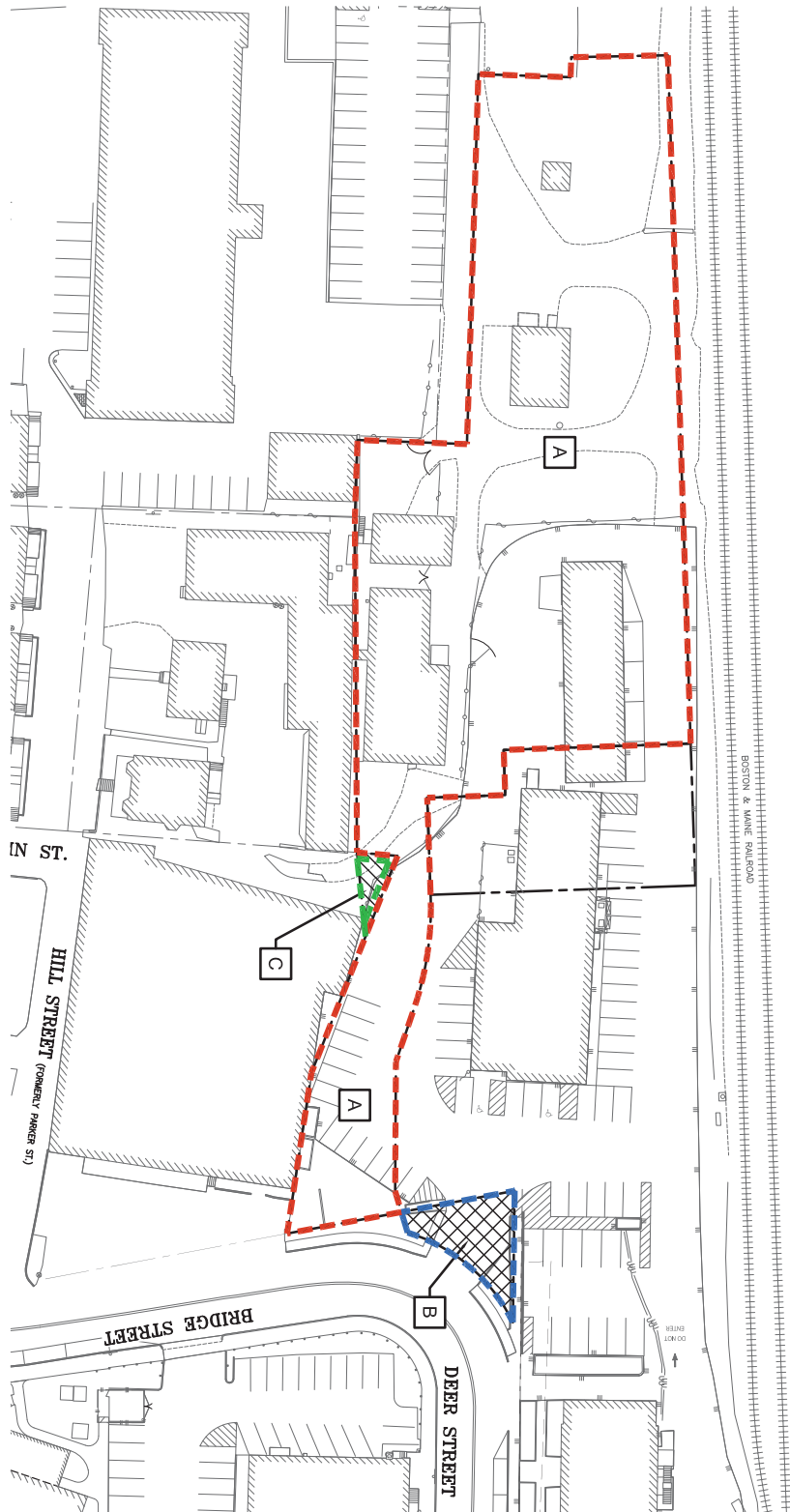
NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 16, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH for the purpose of discontinuing any rights of the City or the public in the following two parcels of property:

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size.

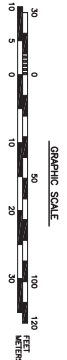
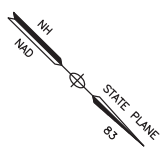
Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk

PA00102923



COLOR KEY

- A LAND TO BE CONVERTED FROM DEER STREET ASSOCIATES TO THE CITY OF PORTSMOUTH
- B LAND TO BE CONVERTED FROM DEER STREET ASSOCIATES TO THE CITY OF PORTSMOUTH
- C LAND TO BE CONVERTED FROM GRAND TRUST TO THE CITY OF PORTSMOUTH



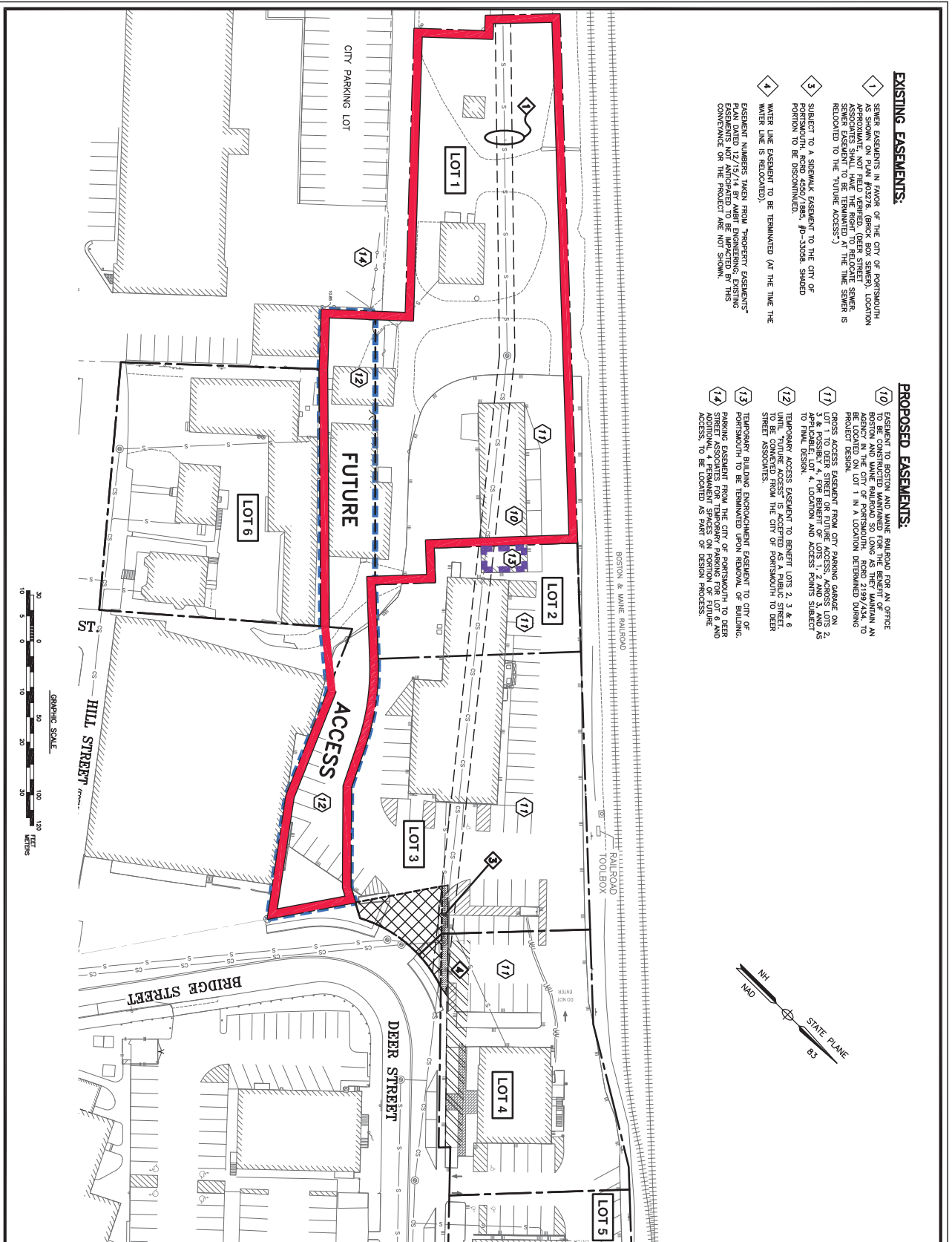
SCALE: 1" = 30'
 JULY 2015
DISPOSITION PLAN
LAND OWNERSHIP
C1

PROPOSED PARKING GARAGE PROJECT DEER & BRIDGE STREETS PORTSMOUTH, N.H.

| NO. | DESCRIPTION | DATE |
|-----|---------------------------------------|---------|
| 3 | REVISE LABELING, REMOVE SIDEWALK ESM. | 9/15/15 |
| 2 | REVISE LABELING | 8/6/15 |
| 1 | ISSUED FOR APPROVAL | 7/31/15 |
| 0 | ISSUED FOR COMMENT | 7/29/15 |
| | NO. DESCRIPTION | DATE |

NOTES:
 1) THE PURPOSE OF THIS PLAN IS TO SHOW LAND OWNERSHIP AT THE PORTSMOUTH PARKING GARAGE PROJECT.

AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 200 Galloway Road - Unit 3
 Portsmouth, NH 03801-7114
 Tel: (603) 430-2200
 Fax: (603) 438-2315

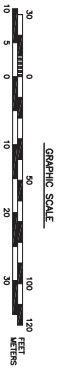
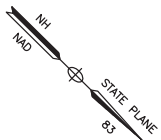


EXISTING EASEMENTS:

- 1 SEWER EASEMENTS IN FAVOR OF THE CITY OF PORTSMOUTH AS SHOWN ON PLAN #03276 (BRICK BOX SEWER). LOCATION ASSOCIATES SHALL HAVE THE RIGHT TO RELOCATE SEWER, SEWER EASEMENT TO BE TERMINATED AT THE TIME SEWER IS RELOCATED TO THE FUTURE ACCESS.)
- 2 SUBJECT TO A SEWERAGE EASEMENT TO THE CITY OF PORTSMOUTH (SEE PLAN #03276). DE-30888, SHOWN PERFORM TO BE DISCONTINUED.
- 3 WATER LINE EASEMENT TO BE TERMINATED AT THE TIME THE WATER LINE IS RELOCATED.
- 4 EASEMENT NUMBERS TAKEN FROM "PROPERTY EASEMENTS" PLAN DATED 12/15/14 BY ARBIT ENGINEERING. EXISTING EASEMENTS NOT SHOWN TO BE IMPACTED BY THIS PROJECT. EASEMENT NUMBERS NOT SHOWN ARE NOT SHOWN. EASEMENTS ON THE PROPERTY ARE NOT SHOWN.

PROPOSED EASEMENTS:

- 10 EASEMENT TO BOSTON AND MAINE RAILROAD FOR AN OFFICE TO BE CONSTRUCTED MAINTAINED FOR THE BENEFIT OF AN AGENCY IN THE CITY OF PORTSMOUTH, ROAD 2197/434, TO BE LOCATED ON LOT 1 IN A LOCATION DETERMINED DURING PROJECT DESIGN.
- 11 GROSS ACCESS EASEMENT FROM CITY PARKING GARAGE ON LOT 2 TO LOT 1 FOR BENEFIT OF LOTS 1, 2 AND 3, AND AS TO BE DETERMINED BY THE CITY OF PORTSMOUTH.
- 12 TEMPORARY ACCESS EASEMENT TO BENEFIT LOTS 3, 4 & 6 UNTIL "TURNING" ACCESS IS ACCEPTED AS A PUBLIC STREET. STREET ASSOCIATES.
- 13 TEMPORARY BUILDING ENCROACHMENT EASEMENT TO CITY OF PORTSMOUTH TO BE TERMINATED UPON REMOVAL OF BUILDING. PARKING EASEMENT FROM THE CITY OF PORTSMOUTH TO DEER STREET. TEMPORARY EASEMENT TO BE TERMINATED UPON REMOVAL AND ACCESS TO BE LOCATED AS PART OF DESIGN PROCESS.
- 14 TEMPORARY ACCESS EASEMENT TO BENEFIT LOTS 3, 4 & 6 UNTIL "TURNING" ACCESS IS ACCEPTED AS A PUBLIC STREET. STREET ASSOCIATES.



PROPOSED PARKING GARAGE PROJECT DEER & BRIDGE STREETS PORTSMOUTH, N.H.

| NO. | REVISION | DESCRIPTION | DATE |
|-----|---------------------------|-------------|---------|
| 2 | REVISE EASEMENT NUMBERING | | 9/15/15 |
| 1 | ISSUED FOR APPROVAL | | 8/6/15 |
| 0 | ISSUED FOR COMMENT | | 7/29/15 |

SCALE: 1" = 30'

DISPOSITION PLAN
EASEMENTS

JULY 2015

C2

FB 265, PG 1

2271.01



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Galloway Road - Unit 3
Portsmouth, NH 03801-7114
Tel: (603) 430-2200
Fax: (603) 438-2315

NOTES:
1) THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED EASEMENTS AND ENCUMBRANCES AT THE PORTSMOUTH PARKING GARAGE PROJECT.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 16, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Proposed Ordinance amending Chapter 10 – Zoning Ordinance as follows:

- (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 5/2/16
- (2) Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled "Conforming Amendments to Zoning Ordinance" dated 5/2/2016
- (3) Amend the Zoning Map as set forth in the following maps dated May 2, 2016:
 - (a) Map 10.5A21A – Character Districts and Civic Districts;
 - (b) Map 10.5A21B – Building Height Standards;
 - (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot line Buildout & Uses
- (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled "Proposed Additional West End Zoning Changes" dated 5/2/2016 and as shown on the map titled "Additional West End Zoning Changes – Second Reading – May 2, 2016"

The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, May 16, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Proposed Ordinance amending Chapter 10 – Zoning Ordinance as follows:

- (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 5/2/16
- (2) Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled "Conforming Amendments to Zoning Ordinance" dated 5/2/2016
- (3) Amend the Zoning Map as set forth in the following maps dated May 2, 2016:
 - (a) Map 10.5A21A – Character Districts and Civic Districts;
 - (b) Map 10.5A21B – Building Height Standards;
 - (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot line Buildout & Uses
- (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled "Proposed Additional West End Zoning Changes" dated 5/2/2016 and as shown on the map titled "Additional West End Zoning Changes – Second Reading – May 2, 2016"

The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk

PL00116241

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance be amended as follows:

- (1) Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated 5/2/16.
- (2) Amend Articles 4, 5 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled “Conforming Amendments to Zoning Ordinance” dated 5/2/2016.
- (3) Amend the Zoning Map as set forth in the following maps dated May 2, 2016:
 - (a) Map 10.5A21A – Character Districts and Civic Districts;
 - (b) Map 10.5A21B – Building Height Standards;
 - (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses.
- (4) Amend the Zoning Map by changing the zoning designation of 52 parcels as set forth in the document titled “Proposed Additional West End Zoning Changes” dated 5/2/2016 and as shown on the map titled “Additional West End Zoning Changes – Second Reading – May 2, 2016”.

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:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

Article 5A Character-Based Zoning

- Section 10.5A10** General
- Section 10.5A20** Regulating Plan
- Section 10.5A30** Character District Use Standards
- Section 10.5A40** Character District Development Standards
- Section 10.5A50** Civic Districts
- Section 10.5A60** Definitions

Section 10.5A10 General

10.5A11 Purpose and Intent

The purpose of Article 5A is to encourage development that is compatible with the established character of its surroundings and consistent with the City's goals for the preservation or enhancement of the area. This is accomplished by providing a range of standards for the elements of development and buildings that define a place.

10.5A12 Applicability

- 10.5A12.10 Article 5A shall apply to the Character districts and Civic districts as shown on the Regulating Plan.
- 10.5A12.20 Municipal districts are shown on the Regulating Plan for reference but are governed by other sections of the Zoning Ordinance (specifically, Sections 10.460 and 10.560) and not by Article 5A.

10.5A13 Compliance with Regulating Plan

- 10.5A13.10 In the Character districts and Civic districts, all lots, buildings, structures, uses, and development shall comply with the requirements of Article 5A, as well as with all other provisions of this Zoning Ordinance that are not superseded by Article 5A.
- 10.5A13.20 No development, subdivision, re-subdivision or construction of or on any building, lot or parcel of land shall occur except pursuant to the Regulating Plan and in compliance with all standards and requirements for the district.

10.5A14 Relationship to Other Provisions of the Zoning Ordinance

- 10.5A14.10 The provisions of Article 5A shall take precedence over all other provisions of the Zoning Ordinance that are in conflict with Article 5A.
- 10.5A14.20 All provisions of the Zoning Ordinance that are not specifically modified or superseded by Article 5A, or that are not in conflict with Article 5A, shall apply to lots, buildings and uses in the Character districts and Civic districts.

10.5A15 Relationship to Other Regulations, Codes and Ordinances

- 10.5A15.10 Any proposed subdivision of land shall comply with the Subdivision Rules and Regulations, in addition to the requirements of Article 5A.
- 10.5A15.20 Any development that requires Site Plan Review under the Site Plan Review Regulations shall comply with such Regulations, in addition to the requirements of Article 5A.
- 10.5A15.30 The provisions of Article 5A do not modify or supersede any provision of the Building Code, other City ordinances or regulations, or State laws relating to the development of land.

10.5A16 Figures

- 10.5A16.10 The standards and definitions in the following figures are an integral part of Article 5A:
 - Figure 10.5A41.10A – Development Standards: Character District 4– Limited (CD4-L1/CD4-L2)
 - Figure 10.5A41.10B – Development Standards: Character District 4– West End (CD4-W)
 - Figure 10.5A41.10C – Development Standards: Character District 4 (CD4)
 - Figure 10.5A41.10D – Development Standards: Character District 5 (CD5)
 - Figure 10.5A43.10 – Façade Types
 - Figure 10.5A43.60 – Building Types
 - Figure 10.5A46.10 – Community Spaces
- 10.5A16.20 The diagrams, photographs and illustrations contained in the above figures are provided only to provide reference to certain regulating elements and indicate general character within the various districts and shall have regulatory force and effect only to that extent.

10.5A17 Definitions

Terms used throughout Article 5A may be defined in the figures (Façade Types, Building Types, and Community Spaces), in Section 10.5A60, in Article 15 or elsewhere in the Zoning Ordinance. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in Article 5A, those in Article 15, other sections of the Zoning Ordinance, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of Article 5A shall take precedence unless the context clearly indicates otherwise.

Section 10.5A20 Regulating Plan

10.5A21 General

10.5A21.10 Contents of Regulating Plan

The Regulating Plan is the Zoning Map for the Character districts and Civic districts. The Regulating Plan consists of the following maps:

- Map 10.5A21A – Character Districts and Civic Districts
- Map 10.5A21B – Building Height Standards
- Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout, and Uses

10.5A21.20 Building Height Standards

10.5A21.21 Assignments for specific building heights require a building to have no more than the designated maximum number of stories or the maximum height in feet (whichever is lower) and no less than the designated minimum number of stories.

10.5A21.22 When a lot is assigned to more than one building height standard the lot shall be apportioned as follows:

- (a) A building height standard designated along the front lot line or street shall apply to the portion of the lot that is 50 feet or less from such lot line or street.
- (b) A building height standard designated along a water body shall apply to the portion of the lot that is 100 feet or less from the mean high water line.
- (c) More than 50 feet from a front lot line or street and more than 100 feet from a water body, the building height may increase to the highest building height standard designated for the lot.
- (d) Where a lot has less depth from the front lot line, street or water body than the required minimum distances stated above, the lowest

building height standard for the lot shall be applied to the required linear distance from the lot line, street or water body.

10.5A21.30 Special Requirements for Façade Types, Front Lot Line Buildout, and Uses

The following standards shall apply when so designated by the Regulating Plan:

- (a) Specific façade type requirements apply to designated properties at the sidewalk level. Where a permitted building type conflicts with a required façade type, the façade type shall supersede.
- (b) For waterfront lots on Ceres Street, the maximum front lot line buildout shall be 50%, and buildings shall have a wood-sided appearance.
- (c) Specific use requirements apply to designated properties along the waterfront area (see Sections 10.5A34-35).

10.5A22 Regulating Plan Amendment

10.5A22.10 General

The Regulating Plan may be amended in accordance with the provisions of Section 10.150 (Changes and Amendments), subject to the further provisions of Section 10.5A22.20.

10.5A22.20 Application Requirements

An application for a Regulating Plan amendment initiated by or on behalf of the owner of property shall be accompanied by a site plan for such property that complies with the requirements for a request for Design Review under the Site Plan Review Regulations.

Section 10.5A30 Character District Use Standards

- 10.5A31 Buildings, structures and land within a Character district shall comply with the use regulations set forth for the applicable district in Section 10.440, except as specified below:
- 10.5A32 In Character District 4–West End (CD4-W), residential uses are not permitted on the ground floor except for Rowhouse units.
- 10.5A33 A lot within the Downtown Overlay District shall comply with the requirements of Section 10.642 Ground Floor Uses.
- 10.5A34 In addition to the uses permitted in the underlying Character districts, lots in the Waterfront Use Overlay as shown on Map 10.5A21C shall also permit uses 9.60, 12.20, 12.22 and 12.40 as set forth in Section 10.440 (Table of Uses).

- 10.5A35 In addition to the uses permitted in Character District 4, waterfront lots on Ceres Street as shown on Map 10.5A21C shall also permit the uses permitted in the Waterfront Industrial district as set forth in Section 10.440.

Section 10.5A40 Character District Development Standards

10.5A41 Development Standards

Development, structures and lots within Character districts shall comply with the applicable general description and standards set forth in Figures 10.5A41.10A-D (Development Standards) and elsewhere in Article 5A.

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**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**

These districts consist of medium density areas with a mix of medium to large houses. Upper floor uses are almost entirely residential. Ground floors include some commercial office uses; areas zoned CD4-L2 also allow some restaurant and retail uses on the ground floor. There are shallow front yards and shallow to medium side yards, with variable private landscaping, and on-site accessory parking. Streets have sidewalks and street trees, and define medium to large blocks.



**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**



BUILDING PLACEMENT – PRINCIPAL BUILDING

| | | |
|------------------------------|---|---|
| Maximum principal front yard | 15 ft | A |
| Maximum secondary front yard | 12 ft | B |
| Side yard | 5 ft min. to 20 ft max. | C |
| Minimum rear yard | Greater of 5 ft from rear lot line or 10 ft from center line of alley | D |
| Front lot line buildout | 60% min. to 80% max. | E |

BUILDING AND LOT OCCUPATION

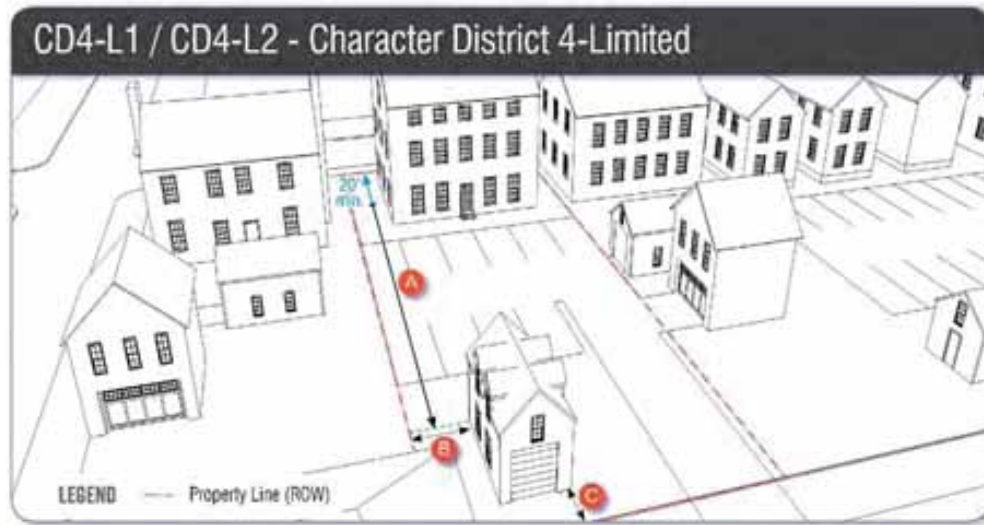
| | | |
|----------------------------------|--------------------------------|---|
| Maximum building block length | 80 ft | E |
| Maximum façade modulation length | 50 ft (see Section 10.5A43.20) | |
| Maximum entrance spacing | NR | |
| Maximum building coverage | 60% | |
| Maximum building footprint | 2,500 sf | |
| Minimum lot area | 3,000 sf | |

| | |
|------------------------------------|----------|
| Minimum lot area per dwelling unit | 3,000 sf |
| Minimum open space | 25% |
| Maximum ground floor GFA per use | NR |

BUILDING FORM – PRINCIPAL BUILDING

| | | |
|---|--|---|
| Building height | See Map 10.5A21.B & Section 10.5A43.30 | F |
| Maximum finished floor surface of ground floor above sidewalk grade | 36" | |
| Minimum ground story height | 11 ft | |
| Minimum upper story height | 10 ft | |
| Façade glazing: | | |
| Shopfront façade | 70% min. | |
| Other façade types | 20% min. to 40% max. | |
| Roof type | flat, gable, hip, gambrel, mansard | |
| Roof pitch, if any | | |
| Gable | 6:12 min. to 12:12 max | |
| Hip | 3:12 min. | |
| Mansard/gambrel | 6:12 min. to 30:12 max. | |

**FIGURE 10.5A41.10A DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—LIMITED (CD4-L1/CD4-L2)**



BUILDING PLACEMENT – OUTBUILDING

| | | |
|--------------------|---|---|
| Minimum front yard | 20 ft behind a façade of a principal building | A |
| Minimum side yard | 3 ft | B |
| Minimum rear yard | 3 ft | C |

BUILDING TYPES

See Figure 10.5A43.60 for building type definitions

| | |
|---------------------------|--|
| House | permitted* |
| Duplex | permitted* |
| Rowhouse | permitted* |
| Apartment building | permitted* |
| Live/work building | permitted** |
| Small commercial building | CD4-L1: not permitted CD4-L2: permitted |
| Large commercial building | not permitted |

*Not permitted in the Downtown Overlay District
 **Residential uses are not permitted on the ground floor in the Downtown Overlay District

BUILDING & LOT USE

See Sections 10.5A30 and 10.440

FAÇADE TYPES

See Figure 10.5A43.10 for façade type definitions
 Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

| | |
|----------------|---|
| Porch | permitted |
| Stoop | permitted* |
| Step | only permitted where indicated on Map 10.5A21C |
| Shopfront | CD4-L1: only permitted where indicated on Map 10.5A21C CD4-L2: permitted |
| Officefront | only permitted where indicated on Map 10.5A21C |
| Forecourt | permitted* |
| Recessed-entry | permitted |

*Not permitted in the Downtown Overlay District

PARKING

See Section 10.5A44.30

COMMUNITY SPACE

See Section 10.5A46

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**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—WEST END (CD4-W)**

This district consists of a medium-to-high density area with a mix of building types and residential, retail, and other commercial uses. There are shallow or no front yards and medium to no side yards, with variable private landscaping and on-site accessory parking. Streets have sidewalks and street trees or other pedestrian amenities, and define medium blocks.



**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—WEST END (CD4-W)**



BUILDING PLACEMENT – PRINCIPAL BUILDING*

| | | |
|---------------------------------|---|----------|
| Maximum principal front yard | 10 ft | A |
| Maximum secondary front yard | 15 ft | B |
| Side yard | NR | C |
| Minimum rear yard | Greater of 5 ft from rear lot line or 10 ft from center line of alley | D |
| Minimum front lot line buildout | 50% | |

* Except for items listed under Section 10.5A42.12

BUILDING AND LOT OCCUPATION

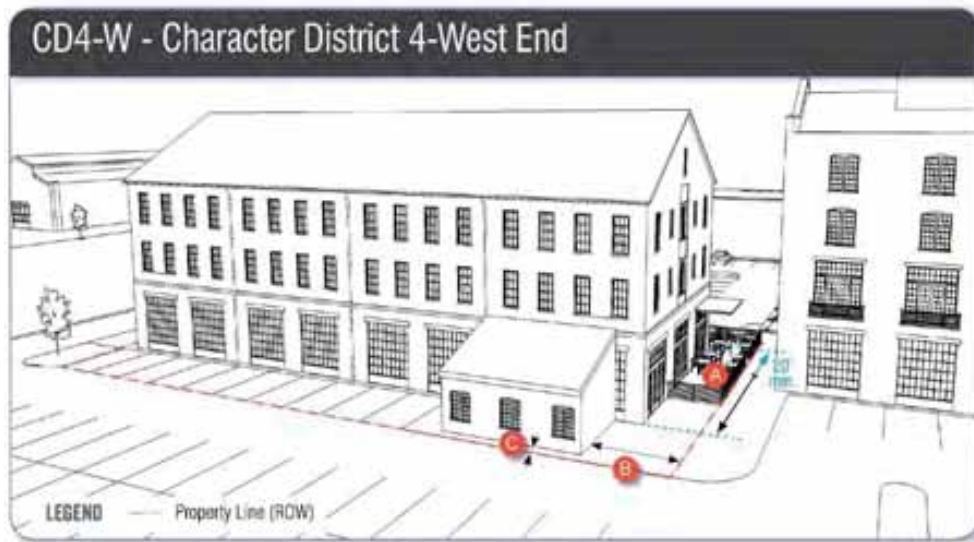
| | | |
|----------------------------------|---|----------|
| Maximum building block length | 200 ft | E |
| Maximum façade modulation length | 80 ft (see Section 10.5A43.20) | |
| Maximum entrance spacing | 50 ft | |
| Maximum building coverage | 60% | |
| Maximum building footprint | 15,000 sf (or as allowed by Section 10.5A43.40) | |

| | |
|------------------------------------|-----------|
| Minimum lot area | 5,000 sf |
| Minimum lot area per dwelling unit | 2,500 sf |
| Minimum open space | 15% |
| Maximum ground floor GFA per use | 15,000 sf |

BUILDING FORM – PRINCIPAL BUILDING

| | | |
|---|--|----------|
| Building height | See Map 10.5A21.B & Section 10.5A43.30 | F |
| Maximum finished floor surface of ground floor above sidewalk grade | 36" | |
| Minimum ground story height | 12 ft | |
| Minimum upper story height | 10 ft | |
| Façade glazing: Shopfront façade Other façade types | 70% min. 20% min. to 50% max. | |
| Roof type | flat, gable, hip, gambrel, mansard | |
| Roof pitch, if any | | |
| Gable | 6:12 min. to 12:12 max | |
| Hip | 3:12 min. | |
| Mansard/gambrel | 6:12 min. to 30:12 max. | |

**FIGURE 10.5A41.10B DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4—WEST END (CD4-W)**



BUILDING PLACEMENT – OUTBUILDING

| | | |
|--------------------|---|----------|
| Minimum front yard | 20 ft behind a façade of a principal building | A |
| Minimum side yard | 0 ft | B |
| Minimum rear yard | 3 ft | C |

BUILDING TYPES

See Figure 10.5A43.60 for building type definitions

| | |
|---------------------------|---------------|
| House | not permitted |
| Duplex | not permitted |
| Rowhouse | permitted |
| Apartment building | not permitted |
| Live/work building | permitted* |
| Small commercial building | permitted |
| Large commercial building | permitted |

*Residential uses are not permitted on the ground floor

BUILDING & LOT USE

| |
|---|
| See Sections 10.5A30 and 10.440 |
| Residential uses are not permitted on the ground floor (see Section 10.5A32) except for rowhouse units. |

FAÇADE TYPES

See Figure 10.5A43.10 for façade type definitions
Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

| | |
|----------------|---------------|
| Porch | not permitted |
| Stoop | permitted |
| Step | permitted |
| Shopfront | permitted |
| Officefront | permitted |
| Forecourt | not permitted |
| Recessed-entry | permitted |

PARKING

| |
|------------------------|
| See Section 10.5A44.30 |
|------------------------|

COMMUNITY SPACE

| |
|---------------------|
| See Section 10.5A46 |
|---------------------|

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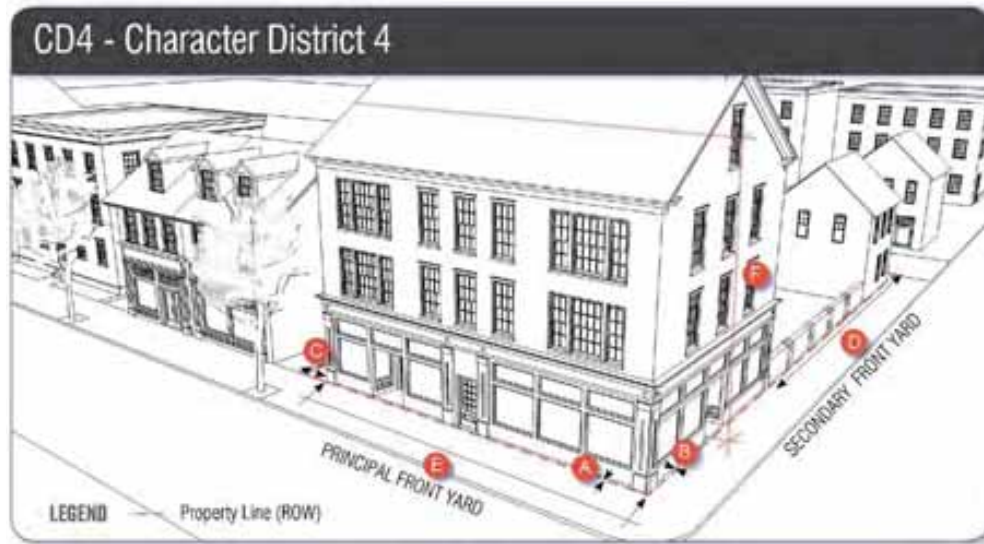
**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4 (CD4)**

This district consists of a medium-to-high density transitional area with a mix of building types and residential, retail, and other commercial uses. There are shallow or no front yards and medium to no side yards, with variable private landscaping. Streets have sidewalks and street trees or other pedestrian amenities, and define small to medium blocks.



