

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, SEPTEMBER 16, 2019 TIME: 7:00PM

-
- 5:00PM – ANTICIPATED NON-PUBLIC SESSION RE: CITY MANAGER SEARCH – RSA 91-A:3, II (b)
 - 6:15PM – ANTICIPATED NON-PUBLIC SESSION RE: BOYLE SUPREME COURT APPEAL – RSA 91-A:3, II (e)
- I. WORK SESSION *(There is no Work Session this evening)*
 - II. CALL TO ORDER [7:00 p.m. or thereafter]
 - III. ROLL CALL
 - IV. INVOCATION
 - V. PLEDGE OF ALLEGIANCE
 - VI. ACCEPTANCE OF MINUTES – *(There are no minutes on for acceptance this evening)*
 - VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS
 - VIII. PUBLIC COMMENT
 - IX. PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTION

Public Hearing

- A. Public Hearing on Chapter 3, Article IX – Distribution of Single-Use Disposables

ORDINANCE AMENDING CHAPTER 3, Article IX – Distribution of Single-Use Disposables

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

(Sample motion – move to pass second reading and schedule third and final reading of the proposed Ordinance at the October 7, 2019 City Council meeting)

- B. Third and Final Reading of Ordinance amending Chapter 7, Article III, Section 7.328 – Limited Parking – Three Hours – Maplewood Avenue: Both Sides, Between Raynes Avenue and Vaughan Street *(Sample motion – move to pass third and final reading, as recommended by the Parking and Traffic Safety Committee)*

- C. Third and Final Reading of Ordinance amending Chapter 7, Article III, Section 7.326 – Limited Parking – Fifteen Minutes by the ~~Deletion of Maplewood Avenue: Easterly Side, the First Two Spaces Commencing 140 Feet Northerly from Vaughan Street~~ (**Sample motion – move to pass third and final reading, as recommended by the Parking and Traffic Safety Committee**)

X. MAYOR BLALOCK

1. *Appointments to be Voted:
- Maryellen Burke to be appointed to the Board of Library Trustees
 - Janaki Fonseka to be appointed to the Board of Library Trustees
 - Lori Soloway to be appointed to the Citywide Neighborhood Blue Ribbon Committee

XI. CITY COUNCIL MEMBERS

A. COUNCILOR ROBERTS

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the August 1, 2019 meeting

B. COUNCILOR PEARSON

1. *Share the Square

FEE COMMITTEE

C. COUNCILOR DWYER & COUNCILOR RAYNOLDS

1. Report Back on Meeting with SIPP and Proposed Motion to Approve License Fees for Prescott Park License Agreements

D. COUNCILOR DENTON

1. *Encouraging Pan Am to apply to the State Clean Diesel program for locomotive anti-idling technology

XII. APPROVAL OF GRANTS/DONATIONS

(There are no Grants or Donations on the Agenda this evening)

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers Association
2. Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters

3. Report Back Re: Contact Information (*Deferred Action at the September 3, 2019 City Council meeting*)
4. Vaughan Street Hotel LLC Amendment to Easement Agreement
5. 799 South Street Sidewalk Easement
6. Polling Hours – November 5, 2019 Municipal Election

XIV. CONSENT AGENDA

(There are no items under the Consent Agenda this evening)

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Barbara Massar, Executive Director, Pro Portsmouth, regarding proposed Distribution of Single-Use Disposables Ordinance
- C. Letter from Joshua P. Lanzetta, Counsel to the Surfrider Foundation, NH, regarding proposed Distribution of Single-Use Disposables Ordinance

XVI. CITY MANAGER'S INFORMATIONAL ITEMS

1. Household Hazardous Waste Day
2. Sagamore Sewer Project

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XVIII. ADJOURNMENT [at 10:00 p.m. or earlier]

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

** Indicates verbal report*

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, September 16, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a proposed Ordinance amending Chapter 3, Article IX – Distribution of Single-Use Disposables. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC/CNHMC
City Clerk

LEGAL NOTICE
NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, September 16, 2019 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a proposed Ordinance amending Chapter 3, Article IX – Distribution of Single-Use Disposables. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.
Kelli L. Barnaby, MMC/CNHMC
City Clerk

PH00451695

1 ORDINANCE#
2 THE CITY OF PORTSMOUTH ORDAINS

3
4 That the Ordinances of the City of Portsmouth are hereby amended, by
5 the addition of a new section entitled Chapter 3, Article IX, Section
6 3.901 - **DISTRIBUTION OF SINGLE-USE DISPOSABLES** which
7 shall read in pertinent part as follows

8 **CHAPTER 3**

9 **PUBLIC HEALTH**

10 **ARTICLE IX: DISTRIBUTION OF SINGLE-USE DISPOSABLES**

11 **3.901: PURPOSE**

12 The City of Portsmouth recognizes that limiting the distribution of
13 single-use disposables is necessary for the protection of both the
14 environment of the municipality and the public health, safety, and
15 welfare of its citizens.

