

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, SEPTEMBER 6, 2016 TIME: 5:30PM

AGENDA

- 5:30PM – PUBLIC USE AND VIEWING FOR EMINENT DOMAIN PURPOSES PROPERTY AT 150 GREENLEAF AVENUE MAP 243 LOT 067
- 6:30PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: LITIGATION – RSA 91-A:2,I (b)

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

PRESENTATIONS

- 1. Water Restrictions
- 2. *Sustainability Committee

V. ACCEPTANCE OF MINUTES – AUGUST 1, 2016

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS

- A. PUBLIC USE AND NECESSITY HEARING FOR EMINENT DOMAIN PURPOSES PROPERTY AT 150 GREENLEAF AVENUE MAP 243 LOT 067 (*Presentation by Legal Team*)
- B. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF TWO HUNDRED ONE THOUSAND DOLLARS (\$201,000.00) FROM UNASSIGNED FUND BALANCE FOR NECESSARY EXPENDITURES RELATED TO CONTRACTUAL OBLIGATIONS (*Presentation by Police Chief Mara*)

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant for Household Hazardous Waste Collection (***Sample motion – move to accept and expend a \$4,660.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract***)
- B. Acceptance of Edward Byrne Memorial Justice Assistant Grant (JAG) – Evaluative Standards - \$10,182.00 (***Sample motion – move to accept and approve the grant as presented***)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Resolution Re: Eminent Domain 150 Greenleaf Avenue (***Sample motion – move to adopt the Resolution entitled “Regarding the Public Necessity for the City to Condemn Certain Property Located at 150 Greenleaf Avenue Portsmouth New Hampshire for Sewer, Drainage, and Stormwater Purposes with Just Compensation to the Landowner”***)
- B. Adoption of Resolution Authorizing a Supplemental Appropriation of Two Hundred One Thousand Dollars (\$201,000.00) from Unassigned Fund Balance for Necessary Expenditures related to Contractual Obligations (***Sample motion – move to adopt the Resolution authorizing a Supplemental Appropriation in the amount of Two Hundred One Thousand (\$201,000.00) Dollars from Unassigned Fund Balance for Necessary Expenditures Related to Contractual Obligations, as presented***)

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from James Daley, St. Thomas Aquinas High School, requesting permission to close Chestnut Street from 11:00 a.m. to 3:00 p.m. on Sunday, June 4, 2017 to allow for a reception line at the conclusion of the Commencement ceremony (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting permission to hold the following events:
- First Night Portsmouth 2017 – Saturday, December 31, 2016; 4:00 p.m. – Midnight
 - Children’s Day – Sunday, May 7, 2017; Noon – 4:00 p.m.
 - 40th Annual Market Square Day Festival & 10K Road Race – Saturday, June 10, 2017; 9:00 a.m. – 4:00 p.m.
 - 15th Annual Summer in the Street – Saturday, June 24th, July 1st, July 8th, July 15th, July 22nd, July 29th; 5:00 p.m. – 9:30 p.m.
- (***Anticipated action – move to refer to the City Manager with power***)
- C. Request for Approval of Pole License to install 1 replacement pole and replacement guy-pole located adjacent to the driveway of 999 Islington Street (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)
- D. Request for Approval of Pole License at 173, 175 Market Street as part of the redevelopment of this property (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)

- E. Request for Approval of Pole License to install 1 replacement pole at 50 Marjorie Street ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- F. Request for Approval of Pole License to install 1 replacement pole at the southeast corner of the Cottage Street and Route 1 Bypass intersection (adjacent to Holloway Motors) ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- G. Request for Approval of Pole License to install 1 replacement pole with guy-wire located at 1608 Islington Street ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Elizabeth Dinan requesting the establishment of a swap shed at the recycling center ***(Sample motion – move to refer to the City Manager for report back)***
- B. Letter from Attorney Watson regarding Mr. Lassen’s proposal for dock space at the reconstructed docks at 95 Mechanic Street ***(Sample motion – move to refer to the City Manager for report back with a recommendation)***

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager’s Items Which Require Action:

- 1. Request for Approval of a Proposed Agreement between the City of Portsmouth Police Commission and the Portsmouth Police Patrolman’s Union, NEPBA Local #11
- 2. Request for Approval of a Proposed Agreement between the City of Portsmouth Police Commission and the Portsmouth Police Ranking Officers’ Association
- 3. Request for Approval of a Proposed Agreement between the City of Portsmouth Fire Commission and the Portsmouth Professional Fire Officers’ Association
- 4. Proposed Acceptance of a Permanent Easement from the Portsmouth Housing Authority for Construction of a Sidewalk and Multi-use Path on Gosling Road
- 5. Report Back from Planning Board Re: Proposed Acquisition of Land from the Foundation for Seacoast Health

6. Report Back Re: Construction of a Tidal Docking Structure within the Ridge Court Right-of-Way and Right-of-Way Setback
7. Request for First Reading of Demolition Ordinance

Informational items

1. Events Listing
2. Report Back Re: 1900 Lafayette Service Road
3. 2017 City Council Calendar
4. Reminder September 12, 2016 Work Session (*agenda attached*)

B. MAYOR BLALOCK

1. *Appointment of Thomas Martin to the PPMTV Board
2. *Joint Budget Committee
 - Mayor Blalock - Chair
 - City Councilor (2) – Appointed by Mayor
 - School Board Representative (2) – Appointed by School Board
 - Fire Commission Representative – Appointed by Fire Commission
 - Police Commission Representative – Appointed by Police Commission
 - Ex-Officio – City Manager Bohenko, Finance Director Belanger, Fire Chief Achilles, Police Chief Mara and Stephen Zadavec, Superintendent of Schools

C. ASSISTANT MAYOR SPLAINE

1. *Regional Desalination Initiative. Addressing future Seacoast Area water needs

D. COUNCILOR PERKINS

1. *Proposed amendment to the Outdoor License Program for Sidewalk Cafes
Approved Locations:
 - *State Street Saloon*
 - *Popovers on the Square*
 - *Ri Ra*
 - *The District*
 - *Birdseye Lounge, LLC*
2. Recruiting Food Trucks (*See ordinance attached*)

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 July 13, 2016 meeting of the Conservation Commission are now available on the City's website
2. Notification that the minutes of the July 21, 2016 meeting of the Planning Board 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 OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: September 1, 2016
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on September 6, 2016 City Council Agenda

5:30 p.m. - Public Use and Viewing for Eminent Domain Purposes Property at 150 Greenleaf Avenue Map 243 Lot 067

6:30 p.m. - Non-meeting with counsel in accordance with RSA 91-A:2,I (b) regarding litigation

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

Presentations:

1. **Water Restrictions.** Brian Goetz, Deputy Public Works Director, will update the City Council on Tuesday evening regarding water restrictions ([see attached](#)).

I recommend the City Council move to authorize the City Manager to enact an outside water ban, and further, to give the City Manager the authority to take whatever action necessary to enforce the water ban.

2. **Sustainability Committee.** On Tuesday evening, the members of the Sustainability Committee will make a presentation regarding ongoing and future sustainability initiatives.

Items Which Require Action Under Other Sections of the Agenda:

1. Public Hearing:

- 1.1 **Public Necessity Hearing to Acquire a Portion of Property at 150 Greenleaf Avenue by Eminent Domain.** City Attorney Robert Sullivan, Deputy City Attorney Suzanne Woodland and Attorney Charles Bauer, as outside counsel, will make a presentation as part of the public hearing for a proposed eminent domain action concerning a portion of the property at 150 Greenleaf Avenue.

For the City Council's consideration is the legal acquisition by eminent domain of approximately 4.6 acres of a 13.78 acre parcel through which a municipal sewer line, installed within a berm, was constructed by the City in 1967 and 1968. The parcel is owned by the 150 Greenleaf Avenue Trust, James Boyle, Trustee. The proposed area with municipal structure to be acquired is shown on the plan included with the proposed City Council Resolution.

The presentation will include an overview of the alleged defects in permanent rights for the City to maintain the sewer line in its current configuration within the berm which runs through the historically swampy area. The presentation will also address the public use, public necessity, and public benefit for such action, weighing the needs of the City with the rights of the landowner.

The public sewer line serves, and has served for nearly 50 years, the Lois Street residential neighborhood and a portion of Middle Road including the Riverbrook Condominiums. The historically swampy wetlands area also serves, and has served the public, to detain storm water as a low point in the area. The landowner will continue to fully own and operate an automotive dealership on the remaining fully developed portion of the property. The landowner will be reasonably and justly compensated for the proposed acquisition.