FIGURE 10.5A41.10C DEVELOPMENT STANDARDS

Character District 4 (CD4)



BUILDING PLACEMENT – PRINCIPAL BUILDING*

| | | |
|------------------------------|---|---|
| Maximum principal front yard | 10 ft | A |
| Maximum secondary front yard | 15 ft | B |
| Side yard | NR | C |
| Minimum rear yard | Greater of 5 ft from rear lot line or 10 ft from center line of alley | D |
| Front lot line buildout | | |
| On Ceres Street | 50% max. (See Map 10.5A21C) | |
| Everywhere else | 50% min. | |

* Except for items listed under Section 10.5A42.12

BUILDING AND LOT OCCUPATION

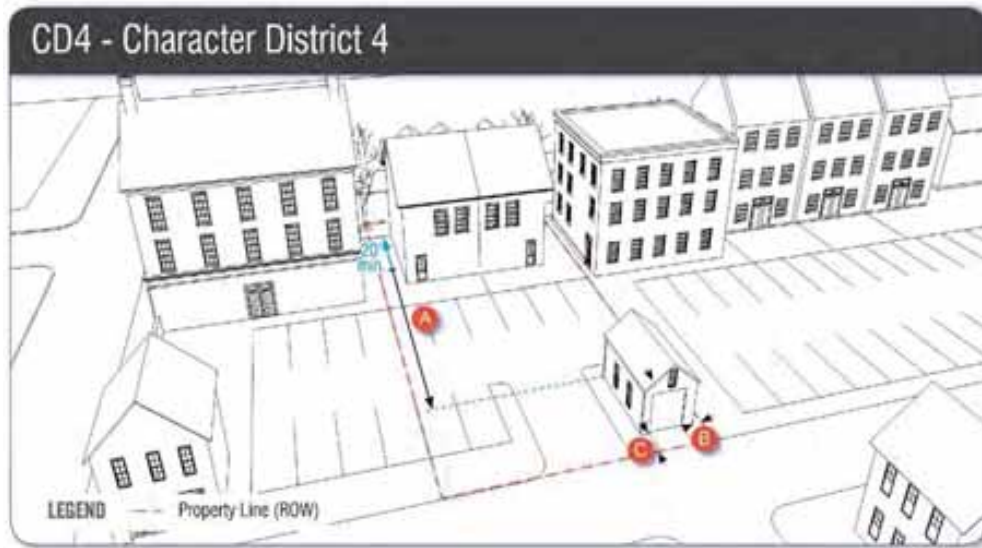
| | | |
|----------------------------------|---|---|
| Maximum building block length | 200 ft | E |
| Maximum façade modulation length | 80 ft (see Section 10.5A43.20) | |
| Maximum entrance spacing | 50 ft | |
| Maximum building coverage | 90% | |
| Maximum building footprint | 15,000 sf (or as allowed by Section 10.5A43.40) | |

| | |
|------------------------------------|-----------|
| Minimum lot area | NR |
| Minimum lot area per dwelling unit | NR |
| Minimum open space | 10% |
| Maximum ground floor GFA per use | 15,000 sf |

BUILDING FORM – PRINCIPAL BUILDING

| | | |
|---|--|---|
| Building height | See Map 10.5A21.B & Section 10.5A43.30 | F |
| Maximum finished floor surface of ground floor above sidewalk grade | 36" | |
| Minimum ground story height | 12 ft | |
| Minimum upper story height | 10 ft | |
| Façade glazing: | | |
| Shopfront façade | 70% min. | |
| Other façade types | 20% min. to 50% max. | |
| Roof type | flat, gable, hip, gambrel, mansard | |
| Roof pitch, if any | | |
| Gable | 6:12 min. to 12:12 max | |
| Hip | 3:12 min. | |
| Mansard/gambrel | 6:12 min. to 30:12 max. | |

**FIGURE 10.5A41.10C DEVELOPMENT STANDARDS
CHARACTER DISTRICT 4 (CD4)**



BUILDING PLACEMENT – OUTBUILDING

| | | |
|--------------------|---|---|
| Minimum front yard | 20 ft behind a façade of a principal building | A |
| Minimum side yard | 0 ft | B |
| Minimum rear yard | 3 ft | C |

BUILDING TYPES

| | |
|---|---------------|
| See Figure 10.5A43.60 for building type definitions | |
| House | not permitted |
| Duplex | not permitted |
| Rowhouse | permitted* |
| Apartment building | permitted* |
| Live/work building | permitted** |
| Small commercial building | permitted |
| Large commercial building | permitted |

*Not permitted in the Downtown Overlay District
 **Residential uses are not permitted on the ground floor in the Downtown Overlay District

BUILDING & LOT USE

| |
|---------------------------------|
| See Sections 10.5A30 and 10.440 |
|---------------------------------|

FAÇADE TYPES

| | |
|--|---------------|
| See Figure 10.5A43.10 for façade type definitions | |
| Except where required façade types are indicated on Map 10.5A21C, the below standards apply: | |
| Porch | not permitted |
| Stoop | permitted |
| Step | permitted |
| Shopfront | permitted |
| Officefront | permitted |
| Forecourt | not permitted |
| Recessed-entry | permitted |

PARKING

| |
|------------------------|
| See Section 10.5A44.30 |
|------------------------|

COMMUNITY SPACE

| |
|---------------------|
| See Section 10.5A46 |
|---------------------|

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**FIGURE 10.5A41.10D DEVELOPMENT STANDARDS
CHARACTER DISTRICT 5 (CD5)**

This district consists of a high density center with a mix of building types and residential, retail and other commercial uses. There are no front yards or side yards, and limited landscaping and public parking facilities. Streets have sidewalks and trees or other pedestrian amenities, and define small to medium blocks.



FIGURE 10.5A41.10D DEVELOPMENT STANDARDS

Character District 5 (CD5)



BUILDING PLACEMENT – PRINCIPAL BUILDING*

| | | |
|---------------------------------|---|---|
| Maximum principal front yard | 5 ft | A |
| Maximum secondary front yard | 5 ft | B |
| Side yard | NR | C |
| Minimum rear yard | Greater of 5 ft from rear lot line or 10 ft from center line of alley | D |
| Minimum front lot line buildout | 80% | |

* Except for items listed under Section 10.5A42.12

BUILDING AND LOT OCCUPATION

| | | |
|----------------------------------|---|---|
| Maximum building block length | 225 ft | E |
| Maximum façade modulation length | 100 ft (see Section 10.5A43.20) | |
| Maximum entrance spacing | 50 ft | |
| Maximum building coverage | 95% | |
| Maximum building footprint | 20,000 sf (or as allowed by Section 10.5A43.40) | |

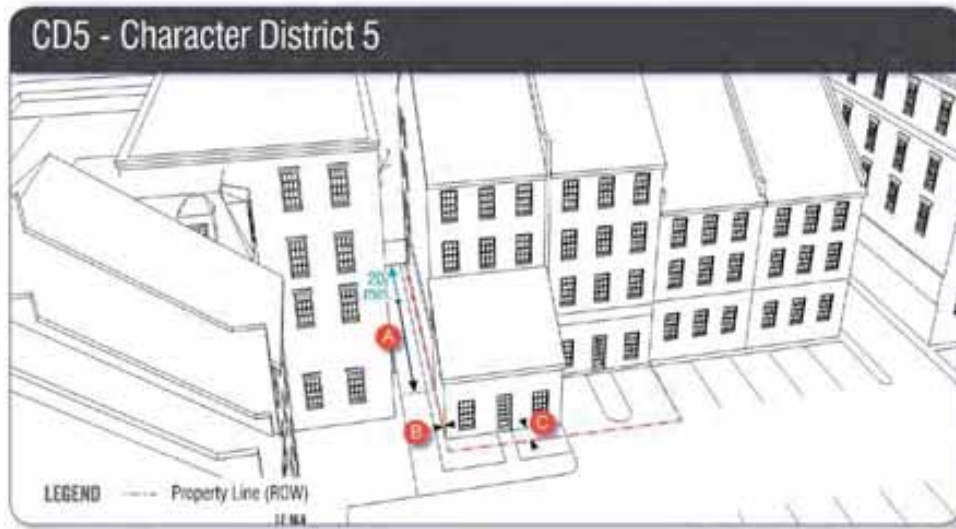
| | |
|------------------------------------|-----------|
| Minimum lot area | NR |
| Minimum lot area per dwelling unit | NR |
| Minimum open space | 5% |
| Maximum ground floor GFA per use | 15,000 sf |

BUILDING FORM – PRINCIPAL BUILDING

| | | |
|---|--|---|
| Building height | See Map 10.5A21.B & Section 10.5A43.30 | F |
| Maximum finished floor surface of ground floor above sidewalk grade | 36" | |
| Minimum ground story height | 12 ft | |
| Minimum upper story height | 10 ft | |
| Façade glazing: | | |
| Shopfront façade | 70% min. | |
| Other façade types | 20% min. to 50% max. | |
| Roof type | flat, gable, hip, gambrel, mansard | |
| Roof pitch, if any | | |
| Gable | 6:12 min. to 12:12 max | |
| Hip | 3:12 min. | |
| Mansard/gambrel | 6:12 min. to 30:12 max. | |

FIGURE 10.5A41.10D DEVELOPMENT STANDARDS

Character District 5 (CD5)



BUILDING PLACEMENT – OUTBUILDING

| | | |
|--------------------|---|---|
| Minimum front yard | 20 ft behind a façade of a principal building | A |
| Minimum side yard | 0 ft | B |
| Minimum rear yard | 3 ft | C |

BUILDING TYPES

See Figure 10.5A43.60 for building type definitions

| | |
|---------------------------|---------------|
| House | not permitted |
| Duplex | not permitted |
| Rowhouse | not permitted |
| Apartment building | not permitted |
| Live/work building | permitted* |
| Small commercial building | permitted |
| Large commercial building | permitted |

*Residential uses are not permitted on the ground floor in the Downtown Overlay District

BUILDING & LOT USE

See Sections 10.5A30 and 10.440

FAÇADE TYPES

See Figure 10.5A43.10 for façade type definitions
 Except where required façade types are indicated on Map 10.5A21C, the below standards apply:

| | |
|----------------|---------------|
| Porch | not permitted |
| Stoop | permitted |
| Step | permitted |
| Shopfront | permitted |
| Officefront | permitted |
| Forecourt | not permitted |
| Recessed-entry | permitted |

PARKING

See Section 10.5A44.30

COMMUNITY SPACE

See Section 10.5A46

10.5A42 Building Placement

10.5A42.10 Yards

10.5A42.11 Yards shall be as required in Figures 10.5A41.10A-D (Development Standards).

10.5A42.12 Yards may be increased above the maximum permitted for truncated corners or other subtractive massing techniques, alleys, vehicular accessways, increased sidewalk width or community spaces.

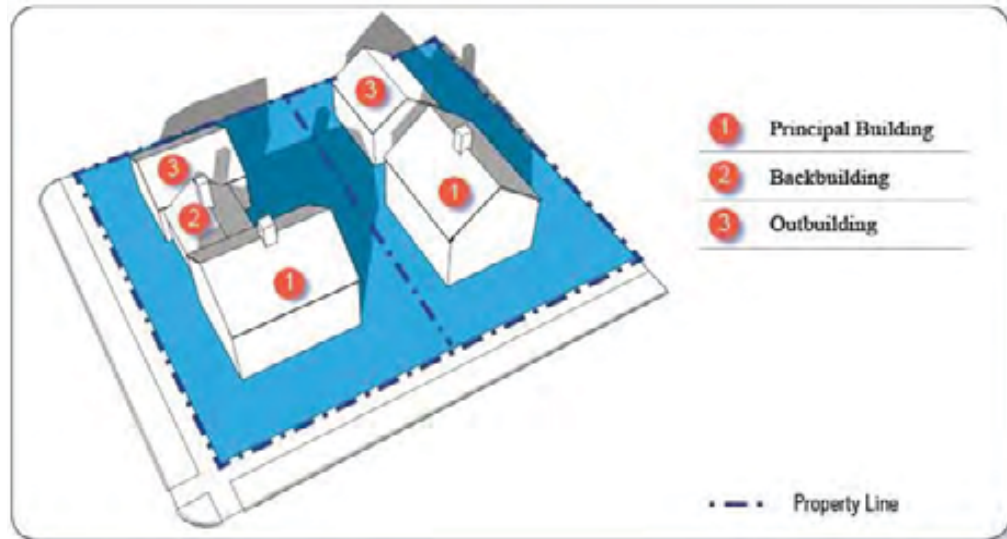
10.5A42.20 Façade Alignment

The façade facing the principal front yard shall be parallel to the front lot line. Where the front lot line is curved, the façade shall be parallel to a straight line connecting the points of intersection of the front lot line and the side lot lines.

10.5A42.30 Outbuildings and Backbuildings

A detached outbuilding, or an outbuilding attached to a principal building with a backbuilding, may be built on each lot to the rear of the principal building, as illustrated generally in Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).

FIGURE 10.5A42.10 PRINCIPAL BUILDING/BACKBUILDING/ OUTBUILDING

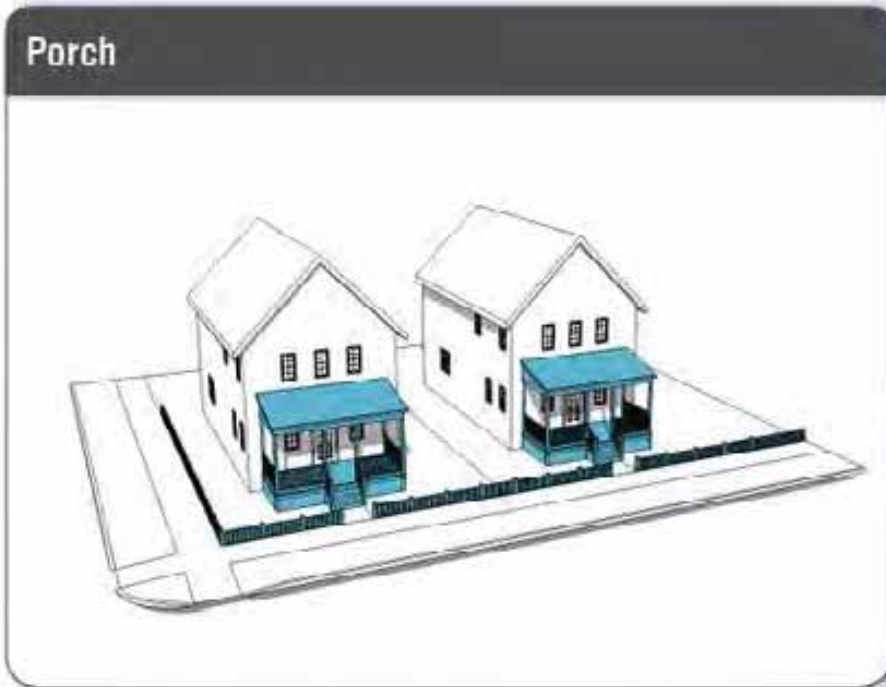


10.5A43 Building Form and Façades

10.5A43.10 Façade Types

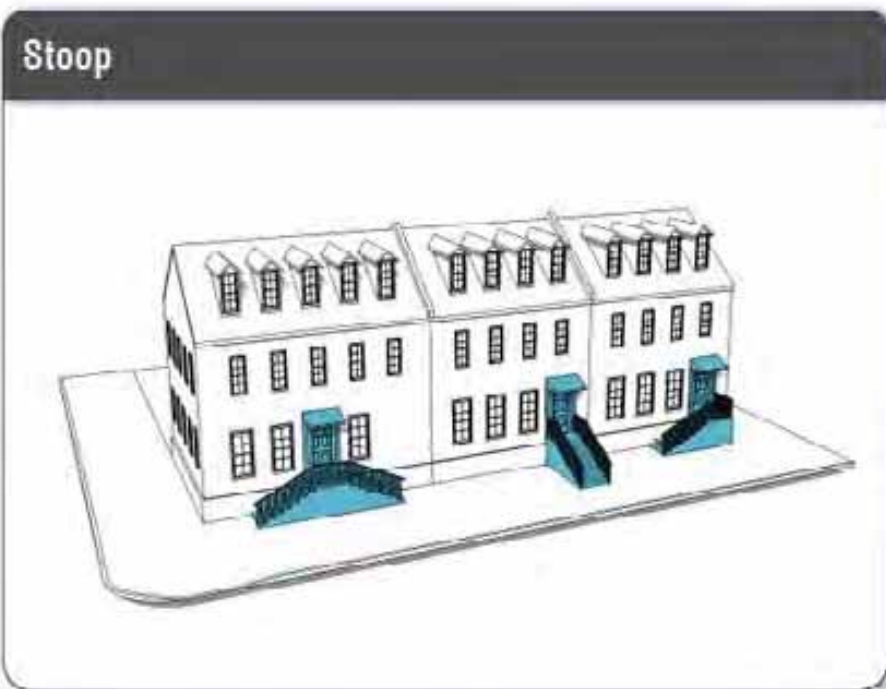
The façade facing the principal front yard shall conform to Figure 10.5A43.10 (Façade Types) and Figures 10.5A41.10A-D (Development Standards), and to any applicable façade type requirements indicated on the Regulating Plan. Permitted building form and façade types may be combined.

FIGURE 10.5A43.10 FAÇADE TYPES



The façade is set back from the front lot line with an attached porch or stoop permitted to encroach. This may be used with or without a fence to maintain street spatial definition.

Permitted districts:
CD4-L1, CD4-L2



The façade is aligned close to the front lot line with the ground floor elevated from the sidewalk for privacy. The entrance has an exterior stair and landing.

This type is recommended for ground floor residential use.

Permitted districts:
CD5, CD4, CD4-W, CD4-L1, CD4-L2

FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)

Step



The façade is aligned close to the front lot line with the ground floor elevated from the sidewalk for privacy. The entrance has an exterior single step without a landing.

This type is recommended for ground floor residential, office or retail use.

Permitted districts:

CD5, CD4, CD4-W

Only permitted in CD4-L1 & CD4-L2 where indicated on Map 10.5A21C.

Shopfront



The façade is aligned close to the front lot line with the building entrance at sidewalk grade and with substantial glazing on the ground floor.

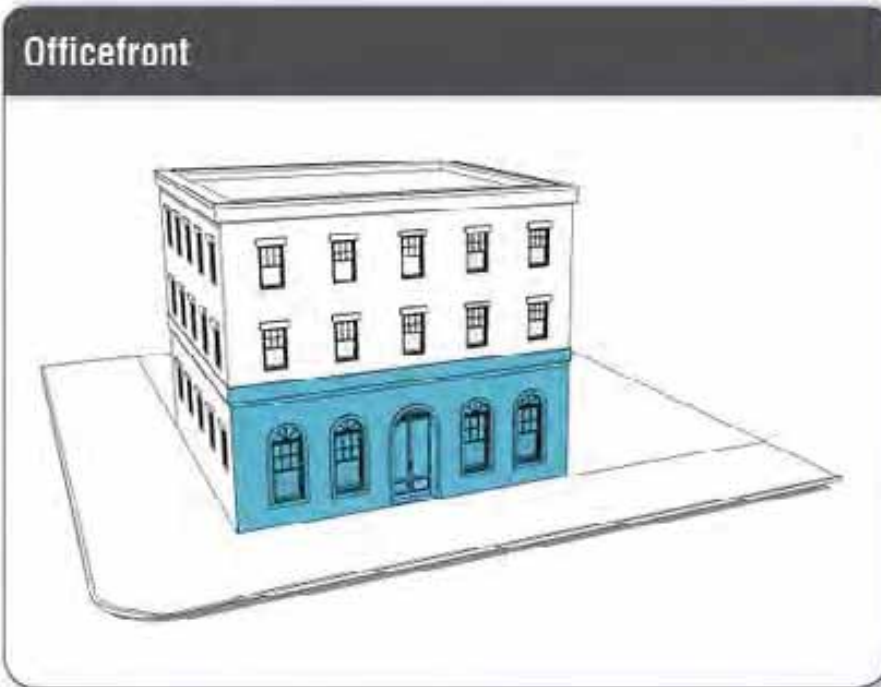
This type is conventional for retail, office or restaurant use.

Permitted districts:

CD5, CD4, CD4-W, CD4-L2

Only permitted in CD4-L1 where indicated on Map 10.5A21C.

FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)

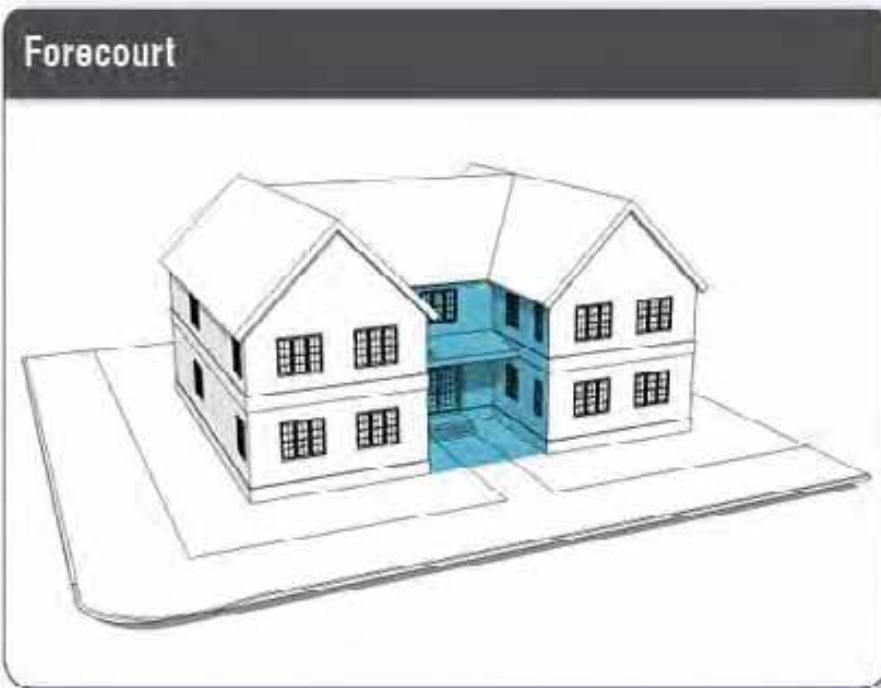


The façade is aligned close to the front lot line with the building entrance at or elevated above sidewalk grade. It may have substantial glazing on the sidewalk level.

This type is conventional for office use.

Permitted districts:

CD5, CD4, CD4-W
Only permitted in CD4-L1 & CD4-L2 where indicated on Map 10.5A21C.

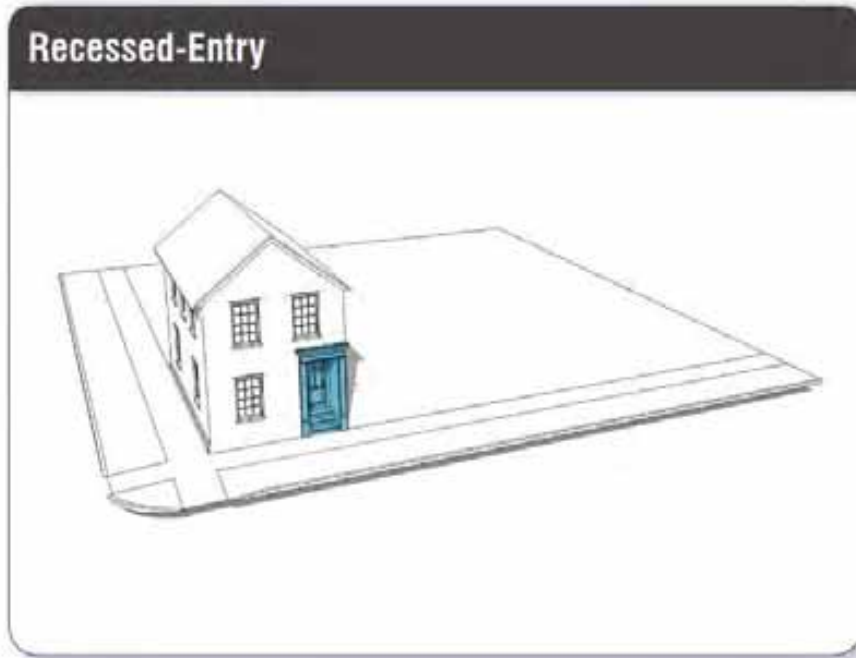


The two ends of the façade are close to the front lot line and the central portion is set back.

Permitted districts:

CD4-L1, CD4-L2
This façade type is not permitted in the Downtown Overlay District.

FIGURE 10.5A43.10 FAÇADE TYPES (CONTINUED)



The façade is aligned close to the front lot line and the primary building entrance is recessed within the façade.

This type is conventional for residential use.

Permitted districts:

CD4-L1, CD4-L2, CD4, CD4-W, CD5

10.5A43.20 Façade Modulation

10.5A43.21 Except as listed in 10.5A43.22, a façade shall be modulated by major breaks in the façade plane and/or changes in exterior materials or rooflines. No individual section of a façade shall be longer than the maximum façade modulation length listed in Figures 10.5A41.10A-D (Development Standards).

10.5A43.22 Façades that have a high degree of fenestration, traditional masonry detailing, and traditional window styling (including windows recessed in the openings and with multiple panes) shall be exempt from the façade modulation requirements listed in Figures 10.5A41.10A-D (Development Standards).

10.5A43.30 Building and Story Heights

10.5A43.31 Specific height requirement areas are designated on Map 10.5A21B. The maximum building height in each height requirement area shall be as follows:

| Height Requirement Area | Minimum Height in Stories | Maximum Height in Stories | Maximum Height in Feet |
|--------------------------------------|---------------------------|---------------------------|------------------------|
| 1 story | 1 | 1 | 20 |
| 2 stories | 2 | 2 | 35 |
| 2 stories (short 3 rd) | 2 | 2 + short 3 rd | 35 |
| 2-3 stories | 2 | 3 | 40 |
| 2-3 stories (short 4 th) | 2 | 3 + short 4 th | 45 |
| 2-4 stories | 2 | 4 | 50 |
| 2-4 stories (short 5 th) | 2 | 4 + short 5 th | 60 |
| 2-5 stories | 2 | 5 | 60 |

10.5A43.32 A roof appurtenance may exceed the maximum allowed building height as specified on Map 10.5A21B (Building Height Standards) by 10 feet, subject to the following:

- (a) All roof appurtenances and other features that exceed the allowed building height for the zoning district shall not exceed 33 percent of the total roof area of the structure and, except for elevators and stair towers, shall be set back at least 10 feet from any edge of the roof.
- (b) Solar energy panels shall not be subject to the 33 percent limitation provided that they are not visible from a point 20 feet above the edge of the street right-of-way on the opposite side of the street.
- (c) The area of roof appurtenances that comply with this section shall not be considered as part of the building’s gross floor area calculations.

10.5A43.33 A development that is not located in an incentive overlay district and that contains at least one acre of lot area shall be allowed an additional story in height (up to 10 feet) if at least 20% of the property is assigned and improved as a community space. Such community space shall count toward the required open space listed in Figures 10.5A41.10A-D (Development Standards). The size, location and type of the community space shall be based on the size and location of the development, and the proposed and adjacent uses.

10.5A43.40 Maximum Building Footprint

10.5A43.41 No building or structure footprint shall exceed the applicable maximum building footprint listed in Figures 10.5A41.10A-D (Development Standards) except as provided in Sections 10.5A43.42-44 below.

10.5A43.42 In the CD5 district, a detached liner building may have a building footprint of up to 30,000 sq. ft. if it meets all other development standards and is integrated into a parking structure through the provision of community space or shared access.

- 10.5A43.43 A building, not subject to Section 10.5A43.42, containing ground floor parking, a parking garage or underground parking levels may have a building footprint of up to 30,000 sq. ft. in the CD4 or CD4-W districts, and up to 40,000 sq. ft. in the CD5 district, if all of the following criteria are met:
- (a) No story above the ground floor parking shall be greater than 20,000 sq. ft. in the CD4 or CD4-W districts or 30,000 sq. ft. in the CD5 district.
 - (b) All ground floor parking areas shall be separated from any public or private street by a liner building.
 - (c) At least 50% of the gross floor area of the ground floor shall be dedicated to parking.
 - (d) At least 30% of the property shall be assigned and improved as community space. Such community space shall count toward the required open space listed under Figures 10.5A41.10A-D (Development Standards) and community space required under Section 10.5A47.20. The size, location and type of the community space shall be based on the size and location of the development, and the proposed and adjacent uses.
 - (e) The development shall comply with all applicable standards of the ordinance and the City's land use regulations.
- 10.5A43.44 The building footprint of a parking structure shall be no greater than 40,000 sq. ft., and the façade length shall be no greater than 300 feet.

10.5A43.50 Streetscreens

Any streetscreen in a front yard shall be built on the same plane as the façade of the principal building and shall be between 3.5 and 4.0 feet in height.

10.5A43.60 Building Types

Buildings in each Character district shall be of one or more of the building types specified for such Character district in Figure 10.5A43.60 (Building Types).

FIGURE 10.5A43.60 BUILDING TYPES



A residential building that has the appearance of a single-family dwelling, with yards on all sides.

Permitted districts:

CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.



A residential building with two vertically-separated units with separate entrances. The building may have yards on all sides, or it may be divided along the party wall by a lot line where permitted by the standards of the Character district.

Permitted districts:

CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.



A building that may occupy the full width of the lot and shares a party wall with one or more buildings of the same type, with a minimal front yard.

Permitted districts:

CD4, CD4-W, CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.

FIGURE 10.5A43.60 BUILDING TYPES (CONTINUED)

Apartment Building



A building that has the appearance of a multifamily dwelling, with yards on all sides.

Permitted districts:

CD4, CD4-L1, CD4-L2

This building type is not permitted in the Downtown Overlay District.

Live / Work Building



A building designed to accommodate a ground floor commercial use and a residential use above or beside.

Permitted districts:

CD5, CD4, CD4-W, CD4-L1, CD4-L2

Residential uses are not permitted on the ground floor in CD4-W or the Downtown Overlay District.

Small Commercial Building



A building with a shopfront or officefront façade type and minimal or no front yard, and that is no more than 3 stories in height.

Permitted districts:

CD5, CD4, CD4-W, CD4-L2

FIGURE 10.5A43.60 BUILDING TYPES (CONTINUED)



A building with a shopfront or officefront façade type and minimal or no front yard, and that is 4 or more stories in height.