16 **3.902: DEFINITIONS**

17 For the purpose of this Section, the following definitions apply:

18 *Composting Facility*: a solid waste compost facility pursuant to the
19 Maine Solid Waste Management Rules: Composting Facilities, 06-096
20 CMR 410 or equivalent; the Maine Hazardous Waste, Septage and Solid
21 Waste Management Act, 38 M.R.S.A. §§ 1301 to 1319-Y or equivalent,
22 and Maine's other Solid Waste Management Rules or equivalents.

23 *Cost Pass-Through*: the cost which must be collected by retailers from
24 their Customers when providing a Single-Use Carryout Bag or a Single-
25 Use Cup.

26 *Customer*: any Person obtaining goods from a Store.

1 *Food Service Establishment*: any restaurant, take-out food establishment,
2 or any other business that is required to obtain a valid food service
3 license from the Public Health Department of the City of Portsmouth.
4 Food Service Establishments do not include Nonprofit Food
5 Establishments.

6 *Medical Facility*: a business or nonprofit that has a primary purpose of
7 providing medical services.

8 *Nonprofit Charitable Reuser*: a charitable organization or a distinct
9 operating unit or division of the charitable organization, that reuses and
10 recycles donated goods or materials and receives more than fifty percent
11 (50%) of its revenues from the handling and sale of those donated goods
12 or materials. To be considered a Nonprofit Charitable Reuser, the entity
13 must meet the terms of section 501(c)(3) of the U.S. Internal Revenue
14 Code (26 U.S.C. 501(c)(3)).

15 *Nonprofit Food Establishment*: a charitable entity that prepares or serves
16 food directly to the Customer or otherwise provides food or meals for
17 consumption by humans. The term includes central food banks, soup
18 kitchens, and nonprofit food delivery services. To be considered a
19 Nonprofit Food Establishment, the entity must meet the terms of section
20 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 501(c)(3)).

21 *Operator*: the person in control of, or having the responsibility for, the
22 operation of a Store, which may include, but not be limited to, the owner
23 of the Store.

24 *Person*: any natural person, firm, corporation, partnership, or other
25 organization or group however organized.

26 *Pharmacy*: any Store where prescriptions, medications, controlled or
27 over the counter drugs, personal care products or health supplement
28 goods, or vitamins are sold.

1 *Prepared Food:* foods or beverages which are prepared on the premises
2 by cooking, chopping, slicing, mixing, freezing, or squeezing, and which
3 require no further preparation to be consumed. Prepared Food does not
4 include any raw, uncooked meat product or fruits or vegetables which
5 are chopped, squeezed, or mixed.

6 *Produce Bag:* any bag without handles used exclusively to carry
7 produce, meats, or other food items to the point of sale inside a store or
8 to prevent such food items from coming into direct contact with other
9 purchased items. A Produce Bag is not a form of Single-Use Plastic Bag.

10 *Retail Establishment:* any commercial establishment that sells perishable
11 and nonperishable goods including but not limited to, clothing, food, and
12 personal items directly to the Customer and is located within or doing
13 business within the City. Retail Establishments do not include Food
14 Service Establishments, Nonprofit Charitable Reusers, or Pharmacies.

15 *Reusable Plastic Bag:* a sewn woven or non-woven nylon,
16 polypropylene, polyethylene-terephthalata, or Tyvek bag capable of
17 being used one hundred (100) times, is machine washable, and has
18 stitched or woven handles that are not fused. A Reusable Plastic Bag is a
19 form of Reusable Bag.