As will be explained further as part of the presentation, this hearing is part of the legal due process and procedures required by New Hampshire statutes for the eminent domain acquisition of property. That due process includes an appraisal, a copy of which is provided to the property owner. This step has been completed and the appraisal report has been posted to the City's website.

The appraisal report provides two methodologies for determining value of the property to be acquired. Using the method most favorable to the landowner, the City would propose to offer to the landowner \$345,000 to acquire the parcel for public use. The estimated costs of removing and replacing the sewer line for continued municipal services to residents and landowners, which would require state and local approvals, would greatly exceed the acquisition expense.

If the City Council elects to proceed with the eminent domain, there will be a 60 to 90 day period of negotiation and statutorily required notices to various parties. Within the statutory structure, the landowner will have the opportunity to challenge the public use, public necessity, public benefit, and just compensation.

[Attached is the proposed Resolution for the City Council's adoption with attached plan.](#)

The City Legal team recommends the City Council move to adopt the Resolution entitled "Regarding the Public Necessity for the City to Condemn Certain Property Located at 150 Greenleaf Avenue Portsmouth New Hampshire for Sewer, Drainage, and Stormwater Purposes with Just Compensation to the Landowner." Action on this matter should take place under Section IX of the Agenda.

2. **Public Hearing and Adoption of Resolution:**

- 2.1 **Public Hearing and Adoption of a Resolution authorizing a Supplemental Appropriation in the amount of Two Hundred One Thousand (\$201,000) Dollars from Unassigned Fund Balance for Necessary Expenditures Related to Contractual Obligations.** The [attached Resolution](#) is for a supplemental appropriation for FY17 to fund the police and fire collective bargaining agreements. In accordance with the City Charter, the City Council may approve a supplemental appropriation from Unassigned Fund Balance.

The Police Chief will be making a presentation regarding this matter.

I recommend the City Council move to adopt the Resolution authorizing a Supplemental Appropriation in the amount of Two Hundred One Thousand (\$201,000) Dollars from Unassigned Fund Balance for Necessary Expenditures Related to Contractual Obligations, as presented. Action on this matter should take place under Section IX of the Agenda. (Two-thirds vote is required.)

Acceptance of Grants and Donations:

1. **Acceptance of Grant for Household Hazardous Waste Collection.** As you are aware, \$40,000 has been committed from the Water & Sewer Enterprise Fund for two household hazardous waste collection events in the FY 2017 budget.

Household hazardous waste collection events help protect our water supply and reduce the potential of hazardous waste being dumped or inappropriately disposed of. In the interest of protecting public health and ensuring household hazardous waste and unwanted household hazardous products are disposed of in an environmentally sound manner, the City has been hosting the collection event for more than thirteen years. Over 200,000 gallons of hazardous waste have been properly disposed of during this time. An average of 675 families take advantage of the collection events every year.

In the spirit of being a good neighbor, the City also offers the services to residents of Greenland. The expenses are shared between the communities on a prorated basis - per vehicle per community. A grant in the amount of \$4,660.00 from the Department of Environmental Services (DES) has been applied for and is available to the City to assist in managing the cost of these events ([see attached](#)). This grant would supplement the City funds proposed in the FY 2017 budget.

I recommend the City Council move to accept and expend a \$4,660.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Action on this matter should take place under Section VIII of the Agenda.

2. **Acceptance of Edward Byrne Memorial Justice Assistant Grant (JAG).** [Attached under Section VIII of the Agenda is a memorandum](#), dated August 12, 2016 from Brenna Cavanaugh, Chair of the Portsmouth Police Commissioners, and Police Chief David J. Mara, requesting that the City Council approve the following grant:

- a) Edward Byrne memorial JAG Grant. The total amount awarded to Rockingham County is \$24,972. Portsmouth's portion will be \$10,182. The Police Department's grant allotment will be used for the development of evaluative standards.

The Police Commission submits the information to the City Council pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their next meeting.