Permitted districts:
CD5, CD4, CD4-W

10.5A44 Off-Street Parking and Loading Requirements

10.5A44.10 General

- 10.5A44.11 Except as otherwise provided in this Section, all buildings, structures and uses in the Character districts and Civic districts shall comply with the off-street parking requirements set forth in Section 10.1110.
- 10.5A44.12 Buildings, structures and uses in the Character districts and Civic districts that are also within the Downtown Overlay District shall comply with the additional standards in Section 10.643.

10.5A44.20 Number of Required Spaces

- 10.5A44.21 Uses in the Character districts and Civic districts that are not located in the Downtown Overlay District shall provide off-street parking in accordance with Section 10.1112.
- 10.5A44.22 Uses in the Character districts and Civic districts that are included in the Downtown Overlay District shall comply with the off-street parking requirements for the Downtown Overlay District in accordance with Section 10.1115.
- 10.5A44.23 Subject to approval by the Planning Board, any portion of the required off-street parking spaces may be dedicated to public use.

10.5A44.30 Parking, Loading, and Driveway Locations and Standards

- 10.5A44.31 All off-street parking spaces shall be located at least 20 feet behind any façade of a principal building, except when in an underground parking level. This restriction shall not apply to off-street parking for a single-family or two-family dwelling.

- 10.5A44.32 Parking lots and loading areas shall be screened from the street by a building or streetscreen except for any driveway.
- 10.5A44.33 Driveways at the street and within a required front yard shall be no wider than 24 feet.
- 10.5A44.34 All parking lots, garages, and parking structures shall include a pedestrian exit directly to a front lot line.
- 10.5A44.35 The above-ground portion of a parking structure or garage shall have a liner building at least the height of the ground floor along the entire width of any front yard except for driveways and pedestrian entrances.
- 10.5A44.36 A parking lot containing more than 75 parking spaces shall have least one internal pedestrian walkway at least 8 feet wide that is paved differently from the parking spaces with respect to texture, material, style, and/or color.

10.5A44.40 Parking Lot Landscaping

Parking lots that contain 10 or more spaces shall conform to the following:

- 10.5A44.41 Landscape islands:
 - (a) Parking lots shall contain one landscaped island for every 10 parking spaces.
 - (b) A parking lot with more than one landscaped island shall have such islands distributed throughout the parking lot.
 - (c) Each landscaped island shall be a minimum of 325 square feet.
- 10.5A44.42 Trees:
 - (a) Parking lots shall contain at least one tree for every 7 parking spaces.
 - (b) No parking space shall be more than 75 feet from a tree within the lot, as measured from the center of the tree to the nearest line demarcating the space.
 - (c) All trees shall be separated from paved surfaces by at least 3 feet.
- 10.5A44.43 All landscaping required pursuant to this Section 10.5A44.40 shall be located and designed in a manner to protect the vegetation from vehicular damage.

10.5A44.50 Loading Docks, Storage and Service Areas

Loading docks, storage and service areas shall not be permitted between the principal building and any front lot line.

10.5A45 Architectural Design Guidelines

In reviewing a proposed project within the Historic District under Section 10.630, the Historic District Commission shall review the application for compliance with the Architectural Design Guidelines. The initial Guidelines shall be those contained in the document titled “Interim Architectural Design Guidelines for the Character-Based Zoning Ordinance,” adopted by the Historic District Commission and dated November 18, 2013, which shall apply until superseded by new guidelines adopted by the Historic District Commission and approved by the City Council.

10.5A46 Community Spaces

10.5A46.10 Figure 10.5A46.10 (Community Spaces) describes the types of community spaces that may be provided as part of a development in accordance with Sections 10.5A42, 10.5A43 or 10.5A47.10.5A46.20.

10.5A46.20 A community space that is provided on site and otherwise qualifies as open space shall count towards the open space requirement for the development.

FIGURE 10.5A46.10 COMMUNITY SPACES



An area of natural, semi-natural, or planted space set aside for human enjoyment and recreation or for the protection of wildlife or natural habitats. A park may consist of grassy areas, trees and other natural or planted landscape features, and may also contain walking paths and trails, monuments, fountains, playground equipment, benches, picnic tables and similar amenities.



A linear community space that may follow natural corridors providing unstructured and limited amounts of structured recreation. A greenway may be spatially defined by landscaping rather than buildings. Its landscape shall consist of paths and trails, waterbodies, and trees, naturalistically disposed.



A paved/brick pedestrian connector between buildings. Pedestrian alleys provide shortcuts through long blocks and connect community spaces and parking areas with streets. Pedestrian alleys may be covered by a roof and/or lined by shopfronts.

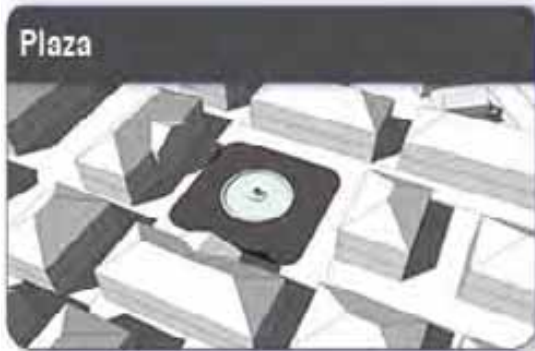


A wide pedestrian sidewalk located between the building façade and the public right of way. Wide pedestrian sidewalks provide space between the façade and the curblin for comfortable pedestrian movement, street trees and street furniture.

FIGURE 10.5A46.10 COMMUNITY SPACES (CONTINUED)



A community space available for unstructured recreation and community purposes. A square is spatially defined by buildings. Its landscape shall consist of paths, lawns and trees, formally disposed. Squares shall be located at the intersection of important streets. The minimum size shall be 1/8 acre.



A community space available for community purposes and commercial activities. A plaza should be spatially defined by buildings. Its landscape should consist primarily of pavement. Trees are optional. Plazas should be located at the intersection of important streets. The minimum size shall be 1/8 acre.



A community space available for informal activities in close proximity to neighborhood residences. A pocket park is spatially defined by buildings. Its landscape shall consist of paths, lawns and trees, formally disposed.



A community space designed and equipped for the recreation of children. A playground should be fenced and may include an open shelter. Playgrounds shall be interspersed within residential areas and may be placed within a block. Playgrounds may be included within parks and greens. There shall be no minimum size.

10.5A47 Incentive Overlay Districts

The Incentive Overlay Districts are designated on Map 10.5A21B. In such areas, certain specified development standards may be modified as set forth in Section 10.5A47.10 below, if the development provides community space or workforce housing in accordance with Section 10.5A47.20, as applicable:

10.5A47.10 Incentives to Development Standards

| DEVELOPMENT STANDARDS | INCENTIVES | |
|------------------------------------|---|---|
| | North End Incentive Overlay District | West End Incentive Overlay District |
| Maximum building coverage | No Change | 80% |
| Maximum building footprint | 30,000 sf | 30,000 sf |
| Minimum lot area | No Change | 2,000 sf |
| Minimum lot area per dwelling unit | No Change | No minimum |
| Maximum building height | Plus 1 story up to 10 ft ¹ | Plus 1 story up to 10 ft ^{1,2} |
| Minimum off-street parking | Residential: 1 space per dwelling unit 0.5 space per micro-unit | Residential: 1 space per dwelling unit 0.5 space per micro-unit Non-residential: 25% reduction from underlying standard |

¹ In order to receive the building height incentive, the sidewalk width in front of any façade shall be at least 10 feet plus two feet for each story of building height above three stories. Any property area needed to comply with this requirement shall count as open space as listed in Figures 10.5A41.10A-D (Development Standards) as community space; even if less than 15 feet in width.

² For parcels over 80,000 sq. ft. in area that are located south of Islington Street, up to two stories or 20 feet may be added to the maximum building height provided both requirements listed under Section 10.5A47.22 (1) and (2) are met.

10.5A47.20 Requirements to Receive Incentives to the Development Standards

10.5A47.21 For a lot located adjacent to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, the development shall include a community space consisting of a continuous public greenway at least 20 feet in width that is parallel to the waterfront for the entire length of the rear or side lot line. The greenway shall include legal and physical access to abutting lots or public ways. When access is not available due to

current conditions on an abutting lot, provisions shall be made for future access in a location determined by the Planning Board.

10.5A47.22 For a lot that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, the development shall include either a community space or workforce housing as specified below:

- (1) Community space option – All of the following criteria shall be met:
 - (a) The community space shall be a community space type that is permitted within the applicable Character district.
 - (b) The community space shall constitute at least 20% of the gross area of the lot and shall not have any dimension less than 15 feet.
 - (c) The community space shall adjoin the public sidewalk and shall be open on one or more sides to the sidewalk.
 - (d) The community space shall include trees and other landscaping to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other street furniture.
 - (e) The community space shall be located on or adjacent to the same lot as the development, except as provided in (f) below.
 - (f) The Planning Board may grant a conditional use permit to allow a proposed community space to be located on a different lot than the development if it finds that all of the following criteria will be met:
 - (i) An appropriate community space cannot feasibly be provided on the same lot as the development.
 - (ii) The proposed community space is within the same Incentive Overlay District as the development.
 - (iii) The proposed community space is suited to the scale, density, uses and character of the surrounding properties.
- (2) Workforce housing option – One or more of the following criteria shall be met:
 - (a) At least 30% of the dwelling units within a building, but no less than three units, shall be workforce housing units for sale (affordable to a household with an income of no more than 100 percent of the area median income for a 4-person household). Such units shall be at least the average gross floor area of the proposed units in the building or 1,000 sq. ft., whichever is greater. The workforce housing units shall be distributed throughout the building wherever dwelling units are located; or
 - (b) At least 10% of the dwelling units within a building, or at least two units, shall be workforce housing units for rent (affordable to a household with an income of no more than 60 percent of the area median income for a 3-person household). Such units shall be at least the average gross floor area of the proposed units in the building or 800 sq. ft., whichever is

greater. The workforce housing units shall be distributed throughout the building wherever dwelling units are located.

Section 10.5A50 Civic Districts

10.5A51 Purpose

10.5A51.10 Civic districts are designated to preserve existing buildings and uses which are open to the general public and owned and operated by a not-for-profit organization or entity other than the City of Portsmouth.

10.5A52 Standards

10.5A52.10 Permitted uses in the Civic district are uses open to the general public and dedicated to arts, culture, education, religion, recreation, government, transit, gardening, horticulture, public gathering, assembly or meeting.

10.5A52.20 Structures may be converted to other civic uses permitted under 10.5A52.10 provided that no exterior changes are made to the existing structures.

10.5A52.30 When specified in the Site Plan Review Regulations, Site Plan approval is required for changes made to existing structures or the lot.

10.5A52.40 New structures, alterations and expansions of existing structures in the Civic district are exempt from the requirements of 10.5A42 and 10.5A43 provided that all uses remain civic.

10.5A52.50 Structures in the Civic district that are proposed for and/or converted to non-civic uses permitted under 10.5A30 shall require Regulating Plan amendment as set forth in Section 10.5A22.

Section 10.5A60 Definitions

This Section provides definitions for certain terms in Article 5A that are not otherwise defined in Article 5A or Article 15:

Backbuilding

A single-story structure connecting a principal building to an outbuilding. See Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).

Block

The aggregate of private lots, rear alleys and rear lanes, circumscribed by streets, paths or pedestrian alleys.

Community space

An area that is dedicated for public use with permanent deeded access to the City of Portsmouth and conforming to the types shown in Figure 10.5A46.10.

- Entrance spacing
The distance between any two publicly accessible pedestrian entrances to a building along a façade.
- Façade
The side of a building facing a front yard.
- Façade glazing
The portion of a façade that consists of transparent windows and doors.
- Front lot line buildout
The portion of the width of the required front yard that is occupied by a building.
- Liner building
A building that is at least 20 feet deep measured from the façade and is specifically designed to mask a parking lot or a parking structure from the street. A liner building may be separated from a parking structure by community space if directly integrated with subsurface parking or vehicular access to a parking structure.
- Outbuilding
A building, usually located toward the rear of the same lot as a principal building, and sometimes connected to the principal building by a backbuilding. See Figure 10.5A42.10 (Principal Building/Backbuilding/Outbuilding).
- Path
A pedestrian way traversing a park, square or other open space, or otherwise separated from streets by landscaped areas, and ideally connecting directly with the urban sidewalk network.
- Regulating Plan
The zoning map or set of maps that shows the Character districts, Municipal districts, Civic districts and any additional requirements of areas subject to, or potentially subject to, regulation by Article 5A.
- Streetscreen
A freestanding wall or fence built on the same plane as a façade to mask a parking lot, structure or use from the street, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm.

CHARACTER-BASED ZONING – 2016 REVISIONS
CONFORMING AMENDMENTS TO ZONING ORDINANCE

Planning Board Proposed Amendments – 5/2/16

Amend Chapter 10 – Zoning Ordinance as follows:
(deletions from existing language ~~stricken~~; additions to existing language **bolded**;
remaining language unchanged from existing)

- A. In Article 2, amend Section 10.234 – Procedures for Variances, Special Exceptions and Appeals from Decisions of the Code Official, as follows:

10.234.50 In any case in which the Board of Adjustment is required to give notice of a public hearing in accordance with the provisions of State law, all persons owning property within 300 feet of the property involved in the appeal or request shall be given notice in the manner set forth by State law, provided that failure to give notice beyond statutory requirement shall not give rise to any right of appeal or protest. The requirements of this paragraph shall not apply in ~~the Central Business A and Central Business B Districts~~ **Character Districts 4 and 5 (CD4 and CD5) and the Downtown Overlay District.**

- B. In Article 4, amend Section 10.410 – Establishment and Purpose of Districts, as follows:

| District | Purpose |
|--|--|
| Character Districts | |
| Character District 4-L1 CD4-L1 | To promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development. |
| Character District 4-L2 CD4-L2 | |
| Character District 4-W CD4-W | |
| Character District 4 CD4 | |
| Character District 5 CD5 | |
| Business Districts | |
| Central Business A CBA | To promote a wide range of business, retail, residential, cultural and other public and private uses, in and surrounding the City's historic commercial core, at intensities and patterns that promote pedestrian circulation and support public transit. |
| Central Business B CBB | |

| District | Purpose |
|------------------------|---|
| Other Districts | |
| Civic District | To preserve existing buildings and uses that are open to the general public and owned and operated by a not-for-profit entity other than the City of Portsmouth. |

C. In Article 4, amend Section 10.440 – Table of Uses – Residential, Mixed Residential and Industrial Districts, as follows:

1. Delete the column headed “CBA”.
2. In the header row, delete “CBB”, as follows:

| |
|----------------|
| CBB |
| CD5 |
| CD4 |

3. In the column headed “CD4-L2”, change “N” to “S” for 7 specific uses, as follows:

| Use | CD4-L2 |
|---|----------------|
| 3.70 Club, fraternal or service organization | N S |
| 5.32 Retail bank | N S |
| 7.20 Personal services | N S |
| 7.30 Consumer services such as copy shop, bicycle repair, and pet grooming | N S |
| 7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers | N S |
| 8.70 Manufacture of goods sold at retail on the premises, such as crafts, coffee roasting and bakery goods | N S |
| 10.30 Inn | N S |

4. In the header row, insert “CD4-W” below “B”, as follows:

| |
|--------------|
| B |
| CD4-W |

5. In the column headed “B/**CD4-W**”, change specific uses, as follows:

| Use | B CD4-W |
|--|----------------|
| 1.20 Townhouse | N P |
| 3.51 Outdoor performance facility | |
| 3.511 Occupancy up to 500 persons | S N |
| 3.522 Occupancy more than 500 | S N |
| 8.40 Shopping center | P S |
| 9.50 Restaurant, place of public assembly or function room | |
| 9.51 Occupancy load less than 250 | P S |

6. Insert additional supplemental regulation for use 1.40 Multifamily dwelling, as follows:

| Use | Supplemental Regulations |
|---------------------------------|---|
| 1.40 Multifamily dwelling | 10.5A32 (Character district permitted uses) |
| 1.41 3 or 4 dwelling units | 10.640 (Downtown Overlay district) |
| 1.42 5 to 8 dwelling units | 10.730 (Gateway district) |
| 1.43 More than 8 dwelling units | 10.813 (Multifamily Dwellings in the Business District) |

7. Amend uses 9.40 through 9.60 as follows:
- (a) Move the row for use 9.40 to before existing use 9.51 (i.e., as a new use 9.51), and amend as follows:
 - 9.51 ~~Restaurant with no accessory uses and with no nightclub or bar, place of public assembly or function room~~
Occupant load less than 50
 - (b) Amend existing use 9.51 (new 9.52) as follows:
 - 9.52 Occupant load **from 50 to** less than 250.
 - (c) Renumber uses 9.50 through 9.60 as 9.40 through 9.50.
- D. In Article 5, amend Section 10.516 – Exceptions to Yard Requirements, as follows:
- 10.516.30 Corner Lot Vision Obstruction
- On a corner lot, no structure, accessory structure, landscaping, or screening which obstructs visibility shall be erected or maintained between the heights of 2.5 feet and 10 feet above the edge of pavement grades within the area bounded by the sidelines of the intersecting street rights-of-way and a straight line joining points along said street sidelines 20 feet from the point of intersection of such sidelines or extensions thereof. This provision shall not apply in ~~the CBA and CBB districts~~ **Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.**
- E. In Article 5, Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, delete the columns headed “CBA” and “CBB”.
- F. In Article 5, delete Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts.

- G. In Article 5, Section 10.590 – Minimum Distance Between Nonresidential Uses and Residential or Mixed Residential Districts, make the following changes:
1. In Section 10.591, insert the words “Gateway District” after the words “General Business District”, and replace the words “property zoned residentially” with the words “a parcel in a Residential or Mixed Residential district or Character District 4-L1.”
 2. In Section 10.592.10, replace the words “Residential or Mixed Residential District” with the words “Residential or Mixed Residential district or Character District 4-L1” in both the introductory sentence and the table header row.
 3. In the footnote to Section 10.592.10, replace the words “the Central Business A (CBA) or Central Business B (CBB) district” with the words “Character District 4 or 5 (CD4 or CD5) or the Downtown Overlay District.”
 4. In Section 10.592.20, replace the words “Residential or Mixed Residential District” with the words “Residential or Mixed Residential district or Character District 4-L1” in both the introductory sentence and the table header row.
- H. Amend Article 6, Section 10.640 Downtown Overlay District, as follows:
- 10.641 Establishment and Purpose
- 10.641.10 The Downtown Overlay District (DOD) is an overlay district applied to portions of the ~~Central Business A and Central Business B districts~~ and the Character districts. All properties located in the DOD must satisfy the requirements of both the DOD and the underlying districts.
- 10.641.20 The purpose of the DOD is to promote the economic vitality of the ~~central business district~~ **downtown** by ensuring continuity of pedestrian-oriented business uses along streets.
- I. Delete Article 6, Section 10.643 Off-Street Parking Facilities
- J. In Article 8, Section 10.830 – Business Uses, delete Section 10.831 – Waterfront Industrial District Adjacent to Central Business District.

K. Amend Article 8, Section 10.860 Hours of Operation, as follows:

10.861 The following uses are limited to operation during the times specified:

| Use No.* | Use | District with time limitations | From | To |
|----------------|--|---|------|-------|
| 3.51 | Performance facility, indoor | CBA, CBB, CD5, CD4, CD4-W, GB, GW, B | 8 AM | 11 PM |
| 3.52 | Performance facility, outdoor | CBA, CBB, CD5, CD4, CD4-W, GB, GW, B | 4 PM | 11 PM |
| 8.111 8.121 | Convenience goods 1 & Convenience goods 2 | MRB, CBA, CBB, CD5, CD4, CD4-W, CD4-L2, GB, GW, B | 6 AM | 11 PM |

* Refer to Section 10.440, Table of Uses.

L. Amend Article 11, Section 10.1120 Off-Street Loading, as follows:

10.1121 General Requirements

10.1121.10 ~~In all Business (except Central Business A and B), Airport, and Industrial districts,~~ All new structures, additions to existing structures, and changes and intensification of use in existing structures shall be provided with off-street loading areas in accordance with this Section, **except in Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.**

10.1121.20 No loading areas shall be required in ~~the Central Business A and Central Business B districts~~ **Character Districts 4-W, 4 and 5 (CD4-W, CD4 and CD5) and the Downtown Overlay District.**

M. Amend Article 12, Section 10.1230 Sign Districts, as follows:

10.1231 The City is hereby divided into sign districts for the purpose of establishing standards for the number, type, size, location and illumination of signs. These sign districts are overlay districts. A property shall be subject to the regulations of both the sign district and the underlying zoning district.

10.1232 Unless otherwise specified by ordinance, the sign districts shall correspond to underlying zoning districts as follows:

| Sign Districts | Underlying Zoning Districts |
|-----------------|---|
| Sign District 3 | Central Business A Central Business B Character District 4-W Character District 4 Character District 5 |

N. Amend Article 15 Definitions, Section 10.1530 Terms of General Applicability, by inserting the following definitions in alphabetical order:

Garage

An area within a principal building or outbuilding that provides space for parking vehicles as an accessory use. Not synonymous with parking structure. (See also: parking lot, parking structure, underground parking level.)

Parking lot

A ground-level open area within a lot for parking vehicles as a principal use or accessory use. (See also: garage, parking structure, underground parking level.)

Parking structure

A structure containing multiple stories of parking as a principal use or accessory use. (See also: garage, parking lot, underground parking level.)

O. In Article 15, Section 10.1525 add the terms **Recessed entry** and **Entrance spacing** to the list of terms primarily used in Article 5A.

- P. Amend Article 15 Definitions, Section 10.1530 Terms of General Applicability, as follows:

Building footprint

The total area ~~of a building~~, at or above 18 inches in elevation as measured from the outside walls at the grade plane, **of a detached building, or of two or more buildings separated by fire walls, common walls or property lines.**

Story

That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. For the purpose of determining the number of stories in a building, a story above grade plane shall count as a full story. An attic, **half story or penthouse** shall not be counted as a story, but ~~a half story or a short story~~ shall be counted as a story. (See also: building height, grade plane, half story, short story, and story above grade plane)

Workforce housing

~~Housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the area median income for a 4-person household; or rental housing which is affordable to a household with an income of no more than 60 percent of the area median income for a 3-person household. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this definition.~~
A dwelling, or group of dwellings developed as a single project, containing workforce housing units, provided that a housing development that excludes minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Ordinance. All workforce housing units shall include a restrictive covenant that ensures affordability as specified in RSA 674:58,IV, for the maximum allowable term.

Character-Based Zoning – 2016 Revisions

Proposed Additional West End Zoning Changes

5/2/2016

(Parcels are listed by Assessors Map-Lot references)

From Character District 4-L1 (CD4-L1) to General Residence C (GRC)

126-27
126-28
126-31
126-32

From Mixed Residence Business (MRB) to General Residence C (GRC)

| | | |
|----------|--------|---------|
| 138-48 | 139-2 | 146-19 |
| 138-48-1 | 139-3 | 146-20 |
| 138-48-2 | 139-4 | 146-21 |
| 138-49 | 139-5 | 146-22 |
| 138-50 | 139-6 | 146-23 |
| 138-51 | | |
| 138-52 | 144-40 | 147-22 |
| 138-54 | | 147-23 |
| 138-55 | 145-14 | 147-24 |
| 138-56 | 145-19 | 147-25 |
| 138-57 | 145-20 | 147-26 |
| 138-58 | 145-21 | 147-27 |
| 138-59 | 145-29 | 147-28 |
| | 145-30 | 147-29 |
| | | 147-30 |
| | | 147-30A |
| | | 156-24 |
| | | 156-35 |

From Business (B) to General Residence C (GRC)

157-10
157-11
157-12
157-13
157-14

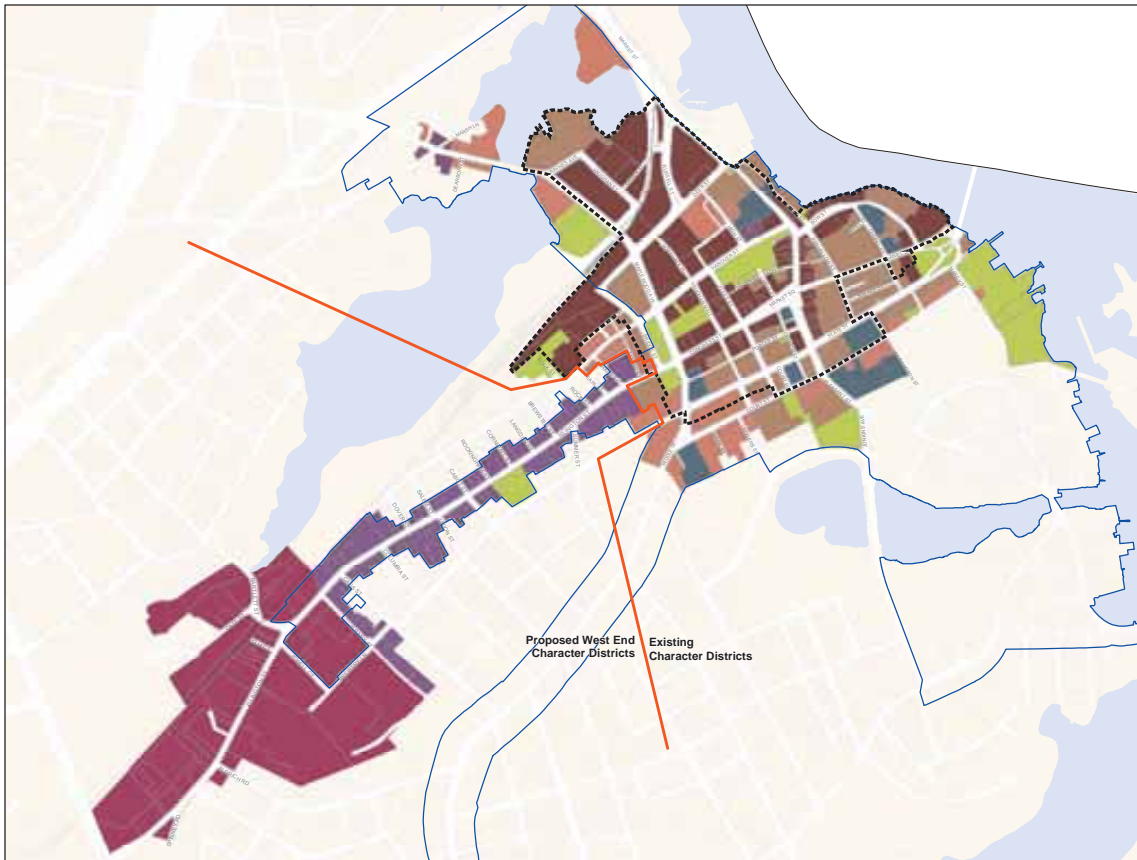
From Central Business B (CBB) to General Residence C (GRC)

138-34

Map 10.5A21A Character Districts and Civic Districts

Second Reading

May 2, 2016



Legend

- Downtown Overlay District
- Historic District

Character Districts

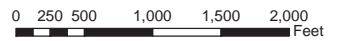
- CD5 Character District 5
- CD4 Character District 4
- CD4-W Character District 4-W
- CD4-L1 Character District 4-L1
- CD4-L2 Character District 4-L2

Civic District

- Civic District

Municipal District

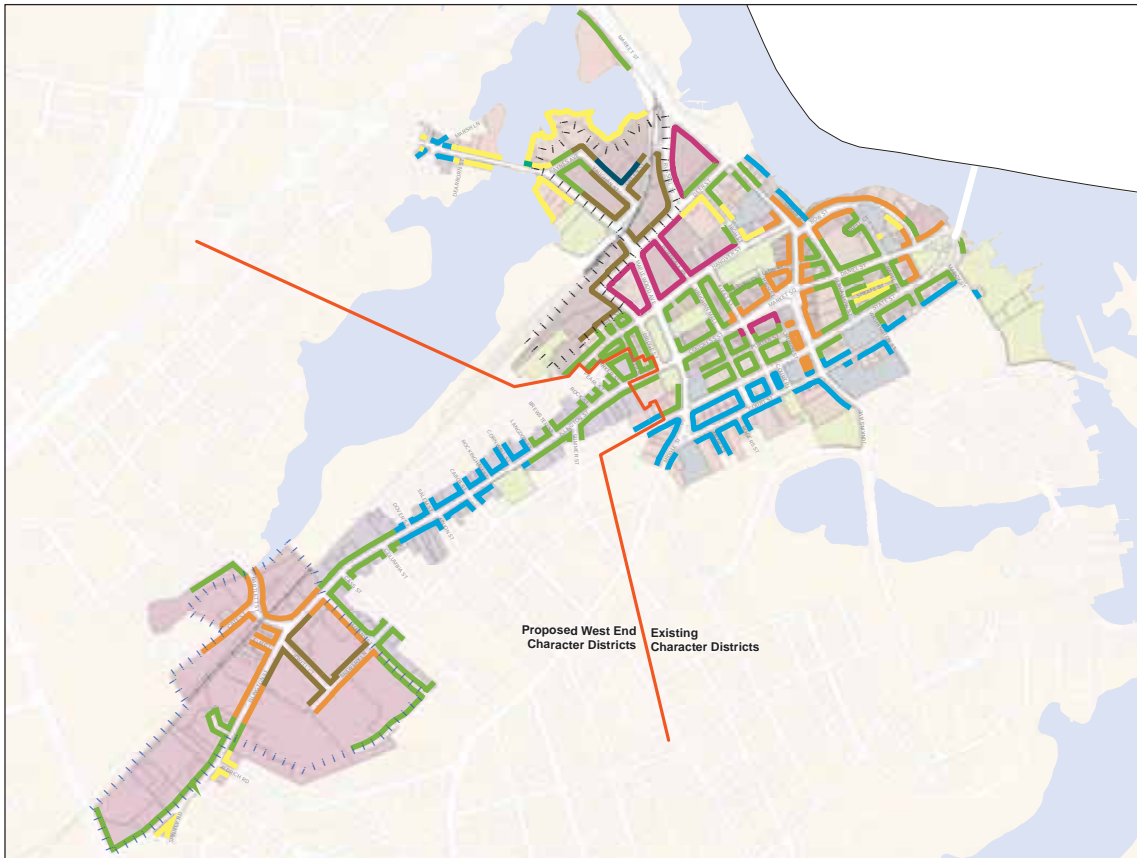
- Municipal District



Map 10.5A21B Building Height Standards

Second Reading

May 2, 2016



Legend

| Height requirement area | Maximum building height* |
|--------------------------|--------------------------|
| 1 Story | 20' |
| 2 Stories | 35' |
| 2 Stories (short 3rd*) | 35' |
| 2-3 Stories | 40' |
| 2-3 Stories (short 4th*) | 45' |
| 2-4 Stories | 50' |
| 2-4 Stories (short 5th*) | 60' |
| 2-5 Stories | 60' |

*Penthouse levels may exceed the building height by 2 feet.

1. A short story includes either: 1) use of a top story below the cornice line of a sloped roof that is at least 20% shorter in height than the story below; or 2) a story within a mansard roof with a pitch no greater than 30:12.

2. When a lot is assigned to more than one height requirement standard refer to the requirements listed in Section 10.5A21.22.

3. Attic space within either a gable, gambrel, Hip, or hip-top mansard roof or a penthouse level on a flat roof is not considered a story. Attic space is permitted above the top story provided the proposed building is no greater than the maximum building height.

North End Incentive Overlay District

West End Incentive Overlay District

The maximum building height within Incentive Overlay Districts may be increased pursuant to Section 10.5A47.

Between Maplewood Avenue and Russell Street, the boundary of the North End Incentive Overlay District is established at 100 feet from the mean high water line.