20 *Reusable Bag:* a bag capable of being used one hundred (100) times, is
21 machine washable, and has stitched or woven handles that are not fused.
22 Reusable Bags include Reusable Plastic Bags

23 *Single-Use Carryout Bag:* a bag made of plastic, paper, or other material
24 that is provided by a Store to a Customer at the check stand, cash
25 register, point of sale or other point of departure for the purpose of
26 transporting food or merchandise out of the Store. Single-Use Carryout
27 Bags include Single-Use Plastic Bags and Single-Use Recycled Paper
28 Bags. Single-Use Carryout Bags do not include Produce bags, Reusable
29 Bags, or bags without handles provided to the Customer to hold
30 prescription medication dispensed from a Pharmacy.

1 *Single-Use Compostable Plastic Container:* a container that is composed
2 of one hundred percent (100%) Polylactic Acid and distributed for the
3 purpose of transporting Prepared Food on a single occasion inside or
4 outside of a Store. A Single-Use Compostable Plastic Container is a
5 form of a Single-Use Plastic Container.

6 *Single-Use Compostable Plastic Cup:* a cup composed of one hundred
7 percent (100%) Polylactic Acid and is distributed for the purpose of
8 transporting a beverage on a single occasion inside or outside of a Store.
9 A Single-Use Compostable Plastic Cup is a form of a Single-Use Plastic
10 Cup.

11 *Single-Use Compostable Plastic Straw:* a disposable tube that is
12 composed of one hundred percent (100%) Polylactic Acid and is
13 distributed to transfer a beverage from a cup or container to the mouth of
14 a person drinking the beverage on a single occasion. A Single-Use
15 Compostable Plastic Straw is a form of a Single-Use Plastic Straw.

16 *Single-Use Cup:* a cup that is distributed for the purpose of transporting
17 a beverage on a single occasion inside or outside of a Store.

18 *Single-Use Plastic Bag:* a bag that is made predominantly of plastic
19 derived from either petroleum or a biologically based polymer, such as
20 corn or other plant sources, and is provided at the check stand, cash
21 register, point of sale or other point of departure for the purpose of
22 transporting food or merchandise out of the Store. A Single-Use Plastic
23 Bag is a form of a Single-Use Carryout Bag.

24 *Single-Use Plastic Container:* a container that is made predominantly of
25 plastic derived from either petroleum or a biologically based polymer,
26 such as corn or other plant sources, and is distributed for the purpose of
27 transporting Prepared Food on a single occasion inside or outside of a
28 Store. A Single-Use Plastic Container is a form of a Single-Use
29 Container.

1 *Single-Use Plastic Cup:* a cup that is made predominantly of plastic
2 derived from either petroleum or a biologically based polymer, such as
3 corn or other plant sources, and is distributed for the purpose of
4 transporting a beverage on a single occasion inside or outside of a Store.
5 A Single-Use Plastic Cup is a form of a Single-Use Cup.

6 *Single-Use Polystyrene Container:* a container composed of synthetic
7 aromatic hydrocarbon polymers that is made from the monomer styrene
8 and distributed for the purpose of transporting Prepared Food on a single
9 occasion inside or outside of a Store. A Single-Use Polystyrene
10 Container is a form of a Single-Use Container.

11 *Single-Use Polystyrene Cup:* a cup composed of synthetic aromatic
12 hydrocarbon polymers that is made from the monomer styrene and
13 distributed for the purpose of transporting a beverage on a single
14 occasion inside or outside of a Store. A Single-Use Polystyrene Cup is a
15 form of a Single-Use Cup.

16 *Single-Use Plastic Straw:* a disposable tube made predominantly of
17 plastic derived from either petroleum or a biologically based polymer,
18 such as corn or other plant sources, that is distributed to transfer a
19 beverage from a cup or container to the mouth of a person drinking the
20 beverage. A Single-Use Plastic Straw is a form of a Single-Use Straw.

21 *Single-Use Recycled Paper Bag:* a paper bag provided at the check
22 stand, cash register, point of sale, or other point of departure for the
23 purpose of transporting food or merchandise out of the establishment
24 that contains no old growth fiber and a minimum of forty percent (40%)
25 post-consumer recycled content; is one hundred percent (100%)
26 recyclable; and has printed in a highly visible manner on the outside of
27 the bag the word “Recyclable,” the name and location of the
28 manufacturer, and the percentage of post-consumer recycled content.
29 The Single-Use Recycled Paper Bag is capable of composting,
30 consistent with the timeline and specifications of the American Society
31 of Testing and Material (ASTM) Standard Specification for

1 Compostable Plastics D6400, as published in September 2004. A Single-
2 Use Recycled Paper Bag is a form of a Single-Use Carryout Bag.