I recommend the City Council move to accept and approve the grant to the Portsmouth Police Department in the amount of \$10,182. Action on this matter should take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Request for Approval of a Proposed Agreement between the City of Portsmouth Police Commission and the Portsmouth Police Patrolman's Union, NEPBA Local #11.** The Police Commission has approved a Tentative Agreement with the Portsmouth Police Patrolman's Union, NEPBA Local #11 to expire on June 30, 2018.

[For your information and to facilitate discussion regarding this matter, attached are the following documents:](#)

- [A letter from Tom Closson, City Negotiator outlining the changes to the Portsmouth Police Patrolman's Union, NEPBA, Local #11 contract.](#)
- [The Portsmouth Police Patrolman's Union, NEPBA, Local #11 contract showing the insertions and deletions to implement the Tentative Agreement if approved.](#)
- [Cost Analysis of the four \(4\) year agreement.](#)

Also, this proposed Agreement is posted on the city's Website at:

<http://www.cityofportsmouth.com/hr/contracts/Police/DraftPolicecontract%20exp.%206-18.pdf>

Move to accept the proposed contract between the Portsmouth Police Commission and the Portsmouth Police Patrolman's Union, NEPBA, Local #11, to expire on June 30, 2018

2. **Request for Approval of a Proposed Agreement between the City of Portsmouth Police Commission and the Portsmouth Police Ranking Officers' Association.** The Police Commission has approved a Tentative Agreement with the Portsmouth Police Ranking Officers' Association.

For your information and to facilitate discussion regarding this matter, attached are the following documents:

- A letter from Tom Closson, City Negotiator outlining the changes to the Portsmouth Police Ranking Officers' contract.
- The Portsmouth Police Ranking Officers' contract showing the insertions and deletions to implement the Tentative Agreement if approved.
- Cost Analysis of the four (4) year agreement.

Also, this proposed Agreement is posted on the city's Website at:

<http://www.cityofportsmouth.com/hr/contracts/Police/DraftRankingOfficersAssociation-exp6-30-18.pdf>

Move to accept the proposed contract between the Portsmouth Police Commission and the Portsmouth Police Ranking Officers' Association, to expire on June 30, 2018

3. **Request for Approval of a Proposed Agreement between the City of Portsmouth Fire Commission and the Portsmouth Professional Fire Officers' Association.** The Portsmouth Fire Commission has approved a Tentative Agreement with the Portsmouth Professional Fire Officers' Association.

For your information and to facilitate discussion regarding this matter, attached are the following documents:

- A letter from Tom Closson, City Negotiator outlining the changes to the Portsmouth Professional Fire Officers' Association contract.
- The Portsmouth Professional Fire Officers' Association contract showing the insertions and deletions to implement the Tentative Agreement if approved.
- Cost Analysis of the four (4) year agreement.

Also, this proposed Agreement is posted on the city's Website at:
<http://www.cityofportsmouth.com/hr/contracts/Fire/DraftFire%20OfficersAssociation-exp6-30-18.pdf>

Move to accept the proposed contract between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers' Association, to expire on June 30, 2018

4. **Proposed Acceptance of a Permanent Easement from the Portsmouth Housing Authority for Construction of a Sidewalk and Multi-use Path on Gosling Road.** The City has designed a project to create a sidewalk and multi-use path along the south side of Gosling Road from the Motel 6 driveway to Woodbury Avenue in order to increase pedestrian and bicyclist safety along this busy corridor. These improvements are recommended in the City's 2014 Bicycle and Pedestrian Plan and are included in the FY 2017-2022 Capital Improvement Plan.

A portion of the project abuts property owned by the Portsmouth Housing Authority, and a permanent easement from the Housing Authority is required in order to construct the proposed improvements. The proposed easement consists of approximately 5,542 square feet on Housing Authority property along the Gosling Road right-of-way, [as shown on the attached Easement Plan \(2 sheets\)](#).

At its meeting on August 18, 2016, the Planning Board reviewed the proposal and voted unanimously to recommend that the easement be acquired as proposed.

I recommend the City Council move to approve the Planning Board's recommendation to accept this easement granted to the City by Portsmouth Housing Authority.

5. **Report Back from Planning Board Re: Proposed Acquisition of Land from the Foundation for Seacoast Health.** At its meeting on August 1, 2016, the City Council voted to refer to the Planning Board a proposal to acquire approximately 50 acres of land from the Foundation for Seacoast Health. The land that is proposed to be acquired is a portion of the Community Campus, and will be used for expanding the existing Recycling Center, creating a multi-field recreation complex, and ensuring protection of valuable wetland and open space.