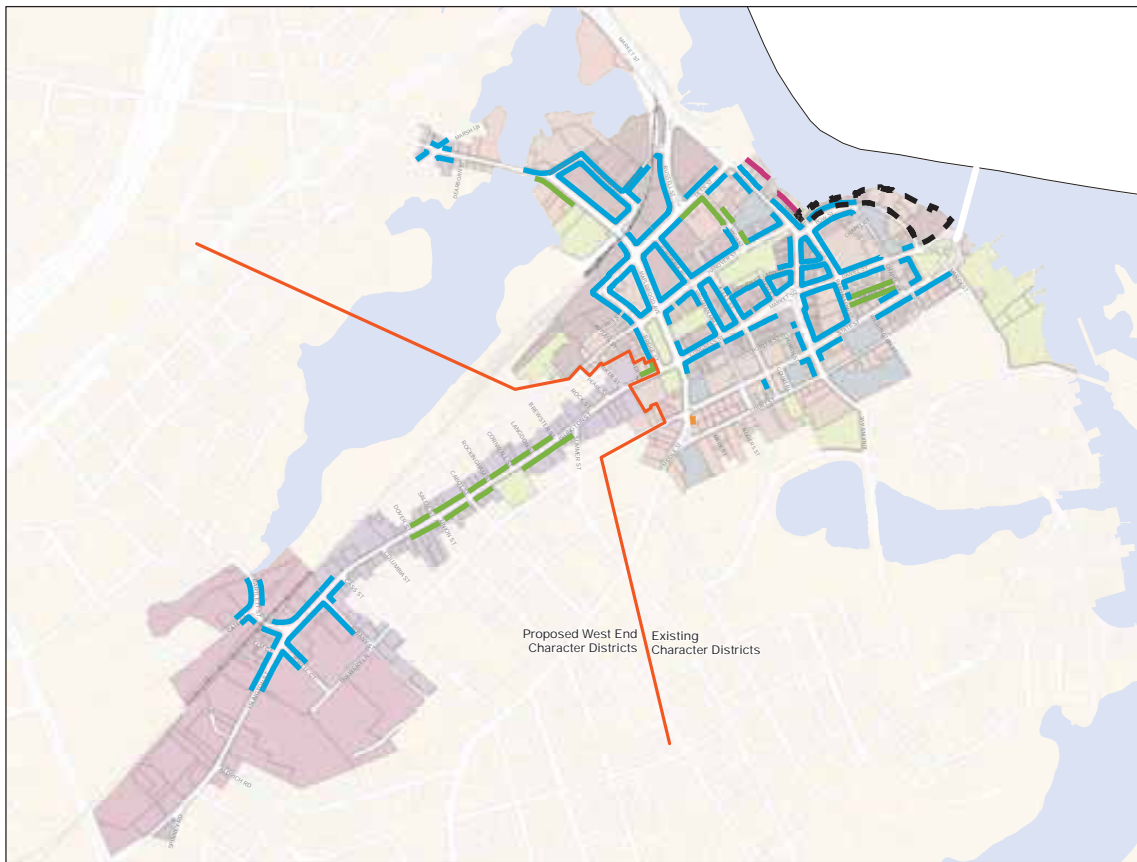


9

Map 10.5A21C Special Requirements for Façade Types, Front Lot Line Buildout, and Uses

Second Reading

May 2, 2016



Legend

Required Façade Types

- Shopfront façade type
- Step, stoop or recessed entry façade type
- Officefront façade type

Waterfront Lots

Waterfront Use Overlay
In addition to the uses permitted in the underlying Character districts, lots in the Waterfront Use Overlay shall also permit uses 9.60, 12.20, 12.22, and 12.40 as set forth in Section 10.440 (Table of Uses). (Section 10.5A34).

Waterfront lots on Ceres Street
For waterfront lots on Ceres Street, the maximum front lot line buildout shall be 50%, and buildings shall have a wood-sided appearance (Section 10.5A21.30).

In addition to the uses permitted in Character District 4, waterfront lots on Ceres Street shall also permit the uses permitted in the Waterfront Industrial district as set forth in Section 10.440 (Section 10.5A35).

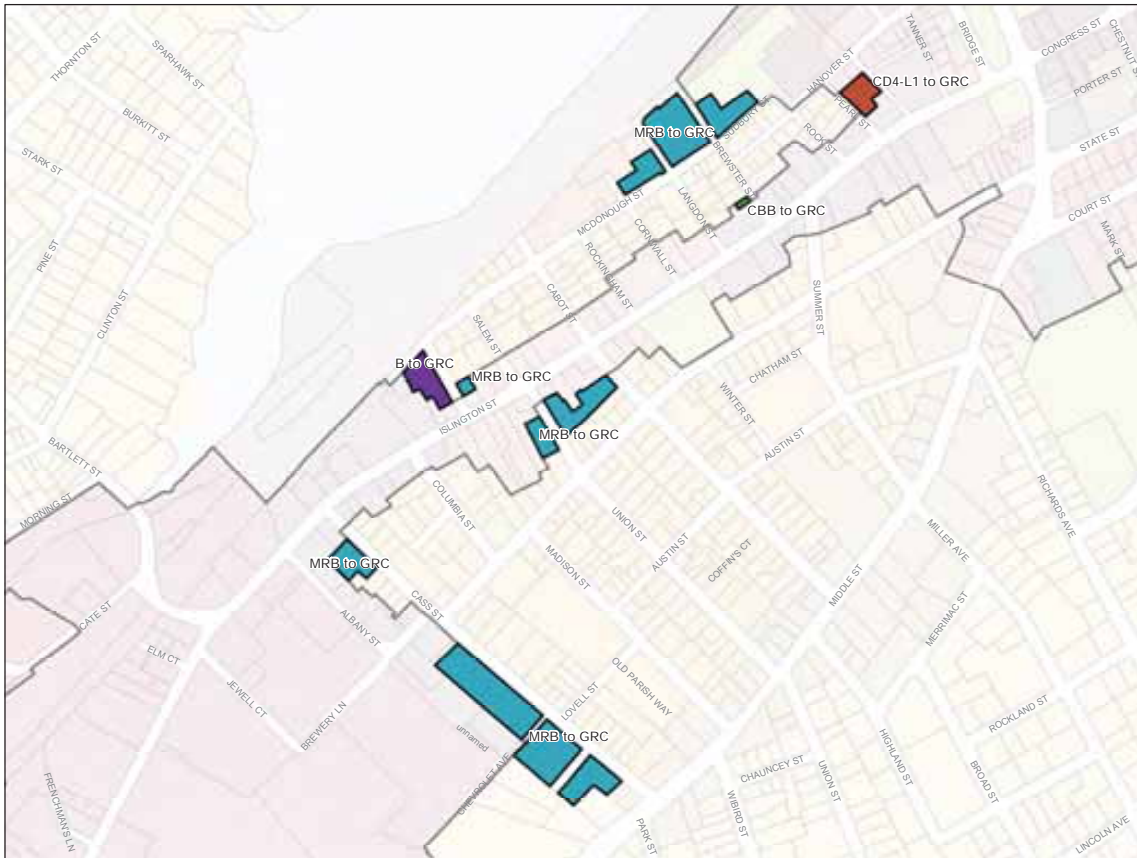
0 250 500 1,000 1,500 2,000 Feet

9

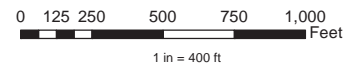
Additional West End Zoning Changes

Second Reading


May 2, 2016



- Legend**
- Character districts area
 - Additional West End Zoning Changes**
 - Business to General Residence C
 - Central Business B to General Residence C
 - Character District 4-L1 to General Residence C
 - Mixed Residential Business to General Residence C



M E M O R A N D U M

TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director 
DATE: April 25, 2016
RE: Proposed Zoning Amendment – Transportation Corridor District

The Planning Department has proposed that the railroad rights-of-way within the City (excluding areas for sidings and spurs) be rezoned to a new Transportation Corridor District. The purposes of the proposed district are:

- to preserve these corridors for existing and future transportation uses and utility lines and facilities;
- to allow for the development of multi-use (bicycle/pedestrian) recreational trails along abandoned rail corridors; and
- to restrict any land uses that would conflict with these transportation and recreational uses from being established.

The proposed district is based on a Transportation Corridor Overlay District that was adopted by the Town of Hampton in 2012 and applied to the former Eastern Line rail corridor within that Town.

A key objective of the proposed zoning amendment is to preserve transportation rights-of-way for recreational trail use. The Eastern Line corridor (commonly referred to in Portsmouth as the Hampton Branch) extends the length of the New Hampshire Seacoast from Seabrook to Portsmouth. This corridor has been designated as the off-road route of the New Hampshire Seacoast Greenway, which is the New Hampshire portion of the East Coast Greenway, a nearly 3,000-mile “linear park” connecting cities from Key West, FL to Calais, ME. The City is working with the Rockingham Planning Commission and other Seacoast towns toward converting the New Hampshire corridor to a multi-use rail trail. This project is identified in the 2005 Master Plan, the 2014 Bicycle and Pedestrian Plan, and the draft 2016 Master Plan. In addition, over the past several years the City has designated funds in the CIP to support construction of the rail trail. By supporting this project, the proposed zoning amendment is consistent with and supports the City’s long-range planning policies.

The Planning Board held a public hearing on this proposed Zoning Ordinance amendment on April 21, 2016, and voted unanimously to recommend to the Council that it be adopted.

Attached are the proposed zoning amendment and a set of maps showing the parcels proposed to be included in the new Transportation Corridor District.

Transportation Corridor District

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 – Zoning Ordinance be amended as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

A. In Article 4 – Zoning Districts and Use Regulations, Section 10.410 – Establishment and Purpose of Districts, insert the following:

| District | Purpose |
|------------------------------------|---|
| [...] | |
| Other Districts | |
| [...] | |
| Transportation Corridor | TC To provide for future transportation uses and related facilities as well as recreational trail use. |

B. In Article 4 – Zoning Districts and Use Regulations, insert a new Section 10.470 as follows:

Section 10.470 Uses Permitted in the Transportation Corridor District

Land in the Transportation Corridor District may be used for the following purposes:

- 10.471 Rail transport**
- 10.472 Municipal trail**
- 10.473 Rail-trail or rail-with-trail**
- 10.474 Underground utility lines, including but not limited to water, sewer, drainage, natural gas, electric and telecommunications**

C. In Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, insert the following new terms and definitions in alphabetical order:

Municipal trail

A full public right-of-way of indefinite duration subject to public trail use restrictions, and classified as a Class A or Class B trail by the City Council pursuant to RSA Chapter 231-A.

Rail transport

The transportation by rail of goods or passengers, including such infrastructure and facilities as tracks, sidings, signals, shops and yards for maintenance and storage of rail machinery, loading platforms, and passenger and freight terminals.

Rail-trail

A multi-purpose public path (paved or natural) created within an abandoned rail corridor right-of-way.

Rail-with-trail

A shared-use path that is located on or directly next to an active railroad corridor.

D. Amend the Zoning Map by rezoning the following lots or parts thereof to the Transportation Corridor District:

- Assessors Map 165 Lot 14
- Assessors Map 234 Lot 2A
- Part of Assessors Map 164 Lot 4 (100-foot wide corridor, measured from the southeasterly property line)
- Assessors Map 125 Lot 20
- Assessors Map 124 Lot 13
- Assessors Map 119 Lot 3
- Part of Assessors Map 119 Lot 5 (50-foot wide corridor, measured from the southwesterly property line)
- Assessors Map 121 Lot 1

Said lots are shown on a series of nine maps titled “Proposed Transportation Corridor District”, dated March 17, 2016.

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:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

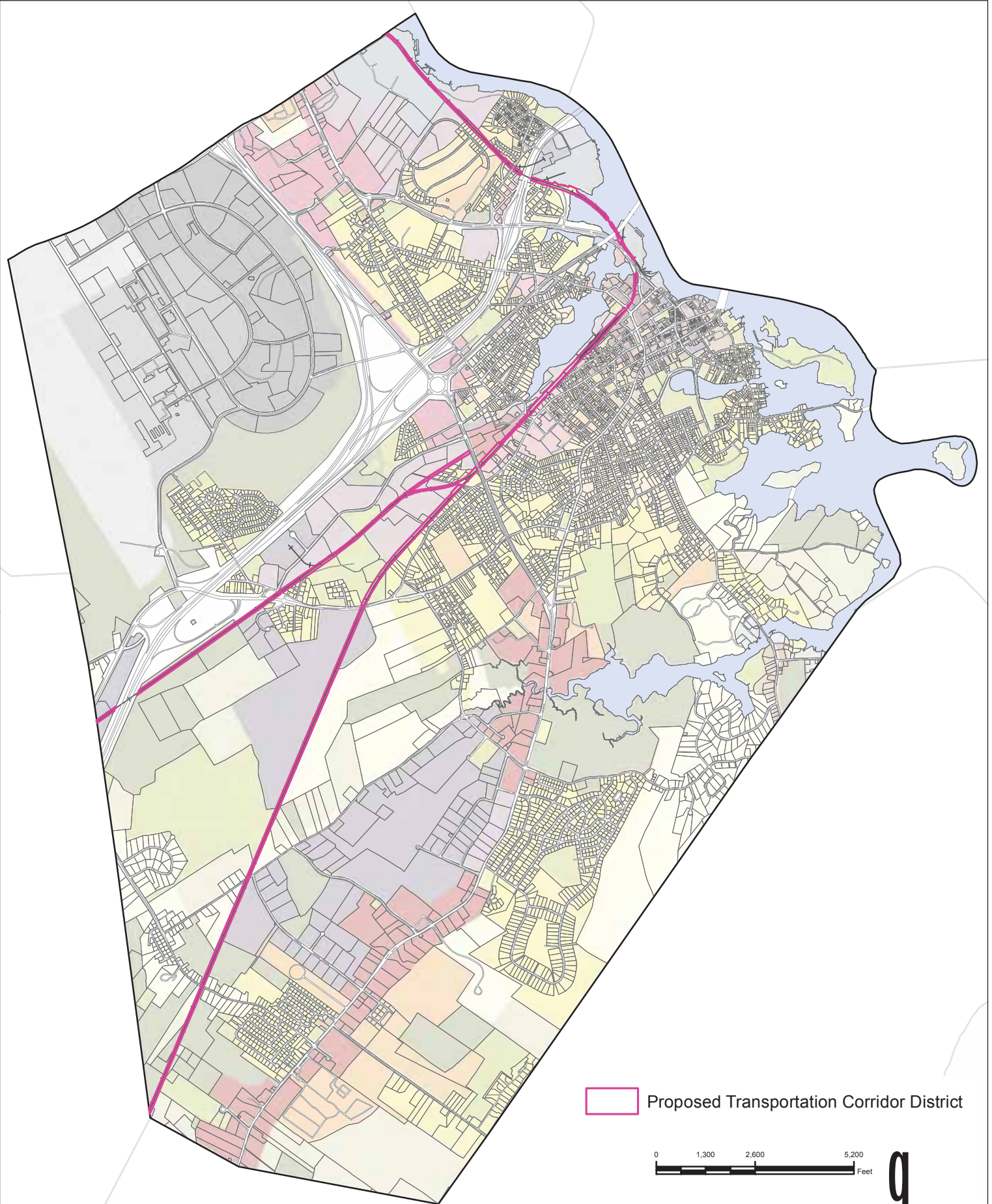
Kelli L. Barnaby, City Clerk

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Proposed Transportation Corridor District

March 17, 2016

Map 1 of 9



 Proposed Transportation Corridor District

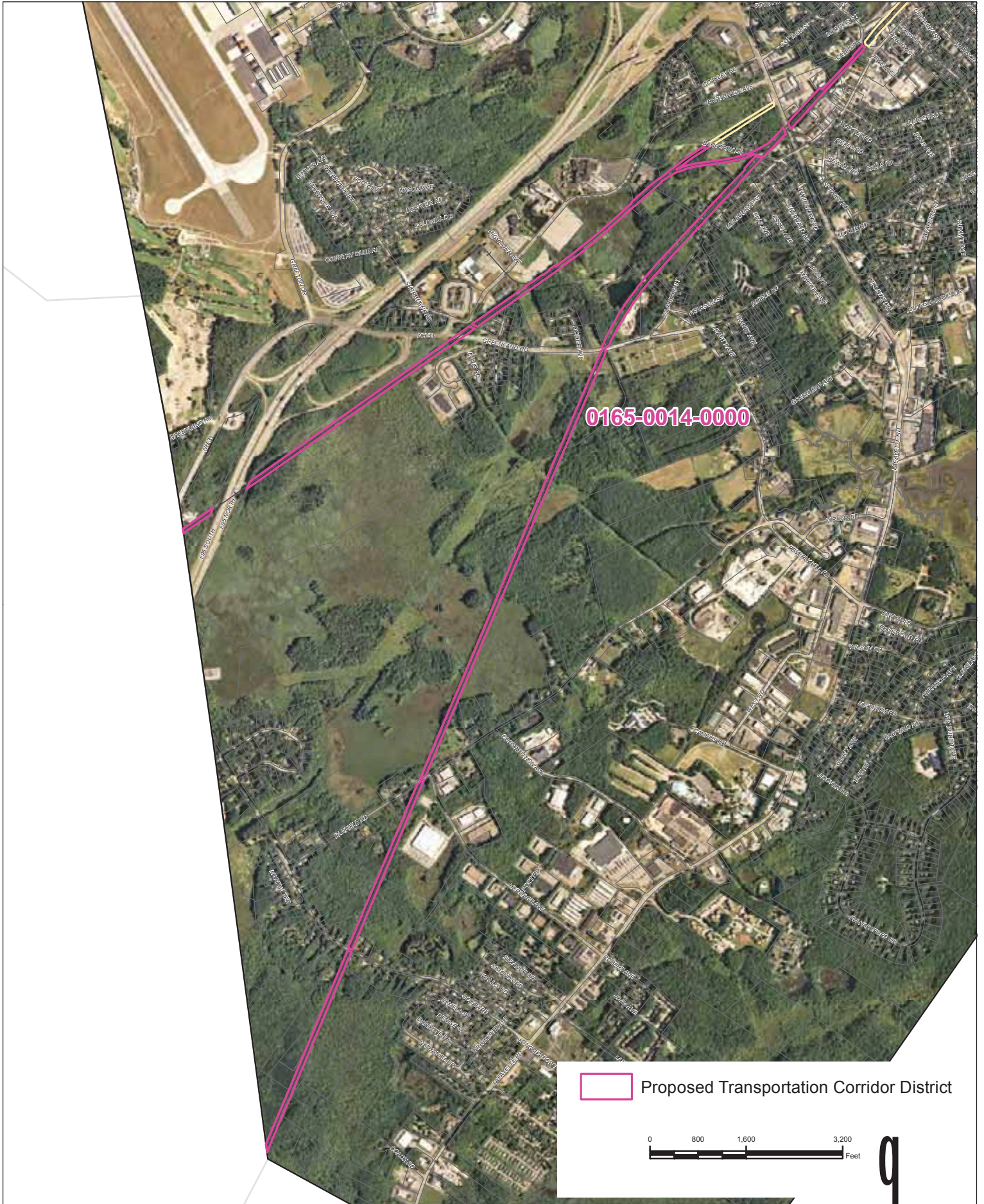
0 1,300 2,600 5,200 Feet



Proposed Transportation Corridor District

March 17, 2016

Map 2 of 9



Proposed Transportation Corridor District

March 17, 2016

Map 3 of 9



Proposed Transportation Corridor District

March 17, 2016

Map 4 of 9




Proposed Transportation Corridor District

March 17, 2016

Map 5 of 9



0125-0020-0000

 Proposed Transportation Corridor District

0 100 200 400 Feet

9

Proposed Transportation Corridor District

March 17, 2016

Map 6 of 9



Proposed Transportation Corridor District

March 17, 2016

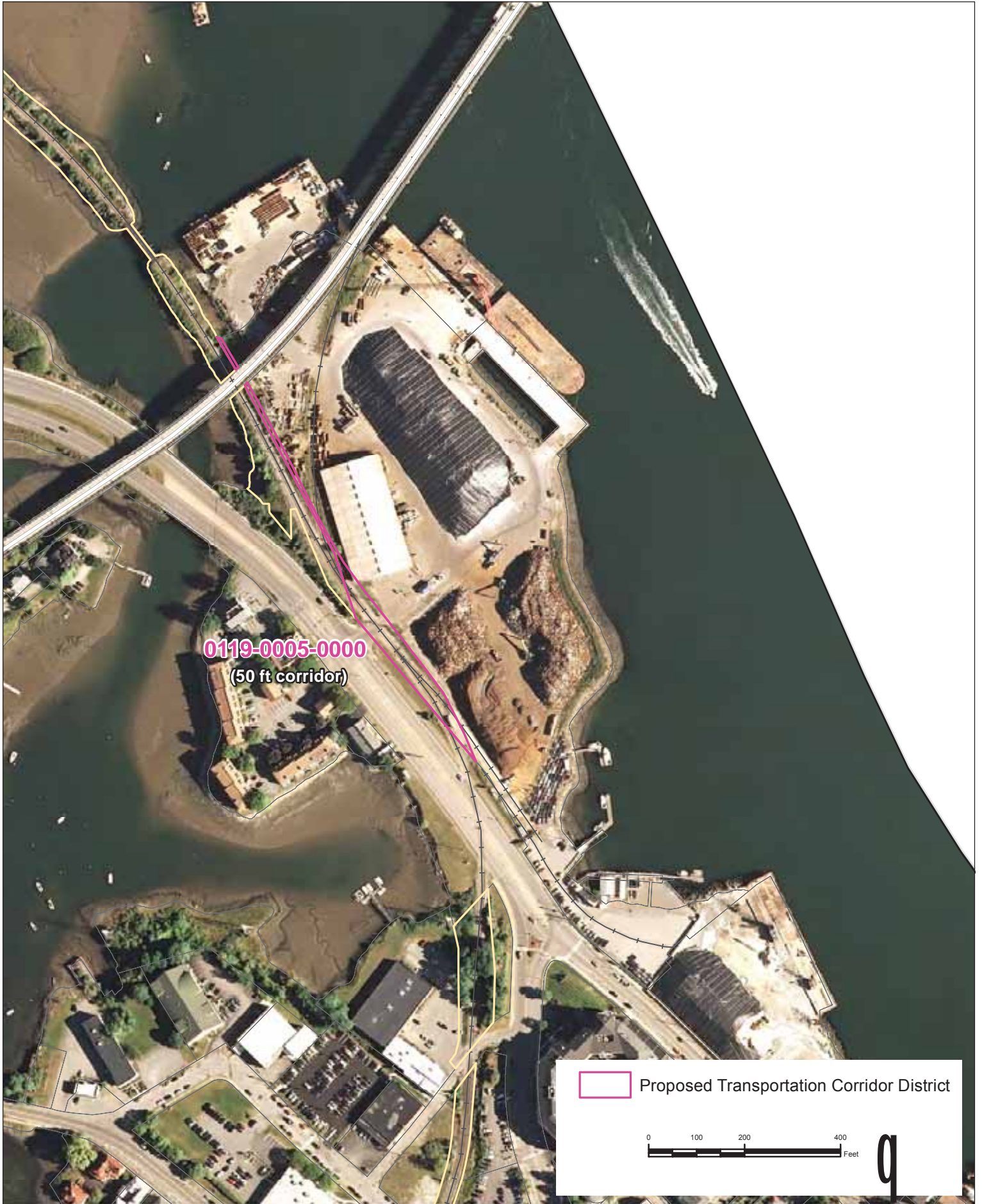
Map 7 of 9



Proposed Transportation Corridor District

March 17, 2016

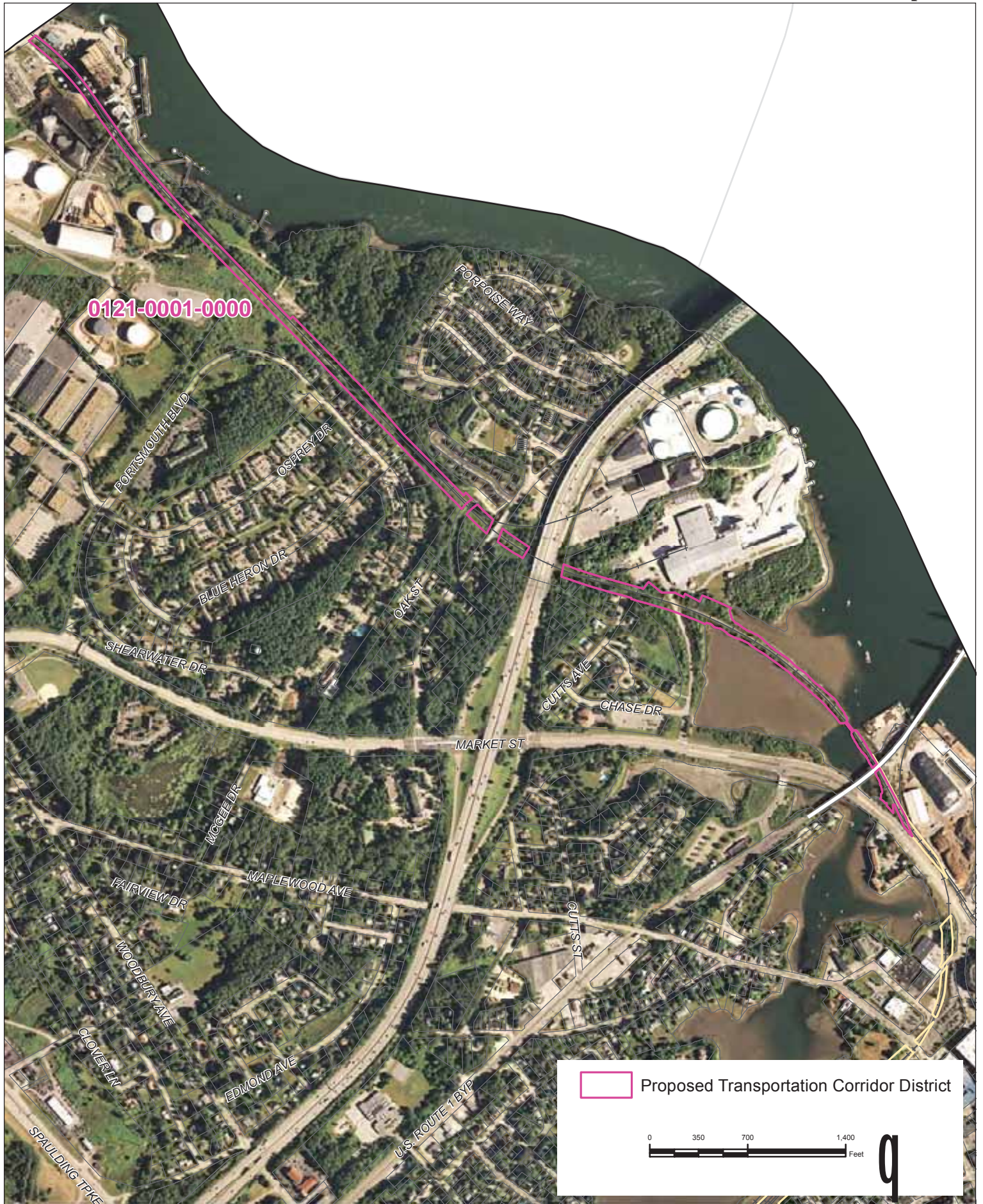
Map 8 of 9



Proposed Transportation Corridor District

March 17, 2016

Map 9 of 9



ANDRE COX
GENERAL



BARRY C. SWANSON
TERRITORIAL COMMANDER

LT. COLONEL HUGH STEELE
ARC COMMANDER

THE SALVATION ARMY

FOUNDED IN 1865 BY WILLIAM AND CATHERINE BOOTH

ADULT REHABILITATION CENTER

30 WARREN AVENUE
PORTLAND, ME 04103
TELEPHONE (207) 878-8555
FAX (207) 878-8110
www.SATruck.org

RECEIVED
May 10, 2016
City Manager
Portsmouth, NH

May 9, 2016

Dear Honorable Mayor Jack Blalock and City Council Members

I am requesting The City of Portsmouth's help. The Salvation Army is asking to place 1 or 2 donation bins on municipal property. We work with 39 municipalities in New Hampshire and Maine such as Hampton, Seabrook, and Rochester just name a few. Our boxes provide residents a place to recycle clothes and other items for a good cause. Donations collected in The City of Portsmouth will be sorted and sold at our Portsmouth Family Store.

We keep data on the total weight collected and send you a report broken down by month for your records. We have bins at mostly transfer stations but also place them at community centers, fire stations or city halls. I appreciate your consideration on this and on behalf of The Salvation Army Thank you for any help with this request

Sincerely,

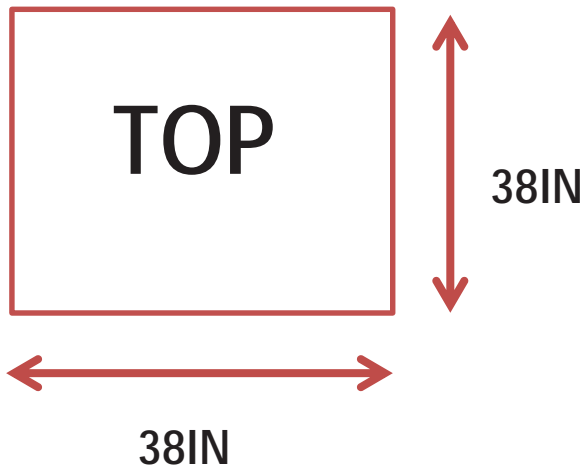
William "Bil" Moriarty
Donation Development Coordinator
The Salvation Army
Portland ARC
207.878.8555 ext 308

SALVATION ARMY DONATION BOX DIMENSIONS



Donation Box details:

- Provide convenience for community and customers to **DONATE GOODS**
- Serviced daily: emptied, cleaned around, and paint touched-up
- Phone number on box for emergency maintenance and home pick-up



FMI Please contact
William Moriarty
207.878.8555 Ext 308
207.423.2071 CELL

- Placed at your discretion in visible location, not blocking pedestrian or vehicular traffic
- Salvation Army ARC carries liability insurance
- Can be relocated or removed at any time requested



Donation Box Partner Program

100% of items placed in Salvation Army boxes are processed and sold in our Family Stores which solely fund The Salvation Army Portland Adult Rehabilitation Program. Items collected from Portsmouth boxes are sent to our Portsmouth Family Store.

By placing one of our new donation boxes on your premises, you will play a major role in healing the lives of broken people and Stand out as a compassionate and concerned community leader willing to go the extra mile for others!

Donation Box details:

- Provide convenience for residents to DONATE GOODS
- Serviced daily: emptied, cleaned around, and paint touched-up
- Phone number on box for emergency maintenance and home pick-up
- 38x38x60 inches
- Placed at your discretion in visible location, not blocking pedestrian or vehicular traffic
- Salvation Army ARC carries liability insurance
- Can be relocated or removed at any time requested

Interested in becoming a friend of the Salvation Army ARC?

Contact William "Bil" Moriarty, Donation Development Coordinator at 207.423.2071 or via email at William.moriarty@use.salvationarmy.org

89 Central Rd.
Rye, NH 03870

received
4/13/16

March 25, 2016

The Honorable Jack Blalock
Mayor's Office
1 Junkins Ave.
Portsmouth, NH 03801

Dear Mayor Jack Blalock,

My name is Kate Loughlin and I am a sixteen year-old student at Portsmouth High School. I work during the summer in downtown Portsmouth and have noticed a recurring problem in this area. Among the children enjoying summer and the adults taking weekend vacations, are smokers. This is not only a health issue for the smokers and the surrounding people, but it is also a littering problem. Seeing my city that I have lived in my whole life and this problem needs to be changed. With changes to the authority on smokers in public places, the city of Portsmouth can become more beautiful.

Working in downtown Portsmouth you see a lot of different types of people including tourists, workers and many kids. The number of people smoking cigarettes in the public area around my work is considerable. These smokers are not only smoking in non-smoking areas, but they are littering their cigarette butts everywhere. Cleaning up outside the store sadly includes picking up many cigarette butts. These narcotics, only available to people over the age of 18, are littered around young kids who are enjoying their ice cream. By New Hampshire law, smoking is prevented in all public and private enclosed workplaces with 4 or more workers. This law also includes places of public access like tramways and public conveyances. Because of this law, workers flee to the streets to smoke, littering and endangering the surrounding visitors. Smoking is a preventable issue that can be addressed and protect the people surrounding it.

Smoking also causes diseases including cancer and lung disease. Smoking is the leading cause of preventable disease and death in the United States(CDCP). 17 of every 100 people in the US are currently smoking cigarettes regularly, which is an estimated 40 million people that are over 18. Even though the number of people smoking has dropped from every 21 people for every 100, there are still 16 million people in the US suffering from a smoking disease. Even though smoking has been proven to have negative effects, the idea of this problem in Portsmouth is not to prevent smoking. The use of cigarettes in Portsmouth does not need to be banned but the effects that it has on others and the right ways of discardment need to be taught and enforced.