3 *Single-Use Straw*: a disposable tube that is distributed to transfer a
4 beverage from a cup or container to the mouth of a person drinking the
5 beverage on a single occasion. Single-Use Straws include a straw made
6 from both plastic materials and non-plastic materials such as paper,
7 pasta, sugar cane, wood, or bamboo.

8 *Store*: any Food Service Establishment, Pharmacy, or Retail
9 Establishment located within the City. Stores do not include Medical
10 Facilities.

11 **3.903 CARRYOUT BAGS**

12 A. Prohibited Carryout Bags:

- 13 1. No Store on City property shall provide a Single-Use Carryout Bag
14 to a Customer, at the check stand, cash register, point of sale, or
15 other point of departure for the purpose of transporting food or
16 merchandise out of the Store except as provided in this Section.
- 17 2. No Person shall distribute a Single-Use Carryout Bag at any City
18 facility, City-managed concession, City-sponsored event, or City--
19 permitted event unless a Store on City property is also otherwise
20 allowed to in this Section.

21 B. Permitted Carryout Bags:

- 22 1. Stores on City property are allowed to distribute Single-Use
23 Carryout Bags or Reusable Bags to Customers subject to the terms
24 of this Section.
- 25 2. All Stores may distribute their remaining 2019 Single-Use Plastic
26 Bag inventory.
- 27 3. Nothing in this Section prohibits Customers from using bags of
28 any type that they bring to the Store themselves or from carrying

1 away goods that are not placed in a bag, in lieu of using bags
2 provided by the Store.

3 C. Exemptions:

- 4 1. Stores on City property are allowed to distribute only Single-Use
5 Recycled Paper Bags or Reusable Bags to Customers for the
6 purpose of carrying away goods or other materials from the point
7 of sale, subject to the terms of this Section.
- 8 2. Food Service Establishments on City property are allowed to
9 distribute Single-Use Plastic Bags to Customers only for the
10 purpose of safeguarding health and safety during the transportation
11 of Prepared Foods, including take-out foods and liquids intended
12 for consumption away from the food provider's premises, subject
13 to the terms of this Section.
- 14 3. A Customer shall be charged a minimum of a ten cents (\$.10) Cost
15 Pass-Through for each Single-Use Carryout Bag provided by the
16 Store on City property. The sale of each bag shall be separately
17 itemized on the sale receipt. The Cost Pass-Through will remain
18 with the Operator of the Store.
- 19 4. A Store on City property may provide a Customer participating in
20 *Special Supplement Nutrition Program for Women, Infants, and*
21 *Children (WIC)* or *Supplemental Nutrition Assistance Program*
22 *(SNAP)* with one (1) or more Single-Use Carryout Bag or Reusable
23 Bags at no cost.
- 24 5. A Store on City property may provide a Customer with (1) Single-
25 Use Recycled Paper Bag 6 inches across or less without handles at
26 no cost.

27 **3.904 DISPOSABLE CUPS**

28 A. Prohibited Disposable Cups:

- 29 1. No Store on City property shall provide a Single-Use Plastic Cup
30 to a Customer, at the check stand, cash register, point of sale, or
31 any other location for the purpose of transporting a beverage that

1 will be drank inside or outside of the Store except as provided in
2 this Section.

3 2. No Store shall provide a Single-Use Polystyrene Cup to a
4 Customer at the check stand, cash register, point of sale, or any
5 other location for the purpose of transporting a beverage that will
6 be drank inside or outside of the Store.

7 3. No Person shall distribute a Single-Use Plastic Cup or Single-Use
8 Polystyrene Cup at any City facility, City-managed concession,
9 City-sponsored event, or City-permitted event unless a Store on
10 City property is also otherwise allowed to in this Section.

11 B. Permitted Disposable Cups:

12 1. Stores on City property are allowed to distribute Single-Use Cups
13 to Customers for the purpose of transporting a beverage that will
14 be drank inside or outside of the Store, subject to the terms of this
15 Section.

16 2. A Customer shall be charged a minimum of a ten cents (\$.10) Cost
17 Pass-Through for each Single-Use Cup provided by the Store on
18 City property. The sale of each Single-Use Cup shall be separately
19 itemized on the sale receipt. The Cost Pass-Through will remain
20 with the Operator of the Store.

21 3. All Stores may distribute their remaining 2019 Single-Use Cup
22 inventory.