The Planning Board reviewed this matter at its meeting on August 18, 2016, and voted unanimously to recommend that the land be acquired as proposed.

I recommend the City Council move to approve the Planning Board's recommendation to acquire the land from the Foundation for Seacoast Health.

6. **Report Back Re: Construction of a Tidal Docking Structure within the Ridge Court Right-of-Way and Right-of-Way Setback.** As you will recall, at the August 1, 2016 City Council meeting, the Council referred the [attached request from Zachary Taylor on behalf of Stephen and Karin Bamdollar](#) for the construction of a tidal docking structure within the Ridges Court right-of-way and right-of-way setback, to the Conservation Commission for report back to the City Council.

At its August 10, 2016 meeting, the Conservation Commission reviewed the letter from Riverside & Pickering Marine on behalf of Stephen and Karin Bamdollar requesting permission to build a new dock across the extension of the City's right-of-way from Ridges Court.

The applicant provided a complete application for their wetland permit including information which supported the proposed dock location. On behalf of the Bamdollars, Riverside & Pickering Marine stated that by utilizing the proposed location they would not block navigational access to the cove to the West of their property, they would be able to put in a smaller docking structure with less impact to the marsh, and the proposed location would avoid a mitigation area constructed by the Bamdollars to offset past impacts to the tidal buffer zone.

After reviewing the project plans and hearing the presentation by Riverside & Pickering Marine, the Conservation Commission supported the proposal to put the dock in the proposed location. The Commission thought there would be less impact to the fringing saltmarsh vegetation, improved chances for the mitigation area approved in 2011 to succeed, and reduced navigational impacts and conflicts to small craft users of the area.

The Conservation Commission acknowledged that their interpretation of the impacts was limited to environmental considerations. The Commission suggested that any impacts to the public interest that may occur due to the location of a dock in this extended right-of-way area would be better addressed by the Portsmouth City Council.

I recommend the City Council move to accept the recommendation of the Conservation Commission regarding Ridges Court.

7. **Request for First Reading of Demolition Ordinance.** [Attached is a draft revision to the existing demolition ordinance](#) (City Ordinances, Chapter 14 – Housing Code, Article II – Demolition). This revision has been prepared in response to a referral by the City Council at its meeting on February 1, 2016.

The draft revised ordinance provides for additional review, including a public hearing, whenever demolition is proposed for a building that is more than 50 years old. The purpose of this additional review is to allow for a determination as to whether the building has historic, architectural or community value, and for identification of alternatives to demolition. Where no such alternatives are identified or acceptable to the owner, the draft ordinance requires documentation in the form of photographs and measured drawings, and encourages salvage of historic building elements.

A draft of the revised ordinance was provided to Portsmouth Advocates for review, and the current document incorporates several changes suggested by the Advocates, including posting of notices on the City's website in addition to the newspaper.

I recommend the City Council move to authorize the City Manager to bring back the proposed Ordinance for first reading at the September 19, 2016 City council meeting, as presented.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on August 15, 2016. In addition, this can be found on the City's website.
2. **Report Back Re: 1900 Lafayette Service Road.** On June 21, 2016 the property owner at 1900 Lafayette Road submitted a formal request to the City to take ownership of a private service road that runs parallel to Route 1 between the ends of West Road. This private service road was built over time as the lots were developed with 1900 Lafayette being the final section completing the road. This service road was required as part of site plan approvals to ensure properties along Route 1 had a safe exit alternative to turning left onto Route 1.

In response to this request the Public Works Department and Legal Department have identified the steps necessary to change the private service road to a public road. The first step is to communicate with all the property owners who have an interest in the private service road to determine they are all willing to convey the necessary legal interest to allow for the establishment of a public road; letters went out last week.

3. **2017 Schedule of City Council Meetings and Work Sessions.** For your information, I have [attached the 2017 Schedule of City Council Meetings and Work Sessions](#). We will bring back this matter at the September 19, 2016 City Council meeting for adoption.
4. **Reminder Re: September 12, 2016 City Council Work Session.** This is a reminder that there is a City Council Work Session with the Transportation Committee on Monday, September 12, 2016 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers ([see attached Agenda](#)).