Smoking does not only affect the actual person smoking, it affects the people surrounding them who are intaking the second hand smoke. There are 480,000 deaths from smoking each year in the US and 41,000 of these deaths are from second hand smoke. This is important because with all of these people smoking around my workplace, there are children and adults intaking the second hand smoke which can lead to health issues. The state believes they have solved this problem by putting up signs that say "NO SMOKING", but these signs are rarely enforced. I have even seen people sit on a bench with this sign right next to them, not even considering the consequences of their decision. These smokers need to be educated about the harm they are putting on their own home and surrounding people and obey the signs they most definitely see before they sit down.

To support my advocacy letter I have included pictures taken on April 2nd just outside Izzy's Frozen Yogurt. Please notice the number of cigarettes and cigars in the planters and on areas where kids would sit and enjoy their ice cream. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Kate Loughlin".

Kate Loughlin



This is the gutter outside NJM Gallery all of this is flowing into the town water and contaminating it.




These are the cigarettes collected in the planters outside the shop. The pile is about 3 inches high.



This is the planter outside Izzy's Frozen Yogurt. The planter has several cigars and many cigarettes in it. People think that this is provided for them the put their cigarettes out in.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: May 12, 2016
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on May 16, 2016 City Council Agenda

6:00 p.m. Non-meeting with counsel regarding negotiations for a one-year Employment Agreement for Chief David J. Mara in accordance with RSA 91-A:2,I (b)

Non-meeting with counsel regarding property negotiations in accordance with RSA 91-A:2,I (b).

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Presentations:

1. **Justice John Broderick Re: Change Direction Campaign.** On Monday evening, Justice John Broderick will make a presentation to the City Council regarding the Change Direction Campaign and its goal to make the five most common signs of mental illness well known.

2. **Update Re: Mosquito Control Program.** The City of Portsmouth has an on-going mosquito control program that monitors and applies various strategies for mosquito control in the City. On Monday evening, Michael Morrison from Municipal Pest Management Services and Kim McNamara the City's Health Officer will present a summary of City's on-going mosquito control program and discuss emerging mosquito borne illnesses. Mr. Morrison has over thirty years of experience in mosquito control in New Hampshire. He and his company are licensed through the State of New Hampshire's Division of Pesticide Control. As part of their presentation, Mr. Morrison and Ms. McNamara will talk about best practices utilized for the mosquito control in Portsmouth as well as regulatory requirements that must be complied with under DES regulations.

3. **MapGeo Parcel Viewer Application.** The City Council will receive a brief introduction of the MapGeo Parcel Viewer Application from Jamie McCarty, GIS Coordinator on Monday evening.. The presentation will consist of a brief introduction of the application and a live demonstration. MapGeo is a new, easy-to-use mapping application that allows citizens to select, view and understand important information about their own property. Users can access it through the “Assessor’s Office” on the City website or directly through portsmouthnh.mapgeo.io.

The tool, whose implementation was managed by the Department of Public Works, will offer a new level of service to citizens who can now find and print current parcel/property data and zoning data for a specific address, as well as providing information about a select set of City services. Other highlights and services include:

- property information and a link to VISION Assessing property data;
- thematic overlays for zoning, polling and ward locations, elementary school districts, and solid waste and recycling routes;
- create a printable map that can be saved to pdf;
- a robust search capability to find addresses or owners; and
- integrated Google Street View and Google Maps;

Items Which Require Action Under Other Sections of the Agenda:

1. **First Reading of Proposed Ordinance Amendments:**

- 1.1 **Request for First Reading of Proposed Zoning Ordinance Amendment - Transportation Corridor District.** Under Section IX of the Agenda, [attached is a memorandum from Rick Taintor, Planning Director](#), regarding the [attached proposed Zoning Ordinance](#) amendment to establish a new Transportation Corridor District. The Planning Board voted on April 21, 2016 to recommend that the City Council amend the Zoning ordinance, as proposed.

The Planning Department has proposed that the railroad rights-of-way within the City (excluding areas for sidings and spurs) be rezoned to a new Transportation Corridor District. The purposes of the proposed district are:

- to preserve these corridors for existing and future transportation uses and utility lines and facilities;
- to allow for the development of multi-use (bicycle/pedestrian) recreational trails along abandoned rail corridors; and
- to restrict any land uses that would conflict with these transportation and recreational uses from being established.

Therefore, I recommend the City Council move to pass first reading and schedule a public hearing and second reading on the proposed Ordinance at the June 6, 2016 City Council meeting, as recommended by the Planning Board. Action on this matter should take place under Section IX of the Agenda.

2. **Public Hearing:**

2.1 **Public Hearing for the Purpose of Discontinuing any Rights of the City or the Public in the Following Two Parcels of Property:**

A certain triangular track of land being located at the northwesterly corner of and within the inner section of the Deer Street and Bridge Street rights of way, and being approximately 1717 square feet in size; and,

A certain trapezoidal track of land being located along the northerly boundary of said triangular track of land, being approximately four (4) feet wide and being approximately 269 square feet in size.

In conjunction with the land acquisition purchase whereby the City is obtaining a parcel of land from Deer Street Associates (DSA) for the construction of a new parking garage, the City will be releasing only the rights of the City or the public to DSA in a piece of land within the Right-of Way at the intersection of Deer Street and Bridge Street. Additionally, the City will need to release its rights in a sidewalk easement that currently encumbers the DSA property. Both of these actions have been part of the anticipated overall public/private agreement that will enable the construction of a new garage and the development of the DSA property.

In accordance with RSA 231:43, the City must hold a public hearing prior to the discontinuance of any rights to public property.

Both of these land releases of public interest were included in the preliminary and final subdivision approval that was granted by the Planning Board on August 20, 2015. At that meeting, after a public hearing on the application, the Board voted unanimously in favor of the application to “grant Preliminary and final Subdivision approval to realign the roadway and transfer 1,717 +/- s.f. of land so that the property shown on Assessor Map 125 as lot 17 increases in area from 108,359+/- to 110,076+/-“. Also included in this application was the discontinuance of a sidewalk easement.

On September 21, 2015 the City Council approved the land transfers for the proposed municipal parking structure at 165 Deer Street. At that meeting, the City Council voted “to transfer to Deer Street Associates the City’s right, title and interest in a parcel of land at the intersection of Deer Street and Bridge Street, containing 1,717+/- s.f. (0.0394 sc.)”.

Under Section VII of the Agenda, attached are the Disposition Plans C1 and C2 both dated July 2015 (amended 9/15/15), showing the subject land parcels, as well as the other properties that the City will be acquiring. Also attached is a plan titled “PROPOSED ROADWAY ALIGNMENT & TRANSFER PLAN TAX MAP 125, LOT 17” dated July 2015 (amended 8/7/15), showing in more detail, the Deer Street/Bridge Street parcel, as well as the area of the sidewalk easement.

Following the Public Hearing the City Council will be asked to vote on the two motions under the City Manager’s Action Items on the Agenda.

3. **Public Hearing/Second Reading of Proposed Ordinance Amendments:**

3.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance – West End Zoning Amendment Ordinance.** As a result of the May 2nd City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached proposed Ordinance amending Chapter 10 – Zoning Ordinance addressing character-based zoning to the West End, additional revisions to Article 5A affecting other character districts, and related amendments to the Zoning Ordinance and the Zoning Map (see attachments below):

- A one-page ordinance incorporating all the proposed zoning amendments;
- A proposed revision to Article 5A — Character Districts (39 pages);
- A set of "conforming amendments" to other sections of the Zoning Ordinance (8 pages);
- A list of additional proposed zoning changes for 52 lots adjacent to the proposed Character districts in the Islington Street corridor and West End (1 page); and
- A set of four maps showing proposed amendments to the Zoning Map. The first three maps are revisions to the existing Regulating Plan for the Character districts, extending character-based zoning down Islington Street to the West End, while the fourth map shows the 52 additional lots proposed for rezoning.

At its meeting on January 11, 2016, the Council passed first reading on a draft of these amendments and voted to refer them to the Planning Board for a report and recommendations. The Planning Board considered these proposed amendments at its January meeting and in a public hearing at its February, March and April meetings. During this review period, the Planning Department developed a number of proposed revisions to the draft ordinance in response to recommendations from the Study Circles groups, comments from residents at the public hearing, and consideration by Planning Board members. As a result, the version that the Planning Board voted to recommend contains significant differences from the version initially accepted by the Council and referred to the Board in January. Therefore, the Council voted at its May

2nd meeting to substitute the Planning Board's recommended ordinance for the version that had been passed at first reading in January.

The proposed amendments to Article 5A incorporate the following substantive revisions:

1. A new Character District 4-West End (CD4-W) is established. In terms of building and site design, the CD4-W district is modeled on the CD4 district in the downtown; but in its use regulations the new district is similar to the Business (B) district that currently applies in the West End. The development standards for this district are set forth in Figure 10.5A41.108 on pages 5A-11 through 5A-13. In addition, similar to the Downtown Overlay District, Section 10.5A30 prohibits ground floor residential uses in the CD4-W district except for row houses.

The primary differences between the CD4-W district in the West End and the CD-4 district in the downtown pertain to the requirements for off-street parking, density, lot coverage and open space. In particular, the lack of public off-street parking facilities in the West End means that the standards for density, lot coverage and open space must reflect the need to provide private off-street parking.

2. The proposed amendment recognizes a new "recessed entry" facade type (see Figure 10.5A43, page 5A-27). This is an existing building facade type found in Portsmouth's older neighborhoods, and it has been added as a permitted facade type along Islington Street, in the West End, and in other areas outside the Downtown Overlay District.
3. The proposed amendment increases the maximum building footprints in the CD4 and CD5 districts to reflect the historic land use patterns and building footprints in these areas of the downtown, as well as the concepts illustrated in the Vision Plans that TPUDC developed based on the Community Design Charrettes for both the North End and the West End. It is proposed to increase the baseline maximum building footprint from 10,000 sq. ft. to 15,000 sq. ft. in the CD4 district and from 15,000 sq. ft. to 20,000 sq. ft. in the CD5 district.
4. The proposed amendment allows ground-level building footprints to be increased to 30,000 sq. ft. in the CD4 and CD4-W districts, and to 40,000 sq. ft. in the CD5 district, where necessary to accommodate parking on a ground floor or underground level (see Sections 10.5A43.42 and 10.5A43.43). In such cases, any above-ground parking requires a liner building along each street frontage, and all stories of the building above ground floor or underground parking levels (including the liner building) shall meet the baseline maximum building footprint required for the Character district.

5. An exemption has been added to allow off-street parking to be located in front of single-and two-family structures (Section 10.5A44.31).
6. Incentives to the development standards have been added for the West End and for large parcels in other character districts in order to encourage property owners to provide workforce housing or community spaces such as pocket parks or plazas (Section 10.5A47).

In addition to these substantive revisions, the proposed zoning amendments implement a number of minor housekeeping amendments intended to clarify existing provisions or correct inconsistencies in the Zoning Ordinance. In keeping with the changes enacted in August 2015, a number of definitions are moved from Article 5A to the general definitions chapter in Article 15.

A marked-up copy of the proposed Article 5A, showing changes from the existing ordinance (as adopted in August 2015), is available for review in the Planning Department, as well as online at:

<http://planportsmouth.com/characterbasedzoning-isc.html>.

Concurrent with the Planning Board review, Portsmouth Listens held a series of Study Circle meetings to review the proposed zoning changes. At the March 17th Planning Board meeting the Study Circles groups presented recommendations that included regulatory changes, non-regulatory items such as capital improvements, and suggestions pertaining to architectural design review, traffic patterns, streetscape design, building code requirements, and city parking policies.

Following is a summary of the Study Circles' principal zoning-related recommendations and how they were incorporated in the revised draft.

| Topic of Study Circle Input | Summary of Input | Amendments Incorporated |
|------------------------------------|---|---|
| Building Heights | <ul style="list-style-type: none"> • Too tall in some areas • Increased only to create more affordable housing | <ul style="list-style-type: none"> • Lowered by 10 feet to 50 feet for the properties located near the Frank Jones Brewery buildings • Increased by up to 20 feet for workforce housing and community space |
| Building Footprints | <ul style="list-style-type: none"> • Too large • Lower the footprint allowance for buildings with at-grade or underground parking | <ul style="list-style-type: none"> • Lowered to 15,000 SF (from 20,000 SF) in CD4 and CD4-W • Lowered to 20,000 SF (from 30,000 SF) in CD5 |

| Topic of Study Circle Input | Summary of Input | Amendments Incorporated |
|--|---|---|
| Architectural Design Review | <ul style="list-style-type: none"> • Should not be required outside the Historic District • Encourage contemporary architectural styles • All buildings to be modulated along facade | <ul style="list-style-type: none"> • Clarified that no design review required outside the Historic District • Façade modulation requirements clarified to allow for contemporary architectural expressions |
| Universal Design | <ul style="list-style-type: none"> • Allow for universal design – especially along Islington Street | <ul style="list-style-type: none"> • Added recessed entryways as a façade type along Islington Street – allows for at-grade entrances |
| Land Use | <ul style="list-style-type: none"> • Inappropriate uses (hotels, conference centers, large performance centers, restaurants, nightclubs) in CD4-W • Consider an art and performance district • Permit restaurant and retail uses along Islington | <ul style="list-style-type: none"> • CD4-W use regulations now based on the Business (B) district, with more limited uses • Artist and small-scale performance space uses permitted in CD4-W • Small-scale retail and restaurant permitted along Islington (now changed to CD4-L2) |
| Workforce Housing | <ul style="list-style-type: none"> • Provide stronger incentives for workforce housing | <ul style="list-style-type: none"> • Increased height incentives for workforce housing on large lots in CD4-W south of Islington Street |
| Parking | <ul style="list-style-type: none"> • Encourage reduced off-street parking requirements and shared parking • Do not require units to be assigned specific spaces • Encourage off-site leases or easements | <ul style="list-style-type: none"> • Market-rate housing and commercial parking requirements reduced if workforce housing or community space is provided • Assigned spacing is not required • Public use of any off-street parking added |
| Density | <ul style="list-style-type: none"> • Lower minimum lot area per unit to encourage affordable housing | <ul style="list-style-type: none"> • Eliminated minimum lot area in the overlay district when workforce housing or community space is provided |

| Topic of Study Circle Input | Summary of Input | Amendments Incorporated |
|---|---|--|
| Ground Floor Residential Use | <ul style="list-style-type: none"> • Allow ground-floor residential uses in CD4-W | <ul style="list-style-type: none"> • Modified to allow in rowhouse buildings |
| Decouple West End Zoning from the Downtown and North End | <ul style="list-style-type: none"> • Separate the proposed amendments that apply more directly to the West End from those that apply to existing Character Districts | <ul style="list-style-type: none"> • The presentation of the amendments has been modified to separate the provisions that are unique to the Downtown or North End |
| Community Space | <ul style="list-style-type: none"> • Use incentives to create more green space | <ul style="list-style-type: none"> • The increased building height incentive encourages parks, plazas, squares, or playgrounds |

The above summary does not include all suggestions presented by the Portsmouth Listens Study Circle groups. In addition, several members of the public participated in the public hearing process and several changes presented in the revised draft are in response to their comments. A full and complete copy of their reports and the proposed zoning amendment for the West End Character District Zoning is available for review at the Planning Department.

I recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the City Council meeting of June 6, 2016. Action on this matter should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

- 1) **Proposed Discontinuing of any Rights of the City or the Public in the following Two Parcels of Property Re: 165 Deer Street.** Subsequent to the public hearing, I am requesting that the City Council move the following motions:
 - 1) *Discontinue any rights of the City or the Public in a certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street Rights of Way, Being approximately 1,717 square feet in size.*
 - 2) *Discontinue any rights of the City or the Public in a certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size.*

2. **Renewal of Pool Lease Agreement Re: Save the Portsmouth Indoor Pool, Inc. (SIPP).**

For the City Council’s consideration is a proposed renewal of the Consolidated Lease and Operations Agreement (“Lease”) between the City of Portsmouth and the non-profit Save the Portsmouth Indoor Pool, Inc. (“SIPP”). In 2011, the City Council entered into a novel, five-year agreement with SIPP in order to prevent the closure of the Portsmouth Indoor Pool. At the time, the Portsmouth Indoor Pool required significant capital improvements and the programming was in need of revitalization.

The agreement entered into in 2011 has been a success. SIPP has performed its obligations under the current agreement, achieving the funding benchmarks in the original lease and implementing over \$750,000 in capital improvements. Among the completed capital improvements: a new roof on the main building, upgraded locker rooms and new mechanical systems. [A complete list of capital improvements is attached.](#)

With the assistance of SIPP, City staff has improved membership and programming. The pool serves approximately 900 swimmers each week, not including the estimated 1,500 children and adults each year who attend swim lessons. The pool is the training facility for the Portsmouth High School swim team and is host to Special Olympics events. Programming includes water aerobics, water yoga and Red Cross life guard training. A summary of programs is provided.

Deputy City Attorney Suzanne Woodland will provide a summary of the renewal terms and answer questions. By way of summary, the proposed renewal keeps in place the structure of the Lease, but modifies SIPP’s fundraising and capital improvements obligations from the original \$750,000 over the five-year term to \$250,000 over the renewal period. A summary of the key provisions and the changes are set forth in the table below; [the proposed Renewal Agreement is attached.](#)

| Existing | Renewal |
|---|---------------------|
| 5 year term | same |
| SIPP obligation to complete at least \$750,000.00 in capital improvements. | Change to \$250,000 |
| City annual appropriation of \$150,000 as operating subsidy. | same |
| City operational support such as janitorial service and technology support. | same |
| SIPP responsible for emergency repairs. | same |

City continues with employment of its part-time pool staff same including lifeguards, instructors and Pool Director.

City maintains property and liability insurance. same

City separately accounts for revenues generated by, and same expenses arising from, the Indoor Pool.

Anticipated future capital projects include: installing a rubber/flat roof over lobby and locker rooms (currently a ballasted roof); construction of a filtration room; deck paint/resurfacing; improved bathroom toilet partitions; and maintenance to the gable end wall. The City approves and inspects all work.

I recommend the City Council move to authorize the City Manager to enter into a renewal of the Consolidated Lease and Operations Agreement consistent with the terms described.

3. **Proposed Lease Agreement with Pontine Theatre Re: Plains Schoolhouse.** As you are aware, the City and the Sons of Italy have had a lease agreement for use of the city-owned 1845 Plains Schoolhouse at 1 Plains Avenue for many years. During that time, the group has used the building for meetings and for charitable events such as the annual fall festival that generate revenue for activities that benefit Portsmouth residents and the group has made several improvements to the building. Although there remains a core group of active members, their use of the building is currently reduced to one evening per month for their regular meeting. Staff recently met with representatives of the Sons of Italy to discuss the possibility of them coordinating with Operation Blessing to move their monthly meeting to the Greenleaf Recreation Center which has better accessibility, meeting space and parking. Following a site visit to the Recreation Center, all parties were amenable to this new arrangement and the group will vacate the Plains Schoolhouse effective June 30, 2016.

Coincidentally, representatives of Pontine Theatre approached the City to inquire if there might be any City space the Theatre group could rent because they are moving out of the West Theatre this summer so that the NH Theatre Project can occupy the entire space. The 1845 Schoolhouse was suggested as a potential site. The Theatre Co-Directors toured the building and feel that the building would meet their needs. They have submitted the [attached request to use the building](#) for program development, administration work, rehearsal space, meetings and educational programs. I have also [attached their Mission Statement](#) for your information. If the City Council approves this request, I would recommend entering into a five-year lease similar to that of the Creek Athletic Club for use of the Bartlett Street Firehouse and the PPMTV for use of the South Meeting House in which the non-profit would make annual building improvements equal to the property tax value for the building which in this case would be \$2,800. Any year that the value of the documented improvements are less than the tax value, a net cash payment would be

required. In addition, the building would be accessible to the public for programs at no charge from time to time.

I recommend that the City Council move to authorize the City Manager to enter a five year lease with Pontine for use of the Plains Schoolhouse effective July 1, 2016.

4. **Solar Power Agreements.** Before the City Council are agreements to implement the installation of two solar arrays; a 265 kilowatt roof mounted system at the Portsmouth High School and a 330 kilowatt ground mounted system at the Madbury Water Treatment Plant in Madbury, NH. In December of 2015, the Portsmouth City Council approved the acceptance of up to \$450,000 in grant funds from the New Hampshire Public Utility Commission. The grant funding will pay for only a portion of the project, the balance of the funding to install the systems will require an additional approximately \$1.3 million which will be repaid through a solar power purchase agreement for each array and associated lease.

Attached is a summary of the solar power purchase agreement and lease terms for the arrays as well as the draft documents. School Business Administrator Steve Bartlett and Deputy City Attorney Suzanne Woodland will be available to respond to questions as well as a representative from Sunraise Investment.

I recommend the City Council move to authorize the City Manager to execute all necessary leases, power purchase agreements, collateral documents and minor amendments to implement the installation of the two solar array systems on substantially the terms as represented in the leases and power purchase agreements presented.

5. **Reconsideration of Action of April 18, 2016 City Council Meeting Re: Disposition of the Fire Boat.** As you are aware, at the April 18, 2016 City Council meeting, the Council voted to approve of the disposal of the Fire Department's 2006 Fire Boat to the Town of Gilford, New Hampshire. Subsequent to the City Council meeting, the City was contacted by a member of the Town of New Castle Board of Selectmen requesting that the City of Portsmouth transfer the Fire Boat to the Town of New Castle (see attached letter).

Attached is a memorandum from Fire Chief Steven Achilles, as well as letters from the Town of New Castle Firewards Select Board and a letter from the Gilford Fire-Rescue regarding this matter.

As Fire Chief Achilles' memorandum indicates, the Portsmouth Fire Commission made the following motion to 1) deny the request of the New Castle Select Board, 2) reaffirm the Commission's previous vote to transfer the vessel to the Town of Gilford, 3) notify the Town of New Castle of their decision, and 4) notify the Portsmouth City Council of the same as you may have final decision on the disposition of the boat.

I am bringing back this matter to the City Council for your reconsideration of the City Council's action of the April 18, 2016 City Council meeting regarding the disposition of

the Fire Boat to the Town of Gilford, New Hampshire. A City Council Member on the prevailing side would need to make the motion.

The City Council may move one of the following motions:

- 1) *Move to reconsider the vote of April 18, 2016 and dispose of the Fire Boat to the Town of New Castle, or,*
- 2) *Move to reaffirm the vote of April 18, 2016 to dispose of the Fire Boat to the Town of Gilford.*

(This requires two-thirds vote.)

6. **License Request Re: 64 Market Street.** Careno Construction Company requests a license through July 29, 2016 to encumber a certain portion of the public parking lot and alley adjacent to 64 Market Street (the Gaslight Restaurant) to facilitate the reconstruction and repair of the fire-damaged restaurant. The reconstruction work is currently underway pursuant to an encumbrance permit issued in March. The proposed license area is shown [on the attached](#).

Careno Construction has been coordinating its work and use of the parking spaces and alley with Eversource and the Department of Public Works who have been working in that area as well. Staff has no objection to the granting of a license with continued coordination requirements. Careno has been paying for the parking spaces impacted by their activities and would continue to pay for impacted parking under the proposed license.

I recommend the City Council move to authorize the City Manager to negotiate and enter into a license with Careno Construction to facilitate reconstruction activities of the Gaslight Restaurant.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on May 2, 2016. In addition, this can be found on the City's website.
2. **African Burying Ground Anniversary of Reburial Ceremony.** For your information, [attached is a News Release](#) regarding a community commemoration for the African Burying Ground Anniversary on Monday, May 23, 2016 at 8:45 a.m. at the African Burying Ground. For more information on this project and related events, please visit www.africanburyinggroundnh.org.

Portsmouth Indoor Pool Programs

- PHS swim team
 - Group swim lessons
 - Private swim lessons
 - Water aerobics, yoga, pre and post-natal workouts
 - Masters Swim Team
 - Adult group and private swim lessons
 - American Red Cross lifeguard training, CPR, first aid, safety training for swim coaches certifications
 - PHS, guards get work credit this year 3 guards
 - Special Olympics
 - Open Water Swim Training with Pilates
 - Community Triathlon for Education for All Children
 - Swim tests for local rowing and boat clubs
 - Collaboration with Eliot Recreation Department for Group swim lessons
 - Rental with Eliot and Wells for fun and summer swim testing
 - Relationship with UNH, Rick McAvoy 1-2 times a year trains their PT department
 - Cross Country running teams girls and boys, PHS
 - Birchtree, school for Autism (swim and work program)
 - Easter Seals work program
 - One Sky, lessons and swim for their clients
 - Sentry Hill Senior Center
-
- Resident discount on membership and pay for programs
 - Included with Pool membership: Lap swim, open swim, water aerobics, cardio and weight equipment on pool deck

Capital Improvements Performed

By SIPP Per 2011 Lease & Operation Agreement

Portsmouth Indoor Pool

Capital Improvements

2012

- Repaired all pool gutters to make water tight
- Replaced all 4" PVC pool return lines
- Installed new depth markers around the pool perimeter
- New DE filter grids
- New float control for auto fill for the pool
- Replaced pool deck drains to make safe
- Replaced both lap pool and hot tub chemical controllers
- Replaced pool chlorine pump
- Replaced starting blocks

2013

- Replaced main building roof
- Replaced starting blocks
- Pool paint for the deck
- Backstroke flags
- New lane lines

2014

Women's Locker room

- New paint on ceilings and walls
- Removal of 12+ layers of old paint on the floors
- New Epoxy non-slip floors
- New changing stall walls
- New shower walls
- 3 new toilets
- 1 new sink with new insulated piping
- 5 New Symmons Allura shower valves and trim
- 1 New Symmons temptrol ADA shower unit with diverter
- New shower piping and isolation valves
- New shower and changing stall curtains
- New locker room doors – coming soon
- New hand dryer
- New mirrors
- New towel and clothes hooks

- New bench seats; all pressure treated wood so ok to get wet. We will decide on painting in the next few months you cannot paint them right away
- Extra electrical outlet
- Removal of old locker room doors going from the locker room out to the pool

Men's Locker room

- New paint on ceilings and walls
- Removal of 12+ layers of old paint on the floors
- New Epoxy non-slip floors
- New changing stall walls
- 2 new toilets
- 1 new urinal
- 1 new sink with isolation valves and insulated piping
- 1 new sink faucet
- 5 New Symmons Allura shower valves and trim
- 1 New Symmons temptrol ADA shower unit with diverter
- New shower piping
- New shower and changing stall curtains
- New locker rooms doors
- New hand dryer
- New mirrors
- New towel and clothes hooks
- New bench seats; all pressure treated wood so ok to get wet. We will decide on painting in the next few months you cannot paint them right away
- Removal of old locker room doors going from the locker room out to the pool

Pool

- New pool liner
- New pool ramp entry floor covering
- Customize gutters to fit new pool liner

Additional Capital Items

- New bottle filler and water cooler at front entrance; this will alleviate the Poland Springs water expense
- No more soda machine in the building
- New mixing valve in the basement for the water heater
- New electrical in the men's and women's room
- Carpet cleaning in front lobby; carpet is very old and will need replacement in this next year

2015

Mechanical Room

- New boiler and all accessories that heats entire building, hot water for showers and sinks, heats pool water and spa water
- New air-handler that heats pool air and provides recirculation of air

- New heat recovery ventilator that provides fresh air and exhaust to pool
- New heat recovery ventilator that provides fresh air and exhaust to locker rooms and entry
- New heat exchanger and accessories that heats the pool
- New heat exchanger and accessories that heats the spa
- New hot water storage tank with integral heat exchanger that provides hot water for showers and sinks
- Rebuilt mixing valve that supplies hot water to the showers and sinks
- New unit heaters that heat Men's and Women's locker rooms
- New (qty-4) sidewall fans in pool room that provide heat relief ventilation
- New 2 lbs gas service from utility meter to boiler
- New chimney to vent products of combustion from the boiler
- New boiler combustion air connection that provides outdoor air directly to the boiler
- New electrical power to all mechanical room components, sidewall fans and unit heaters
- New HVAC control systems
- New piping and ductwork within mechanical room
- New piping and ductwork insulation within mechanical room
- New backflow preventer at city water entrance

Additional Capital Items

- Replaced exterior door at mechanical room
- Lobby carpet
- Locker room new floor paint

Capital Improvements that need to be completed

- Rubber/flat roof over lobby and locker rooms; this is currently a ballasted roof
- Filtration room
- Deck paint/resurfacing
- Bathroom toilet partitions
- Gable end wall

Changes in Operations from 2011-Present

- Multi use pool
- Rentals to additional swim teams and programs
- Additional specialty programs
- Additional private swim lessons
- Additional group lessons
- Increase in membership (2011 only) and swim lesson rates

**RENEWAL OF
CONSOLIDATED LEASE AND OPERATIONS AGREEMENT
TO MAINTAIN THE PORTSMOUTH PUBLIC POOL**

THIS RENEWAL AGREEMENT, with an effective date of July 1, 2016 (the "Renewal"), is by and between the City of Portsmouth (the "City"), a municipal corporation organized and existing under the laws of the State of New Hampshire and having a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire and Save the Indoor Portsmouth Pool, Inc. ("SIPP") a non-profit corporation organized under the laws of New Hampshire, 82 Court Street, P.O. Box 418, Portsmouth, NH 03801.

WHEREAS SIPP is currently leasing and operating the Portsmouth Public Indoor Pool pursuant to a Consolidated Lease and Operations Agreement to Maintain the Portsmouth Public Pool dated July 1, 2011 ("Lease and Operations Agreement"); and

WHEREAS the Lease and Operations Agreement is due to expire on June 30, 2016 and the parties desire to renew it for a five year term.

NOW THEREFORE the Parties agree as follows:

A. All terms and conditions of the Lease and Operating Agreement, a copy of which is attached, are incorporated herein as if fully set forth, subject to the following amended sections:

Article I, Section 1.1 is amended as follows:

Section 1.1 Demise of Premises, Duration and Parking: The City hereby leases the Premises to SIPP for 5 years; such term commencing on July 1, ~~2016~~ ~~2014~~ and ending on June 30, ~~2021~~ ~~2016~~ in accordance with the terms herein. The parking area shall not be a part of the demised premises. The City, through its School Department, shall continue to operate the parking area that is presently available for use by patrons of the pool.

Article I, Section 1.2 is amended as follows:

Section 1.2 Capital Improvements: All capital improvements will be the responsibility of SIPP. SIPP will invest at least ~~\$750,000.00~~ ~~\$250,000.00~~, as defined in Section 1.5, over the five year term for capital improvements (plus 6 months for final completion). The schedule for undertaking capital improvement projects shall be mutually agreed upon between the parties and adjusted as necessary from time-to-time based on the physical needs of the facility, safety concerns, availability of SIPP funds, potential programming impacts and like conditions.

Article I, Section 1.5 is amended as follows:

Section 1.5 Fundraising Benchmarks and Financial Resources: During the term of this Agreement, SIPP shall annually raise ~~\$750,000~~ ~~\$250,000~~ in available funds for capital

improvements, ~~in the following amounts:~~

- ~~By: June 30, 2012 at least \$50,000~~
- ~~June 30, 2103 an additional \$150,000~~
- ~~June 30, 2014 an additional \$175,000~~
- ~~June 30, 2015 an additional \$200,000~~
- ~~June 30, 2016 an additional \$175,000~~

“Available funds” shall mean the funds that SIPP can put to use in meeting the demands for capital improvements or hold in its investment portfolio for the same purposes. Available funds may include the promise of grant funds or loans from any agency, governmental, organizational or corporate source when: SIPP has received a written commitment approving the funds; the funds will be used for capital improvements; and the conditions for receipt are reasonably anticipated to be satisfied by SIPP. Available funds shall also include the value of donated or reduced cost materials installed as part of any capital improvement. Available funds may also include engineering or architectural services donated for such capital improvements up to a maximum of ten percent (10%) of the benchmark total for each fiscal year.

Funds raised in excess of the **\$750,000 under the initial lease term or any** annual benchmark **under this Renewal Agreement** may be applied to the following year’s goal.

Failure to meet any benchmark shall constitute an event of default under this Agreement.

As may be requested by the City, SIPP shall disclose a summary of SIPP’s financing through such means as fundraising, underwriting, donations or other methods to obtain adequate financing, to provide for the maintenance and capital improvement needs of the Premises. Nothing herein shall require the disclosure of SIPP’s donors.