23 4. Nothing in this Section prohibits Customers from using cups of
24 any type that they bring to the Store themselves they would
25 otherwise be allowed to bring under the Ordinances of the City of
26 Portsmouth in lieu of using cups provided by the Store.

27 C. Exemptions:

28 1. The only Single-Use Plastic Cups that Stores on City property are
29 allowed to distribute are Single-Use Plastic Compostable Cups if
30 the Store on City property provides customers the option to dispose
31 of the Single-Use Compostable Plastic Cups in a specifically
32 designated composting receptacle that is both on the premise and

1 its contents will be transported to a Composting Facility to be
2 composted.

- 3 2. A Store may provide a Customer participating in the Special
4 Supplement Nutrition Program for Women, Infants, and Children
5 (WIC) or the Supplemental Nutrition Assistance Program (SNAP)
6 with one (1) or more Single-Use Cup at no cost.

7 **3.905 DISPOSABLE CONTAINERS**

8 A. Prohibited Disposable Containers:

- 9 1. No Store on City property shall provide a Single-Use Plastic
10 Container to a Customer, at the check stand, cash register, point of
11 sale, or any other location for the purpose of transporting Prepared
12 Food that will be consumed inside or outside of the Store except as
13 provided in this Section.
14 2. No Store shall provide a Single-Use Polystyrene Container at the
15 check stand, cash register, point of sale, or any other location for
16 the purpose of transporting Prepared Food that will be eaten inside
17 or outside of the Store.
18 3. No Person shall distribute a Single-Use Plastic Container or a
19 Single-Use Polystyrene Container at any City facility, City-
20 managed concession, City-sponsored event, or City-permitted
21 event unless a Store on City property is also otherwise allowed to
22 in this Section.

23 B. Permitted Disposable Containers:

- 24 1. Stores on City property are allowed to distribute Single-Use
25 Containers to Customers for the purpose of transporting Prepared
26 Food that will be eaten inside or outside of the Store, subject to the
27 terms of this Section.
28 2. All Stores may distribute their remaining 2019 Single-Use
29 Container inventory.
30 3. Nothing in this Section prohibits Customers from using containers
31 of any type that they would otherwise be allowed to bring under

1 the Ordinances of the City of Portsmouth to the Store themselves
2 in lieu of using containers provided by the Store.

3 C. Exemptions:

- 4 1. The only Single-Use Plastic Containers that Stores on City
5 property are allowed to distribute are Single-Use Plastic
6 Compostable Containers if the Store provides customers the option
7 to dispose of the Single-Use Compostable Plastic Containers in a
8 specifically designated composting receptacle that is both on the
9 premise and its contents will be transported to a Composting
10 Facility to be composted.

11 **3.906 DISPOSABLE STRAWS**

12 A. Prohibited Disposable Straws:

- 13 1. No Store on City property shall provide a Single-Use Plastic Straw
14 to a customer for the purpose of transferring a beverage from a cup
15 or container to the mouth of a person drinking the beverage on a
16 single occasion inside or outside of the Store, except as provided in
17 this Section.
18 2. No Person shall distribute a Single-Use Plastic Straw at any City
19 facility, City-managed concession, City-sponsored event, or City-
20 permitted event unless a Store on City property is also otherwise
21 allowed to in this Section.

22 B. Permitted Disposable Straws:

- 23 1. Stores on City property are allowed to distribute Single-Use Straws
24 to Customers for the purpose of transferring a beverage from a cup
25 or container to the mouth of a person drinking the beverage on a
26 single occasion inside or outside of the Store, subject to the terms
27 of this Section.
28 2. All Stores may distribute their remaining 2019 Single-Use Straw
29 inventory.

1 3. Nothing in this Section prohibits Customers from using straws of
2 any type that they bring to the Store themselves in lieu of using
3 containers provided by the Store.

4 C. Exemptions:

- 5 1. Stores on City property are only allowed to distribute Single-Use
6 Straws at the explicit request of the customer for the purpose of
7 transferring a beverage from a cup or container to the mouth of a
8 person drinking the beverage on a single occasion inside or outside
9 of the Store.
- 10 2. The only Single-Use Plastic Straws that Stores on City property are
11 allowed to distribute are Single-Use Plastic Compostable Straws if
12 the Store provides customers the option to dispose of the Single-
13 Use Compostable Plastic Straws in a specifically designated
14 composting receptacle that is both on the premise and its contents
15 will be transported to a Composting Facility to be composted.

16 **3.907 PENALTIES AND REMEDIES**

17 In addition to any other penalty or remedy permissible by law for
18 violation of this Section, the following shall apply:

- 19 1. If the City determines that a violation of this Section has occurred,
20 he/she will issue a written warning notice to the Operator of a
21 Store on City property and the potential penalties that will apply
22 for future violations
- 23 2. Upon a second or subsequent infraction of this Section, the City is
24 authorized to issue citations to persons, firms, or corporations
25 violating this Section in accordance with the ordinances of the City
26 of Portsmouth. The amount of the fee that will accompany the
27 citation will be determined by the Fee Schedule Study Committee
28 of the City of Portsmouth.
- 29 3. The City Attorney is authorized to file any appropriate legal
30 proceedings, including but not limited to requests for injunctive
31 relief, necessary to prevent violation of this Section.

1 **SEVERABILITY**

2 Any portion of this ordinance that is found to be void shall be
3 unenforceable without invalidating the remainder of the ordinance.

4 **EFFECTIVE DATE**

5 This ordinance shall take effect on December 31, 2019.

6
7 APPROVED

8
9
10 _____
11 Mayor Jack Blalock

12
13
14 ADOPTED BY COUNCIL:

15
16
17 _____
18 Kelli L. Barnaby, City Clerk

DISTRIBUTION OF SINGLE-USE DISPOSABLES AMENDMENTS

Amendment 1: Add a Single-Use Container Definition:

Add the following definition to section 3.902:

Single-Use Container: a container that is distributed for the purpose of transporting Prepared Food on a single occasion inside or outside of a Store.

Amendment 2: Clarifying Penalties and Remedies:

Starting on line 20, on page 11, replace ‘he/she will issue a written warning notice to the Operator of a Store on City property and the potential penalties that will apply for future violations’ with ‘a written warning that includes the potential penalties for future violations will be issued to the Operator.’ so that sentence in Section 3.907 reads:

1. If the City determines that a violation of this Section has occurred, a written warning that includes the potential penalties for future violations will be issued to the Operator ~~he/she will issue a written warning notice to the Operator of a Store on City property and the potential penalties that will apply for future violations.~~

Amendment 3: Local Volunteer Organizations Exemption:

Add the following definition to section 3.902:

Local Volunteer Organization: the local affiliate of any volunteer civic organization, recreational club, or athletic team that does not have one or more full time paid staff member.

Starting on line 17, on page 6, insert ‘not acting in an official capacity for a Local Volunteer Organization’ so the sentence in Section 3.903.A.2 reads:

No Person **not acting in an official capacity for a Local Volunteer Organization** shall distribute a Single-Use Carryout Bag at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless a Store on City property is also otherwise allowed to in this Section.

Starting on line 7, on page 8, insert ‘not acting in an official capacity for a Local Volunteer Organization’ so the sentence in Section 3.904.A.3 reads:

No Person **not acting in an official capacity for a Local Volunteer Organization** shall distribute a Single-Use Plastic Cup or Single-Use Polystyrene Cup at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless a Store on City property is also otherwise allowed to in this Section.

Starting on line 18, on page 9, insert ‘not acting in an official capacity for a Local Volunteer Organization’ so the sentence in Section 3.905.A.3 reads:

No Person **not acting in an official capacity for a Local Volunteer Organization** shall distribute a Single-Use Plastic Container or Single-Use Polystyrene Container at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless a Store on City property is also otherwise allowed to in this Section.

Starting on line 18, on page 10, insert ‘not acting in an official capacity for a Local Volunteer Organization’ so the sentence in Section 3.906.A.2 reads:

No Person **not acting in an official capacity for a Local Volunteer Organization** shall distribute a Single-Use Plastic Straw at any City facility, City-managed concession, City-sponsored event, or City-permitted event unless a Store on City property is also otherwise allowed to in this Section.