Article I, Section 1.6 is amended as follows:

Section 1.6 Renewal Terms: Within 1 year prior to expiration of the 5 year lease term, SIPP may request that renewal of the lease for an additional five year term. The City shall renew this lease upon substantially the same terms and conditions provided, that and subject to, the following: (1) SIPP is able to demonstrate that it has or will invest before the end of the term at least ~~\$750,000.00~~ **\$250,000.00** in capital improvements in the Premises; (2) SIPP is not in violation of any material term of this Agreement; (3) the City not obligated to make a financial contribution beyond the five year term of this Agreement (nothing herein would preclude continuation of the present financial contribution); and (4) SIPP is prepared to continue to make such capital improvements as may be reasonably necessary and as the parties may agree during the subsequent five year term.

Article III, Section 3.1 is amended as follows:

(d) At the end of each fiscal year, any operational savings (any balance remaining in the Special Revenue Fund) will be retained in the Fund for future use unless

SIPP otherwise directs that some or all of the savings be used for capital improvements, in which case such funds would be “available funds” under Section 1.5. SIPP shall provide the City with direction relative to the savings within **ninety (90)** ~~thirty (30)~~ days after the end of the fiscal year.

B. This Renewal also incorporates a Memorandum of Understanding for HVAC Improvements to Portsmouth Public Pool dated June 15, 2015 between the parties, copy attached.

IN WITNESS WHEREOF, the City and SIPP have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first written above.

THE CITY OF PORTSMOUTH

SAVE THE INDOOR PORTSMOUTH POOL, INC.

By: _____
John P. Bohenko, City Manager

By: _____
Name: _____

Authorized by vote of the City Council on _____

STATE OF NEW HAMPSHIRE: ss.
COUNTY OF ROCKINGHAM

On this _____ day of _____, 201__, before me, _____ a Notary Public in and for said County and State, personally appeared **John P. Bohenko**, personally known to me (on the basis of satisfactory evidence) to be the **City Manager** of the **City of Portsmouth** and on oath stated that he was authorized to execute this instrument and acknowledged it to be his free and voluntary act for the uses and purposes set forth herein.

Notary Public in and for said County and State
Printed Name: _____
My commission expires: _____

STATE OF NEW HAMPSHIRE: ss.
COUNTY OF ROCKINGHAM

On this _____ day of _____, 201__, before me, _____ a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of **Save the Indoor Portsmouth Pool, Inc.**, and on oath stated that she/he was authorized to execute this instrument and acknowledged it to be her/his free and voluntary act for the uses and purposes set forth herein.

Notary Public in and for said County and State

Printed Name: _____

My commission expires: _____

DRAFT



WEST END STUDIO THEATRE · 959 ISLINGTON STREET, PORTSMOUTH NH · (603) 436-6660 · INFO@PONTINE.ORG

May 3, 2016

John Bohenko, City Manager
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Dear Mr. Bohenko:

Thank you for meeting with us yesterday; we are very interested in entering into a five-year lease agreement with the City of Portsmouth for use of the 1845 schoolhouse at 1 Plains Avenue. Pontine Theatre is leaving the West End Studio Theatre in June and we are in need of space for rehearsals, meetings and educational programs. The schoolhouse would be ideal for our purpose.

We are honored by the prospect of being entrusted with such an historic city property. We have operated several other spaces in the city over the past thirty-eight years and have considerable experience with capital campaigns and building management.

We plan to use the schoolhouse principally for activities related to the development of new programs. As you know, the company specializes in creating original works that are rooted in the history and literature of New England. The research, development and rehearsal of these programs is labor intensive and requires ongoing access to studio and administrative space. We also hope to use the schoolhouse for public workshops, lectures, readings, and informal presentations about programs under development.

We look forward to the City Council meeting on May 16th and to working with the City Attorney on a lease agreement. Thank you for your help in moving this forward.

Sincerely Yours,

Greg Gathers
Co-Artistic Directors

Marguerite Mathews



WEST END STUDIO THEATRE · 959 ISLINGTON STREET, PORTSMOUTH NH · (603) 436-6660 · INFO@PONTINE.ORG

MISSION STATEMENT

Pontine Theatre is dedicated to creating intimately scaled, original stage productions that celebrate the history, culture and literature of New England. In creating its work, the company employs a holistic ensemble process which recognizes the actor as the central artist of the theatre. In addition to performing, Pontine's artists take on the roles of researcher, playwright, director, designer and builder to create productions with a unity of vision capable of engaging audiences with an intimate connection to their own cultural heritage.

A BRIEF HISTORY

Founded in 1977, Pontine Theatre is both a resident and a touring company. In Portsmouth NH, an at-home performance series showcases the company's premieres and the works of invited guest artists from around the country. All of the works in this series use expression through movement as a primary dramatic vehicle and all are original works created by the artists who perform them. The 2015-16 series includes performances by artists from California and NYC, and the three productions by Pontine Theatre, including the premiere of "Evangeline," based on the epic poem by Henry Wadsworth Longfellow.

Touring brings Pontine Theatre to a broad-based regional audience. Last season, the company toured a holiday program for seniors in eighteen communities and a program about the New England Transcendentalists to seniors in fifteen communities, with additional performances at public libraries, museums and historical societies. Pontine Theatre's touring programs reach audiences of all ages and ethnicities. The company tours throughout the New England states; most programs serve rural communities.

**SUMMARY OF TERMS
FOR SOLAR ARRAY AGREEMENTS
PORTSMOUTH HIGH SCHOOL AND MADBURY WATER TREATMENT PLANT**

Each array will be governed by a separate power purchase agreement and lease with SunRaise Investments LLC, but have substantially the same terms and conditions. Those terms are summarized below and the draft agreements for the array at the Portsmouth High School are attached. The agreements for the array at the Madbury Water Treatment Plant will be nearly identical with regard to form, containing minor modifications due to the ground installation, and consequently have not been included in the packet of information.

Power Purchase Agreement (PPA)

- The PPA is 25-year term agreement; the City having an option to buy the solar array at fair market value after six years and terminate the arrangement.
- SunRaise (its contractor) will install, operate and maintain the solar array.
- The City's facility will consume the power generated by the array and the City will pay a service fee for that power at 95% of the retail electric rate to receive savings; there is a floor below which the service fee cannot drop (see schedule B) to protect SunRaise's investment in the installation of the array.
- To the extent that the array does not generate sufficient power for the facility's needs, or does not operate, the City is automatically supplied by its current utility provider; a meter which will indicate from which source the facility is supplied.
- The Agreement is fully assignable and will be assigned to a Special Purpose Entity owned by SunRaise Investments LLC so that investors can participate and the tax credits available for such solar projects can be captured.

Lease

- The lease is a 25-year term, linked to the PPA such that if the PPA is terminated early, the lease will also terminate.
- The lease protects SunRaise's interest in the array and establishes its rights to enter the property to install and maintain the array.
- The lease protects SunRaise's solar rights and limits the City's ability to plant trees, build structures or otherwise interfere with the array's operations.
- The lease is also fully assignable.

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“Agreement”) is by and between SunRaise Investments LLC (the “Seller”) and the City of Portsmouth, New Hampshire (the “Buyer”) (together referred to as “Parties” and each individually as a “Party”) and is effective and binding on the Parties as of the date hereof.

Background

1. The Seller will install and commission a solar photovoltaic facility with a nominal capacity of 294 kW located at 50 Andrew Jarvis Drive in Portsmouth, New Hampshire (the “Facility”).
2. The Buyer is a customer of the Utility (as defined below).
3. The Facility is capable of being operated as a net metered system authorized pursuant to RSA 362-A:9 and Puc 900 (the “Net Metering Capability”).
4. The Buyer is or will be an “eligible customer-generator” or “customer-generator” as defined in RSA 362-A:1-a, II-b and Puc 902.03.
5. Becoming a customer-generator will entitle the Buyer to certain benefits available under New Hampshire law and under regulations established by the Public Utility Commission (the “Commission” or “PUC”) for net metering electric generation systems.
6. The Seller and the Buyer have accordingly entered into this Agreement to establish the terms and conditions under which the Buyer will purchase and enjoy the benefits of the output of the Facility in exchange for compensation to the Seller as specified herein.

N O W, T H E R E F O R E,

In consideration of the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

Section 1. **Definitions**. Capitalized terms used herein but not otherwise defined shall have the following meanings:

“Administrator” shall mean the person or persons designated by the Seller from time to time, in its sole discretion, as the administrator and designated person to make all required filings with the Utility and/or the Commission on behalf of the Facility.

“Commission” shall have the meaning set forth in the Background Section to this Agreement.

“Facility” shall have the meaning set forth in the recitals to this Agreement.

“Financing Source” or “Financing Sources” means, either in the singular or collectively, as applicable, the persons or entities lending money, extending credit or providing debt, equity or lease financing for or secured by the Facility and any trustee or agent acting on any such person or entity’s behalf.

“Meter” shall have the meaning given in Section 3.

“Notice” shall have the meaning given in Section 15.

“Service Commencement Date” means the first date on which the Facility actually delivers generation to the Seller.

“Surplus Generation” means electricity generated by the Facility in excess of the Buyer’s electric usage measured at the end of the Utility’s billing cycle.

“Net Metering Rate” shall have the meaning as defined in RSA 362-A:9, IV(a) and (b) and Puc 903.02(f) or (g).

“Utility” means the retail electric company serving the Buyer. The Utility is currently Eversource Energy and the Meter is currently serviced by the Utility.

Section 2. **Output Purchase Agreement.** This Agreement creates an obligation by the Buyer to pay the Seller for the benefit of electricity generated by the Facility. The Administrator shall administer this Facility in accordance with this Agreement and applicable law.

Section 3. **Electricity Meters.**

- (a) The Parties hereto agree that the electricity meters (the “Meters”) listed in Schedule A to this Agreement shall be included as a part of this Agreement. Schedule A shall be amended from time to time, if necessary, as Meters are added and removed to accommodate the Net Metering Capability.
- (b) During the Term of this Agreement, the Seller shall not add or remove any Meter without the Buyer’s consent.
- (c) If at any point during the Term of this Agreement the Facility produces excess generation in a one year period, the Buyer shall work with Seller to convert the Facility to a group net metering system and this Agreement to a group net metering agreement.

Section 4. **Price; Billing and Payment.**

- (a) Price. The Buyer shall pay to the Seller for the benefits of the Facility as described in Schedule B. Such payment(s) shall be due monthly within thirty (30) of receipt of Seller’s invoice.
- (b) Late Payments. The Seller shall be entitled to charge interest at the rate equal to the lesser of: (i) one percent (1%) per month; or (ii) the maximum provided by law, for late payments hereunder. In the event that the last day that payment must be so made falls on a weekend or state or federal holiday, the payment shall be due on the next business day. This late payment charge shall be imposed upon the unpaid balance, including any prior unpaid late payment charges and shall be assessed on such unpaid balances once each month after it is initially imposed on an unpaid balance, so long as a balance remains unpaid.
- (c) Nothing in this Agreement shall be a promise or guaranty by the Seller to provide the Buyer with output from the Facility or to provide any net metering credits from the Facility. Subject to Section 10(d), the Buyer shall only be obligated to pay for such output or net metering credits as are actually produced by the Facility.

Section 5. **Ownership of the Facility.**

(a) The Seller owns the Facility. Nothing in this Agreement shall have the effect of passing any right, title or interest in, or liability related to, the Facility to the Buyer or any other person.

(b) **Lease.** The Buyer agrees to execute a Solar Energy Facility Site Lease Agreement simultaneously herewith (the "Lease"), which Lease shall include a provision for Buyer's right of egress and ingress over, and across the roof and field of the premises and those areas surrounding the roof and fields, described and depicted in said Lease for the purposes of installing, operating, maintaining, improving, repairing, relocating, and removing the Facility on the roof and field of the premises and to make such penetrations in the roof and roof structure as needed to run wires and conduit from the Facility to the electrical panel and other areas within the premises and to obtain access to other utility services made available by the Buyer. The right of access provided by Buyer shall include, but not be limited to, access for lifting, rigging and material-handling equipment), ingress to and egress from the Facility on, over, and across the premises. The Seller agrees to maintain the Leased premises and the property utilized for purpose of ingress and egress in its original condition, normal wear and tear excepted, and agrees to restore any damage done to said premises and property by the Seller during the Term of the Agreement. Access to the premises by the Seller's employees, contractors or agents shall conform to the Buyer's rules and guidelines regarding safety and site access for maintenance and similar workers.

(c) **Solar Covenant.** Buyer recognizes that the economic viability of the Solar Facility for Seller depends on Buyer, and those claiming by through or under Buyer, taking all reasonable steps to ensure that their use of that portion of Buyer's Property not covered by this Agreement or Lease, as well as their use of any and all nearby property now owned or hereafter owned or acquired by them, does not, directly or indirectly, block, interfere with or otherwise impede the maximum access of the Solar Facility to sunlight. In light of the foregoing, Buyer hereby covenants to provide for the free passage of solar radiation to the System. Any obstruction to the passage of direct solar radiation across the Property to the System by Buyer or a tenant or assignee of Buyer is prohibited. Trees, structures, and improvements located on the Property as of the Effective Date shall be allowed to remain, unless Buyer and Seller agree to their removal. Buyer shall not place or plant any trees, structures, or improvements on the Property after the Effective Date that may, in Seller's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Buyer has received prior written approval from Seller for any such trees, structures, or improvements. Seller and Buyer further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar covenant made in this **Section 5.c.**

(d) **Use and Maintenance.** Seller agrees not to use or permit the use of the rooftop for any purpose which is illegal, dangerous to life, limb or property or which, in Buyer's reasonable opinion, creates a nuisance. In particular, no environmentally hazardous materials will either be used or stored in or around the rooftop and no such materials will be used in any of the Facility installed by Seller on the rooftop. Seller will not permit unauthorized person or persons with insufficient expertise or experience to access the rooftop or maintain or operate the Facility. Seller and Buyer understand that the rooftop must be kept locked and secure at all times. Seller agrees not to commit any waste or allow any waste to be committed within or on any portion of the rooftop and will not injure the rooftop or building but will maintain the rooftop in a clean condition and in good repair as it relates to the Facility. Seller agrees that the installation, operation and maintenance of the Facility will at all times, and at Seller's sole cost and expense, comply with such technical standards for the rooftop relating to structural engineering and applicable permits.

(e) Throughout the Term of this Agreement, the Seller shall require any of its construction, operations or maintenance contractors (“Contractors”) to maintain insurance in the following minimum amounts and coverages:

Insurance shall be in such form as will protect the Contractors from all claims and liabilities for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this contract whether such operation by himself or by anyone directly or indirectly employed by him.

1. AMOUNT OF INSURANCE

- A) Comprehensive General Liability:
Bodily injury or Property Damage - \$1,000,000/\$2,000,000
Per occurrence and general aggregate
- B) Automobile and Truck Liability:
Bodily Injury or Property Damage - \$1,000,000/\$2,000,000
Per occurrence and general aggregate
- C) Excess/Umbrella Coverage in the amount of \$1,000,000

Additionally, the Contractors shall purchase and maintain the following types of insurance:

- A) Workers Comprehensive Insurance coverage for all people employed by the Contractors to perform work on the Facility. This insurance shall at a minimum meet the requirements of the most current laws of the State of New Hampshire.
- B) Contractual Liability Insurance coverage in the amounts specified above under Comprehensive General Liability.
- C) Product and Completed Operations coverage to be included in the amounts specified above under Comprehensive General Liability.

The City of Portsmouth shall be named as an additional insured and identified as a certificate holder on all policies as follows: City of Portsmouth, Attn: Legal Department, 1 Junkins Avenue, Portsmouth, NH 03801.

Contractors shall provide proof of insurance coverage satisfactory to the City of Portsmouth.

Coverages shall remain in effect for a period consistent with the Statutes of Limitations under the Law of the State of New Hampshire.

Section 6. **Environmental Attributes**. All mandatory or voluntary federal, state/commonwealth, or local rights to the Facility’s green attributes, including all renewable energy credits, and any and all rebates, tax credits, and other economic benefits in connection with the Facility (“**Environmental Attributes**”) shall remain the property of the Seller or its successors or assigns. The Seller shall have the exclusive right to sell, transfer, or convey the Environmental Attributes to any other person in Seller’s sole discretion. Net metering credits are not Environmental Attributes.

Section 7. **Covenants and Obligations.**

(a) **Reports.** Upon request, the Buyer shall provide to the Seller copies of Facility generation records produced by the Utility and, if applicable, all Utility accounting of the Net Metering Capability. This relationship may reverse if the Facility becomes a group net metering system.

(b) **Exclusivity.** The Buyer shall not enter into a net metering arrangement with any other person or entity for the Meters referenced in Section 3 above during the Term.

(c) **Utility.** The Buyer shall remain a customer of the Utility in good standing at all times during the Term, and shall not take any action to cause any Meter to be disconnected or removed from the Utility's service without the Seller's prior consent. The Buyer shall pay its obligations to the Utility as the same become due and payable at all times during the Term. Nothing in the paragraph limits the Buyer from contracting with a different retail electric company provided notice to and coordination with Seller occurs and so long as such retail electric company consents to the Facility being a net metered facility.

(d) **Further Assurances.** The Parties, from time to time on written request of the other Party, shall perform such further acts, including execution of documents, as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or regulatory approvals pertaining to the subject matter hereof.

(e) **Authorization.** Should the Parties convert the Facility to a group net metering arrangement, the Seller and the Administrator are hereby authorized to take all such additional actions, including, without limitation, making any filings and submissions to the Utility, the Commission and any other applicable regulatory bodies, as may be necessary from time to time to carry out the terms of this Agreement related to net metering. Until such time, the Buyer shall be authorized to make any filings and submissions related to net metering.

(f) **Permits and Approvals.** Seller, consistent with applicable laws, shall use reasonable efforts to obtain, at its sole cost and expense, any zoning, land use and building permits required to construct, install and operate the Facility. Buyer, consistent with applicable laws, shall cooperate with Seller's reasonable efforts to obtain such permits and approvals

(g) **Standard System Repair and Maintenance.** Seller shall construct and install the Facility at the Premises. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the Facility at its sole cost and expense, except for any repairs or maintenance resulting from Buyer's negligence, willful misconduct or breach of this Agreement or the Lease (if applicable). Seller shall not be responsible for any work done by others on any part of the Facility unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the Facility by anyone other than Seller or Seller's contractors. If the Facility requires repairs for which Seller is not responsible, Buyer shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current reasonable rates. Except when Seller has a reasonable belief that there is imminent danger to any person or property, Seller shall provide Buyer with 24 hours advance notice prior to accessing the premises to make standard or emergency repairs so that the Buyer may have the option to send its staff to monitor the work being done by Seller or Seller's agents.

(h) **Breakdown Notice.** Seller shall notify Buyer within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the Facility or (ii) an interruption in the supply of electrical energy from the Facility. Buyer and Seller shall each designate personnel and

establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Buyer shall notify Seller immediately upon the discovery of an emergency condition affecting the Facility.

(i) Liens and Payment of Contractors and Suppliers. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the premises free and clear of any liens related to such charges. Seller shall indemnify Buyer for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Buyer in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the premises.

(j) Bond. Seller shall obtain, or cause its EPC contractor to obtain, a labor and material payment bond in an amount of the cost of the construction of the Facility for the entire period of construction of the Facility. Buyer shall not be responsible for obtaining builders risk insurance.

(k) Outages. Buyer shall be permitted to be off-line for two (2) full twenty-four (24) hour days (each, a "Scheduled Outage") per calendar year during the Term, during which days Buyer shall not be obligated to accept or pay for electricity from the Facility; provided, however, that Buyer must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage. In the event that Scheduled Outages exceed two (2) days per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Seller shall reasonably estimate the amount of electricity that would have been delivered to Buyer during such excess Scheduled Outages or any unscheduled outages and shall invoice Buyer for such amount in accordance with Section 4.

(l) Relocation. If Buyer ceases to conduct business operations at and/or vacates the premises or is prevented from operating the Facility at the premises prior to the expiration of the Term, Buyer shall have the option to provide Seller with a mutually agreeable substitute premises located within the same electric distribution utility service territory as the terminated Facility or in a location with similar utility rates and insolation. Buyer shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Buyer shall execute an amended agreement that shall have all of the same terms as this Agreement except for the (i) Effective Date; (ii) Lease (which will be amended to grant rights in the real property where the Facility is relocated to); and (iii) Term, which will be the remainder of the Term of this Agreement and such amended agreement shall be deemed to be a continuation of this Agreement without termination. Buyer shall also provide any new Buyer, owner, lessor or mortgagee consents or releases required by Seller or Seller's financing parties in connection with the substitute premises. Buyer shall pay all costs associated with relocation of the Facility, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the Facility from the premises and installation and testing of the Facility at the substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out-of-pocket expenses connected with preserving and refileing the security interests of Seller's financing parties in the Facility. Buyer shall pay Seller the service fee multiplied by the average system output over the prior ninety (90) day period of operations, adjusted for prevailing insolation, for every day or portion thereof between the time the Facility ceases operation at the original premises until operation commences at the substitute premises. Seller shall remove the Facility from the vacated premises prior to the termination of Buyer's ownership, lease or other rights to use such premises. Seller will not be required to restore the premises to its prior condition but shall promptly pay Buyer for any damage caused by Seller during removal of the Facility, but not for normal wear and tear. If the substitute premises has

inferior insulation as compared to the original premises, Seller shall have the right to make an adjustment so Buyer's payments to Seller are the same as if the Facility were located at the original premises. If Buyer is unable to provide such substitute premises and to relocate the Facility as provided, any early termination will be treated as a default by Buyer.

(m) Removal of Facility at Expiration. Upon the expiration or earlier termination of this Agreement (provided Buyer does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the Facility from the premises on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Excluding ordinary wear and tear, the premises shall be returned to its original condition including the removal of Facility mounting pads or other support structures. In no case shall Seller's removal of the Facility affect the integrity of Buyer's land or structures. Seller will ensure that work on the System by Seller and its contractors will be performed according to the applicable requirements. Seller shall leave the premises in neat and clean order. Buyer shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during Facility removal.

(n) Non-Appropriation. In the event that: (1) funds are not appropriated for the municipal department(s) or general government administration sufficient to satisfy the obligations under the Agreement during the fiscal period subsequent to the one in which the Agreement was entered into; and (2) such non-appropriation did not result from any act or failure on the part of the City to propose a budget sufficient to meet the obligation; Buyer may terminate the Agreement by written notice from Buyer's governing body to Seller a minimum of 30 days prior to such non-appropriation event. Buyer agrees that it will take all steps necessary to seek appropriations, to the extent permitted by law, each year.

(o) Completion of Construction. Seller shall use commercially-reasonable best efforts to complete construction and interconnection of the Facility by January 1, 2017.

(p) Additional Construction Documentation to Secure Grant Funds. The Parties acknowledge and agree that the Buyer is eligible to receive up to \$450,000 in grant funds through the Public Utility Commission toward the reimbursement of construction costs of this array and an additional array to be installed by Buyer at the Madbury Water Treatment Facility. The Parties shall negotiate and execute such additional documentation relative to construction of the array and the administration of the grant funds as may be required to obtain the funds for the benefit of the Parties and this Project.

Section 8. Representations and Warranties.

(a) The Buyer hereby represents and warrants to the Seller as follows:

- (i) Right, Power and Authority. It has full right, power and authority to enter into this Agreement and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.
- (ii) Binding Obligation. This Agreement has been duly authorized by all necessary action of the Buyer, and constitutes a valid and binding obligation on the Buyer, enforceable in accordance with the terms hereof.
- (iii) The Buyer further represents and warrants to the Seller that the Buyer is a customer of record of the Utility in good standing and the Buyer obtains distribution service from the Utility at Buyer's Usage Meter.

- (b) The Seller hereby represents and warrants to the Buyer as follows:
- (i) Right, Power and Authority. It has full right, power and authority to enter into this Agreement and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.
 - (ii) Binding Obligation. This Agreement has been duly authorized by all necessary action of the Seller, and constitutes a valid and binding obligation on the Seller, enforceable in accordance with the terms hereof.

Section 9. **Term and Termination**.

(a) Term. This Agreement is effective upon the Effective Date and will have a term of twenty-five (25) years from the Service Commencement Date or until the earlier termination of this Agreement pursuant to early termination provisions (the "Initial Term"). After the Initial Term, the Buyer shall have the option to renew the Agreement for a five year term ("Renewal Term"), up to a maximum of two (2) such Renewal Terms, by a written notice from the Buyer to the Seller at least three hundred sixty (360) days prior to the expiration of the Initial Term or the Renewal Term. The Initial Term and all subsequent Renewal Terms, if any, are referred to collectively as the "Term."

(b) Termination by the Seller. The Seller shall have the right, but not the obligation, to terminate this Agreement upon thirty (30) days prior written notice to Buyer:

- (i) if, despite the Seller's commercially reasonable efforts, on or prior to the December 31, 2016, if the Facility has not achieved service commencement (as defined in the Service Commencement Date).
- (ii) If, prior to the Service Commencement Date, the Buyer reasonably determines that: (A) there exist Facility site conditions (including environmental conditions) or construction requirements that were not known by the Seller as of the Effective Date and that could materially increase the cost of the development or construction of the Facility or materially and adversely affect the electricity production from the Facility as designed; (B) there has been a material adverse change in the rights of the Seller to construct or operate the Facility; or (C) there are easements, covenants, conditions or restrictions or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the Facility.

(c) Upon early termination of this Agreement in accordance with Section 9(b) or upon Buyer's Purchase of the Facility pursuant to Section 12, each Party shall discharge by performance all obligations due to the other Party that arose up to the date of termination and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

(d) All payment obligations of the Buyer, and all rights and remedies of the Parties hereto, arising prior to the termination of this Agreement shall survive the termination thereof.

Section 10. **Events of Default**.

(a) The occurrence of any of the following events shall be an “Event of Default” with respect to the applicable Party under this Agreement:

(i) With respect to the Seller:

- a. , The Facility fails to provide any generation output, when any failure is not the result of a Force Majeure Event, during any continuous thirty (30) day period starting after the Service Commencement Date or for ninety (90) days during any twelve (12) month period starting after the Service Commencement Date (“Non-Delivery Period”); provided, however, that non-operation of the Facility for the duration of a Force Majeure Event (as defined in Section 10(b) below) or for any period during which the Customer is in default hereunder shall not be used in calculating the Non-Delivery Period; and provided, further, that the Seller’s failure to deliver output following the Non-Delivery Period shall not be a default so long as the Seller, at its option, pays to the Buyer an amount equal to the monetary value of the output minus the price for the same amount of output, which amount would have been credited, allocated or otherwise applied to the Buyer’s Usage Meter in the ordinary operation of the Facility based on the average generation of the Facility during the same billing period in the two most recent years of operation (or in the absence of prior periods, based on the estimated monthly output of the Facility), on a monthly basis until such time as the Seller restores delivery of output from the Facility.
- b. The Facility materially interferes with the performance or functioning of the Buyer’s equipment and/or processes. Should the Facility materially interfere with the performance or functioning of the City’s equipment and/or processes on more than three (3) occasions and Seller does not correct such interference problem within a commercially reasonable period, Buyer shall have the right to terminate this agreement without further opportunity for Seller to cure.

(ii) With respect to the Buyer:

- (A) The Buyer fails to make any payment on the due date therefore, and such failure continues for a period of thirty (30) business days after the applicable due date.
- (B) The Buyer sells the property where Buyer’s Usage Meter is located without Buyer’s purchaser assuming the rights and obligations of this Agreement.

(iii) With respect to either Party:

- (A) The other Party voluntarily or involuntarily files or has filed against it a bankruptcy or other similar petition (and in the event of an involuntary filing only, such involuntary bankruptcy petition continues un-dismissed for a period of sixty (60) days after the filing thereof).
- (B) The other Party breaches or fails to perform any material covenant, agreement or obligation set forth in this Agreement or any other Agreement of the Parties appended hereto or the other Party makes any misrepresentation or breaches any material representation or warranty

contained herein, and such breach, failure or misrepresentation remains uncured thirty (30) days or more after the Party claiming default provides written notice to the other Party, specifying the provision pursuant to which the alleged default has occurred. The Party accused of default shall have ninety (90) days from the date of the notice to cure the default. In the event that the defaulting Party shall fail to cure the default within thirty (30) days, the non-defaulting Party shall be entitled to send a notice of termination of this Agreement to the defaulting Party and shall be entitled to pursue any and all remedies available at law or in equity.

- (C) Either Party ceases to hold any permit or authorization required for the lawful construction or operation of the Facility that results in a lack of legal rights on the part of the Seller or the Facility to continue to operate; provided, however, that the foregoing shall not result in an Event of Default if, (1) such permit or authorization is no longer required at such time, or (2) the Seller, within 30 days after becoming aware of such suspension, revocation or cancellation, commences and diligently pursues efforts to obtain a replacement of such permit or authorizations.

(b) Force Majeure. Neither the Seller nor the Buyer shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event (as defined below). A “Force Majeure Event” means any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (i) such circumstance, despite the exercise of due diligence, cannot be prevented, avoided or removed by such Party, (ii) such event is not due to such Party’s negligence or intentional misconduct, (iii) such event is not the result of any failure of such Party to perform any of its obligations under this Agreement, (iv) such Party has taken reasonable steps to mitigate the consequences and effects of such event, and (v) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken to comply with this Agreement. Subject to the foregoing conditions, Force Majeure Events may include: strikes or other labor disputes, other than strikes or labor disputes solely by employees of the Party declaring the Force Majeure Event or as a result of such Party’s failure to comply with a collective bargaining agreement; adverse weather conditions and other acts of nature that cause damage to the Facility; earthquakes; war, acts of terrorism, riots or civil unrest; provided, that Force Majeure Events shall not include any inability to make any payments that are due hereunder or to any third party or to procure insurance required to be procured hereunder.

(c) Buyer Remedies. If a Seller Event of Default described above has occurred, Buyer may terminate this Agreement upon at least forty-five (45) days prior written notice to Seller. In the event of a Seller Event of Default, the Buyer may also exercise any other remedy it may have at law or equity or under this Agreement.

(d) Seller Remedies. If a Buyer Event of Default as described above has occurred and is continuing, the Seller may terminate this Agreement upon at least forty-five (45) days prior notice to the Customer; and in addition to any other remedy hereunder, Seller may (i) cease the provision of output from the Facility, (ii) remove the Facility and (iii) seek additional damages from the Buyer as set forth below. The damages Seller shall be entitled to recover from the Buyer shall be the revenues that would have been received by the Seller from the Buyer for the remainder of the then-applicable Term. For purposes of calculating lost revenues for the remainder of the Term pursuant to the immediately preceding sentence, it shall be assumed that the sales revenues for the remainder of the Term would have been the same as the estimated annual energy production delivered at the applicable price. The applicable

price shall be a forecast of the Service Fee for the remainder of the Term, which shall never fall below the Floor Price as indicated in Schedule B. Following the occurrence of a Buyer Event of Default, the Seller shall use commercially reasonable efforts to find a replacement customer to mitigate its damages. In addition, the Buyer shall pay to the Seller an amount equal to the recaptured solar investment tax credits or incentives plus associated interest and penalties arising from such recapture, if any, that the Seller (and any equity participant in the Seller) incur as a result of the Buyer Event of Default. Moreover, upon a Buyer Event of Default, Seller may pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise.

Section 11. **Financing Source Cure Rights Upon the Seller Event of Default.** Notwithstanding anything in this Agreement to the contrary, upon the occurrence of an Event of Default as to the Seller, or any event that with notice, the passage of time, or both, would constitute or be reasonably likely to result in an Event of Default:

(a) A Financing Source, as collateral assignee, shall be entitled to exercise, in the place and stead of the Seller, any and all rights and remedies of the Seller under this Agreement in accordance with the terms of this Agreement. A Financing Source shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Facility.

(b) A Financing Source shall have the right, but not the obligation, to pay all sums due by the Seller under this Agreement and to perform any other act, duty or obligation required of the Seller thereunder or cause to be cured any Event of Default of the Seller thereunder in the time and manner provided by the terms of this Agreement. Financing Source will not be required, but will have the option, to cure any default or Event of Default of the Seller under this Agreement or to perform any act, duty or obligation of the Seller under this Agreement.

(c) Upon a Financing Source's exercise of remedies pursuant to any security interest in the Facility, including any sale of the Facility by such Financing Source, or any conveyance from the Seller to a Financing Source (or any assignee of such Financing Source) in lieu of such Financing Source's exercise of its remedies, the Financing Source will give notice to the Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies or conveyance shall not constitute an Event of Default under this Agreement.

(d) In the event of any rejection or other termination of this Agreement under the United States Bankruptcy Code, at the request of the Financing Source made within one hundred twenty (120) days of such termination or rejection, the Buyer will enter into a new agreement with the Financing Source or its assignee having substantially the same terms and conditions as this Agreement, including, but not limited to, price and term.

(e) If the Financing Source or its assignee, pursuant to an exercise of remedies by the Financing Source, shall acquire title to or control of the Seller's assets related to the Facility and shall, within thirty (30) days after such exercise of remedies (so long as notice of termination pursuant to Section 10(d) has not been given prior to such exercise of remedies and in no event longer than one hundred eighty (180) days after notice of any uncured default if the Buyer elects to terminate after such one hundred eighty (180) day period), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person, then the Seller, the Financing Source or its assignee shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(f) To the extent a Financing Source or any assignee or transferee of a Financing Source succeeds to the interests of the Seller under this Agreement (such that such person is deemed to be the Seller

for purposes of this Agreement), pursuant to this Section 11 or otherwise, such Financing Source shall be bound by all of the undertakings and responsibilities of the Seller hereunder.

(g) The rights of any Financing Party to acquire or transfer the Facility shall be subject to such Financing Party and transferee filing all necessary notices to and obtaining all necessary approvals of any governmental entities as may be required in connection any applicable laws, rules, regulations or Permits in connection with any such acquisition or transfer.

Section 12. **Purchase Option.** At any time after the seventh (7th) anniversary of the date the Facility reached the Service Commencement Date, Buyer shall have the option to purchase the Facility from Seller (the "Purchase Option"), under which title and ownership of the Facility will transfer from Seller to Buyer. Subject to the provisions of this Section 12, the purchase price of the Facility (the "Purchase Option Price") will be the Fair Market Value.

(a) Upon receipt of written notice of Buyer's intent to exercise the Purchase Option, the Parties shall first attempt to agree on a Fair Market Value for the Facility. If the Parties cannot agree on a Fair Market Value within thirty (30) calendar days from the date of Buyer's notice of its exercise of the option, Fair Market Value shall be determined within a further thirty (30) days by an independent energy appraiser mutually acceptable to the Parties. If the Parties cannot agree on an independent appraiser, then each Party shall select an independent appraiser of their choice, and the independent appraisers shall select an appraiser to prepare a final appraisal for purposes of determining the Fair Market Value of the system, which valuation shall be conclusive as to the Fair Market Value of the Facility.

(b) If Buyer desires to exercises the Purchase Option, the Parties will promptly agree to a date for the closing of the purchase not less than sixty (60) days and not more than one hundred and twenty (120) days after receipt of written notice of the intent to exercise the Purchase Option received by Seller.

(c) Buyer acknowledges that Seller makes no representation or promise as to the Fair Market Value of the Facility at any future time. Buyer waives its right to exercise this Purchase Option if any Event of Default by Buyer is then continuing.

Section 13. **Assignment.** Except as set forth in Section 11, neither Party may assign or transfer this Agreement to any other person without the other Party's prior written consent, and any attempted assignment or transfer without such consent shall be void. The foregoing notwithstanding, the Seller may (a) assign this Agreement without the Buyer's consent to an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the assigning party, (b) collaterally assign its rights to or for the benefit of a Financing Source, upon prior notice to the Buyer; or (c) assign its rights and obligations to an entity acquiring all or substantially all of its assets used to perform its obligations hereunder; provided however, that any assignee shall agree in writing to be bound by the terms and conditions of this Agreement and shall possess the reasonable technical and financial capability to perform the assignor's obligations and equivalent creditworthiness as the assigning the Seller. The foregoing notwithstanding, Buyer may (a) assign this Agreement without the Seller's consent to an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with it, (b) assign its rights and obligations to an entity acquiring one or more Buyer's Meters that are the subject of this Agreement; provided however, that any assignee shall agree in writing to be bound by the terms and conditions of this Agreement and shall possess all reasonable capability to perform the assignor's obligations as the Buyer.

Section 14. **Liability and Indemnity.** Each Party agrees to waive any claim or right against the other for consequential damages or punitive damages; and neither party shall be liable to the other (under this paragraph or otherwise) for or as a result of any proceeding in which rates are reviewed or established for either party by the Commission or similarly authorized entity. In no event shall the Seller or any officer, member, manager, employee or owner thereof be liable under this agreement or otherwise in the event the Facility fails to generate electricity at any time, the Seller fails to maintain any necessary license, permit or government approval, or for any error or omission in any filing or instructions submitted by or on behalf of the Seller or the Administrator to the Utility or any governmental entity. Notwithstanding anything to the contrary herein, the Seller's maximum liability under and in connection with this Agreement (whether in contract, tort, strict liability or otherwise) shall not exceed the limits of insurance required to be maintained as part of this Agreement if a covered claim or \$250,000 if not a covered claim.

Seller shall defend, indemnify and hold harmless Buyer, and its agents, officials and employees from and against any and all claims, actions, damages and losses incurred by Buyer arising out of or relating to Seller's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such claims, actions, damages or losses are caused by the negligent acts or omissions of Buyer.

Buyer shall defend, indemnify and hold harmless Seller, and its agents, officials and employees from and against any and all claims, actions, damages and losses incurred by Seller arising out of or relating to Buyer's negligence set forth in this Agreement, except to the extent such claims, actions, damages or losses are caused by the negligent acts or omissions of Seller.

Section 15. **Notices.** All notices, requests, demands, claims and other communications (each, a "Notice") hereunder shall be in writing, addressed to the intended recipient as set forth below:

If to the Seller: Bob Lambert, Managing Member, SunRaise Investments LLC
31 Partridge Street, Portsmouth, NH 03801
603-767-5913
bob@sunraiseinvestments.com

With a copy to:
Eli Emerson, Esq, Counsel to SunRaise Investments LLC,
Primmer Piper Eggleston & Cramer PC, 106 Main Street, PO Box 349
Littleton, NH
603-444-4008; eemerson@primmer.com

If to the Buyer: Steve Bartlett, Business Administrator, Portsmouth School Department
1 Junkins Avenue, Portsmouth, NH 03801
603-610-4161
sbartlett@portsmouth.k12.nh.us

With a copy to:
Suzanne Woodland, Deputy City Attorney, City of Portsmouth
1 Junkins Avenue, Portsmouth NH 03801
603-610-7240; smwoodland@cityofportsmouth.com

Or to such other person, address or number as the party entitled to such Notice shall have specified by notice to the other party given in accordance with the provisions of this Section. Any such Notice shall be deemed duly given on the earliest of: (i) when delivered personally to the recipient; (ii) one (1) business day after being sent to the recipient by reputable overnight courier services (charges prepaid); (iii) one (1) business day after being sent to the recipient by facsimile transmission; or (iv) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

Section 16. **Entire Agreement; Amendment.** This Agreement, including any exhibits, schedules and attachments, supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter, and there are no covenants, promises, agreements, conditions or understandings, written or oral, except as herein set forth. This Agreement may not be amended, waived or modified except by an instrument in writing executed by the Party against whom such amendment, waiver or modification is to be enforced.

Section 17. **Severability; Construction.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any provision of this Agreement that is not essential to the purpose of this Agreement that is declared or rendered unlawful, invalid or unenforceable by any applicable court of law or regulatory agency or deemed or rendered unlawful, invalid or unenforceable because of a statutory or regulatory change, including, without limitation, any order of the Commission or any change in the Utility's tariff (individually or collectively, such events referred to as a "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; further, if a Regulatory Event occurs, the Parties shall use their best efforts to reform the Agreement in order to give effect to the original intention of the Parties. Notwithstanding the foregoing, or anything else in the Agreement to the contrary, in the event that, as a result of a Regulatory Event, a party (the "Excused Party") is excused from any payment or performance obligation, the other Party shall be correspondingly excused from any payment or performance obligation that would have arisen but for the failure or inability of the Excused Party to perform. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

Section 18. **Waiver of Rule of Construction.** The Parties waive the benefit of any rule that this Agreement is to be construed against one party or the other.

Section 19. **Effect of Agreement.** This Agreement shall not be construed as a contract of agency, guaranty, indemnification, partnership or joint venture.

Section 20. **Fees and Expenses.** Each Party will bear its own fees and expenses incurred in the transactions contemplated by this Agreement.

Section 21. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire, without giving effect to principles of conflict of laws that would require the application of any other law. In the event of any amendment or repeal of the governing law that alters the fundamental purpose and intent of this Agreement, the parties shall work in good faith to address any equitable issues that arise and maintain the central purpose of the Agreement.

Section 22. **Dispute Resolution.** The Parties shall attempt in good faith to resolve all disputes arising under or with respect to this Agreement promptly by negotiation, as follows. A Party may give the other Party written notice of any dispute not resolved in the normal course of business. Representatives of both Parties shall meet at a mutually acceptable time and place within fifteen (15) business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute.

[Signature Page Follows on Separate Page]

DRAFT

IN WITNESS WHEREOF the parties do hereby execute this Agreement as of the ____ day of _____, 2016.

SELLER:

SUNRAISE INVESTMENTS LLC.

Witness

By: _____
Name: Bob Lambert
Title: Managing Member

BUYER:

CITY OF PORTSMOUTH, NEW HAMPSHIRE

Witness

By: _____
Name: John Bohenko
Title: City Manager
As authorized by vote of the
City Council dated: _____

DRAFT

Schedule A

The Parties hereto agree that the following electricity meters (the "Meters") shall be included as a part of this Agreement:

- (1) The Buyer's use meters G28110121 and G45209538, the Buyer's account number of 8000696-03-5-7, and the Buyer's service address of 50 Andrew Jarvis Drive, Portsmouth, NH 03801(the "Buyer's Usage Meter");

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Schedule B

For each billing period during the Term and for every kilowatt-hour of generation produced by the Facility, allocated or otherwise applied to the Utility bills, accounts or charges for the Buyer's Meter, the Buyer shall pay to the Seller a service fee equal to ninety-five percent (95.0%) of the energy rate that Buyer is currently paying to its retail electric service provider (the "Service Fee"). If the Buyer's retail electric service rate changes based on time of use, Service Fee shall be determined by averaging the retail electric service rate, equally weighted among each time period. Moreover, the Service Fee shall never be less than \$0.09405/kWh in years 1-6; \$0.115/kWh in years 7-10; and \$0.14/kWh in years 11-25 (the "Floor Price").

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Schedule C

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SOLAR ENERGY FACILITY SITE LEASE AGREEMENT

(_____ Project)

This **SOLAR ENERGY FACILITY SITE LEASE AGREEMENT** (this “**Agreement**”) is made, dated, and effective as of May __, 2016 (the “**Effective Date**”) by and between the City of Portsmouth (“**Lessor**”), and SunRaise Investments, LLC, a New Hampshire limited liability company (“**Lessee**”). Each of Lessor and Lessee are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Lessor is the owner of certain real property located at 50 Andrew Jarvis, Portsmouth, Rockingham County, New Hampshire, consisting of land and certain improvements, buildings, and other structures located thereon, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the “**Property**”).

B. Lessee is a developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for the delivery of electrical energy to be installed, maintained, operated, and used on the Property.

C. Lessor and Lessee are parties to a solar photovoltaic Power Purchase and Sale Agreement dated of even date herewith (the “**Solar PPA**”), pursuant to which Lessee (as System Owner) has agreed to sell to Lessor (as Host Customer), and Lessor has agreed to purchase from Lessee, such amounts of electrical energy produced by a solar photovoltaic electric generation system as defined in the Solar PPA, (the “**System**”) to be installed and operated by Lessee on a portion of the Property.

D. In furtherance of the Solar PPA, Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive lease of that portion of the Property described and depicted on the attached Exhibit B (the “**Premises**”) together with a right of ingress to and egress from the Premises for purposes of (i) constructing, installing, maintaining, owning, operating, repairing, and removing the System, (ii) transmitting electrical energy to, on, over, and across the Property, and (iii) accessing the System on, over, through, and across the Property on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and intending to be legally bound hereby, Lessor and Lessee hereby agree as follows:

AGREEMENT

1. Grant of Lease; Purpose of Lease; Permitted Uses and Activities.

1.1 Lease and Confirmation. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Premises to Lessee and grants to Lessee certain rights of access and use on, over, and across the Property for the purposes and activities set forth herein.

1.2 Purpose of Lease. The lease created by this Agreement is solely and exclusively for solar energy-generation and sale purposes, and throughout the Term (as defined in Section 2), Lessee shall have the exclusive right to use the Premises for solar energy generation and sale purposes.

1.3 Permitted Uses and Activities. The rights granted to Lessee in this Agreement permit Lessee to do the following:

1.3.1 Operations. Use the Premises and such other areas of the Property as identified and depicted on the attached Exhibit B for solar energy conversion, the collection and transmission of electrical energy to and from the System, and for related and incidental purposes and activities, including but not limited to: (a) locating, constructing, installing, operating, maintaining, improving, repairing, relocating, and removing the System on and from the Premises; (b) making such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas on and within the Premises; (c) parking in designated areas of the Property; (d) accessing the Premises and the System (including but not limited to access for lifting, rigging, and material-handling equipment); (e) installing gates, fences, and such other security measures as may be necessary or desirable in Lessee's sole determination, to secure the System; and (f) installing, maintaining, using, and repairing on the Premises, inverters, electrical wires and cables required for the transmission of electrical energy (collectively, "Operations").

1.3.2 Ingress and Egress. This Agreement includes the right of ingress and egress to and from the System over and across the roof and field of the premises and those areas surrounding the roof and fields for the purposes of installing, operating, maintaining, improving, repairing, relocating, and removing the System on the roof and field of the Property and to make such penetrations in the roof and roof structure as needed to run wires and conduit from the System to the electrical panel and other areas within the Property and to obtain access to other utility services made available by the Lessor. This right of access granted by Lessor, includes but is not limited to access for lifting, rigging and material-handling equipment, ingress to and egress from the System on, over, and across the Property. The Lessee agrees to maintain the Property, subject of this Lease and specifically utilized for purposes of ingress and egress, during the Term of this Lease in its original condition, normal wear and tear excepted, and agrees to restore any damage done to said Property by the Lessee during the Term of this Lease Agreement. Access to the premises by the Lessee's employees, contractors or agents shall conform to the Lessor's rules and guidelines regarding safety and site access for maintenance and similar workers.

1.3.3 License for Temporary Construction Laydown Area. Lessor hereby grants to Lessee a license to use that portion of the Property depicted on the attached Exhibit C and incorporated herein by this reference, for the assemblage of materials to construct, erect, and install the System (the "Laydown Area"). Upon completion of construction and installation of

the System, Lessee will remove all materials from the Laydown Area and will restore the Laydown Area to substantially the same condition in which it existed immediately prior to Lessee's use.

1.4 Solar Covenant. Lessor recognizes that the economic viability of the Solar Facility for Lessee depends on Lessor, and those claiming by through or under Lessor, taking all reasonable steps to ensure that their use of that portion of Lessor's Property not covered by this Lease, as well as their use of any and all nearby property now owned or hereafter owned or acquired by them, does not, directly or indirectly, block, interfere with or otherwise impede the maximum access of the Solar Facility to sunlight. In light of the foregoing, Lessor hereby covenants to provide for the free passage of solar radiation to the System. Any obstruction to the passage of direct solar radiation across the Property to the System by Lessor or a tenant or assignee of Lessor is prohibited. Trees, structures, and improvements located on the Property as of the Effective Date shall be allowed to remain, unless Lessor and Lessee agree to their removal. Lessor shall not place or plant any trees, structures, or improvements on the Property after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee for any such trees, structures, or improvements. Lessee and Lessor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar covenant made in this Section 1.4.

1.5 Lessee's Exercise of Rights; Acknowledgment of Lessor. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee will not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises or the Property. Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, or to the ground, or a combination thereof.

2. Term; Termination. The term of this Agreement shall run co-terminus with the term of the Solar PPA (collectively, the "Term"); provided however, Lessee's right of access shall continue in full force and effect for a period of Ninety (90) days following the expiration or earlier termination of this Agreement for purposes of removing the System (save and except for termination following Lessor's exercise of its purchase option pursuant to the Solar PPA). Notwithstanding the foregoing, if the System is not installed on the Premises on or before December 31, 2016, this Agreement will terminate as per the provisions of Section 9 (b) of the Solar PPA. Upon the expiration or earlier termination of this Agreement, Lessee shall surrender to Lessor all of Lessee's right, title, and interest in and to the Premises by executing and recording in the real property records of Rockingham County, New Hampshire (the "Records") an instrument evidencing the termination of this Agreement and Lessee's interest in the Property.

3. Rent. As consideration for the rights and interests granted by Lessor under this Agreement, Lessee shall pay Lessor rent in the amount of One (\$1.00) Dollars per year ("Rent"). Lessee shall pay Lessor the initial Rent payment within thirty (30) after the Service Commencement Date, as defined in Section 9 (a) of the Solar PPA, for the first twelve (12) month period of the Term ("Rent Commencement Date"), and shall thereafter pay each Rent payment on or before the applicable anniversary of the Service Commencement Date for the forthcoming twelve (12) month period. Lessor acknowledges and agrees that Lessee shall have no obligation to pay Rent to Lessor

hereunder for the period prior to the Rent Commencement Date and the Rent is the only rent Lessee shall be obligated to pay Lessor hereunder during the Term.

4. Ownership of System; Financing Statements. The System is and shall remain Lessee's personal property at all times, shall not be a fixture on the Property, and may be removed by Lessee in accordance with the terms and conditions of this Agreement and the Solar PPA. Lessee shall have the right to file in the central and county records in which the Property is located financing statements evidencing Lessee's title to the System. Neither the System nor any of its components may be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Lessor. Lessor shall not cause or permit the System or any part thereof to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Lessor.

5. Lessee's Representations, Warranties, and Covenants.

5.1 Security. Lessee shall provide all security measures that Lessee determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Lessee's Operations.

5.2 Maintenance. During the Term, Lessee shall, at Lessee's sole cost and expense, maintain the System and the Premises in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies.

5.3 Clean Condition. Lessee shall not unreasonably clutter the Premises, and shall collect and dispose of any and all of Lessee's refuse and trash.

5.4 Indemnity. Lessee will indemnify Lessor for physical injuries or death to Lessor, Lessor's property or the public, to the extent caused by Lessee's construction, operation or removal of the System on the Premises, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Lessor or Lessor's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any losses of rent, business opportunities, profits and the like that may result from Lessor's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of the System pursuant to this Agreement. The reference to property for physical damage to property shall include temporary classroom needs if Lessor is unable to reasonably meet its needs in other parts of the structure not damaged and shall not be considered consequential damages.

5.5 Hazardous Materials. Lessee shall not violate, and shall indemnify Lessor against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence on or under the Premises of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, State, or local laws or regulations ("**Hazardous Materials**").

6. Lessor's Representations, Warranties, and Covenants.

6.1 Authority; No Third-Party Rights. Lessor represents and warrants to Lessee that there are no circumstances known to Lessor and no commitments to third parties that may damage, impair, or otherwise adversely affect Lessee's rights hereunder. Lessor and each person signing this Agreement on behalf of Lessor has the full and unrestricted right and authority to do so. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

6.2 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation, activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Agreement; (ii) take any action that will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

6.3 Title Review and Cooperation. Lessee may, at its own cost and expense, cause an examination of title to the Property. Lessor shall cooperate with Lessee to obtain non-disturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Agreement. If Lessee and Lessor are unable to obtain such agreements from any third party holding an interest in the Property, Lessee and any Assignee shall be entitled (but not obligated) to make payments in fulfillment of Lessor's obligations to such third party and may offset the amount of such payments from amounts due Lessor under this Agreement. Lessor shall also provide Lessee with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee.

7. Taxes. (a) Lessor shall be liable for any real estate property taxes assessed against the Landlord's Property during the Term ("Real Property Taxes"). However, Lessee shall be responsible for any real and personal property taxes on the Solar Facility including all additions and improvements, during the Term of this Lease. Failure of Lessee to pay the duly assessed real and personal property taxes when due shall be cause to terminate this Lease by the Lessor. (requirement under RSA 72:73,I(b)).

(b) Each Party shall remain solely liable for any tax assessed against their respective personal property located at or about the Lessor's Property' provided that if the taxing authority does not separately assess such personal property taxes the parties shall cooperate in good faith to allocate all such personal property taxes in an equitable manner. Lessor shall cooperate with Lessee

in pursuing applicable or potentially applicable exemptions relating to personal property taxes attributable to the Solar Facility and in obtaining any available refunds or abatements of personal property taxes paid by Lessee hereunder.

(c) Each Party may contest in good faith any tax assessment or payments, provided that all payments are made when due or appropriately bonded. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(d) Lessor acknowledges that Lessee may seek to negotiate a tax agreement or other understanding with relevant tax authorities in order to provide certainty regarding taxation with respect to the Solar Facility and/or achieve other objectives. Lessor agrees to cooperate with Lessee in connection with such efforts and agrees to execute such agreement, subject to Lessor's reasonable review, which shall not be unreasonably withheld, delayed or conditioned.

(e) In the event Lessee fails to pay any taxes for which the Lessee is responsible hereunder, Lessor shall have the right, but not the obligation, to pay same and in such event shall be entitled to recover such amount from Lessee together with interest thereon at a rate equal to the lesser of (i) 0.5% per month (6% per annum) or (ii) the highest rate allowed under Applicable Law ("Interest Rate").

8. Insurance. Each of Lessor and Lessee (or its contractor) shall, at its own cost and expense, maintain, with a company or companies licensed or qualified to do business in the State of New Hampshire commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Each Party shall be an additional insured under the other Party's policy. For the avoidance of doubt, Lessee's property insurance shall cover the System, and Lessor's property insurance shall cover the Premises and Property.

9. Assignment.

9.1 Assignment by Lessor; Transfer of the Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System, that no portion or component of the System is a fixture, and that the System may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered with the conveyance of any fee or leasehold interest in or to any portion of the Premises (any such conveyance, a "**Transfer**"). Lessor shall notify Lessee in writing no fewer than fourteen (14) days before any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer. This Agreement shall survive any Transfer.

9.2 Assignment by Lessee. Lessee and any Assignee (as defined below) shall have the right, without need for Lessor's consent, to finance the System and, provided that there is a contemporaneous assignment under the Solar PPA to the same Assignee, to convey, assign, mortgage, or transfer to one or more Assignees this Agreement (or any right or interest of Lessee in this Agreement), Lessee's leasehold interest in the Premises, or the System. An "**Assignee**" is any of the following: (i) any one or more parties involved in financing or refinancing of the System, including, without limitation, any Lender (as defined in Section 10.1); (ii) any purchaser of the

System, or any purchaser of all or any portion of Lessee's interest in this Agreement and the Solar PPA; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company as described in subclause (iii); or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Lessee will give notice to Lessor of any such assignment (including the address of the Assignee for notice purposes), provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Lessor with respect to such assignment until such notice shall have been given.

10. Lender Protections.

10.1 Notice of Lender. Lessee shall deliver to Lessor written notice of and contact information for any bank, financial institution or other institutional investor providing debt or equity financing for the System (each, a "**Lender**") and any trustee or agent acting on any such Lender's behalf, within thirty (30) days of any such party becoming a Lender.

10.2 Lender Collateral Assignment. Upon notice and delivery by Lessee pursuant to Section 10.1 of the name and contact information for any Lender, then Lessor shall be deemed to:

10.2.1 Acknowledge any collateral assignment by Lessee to the Lender, of Lessee's right, title and interest in, to and under this Agreement, as consented to under Section 10.2.2;

10.2.2 Acknowledge that any Lender, as such collateral assignee, shall be entitled to exercise any and all rights of lenders generally with respect to Lessee's interests in this Agreement; and

10.2.3 Acknowledge that it has been advised that Lessee has granted a security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System.

10.3 Lender Cure Rights Upon Lessee Default. Upon any Lessee Default (as defined in Section 11.1), Lessor shall deliver to each Lender of which it has notice a copy of any notice of default delivered under Section 11. Following the receipt by any Lender of any notice that Lessee is in default in its obligations under this Agreement, such Lender shall have the right but not the obligation to cure any such default, and Lessor agrees to accept any cure tendered by the Lenders on behalf of Lessee in accordance with the following: (a) a Lender shall have the same period after receipt of a notice of default to remedy an Event of Default by Lessee, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of a notice of default hereunder; *provided, however*, that any such cure periods shall be extended for the time reasonably required by the Lender to complete such cure; and (b) the Lender shall not be required to cure those Lessee

Defaults that are not reasonably susceptible of being cured or performed by the Lender. The Lender shall have the absolute right to substitute itself or an affiliate for Lessee and perform the duties of Lessee hereunder for purposes of curing such Lessee Default. Lessor solely expressly consents to such substitution, and authorizes the Lender, its affiliates (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of Lessee, but subject to the terms and conditions of this Agreement.

10.4 New Lease to Lender. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Lessor shall give prompt written notice to each Lender of which Lessor has notice. Lessor shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Premises with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, and shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new lease, the Lender shall (i) pay Lessor any amounts that are due Lessor from Lessee; (ii) pay Lessor any and all amounts that would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease; (iii) perform all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations that have not been performed by Lessee that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations that are not reasonably susceptible of being cured by such Lender. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Lessor. The provisions of this Section 10.4 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy the Premises without hindrance by Lessor or any person claiming by, through or under Lessor, provided that all of the conditions for a new lease as set forth in this Section are complied with.

11. Default and Termination; Remedies; No Cross Default.

11.1 Lessor's Right to Terminate. Except as qualified by Section 10 above and subject to all notice and cure rights set forth therein, Lessor shall have the right to terminate this Agreement after (i) a material default in the performance of Lessee's obligations under this Agreement (a "Lessee Default") has occurred and remains uncured, (ii) Lessor simultaneously notifies Lessee and all Lenders in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within ninety (90) days in the case of all Lenders, receive the written notice, or, if cure will take longer than 60 days for Lessee or 90 days for any Lender, Lessee or Lender has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion. Any termination by Lessor after the applicable notice and cure periods set forth above and in Section 10 shall be effective upon thirty (30) days' written notice to Lessee.

11.2 Lessee's Right to Terminate. Lessee shall have the right to terminate this Agreement at any time before the commencement of operations of the System upon thirty (30) days' prior written notice to Lessor. After the System commences operations, Lessee shall have the right to terminate this Agreement if a material default in the performance of Lessor's obligations under this Agreement (a "**Lessor Default**") has occurred and remains uncured after thirty (30) days' notice from Lessee of such Lessor Default. Any termination by Lessee after the applicable notice and cure period set forth above shall be effective upon thirty (30) days' written notice to Lessor.

11.3 No Cross Default. No event of default by Lessee, as System Owner, or Lessor, as Host Customer, pursuant to the Solar PPA shall constitute a Lessee Default or a Lessor Default under this Agreement. Any amendment, modification, expiration, or termination of the Solar PPA shall be of no force or effect as to this Agreement, and this Agreement shall remain valid, and in full force and effect unless and until expressly terminated by the Parties hereto. Notwithstanding the foregoing or anything in this Agreement to the contrary, the non-defaulting party has the right individually and unilaterally to terminate this Agreement if the Solar PPA terminates as a result of a default of the other party thereunder.

12. Notice. Any written notice required, permitted, or contemplated hereunder shall be addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may also be sent by fax transmission [or email] provided that such transmission includes delivery confirmation [or read-receipt confirmation, as applicable]:

Notice to Lessor:

Steve Bartlett, Business Administrator
Portsmouth School Dept.
1 Junkins Avenue, Portsmouth, NH 03801
603-610-4161
sbartlett@portsmouth.k12.nh.us

With a copy to:

Suzanne Woodland, Deputy City Attorney
City of Portsmouth
1 Junkins Avenue, Portsmouth NH 03801
603-610-7240
smwoodland@cityofportsmouth.com

Notice to Lessee:

Bob Lambert, Managing Member
SunRaise Investments LLC
31 Patridge Street, Portsmouth, NH 03801
603-767-5913
bob@sunraiseinvestments.com

With a copy to:

Eli Emerson, Esq.
Primer Piper Eggleston & Cramer PC
106 Main Street, PO Box 349
Littleton, NH 603-444-4008
eemerson@primmer.com

If to any Lender or Assignee: At the address given for such Lender or Assignee pursuant to Section ___ or Section ___.

Either Party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual Person, whether a party or an officer or representative, or

to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

13. Legal Matters.

13.1 Governing Law; Dispute Resolution. This Agreement shall be governed by the laws of the State of New Hampshire, without regard to any conflict of laws principals. The Parties shall attempt in good faith to resolve all disputes arising under or with respect to this Agreement promptly by negotiation, as follows. A Party may give the other Party written notice of any dispute not resolved in the normal course of business. Representatives of both Parties shall meet at a mutually acceptable time and place within fifteen (15) business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and attempt to resolve the dispute.

13.2 Consequential Damages. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER LESSEE NOR LESSOR SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, ARISING OUT OF THIS AGREEMENT. THE FOREGOING PROVISION SHALL NOT PROHIBIT LESSEE OR LESSOR FROM SEEKING AND OBTAINING GENERAL CONTRACT DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS AGREEMENT.

14. Miscellaneous.

14.1 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section 14.1.

14.2 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto.

14.3 Title, Quiet Enjoyment. Lessor represents and warrants that, as of the date hereof, Lessor has good and marketable title to the Property, subject to no liens, easements, options or other encumbrances other than the existing encumbrances. Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Agreement.

14.4 Successors and Assigns; Agreement to Run With Land. Except as set forth herein above in Sections 9 and 10, neither Party may assign or transfer this Agreement to any other person without the other Party's prior written consent, and any attempted assignment or transfer without such consent shall be void. Upon any approved Assignment, this Agreement and the leasehold interest granted herein shall run with the land and survive any Transfer. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties.

14.5 Severability. In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, Lessor and Lessee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

14.6 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Agreement.

14.7 Memorandum of Lease. Lessor and Lessee shall execute in recordable form and Lessee shall then record a Notice of Lease with the applicable registry of deeds in the jurisdiction in which Lessor's Property is located ("Registry of Deeds"), which Notice of Lease shall contain a reference to the covenants granted by Lessor to Lessee hereunder and shall otherwise be in form and content reasonably acceptable to Lessee. Lessor hereby consents to the recordation of any Assignee's interest in the Premises.

14.8 Amendments. This Agreement may be amended only in writing signed by Lessee and Lessor, or their respective successors in interest.

14.9 Binding Effect. This Agreement and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns.

14.10 Entire Agreement. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between the Parties with respect to such subject matter.

14.11 Waivers. Any waiver of this Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any term of this Agreement shall not affect or waive that Party's right to enforce any other term of this Agreement.

14.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

14.13 Fees and Expenses. Each Party will bear its own fees and expenses incurred in the transactions contemplated by this term sheet.

[SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

LESSOR:

LESSEE:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DRAFT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _____
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, as _____ of _____, a _____, on its behalf.

Notary Public for _____
My commission expires: _____
Commission No.: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

DRAFT

EXHIBIT B

DESCRIPTION AND DEPICTION OF PREMISES

DRAFT

EXHIBIT C

DEPICTION OF TEMPORARY LAYDOWN AREA

DRAFT



SETTLED 1623
INCORPORATED 1693

Town of New Castle
NEW CASTLE, NH 03854-0367

May 6, 2016

Portsmouth City Council
Portsmouth Fire Commission
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Portsmouth City Council & Fire Commission:

This states the interest of the Town of New Castle in taking title to the Portsmouth fire boat. The Town would use the vessel in the same manner as did the City of Portsmouth Fire Department, for water-based fire protection and emergency services.

New Castle attempted to enlist other local municipalities in a program designed to assist the City with maintenance costs of the boat but that effort was not successful. New Castle is not in a position to alone absorb those maintenance costs.

The Town has determined that it is in a position to take possession and title of the fire boat. New Castle Fire Chief Blanding has inspected the boat and been brought up to date on the condition and maintenance of the boat by Portsmouth Fire Chief Achilles. The Town understands that the boat will be delivered in an "as is" condition.