Amendment 4: Elimination of the citywide ‘Styrofoam’ cup ban:

Starting on line 29, on page 7, insert ‘a Single-Use Polystyrene Cup or’ and delete ‘2. No Store shall provide a Single-Use Polystyrene Cup to a Customer at the check stand, cash register, point of sale, or any other location for the purpose of transporting a beverage that will be drank inside or outside of the Store’ so those sentences in Section 3.904.A read:

1. No Store on City property shall provide a **Single-Use Polystyrene Cup** or a Single-Use Plastic Cup to a Customer, at the check stand, cash register, point of sale, or any other location for the purpose of transporting a beverage that will be drank inside or outside of the Store except as provided in this Section.
- ~~2. No Store shall provide a Single-Use Polystyrene Cup to a Customer at the check stand, cash register, point of sale, or any other location for the purpose of transporting a beverage that will be drank inside or outside of the Store.~~

Amendment 5: Elimination of the citywide ‘Styrofoam’ container ban:

Starting on line 9, on page 9, insert ‘a Single-Use Polystyrene Container or’ and delete ‘2. No Store shall provide a Single-Use Polystyrene Container at the check stand, cash register, point of sale, or any other location for the purpose of transporting Prepared Food that will be eaten inside or outside of the Store’ so those sentences in Section 3.905.A read:

1. No Store on City property shall provide a **Single-Use Polystyrene Container** or a Single-Use Plastic Container to a Customer, at the

check stand, cash register, point of sale, or any other location for the purpose of transporting Prepared Food that will be consumed inside or outside of the Store except as provided in this Section.

~~2. No Store shall provide a Single Use Polystyrene Container at the check stand, cash register, point of sale, or any other location for the purpose of transporting Prepared Food that will be eaten inside or outside of the Store.~~

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Article III, Section 7.328 – **LIMITED PARKING - THREE HOURS** sub-section A of the Ordinances of the City of Portsmouth which shall read as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

Section 7.328: **LIMITED PARKING - THREE HOURS**

- A. No person having control or custody of any vehicle shall stop or cause the same to stop or park for longer than three hours at any time between the hours of 9:00 a.m. and 8:00 p.m. Monday through Saturday, and between 12:00 p.m. and 8:00 p.m. Sunday, Holidays excluded, on the following streets and locations:

Maplewood Avenue: both sides, between Raynes Avenue and Vaughan Street

The City Clerk shall properly alphabetize and/or re-number the ordinance 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

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Article III, Section 7.326 – **LIMITED PARKING – FIFTEEN MINUTES** sub-section A of the Ordinances of the City of Portsmouth which shall read as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

Section 7.326: LIMITED PARKING – FIFTEEN MINUTES

- A. No person having control or custody of any vehicle shall stop or cause the same to stop or park for longer than 15 minutes at any time between the hours of 9:00 a.m. and 8:00 p.m. Monday through Saturday, and between 12:00 p.m. and 8:00 p.m. Sunday, Holidays not included, on the following streets and locations:

~~9-Maplewood Avenue: easterly side, the first two spaces commencing 140 feet northerly from Vaughan Street~~

The City Clerk shall properly alphabetize and/or re-number the ordinance 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

ACTIONS

PARKING and TRAFFIC SAFETY COMMITTEE

8:00 A.M. – August 1, 2019
City Hall – Council Chambers

PRESENT: Chairman, Doug Roberts
Deputy City Manager, Nancy Colbert Puff
Fire Chief, Todd Germain
Police Captain, Mark Newport
Harold Whitehouse
Mary Lou McElwain
Ralph DiBernardo
Jonathan Sandberg

ABSENT: Public Works Director, Peter Rice
Steve Pesci

CITY STAFF PRESENT: Parking and Transportation Engineer, Eric Eby
Parking Director, Ben Fletcher

Action Items requiring an immediate ordinance during the next Council meeting:

None

Temporary Action Item requiring an ordinance during the annual omnibus:

- Prohibit parking on both sides of the public portion of Hill Street, between Bridge Street and Autumn Street. (VII.A.)
- Change time limit from 15 minutes to 3 hours for parking space on Deer Street opposite High Street. (VII.D.)
- Approve loading zone on south side of Vaughan Street at the corner of Raynes Avenue, with hours of 6 AM to 9 AM. (VIII.A.)