It should also be noted that transferring the boat to New Castle keeps a valuable piece of rescue and firefighting equipment still available to Portsmouth and other seacoast communities through mutual aid and other cooperative programs.

Sincerely,

New Castle Select Board

Lorn Buxton, Chair

David McGuckin

William Stewart



Portsmouth Fire Department

Administration

To: City Manager John Bohenko
From: Fire Chief Steven Achilles
Date: 5/11/2016
Re: **Action of Fire Commission Related to Fire Boat**

The Fire Commission took action on a letter received from the New Castle Select Board dated May 6, 2016 at their Commission meeting last evening. The letter from the New Castle Select Board was addressed to both the Fire Commission and Portsmouth City Council requesting the Portsmouth Fire Boat be transferred to the Town of New Castle. In considering the request, I presented to the Commission a review of discussions, meetings and correspondence that have occurred between myself, you, Attorney Sullivan, and Selectman McGuckin since the City Council affirmed transferring the vessel to the Town of Gilford at their April 18, 2016 meeting. Also presented were two letters; one from the Town of Gilford fire chief and the second from the Town of New Castle Firewards Select Board (both attached and dated May 10, 2016).

After discussion a motion was made by Commissioner Gamester and seconded by Chairwoman Matthes to 1) deny the request of the New Castle Select Board, 2) reaffirm the Commission's previous vote to transfer the vessel to the Town of Gilford, 3) notify the Town of New Castle of their decision, and 4) notify our City Council of the same as they may have final decision on the disposition of the boat. The motion passed. Therefore, please accept this memo as notification of the Fire Commission's decision. We are also requesting that this be forwarded to the City Council for further and hopefully final action.

Thank you for your time and consideration.

Department Memorandum

Town of New Castle
Firewards Select Board
New Castle, NH 03854

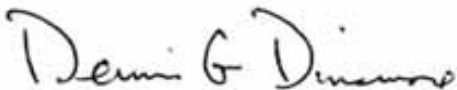
May 10, 2016

Portsmouth City Council
Portsmouth Fire Commission
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Portsmouth City Council & Fire Commission

During the monthly Firewards Select Board's meeting held today, Tuesday, May 10, 2016 at 16:00, the present Firewards voted unanimously not to validate the New Castle Select Board's decision to take possession and title of the Portsmouth Fire Boat and rejects the Select Board's statement that the Town of New Castle is in a position to take possession and title of the fire boat without fully vetting the decision with the residence of the town.

Sincerely,

A handwritten signature in dark ink that reads "Dennis G. Dinsmore". The signature is written in a cursive style with a large initial "D".

Dennis G. Dinsmore, Chairman
Town of New Castle Firewards Select Board



Gilford Fire-Rescue

Stephen M. Carrier, Chief

Bradley A. Ober, Deputy Chief

Community, Safety, Professional Service

May 10, 2016

City of Portsmouth
Fire Commission
Portsmouth Fire Station 1
170 Court Street
Portsmouth, NH 03801

Dear Commissioners,

First, let me thank you so much for considering Gilford to be the recipient of your Fire Boat. We are humbled and grateful as a Town and a Department. A gift of such nature and value is an once-in-a-lifetime opportunity.

It is our understanding that you will be reconsidering your earlier vote to gift the boat to us. Of course, we are very disappointed to hear that news. We have been very conservative and cautious to not call the boat, "our boat" until we actually see it in our Town. However, we have been progressing through the process of receiving the boat since it was first discussed in the middle of March. We have had three public meetings to discuss receiving the boat; we have made two separate trips to view the boat, talk to department members, and talk to the mechanics; and, we have spent considerable time assuring that we can properly transport, store, and maintain the boat, locally. We have advertised and scheduled a Public Hearing for tomorrow night to take input regarding the gift.

The "Sagamore" would be a huge asset to the Town of Gilford and to all Lake Winnepesaukee waterfront owners, island residents, visitors, and boaters. It would replace our current, 39 year old boat. It would immediately quadruple our pumping capacity. The roof-mounted master stream device would make it possible to flow more water with a longer reach, improving safety. It would improve our ability to rescue someone or transfer someone at water level. It would improve crew and patient comfort by having a water-tight, heated cabin. The jet drives offer a safer alternative to propellers. And, the navigation equipment, including FLIR is superior to our current navigation equipment. Furthermore, the boat would be in fresh water, extending its life and reducing maintenance costs. It will also be put into use 2 to 3 times more often, annually, than it currently responds along the Seacoast.

***39 Cherry Valley Road, Gilford, New Hampshire 03249-6843
Phone (603) 527-4758 E-mail gilfordfirerescue@gilfordnh.org***



Gilford Fire-Rescue

Stephen M. Carrier, Chief

Bradley H. Ober, Deputy Chief

Community, Safety, Professional Service

Collectively, The Board of Fire Engineers; the Gilford Fire-Rescue administration and membership; the Town administration; and, many Gilford residents simply could not let this tremendous opportunity slip by without attempting to reach out and describe how very important this gift would be to our community, as well as to the greater Lakes Region.

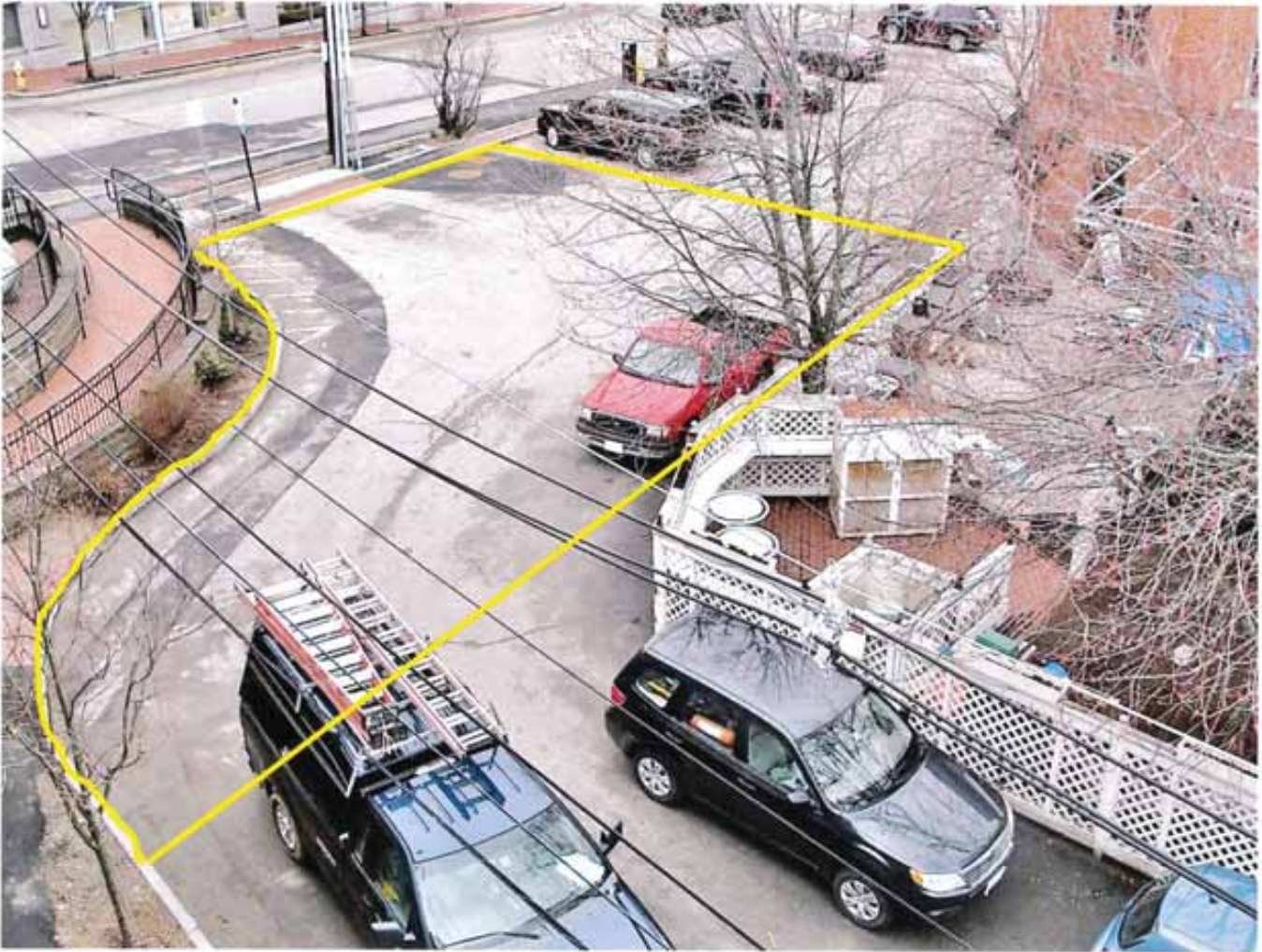
The "Sagamore" would be perfect for Gilford Fire-Rescue, the Town of Gilford, and Lake Winnepesaukee. We hope that through reconsideration, you will affirm your earlier vote to transfer the boat to Gilford.

Respectfully,

Chief Stephen M Carrier

***39 Cherry Valley Road, Gilford, New Hampshire 03249-6843
Phone (603) 527-4758 E-mail gilfordfirerescue@gilfordnh.org***

Proposed License Area
Careno Construction Co.
Gaslight Rebuild/Repair Project



Event Listing by Date

Starting Date: 5/ 2/2016

Ending Date: 3/31/2017

| Start End | Type Description | Location | Requestor | Vote Date |
|------------------------|--|--|--------------------------------|------------|
| 5/ 7/2016 5/ 7/2016 | ROAD RACE Carolyn Ostrom, NH Community Relations Specialist is the contact for this event. The event begins on Peirce Island and ends at Strawberry Banke Starting time is 9:00 a.m. | Peirce Island | Susan G. Koman | 8/17/2015 |
| 5/14/2016 5/14/2016 | WALK This event is cancelled. Deidre Reynolds is the contact for this event. Her contact information: dede40@comcast.net or 236-9616 This event gathers at Prescott Park at 11:00 a.m. then process to walk across Memorial Bridge and back. The full name of this event: Moms Demand Action Tri State Meet Up and Bridge Walk for Gun Sense. | Prescott Park - CANCELLED | Moms Demand Action Tri State M | 3/14/2016 |
| 5/20/2016 5/20/2016 | BIKE TOUR Josh Pierce is the contact for this event. This event begins at 7:00 a.m. in Market Square at Popovers. It is a commuter breakfast from 7:00 to 10:00 a.m. | Market Square - Popovers | Seacoast Area Bicycle Riders | 5/ 2/2016 |
| 5/29/2016 5/29/2016 | RACE Jeanine Sylvester is the contact for this event. This event is at Pease Tradeport. Event begins at 11:00 a.m. | Pease Tradeport | Runner's Alley | 1/25/2016 |
| 6/11/2016 6/11/2016 | FESTIVAL Barbara Massar is the contact for this event. This event begins at 9:00 a.m. to 4:00 p.m. | Market Square Day - 39th | Pro Portsmouth | 8/ 3/2015 |
| 6/11/2016 6/11/2016 | RACE Barbara Massar, Executive Director is the contact for this event. This is 5K Road Race that begins in Market Square. | Market Square Road Race | Pro Portsmouth | 8/ 3/2015 |
| 6/18/2016 6/18/2016 | RACE Nicole McShane is the contact for this event. Her contact number is 430-1140 ex. 2407 Raindate for this event is Sunday, June 19th. | Pleasant Street | Big Brother Big Sisters of New | 10/19/2015 |
| 6/25/2016 6/25/2016 | MUSIC Barbara Massar, Executive Director is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m. | Pleasant Street - Summer in the Street Music Serie | Pro Portsmouth | 8/ 3/2015 |
| 6/25/2016 6/25/2016 | PRIDE Contact: Jess Dorr, Executive Director 603-552-5824, Portsmouth Pride Community Event with Six Walks into Market Square | Market Square | Seacoast Ouright | 3/21/2016 |
| 7/ 2/2016 7/ 2/2016 | MUSIC Barbara Massar, Executive Director is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m. | Pleasant Street - Summer in the Street Music Serie | Pro Portsmouth | 8/ 3/2015 |
| 7/ 4/2016 7/ 4/2016 | RACE David Hampson is the contact for this event. Telephone No. 334-3032 Race Start: 9:00 a.m. Registration: 7:30 a.m. | Strawbery Banke, Marcy Street | Easter Seals Veteran's Count | 12/ 7/2015 |

Event Listing by Date

Starting Date: 5/ 2/2016

Ending Date: 3/31/2017

| Start End | Type Description | Location | Requestor | Vote Date |
|------------------------|---|--|--------------------------------|------------|
| 7/ 9/2016 7/ 9/2016 | FUND Jim O'Brien is the contact for this event. Tel. 603-380-5343 | Market Square - Boot Drive | Portsmouth Professional Fire F | 4/18/2016 |
| 7/16/2016 7/16/2016 | BIKE TOUR Contact: Chris Vlangas 1-800-757-0203 Event begins at 7:30 a.m. from Shapleigh Middle School in Kittery. | From Kittery, ME to Route 1B to Rye back to Kitter | Cystic Fibrosis Foundation | 1/25/2016 |
| 7/16/2016 7/16/2016 | MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 to 9:30 p.m. | Pleasant Street - Summer in the Street Music Serie | Pro Portsmouth | 8/ 3/2015 |
| 7/23/2016 7/23/2016 | MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m. | Pleasant Street - Summer in the Street Music Serie | Pro Portsmouth | 8/ 3/2015 |
| 7/30/2016 7/30/2016 | BOAT Molly Bolster is the contact for this event. This event begins at 9:00 a.m. to 3:00 p.m. Raindate: 7/31/16 | Peirce Island | Round Island Regatta | 3/14/2016 |
| 7/30/2016 7/30/2016 | MUSIC Barbara Massar, Executive Director This event is from 5:00 to 9:30 p.m. | Pleasant Street - Summer in the Street Music Serie | Pro Portsmouth | 8/ 3/2015 |
| 8/ 4/2016 8/ 4/2016 | RACE Justin Finn is the contact for this event. Race Start: 6:00 p.m. Registration: 4:30 p.m. | Portsmouth High School Cross Country Track | Portsmouth Rotary Club | 12/ 7/2015 |
| 8/20/2016 8/20/2016 | FUND Jim O'Brien is the contact for this event. Tel. (603) 380-5343 | Market Square - Boot Drive | Portsmouth Professional Fire F | 4/18/2016 |
| 9/17/2016 9/17/2016 | RACE Holly Tennent and Melissa Mikulski are the contacts for this event. mmikulski@bottomline.com 501-5335 htennent@bottomline.com 501-6653 This event begins at 9:00 a.m. | Pease Tradeport | Bottomline Technologies | 4/ 4/2016 |
| 9/17/2016 9/17/2016 | WALK Contact: Ken La Valley, Chair - Out of Darkness Walk on Saturday, September 17, 2016 Registration: 8:30 a.m. Walk Duration 10:00 a.m. - Noon Peirce Island - Begin and end. Proposed Walk route 2.3 miles | Peirce Island | American Foundation for Suicid | 1/11/2016 |
| 9/18/2016 9/18/2016 | RACE Wendy McCoolle is the contact for this event. Telephone #603-759-5640 Race Start: 9:00 a.m. Registration: 7:30 a.m. | Portsmouth Middle School | Celebrate Pink | 12/ 7/2015 |

Event Listing by Date

Starting Date: 5/ 2/2016

Ending Date: 3/31/2017

| Start End | Type Description | Location | Requestor | Vote Date |
|--------------------------|---|---|--------------------------------|------------|
| 9/24/2016 9/25/2016 | BIKE TOUR Donna Hepp is the contact for this event. Tel. 414-258-3287 | Through Portsmouth | Grante State Wheelmen | 12/ 7/2015 |
| 9/24/2016 9/25/2016 | FESTIVAL David Hallowell is the contact for this event. This is a 2-day event starting at 8:00 a.m. to 6:00 p.m. | Pleasant Street | Portsmouth Maritime Folk Festi | 1/25/2016 |
| 9/24/2016 9/25/2016 | TOUR Caroline Amport Piper is the contact for this event. Tel. (603) 686-4338 Location of this event is to be determined. This event begins each day at 11:00 a.m. to 3:00 p.m. | To Be Determined | Friends of the South End | 12/ 7/2015 |
| 10/ 9/2016 10/ 9/2016 | ROAD RACE Contacts: (Date changed to October 9, 2016 instead of October 8th) Ben Anderson - ben@prescottpark.org Angela Greene - angela@prescottpark.org Race Start: 10:00 a.m. Registration: 8:00 a.m. | Memorial Bridge Portsmouth | Memorial Bridge Road Race | 12/ 7/2015 |
| 10/22/2016 10/22/2016 | WALK Contact Susan von Hemert Annual Memorial Bridge Walk walking acorss Memorial Bridge to Prescott Park | Memorial Bridge Walk to Prescott Park | Seacoast Rotary | 3/ 3/2016 |
| 11/13/2016 11/13/2016 | ROAD RACE Jay Diener, Co-race Director is the contact for this event. He can be reached at (603) 758-1177 Runners start at 8:30 a.m. | Portsmouth, New Castle, Rye | Seacoast Half Marathon | 4/18/2016 |
| 11/24/2016 11/24/2016 | ROAD RACE Matt Junkin, Race Director is the contact for this event. This is the Thanksgiving Day Turkey Trot which begins at Peirce Island and ends at Strawberry Banke. Registration begins at 7:00 a.m. Race commences at 8:30 a.m. | Peirce Island is the start - Strawberry Banke is th | Seacoast Rotary Turkey Trot 5K | 11/16/2015 |
| 12/11/2016 12/11/2016 | ROAD RACE Thomas M. Bringle is the contact for this event. Tel. 603-724-6080 tbringle@arthritis.org. Registration begins at 9:00 a.m. Race start time: 10:00 a.m. | Little Harbour School | Arthritis Foundation - Jingle | 1/25/2016 |
| 1/ 1/2017 1/ 1/2017 | RACE Michael Rennebu is the contact for this event. Cell #603-969-9783 Race Start: 11:00 a.m. Registration: 9:00 a.m. | Portsmouth Middle School | Great Bay Services | 12/ 7/2015 |

CITY OF PORTSMOUTH



PRESS RELEASE

**FOR
IMMEDIATE
RELEASE**

May 13, 2016

Community Commemoration Set for African Burying Ground Anniversary

PORTSMOUTH, NH – On Monday, May 23, 2016 at 8:45 a.m., Mayor Blalock will lead a small ceremony at the African Burying Ground to commemorate the one year anniversary of the reburial ceremony. The public is invited to attend and encouraged to bring their own cut flowers. Members of the public who cannot attend the morning event are invited to place flowers at the Memorial throughout the day. All members of the public are welcome to join the Mayor, project advocates and volunteers in this remembrance that will take place rain or shine.

The event is intended to honor those buried at Chestnut Street and to recall the powerful community events that marked the project completion last May. The vibrant events from 2015 included an overnight Ancestral Vigil at the New Hope Baptist Church and a reburial ceremony during which 19 pall-bearers and over 500 community members witnessed the unveiling of the artworks and the return of previously exhumed human remains to the completed Memorial. These events were followed by an energetic community celebration at the Stokel Commons at Portsmouth Middle School.

In the 12 months following the reburial event and unveiling of the Memorial Park artworks, the African Burying Ground and Memorial Park has been widely visited and embraced by the community and spurred community conversations and greater understanding of Portsmouth's history. Since the opening, several performances and visual arts programs have taken place in the community based on the African Burying Ground. Visitors have included locals, international groups and academic programs, and several

national and regional publications have noted the historical site and community efforts to create the Memorial. Just this week, the project was awarded a 2016 Preservation Award from the New Hampshire Preservation Alliance.

For more information on this project and related events, please visit www.africanburyinggroundnh.org.



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application



Committee: Historic District Commission

Name: Reagan Ruedig Telephone: 603-373-8391

Could you be contacted at work? YES NO - If so, telephone # cell 646-342-9275

Street address: 70 Highland St

Mailing address (if different): -

Email address (for clerk's office communication): rbaydown@gmail.com

How long have you been a resident of Portsmouth? 6 yrs

Occupational background:

- Historic Preservation - Architectural historian for
Preservation Company, consultants in Historic
Preservation (6 years)
- ~~Portsmouth Historical Society Trustee 4 yrs~~

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: I have enjoyed my 3+
years serving on the HDC and feel that I have
more still to contribute to my community and its
built environment.



Please list any organizations, groups, or other committees you are involved in:

Portsmouth Historical Society - Board of Trustees,

Buildings and Grounds Committee Chair

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

1) Lynne Monroe, 5 Hobbs Rd, Kensington, NH 603-778-1799
Name, address, telephone number

2) Joe Almeida, 33 Blossom St, Portsmouth 603-502-8605
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Leaga B. Breding Date: 3/30/2016

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 06/01/2019

Annual Number of Meetings: 25 Number of Meetings Absent: 2
2015

Date of Original Appointment: 12/17/2012

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

Committee: Historic District Commission **Renewing applicant**

Name: Jonathan Wyckoff Telephone: 603 436-4863

Could you be contacted at work? YES/NO - If so, telephone# cell 603 235-9224

Street address: 135 Sparhawk St.

Mailing address (if different): _____

Email address (for clerk's office communication): jonmwyckoff@gmail.com

How long have you been a resident of Portsmouth? Life time

Occupational background:

After schooling my wife (Joann) and I started refinishing antique furniture which led to restoring older homes. I have supervised large projects in Dover and have successfully run Wyckoff Construction since 1985 only recently retiring. I take great pride in my work and consider finish carpentry to be my speciality.

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: I feel passionately that the work the H.D.C. does in reviewing projects is an important part of the planning of our fair city and that my experience in building and construction details is helpful to our decisions. Also as a lifelong student of the history and development of Portsmouth, I can offer a unique analysis to both large + small projects.



Please list any organizations, groups, or other committees you are involved in:

Portsmouth Historical Society N. H. Gazette
N. H. Historical Society Portsmouth Listens
Portsmouth Athenaeum Citywide Neighborhood Committee
Historic New England
Wyckoff House + Association

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

- 1) George Carlisle 18 Congress St. H. 436 8006 @ 766-0424
Name, address, telephone number
- 2) Richard Katz 59 Kensington rd. H 436-1525
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature:  Date: 3-28-16

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 6/1/2019

Annual Number of Meetings: 25 Number of Meetings Absent: 2

Date of Original Appointment: 6/9/2007

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

JIP 2 5 2015

Committee: HISTORIC DISTRICT COMMISSION **Renewing applicant - Alternate**

Name: JOHN MAYER Telephone: 603-422-9551

Could you be contacted at work? YES/NO - If so, telephone# 978-834-5058

Street address: 68 CABOT ST., PORTSMOUTH 03801

Mailing address (if different): —

Email address (for clerk's office communication): JMAYER.NH@GMAIL.COM

How long have you been a resident of Portsmouth? 18 years

Occupational background:

- MUSEUM curator and MUSEUM director —
- 1998-2002 - MUSEUM curator, STRAWBERRY BANK C
- 2002-2015 - MUSEUM curator, Maine Hist. Society
- 2016-present - MUSEUM director, Amesbury Carriage Museum

Would you be able to commit to attending all meetings? YES/NO (mostly)

Reasons for wishing to continue serving: I am very committed to supporting preservation of historic resources in our city.



Please list any organizations, groups, or other committees you are involved in:

Portsmouth Athenaeum, proprietor

NOT PORTSMOUTH SPECIFIC:

SOCIETY FOR INDUSTRIAL ARCHAEOLOGY

P.R.I.S.M.S., INC (Support group for disabilities)

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

1) Rodney Rowland, Strawberry Bank, 603-422-7525
Name, address, telephone number

2) Tom Hardiman, Portsmouth Athenaeum, 603-431-2538
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: [Handwritten Signature] Date: 4-25-16

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 06/01/2019

Annual Number of Meetings: 8 Number of Meetings Absent: 1
+ 20 + 205

Date of Original Appointment: 7/20/15

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801

Legal Framework for Prescott Park

Mayor's Blue Ribbon Committee on the Prescott Park Master Plan

May 4, 2016

Who owns Prescott Park?

The City of Portsmouth owns the parcels that make up Prescott Park.

How did the City come to own the parcels, which make-up Prescott Park?

The Prescott sisters, Josie and Mary, are directly responsible for the creation of what is now known as Prescott Park. After their older brother Charles died, his sizable inheritance eventually came under their control. Beginning during their lifetimes, the sisters and their agents utilized their funds to acquire land along the Marcy Street waterfront for the purpose of transforming the area.

Beginning in the late 1930s and over the next forty years, through a number of land transactions and construction projects, parcels were acquired, buildings were cleared, and improvements made which resulted in today's Prescott Park. Mary Prescott died in 1939 and Josie F. Prescott died in 1949. Agents of Josie F. Prescott, under the terms of Josie F. Prescott's Will and Testament from 1938, continued the work of assembling and improving parcels as directed. Specifically, the Trust directed her agents to continue to acquire and improve property along the Marcy Street waterfront after her death and, within five years, convey those properties to the City to be "used for parks and recreational purposes". The same document directed funds to be set aside in a Trust for the maintenance and care of the acquired parcels. In 1954, the land acquired and the funds were conveyed to the City of Portsmouth after which time additional properties were acquired and improved resulting in today's Prescott Park. The Josie F. Prescott Trust remains today a City's trust fund, proceeds from which are used to fund the maintenance of the buildings and grounds of Prescott Park, which includes Four Tree Island.

What are the restrictions on the parcels collectively known as Prescott Park?

A discussion of the "restrictions" of the use of the City's Prescott Park has many components. In general, the following statements will help answer the question.

- a. As a City Park, the Portsmouth City Council has wide latitude in determining how the Park property is used through City ordinances or other authority it chooses to exercise as the owner of City property. As examples, City ordinances exclude skateboarding in Prescott Park; no person may bring alcoholic beverages or drink alcoholic beverages at any time in any City park.
- b. The 1954 deed for the majority of the parcels transferred to the City of Portsmouth, expressly states the "conveyance is upon the express condition and essential part

consideration that the premises shall be used only for park and public recreational purposes and that no intoxicating liquors shall ever be sold thereon”.

- c. In addition, and most importantly, the City holds the ownership of the parcels which make up the Park in trust due to the manner in which the property was acquired - through the Will and Trust of Josie F. Prescott. As a result, the intent for which the parcels were conveyed to the City is paramount. In New Hampshire, the Charitable Trust Unit of the Attorney Generals oversees that trusts and trust property are used in a manner consistent with the maker of the trust.

What is the legal role of the Trustees of Trust Funds?

The Trustees’ role is to administer the City’s Trusts in accordance with their terms. There are over 90 Trusts held by the City of Portsmouth.

What is the role of the Trustees of Trust Funds in Prescott Park?

Because the Trustees of Trust Funds hold the Josie F. Prescott Trust, a Trust established for the purpose of maintaining the Park, all City Councils in recent memory have deferred management and operation of the Park in almost all matters to the Trustees of Trust Funds. This is a result of informal policy, not of law.

Did the Prescott Trust name the Trustees of Trust Funds as administrators of the Prescott Trust?

No. However, in addition to purchasing land and conveying it to the City for use as a public park, Josie F. Prescott (the survivor of her sister) also instructed her Trustees (through her Will) to gift funds to the City for the purchase of other parcels in the area and the maintenance of the Park. These funds were left in “trust”. Under the Portsmouth City Charter all Trusts are to be administered by the City’s Trustees of Trust Funds. The Josie F. Prescott Trust as well as ~90 other Trusts held by the City of Portsmouth are administered by the Trustees of Trust Funds. The Josie F. Prescott Trust is the largest single Trust Fund of the City of Portsmouth. As of June 2015, the book value of the Trust was \$3.9 million.

What is the role of the New Hampshire Attorney General’s Office Division of Charitable Trusts?

The City of Portsmouth holds the ownership of Prescott Park in trust due to the manner in which the property was acquired through the Will and Trust of Josie F. Prescott. The Park is held in charitable trust and all charitable trusts in the state are overseen by the Charitable Trusts Unit of the Attorney General’s Office. In general, the Charitable Trusts Unit oversees such trusts and trust property to assure that trust property is being used in a manner consistent with the intent of the maker of the trust.

Who owns the structures in Prescott Park?

The City of Portsmouth owns all of the structures in Prescott Park.

What is the Public Forum Area?

The Trustees of Trust Funds have adopted a Public Forum policy out of a desire to accommodate the public policy and constitutional considerations for permitting protected expressive activity while at the same time maintaining the Park as a place for the public to quietly enjoy its lawns, garden and scenic attractions. The general area of the public forum area is the pier and parking areas closest to the Park entrance at State Street.

What agreements are in place for the use of portions of the park by other entities?


The City of Portsmouth has formal agreements in place with three organizations for the usage of specific spaces in the Park. These include the Players' Ring Theatre (Marine Railway Building fronting Marcy Street); the Prescott Park Arts Festival (various sites within the park), and the Gundalow (docking structure near the Sheafe Warehouse).

What is the status of the proposed "new stage" by the Prescott Park Arts Festival?

On September 8, 2015, the Portsmouth City Council voted to authorize the City Manager to "proceed with land use reviews regarding the Prescott Park Arts Festival's proposed stage relocation with final approval by City Council before stage is built". As a result, the PPAF began the process of seeking land use and other approvals (e.g. wetland permit applications) for the creation of a new stage and related facilities in the park. As the owner of the park and owner of structures within the Park, the City of Portsmouth is the applicant for the permit application. Per City Council vote from September 2015, no new facility will move forward without a vote of the City Council.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: May 12, 2016
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: Proposed Concept Plan for Micro-Units at the Parrott Avenue Lot

As initiated by Councilor Eric Spear and requested by the City Council at your January 11, 2016 meeting, the Planning Department developed the attached conceptual building design and site plan for placement of a three-story, mixed-use building within a portion of the city-owned Parrott Ave. parking lot. Per Council's direction, the core purpose of the project is to evaluate whether conversion of a portion of the Parrott Ave. surface parking lot into affordable housing (in the form of small housing / micro-units) would be beneficial in meeting Portsmouth's need for additional affordable housing.

The Parrott Ave. lot is approximately 1.65 acres in land area (Exhibit 1). There are currently 175 parking spaces on the lot and some of these spaces have been utilized by the Middle School during the expansion project. The remaining spaces, being unmetered, have a high occupancy and utilization rate. The property is currently zoned as *Municipal* under the Character-Based Zoning Ordinance. Depending on whether the city seeks to retain ownership of the land and/or building or, conversely, convey interest in the property to a third party developer, the Zoning Ordinance may need to be amended to support the project.

In minimizing the loss of surface parking as well as enhancing the streetscape along Junkins and Parrott Ave., Exhibit 2 shows a conceptual site plan with a multi-story, mixed-use building that could support between 40-50 micro units. Micro-units are currently defined under the zoning ordinance as residential units with up to 400 SF in gross floor area. Given the secondary objective of maintaining sufficient downtown parking, the conceptual site plan also shows a building footprint that allows for either an expansion or reduction in the length depending on the city's desired balance between the density of affordable housing and the ongoing need to support the current and future parking demand within the immediate neighborhood.

Exhibit 3 illustrates the conceptual site plan with a three-story, mixed-use building that is approximately 32 feet in height and has a footprint of 15,000 SF+/- . The ground floor uses along the street edge are proposed to be small-scale commercial office uses whereas the rear-facing ground-floor space (with direct access to the parking area) could be used for additional micro-units that would provide universal access to the sidewalk and parking area. The remainder of the Parrott Ave. parking lot would remain a shared public parking lot with 90 +/-spaces available for both the micro-units, the new commercial tenants, the Middle School, as well as the general public.



Parrott Ave. Lot

- Size - 1.65 Acres
- Parking Spaces - 175
- Zoning District - Municipal

**Exhibit 1 – Existing Conditions Plan
for the Parrott Ave. Lot**



Conceptual Site Plan

- Building Height – 3 Story/ 32 Foot Building
- Building Footprint – 15,000 +/- SF
- Land Use – 40-50 Micro Apartment Units at 400 +/- SF
- Parking – 50 Shared Spaces

Exhibit 2 - Conceptual Site Plan for the Micro-Unit Project at the Parrott Ave. Lot



**Exhibit 3 - Conceptual Building Design for the
Micro-Unit Project at the Parrott Ave. Lot**