1. Accepted and placed on file meeting minutes from June 6, 2019.
2. Accepted and placed on file financial reports dated May 31, 2019 and June 30, 2019.
3. Public Comment Session: two speakers: Marc Stettner (VII.E.) and Jason Combs (traffic on Middle Road).
4. Written Correspondences:
Elizabeth Bratter (Hill Street Parking)
Elizabeth Bratter (NPP)

5. Letter from Marc Stettner regarding dedicated motorcycle, moped and scooter parking – **Voted** to suspend the previous vote made on June 6, 2019 to establish a fee of \$1.50 per hour when using the ParkMobile App or \$2.00 per hour at the display meter, maximum three hours for the motorcycle-specific spaces in the designated motorcycle parking area and refer to the City's Legal Department and staff for a report back at a future meeting.
6. Hill Street parking – **Voted** to prohibit parking on both sides of the public portion of Hill Street, between Bridge Street and Autumn Street.
7. Request for parking restrictions at the end of Little Harbor Road, by residents of Little Harbor Road – **Voted** to refer to staff for observations and report back at the next meeting.
8. Concerns with speeding vehicles on Little Harbor Road, by Shel Krasker – **Voted** to refer to staff for observations and report back at the next meeting.
9. Change 15-minute space back to 3-hour space on Deer Street opposite High Street – **Voted** to change time limit from 15 minutes to 3 hours for parking space on Deer Street opposite High Street.
10. Request for loading zone on Vaughan Street for 111 Maplewood Avenue building, by the Kane Company – **Voted** to approve loading zone on south side of Vaughan Street at the corner of Raynes Avenue, with hours of 6 AM to 9 AM.
11. Report back, proposed lane use changes at Congress Street and Fleet Street, and Pleasant Street at Market Square – **Voted** to implement the lane use changes on Congress Street and Fleet Street, and Pleasant Street at Market Square in the fall of 2019 on a trial basis and report back.
12. Neighborhood Parking Program, referral from City Council – No action required by Committee.
13. Parking Principles Discussion – No action required by Committee.
14. Funding for pedestrian-activated Rectangular Rapid Flashing Beacon (RRFB) on Dutton Avenue near Memorial Bridge parking lot – No action required by Committee.
15. Quarterly Accident Report by Police Captain Mark Newport – No action required by Committee.
16. PTS Open Action Items – No action required by Committee.

Adjournment – At 9:05 a.m., **voted** to adjourn.

Respectfully submitted by:

Amy Chastain

Secretary to the Committee

MEETING MINUTES

PARKING and TRAFFIC SAFETY COMMITTEE

8:00 A.M. – August 1, 2019
City Hall – Council Chambers

I. CALL TO ORDER:

At 8:00 a.m., Chairman Doug Roberts called the meeting to order.

II. ROLL CALL:

Members Present:

Chairman, Doug Roberts
Deputy City Manager, Nancy Colbert Puff
Fire Chief, Todd Germain
Police Captain, Mark Newport
Member, Ralph DiBernardo
Member, Mary Lou McElwain
Member, Harold Whitehouse
Alt. Member, Jonathan Sandberg

Absent:

Public Works Director, Peter Rice
Member, Steve Pesci

Staff Advisors Present:

Parking and Transportation Engineer, Eric Eby
Parking Director, Ben Fletcher

III. ACCEPTANCE OF THE MINUTES:

Mary Lou McElwain moved to accept the meeting minutes of the June 6, 2019 meeting, seconded by Harold Whitehouse. **Motion passed 7-0.**
Police Captain Mark Newport was not present for vote.

IV. FINANCIAL REPORT:

Mary Lou McElwain requested a report on the Foundry Garage. Parking Director Ben Fletcher provided a graph showing transient revenues from November 2018 to July 2019 for Foundry Garage. He stated the numbers are trending up. It is still below budget, but has improved significantly over the summer.

Harold Whitehouse noted that City Council recommended a flat fee for downtown employees and questioned if it was under consideration. Parking Director Ben Fletcher responded that he agreed with Councilor Becksted's statements quoted in the paper. However, a rate of \$5 a day would be \$100 a month, which is the price of the monthly pass. Chairman Doug Roberts stated he would be preparing a proposal for discounted rates for downtown employees and residents if they parked on the top floors of the garage.

Ralph DiBernardo complimented Parking Director Ben Fletcher on the budgeting for the year. Ralph DiBernardo noted that they were managing parking with parking funds. Parking Director Ben Fletcher confirmed that was correct.

Jonathan Sandberg questioned if the Foundry Garage wasn't filling up because there was less demand for parking or because people were parking elsewhere. Parking Director Ben Fletcher responded that parking was a supply and demand model. Street parking is operating at 150%. Hanover Garage is in the 90% range. The price structure of all the parking may need to be adjusted to motivate people to park in the Foundry Garage. There will be more discussion on the issue.

Mary Lou McElwain asked if the free parking and shuttle at Connect Church was taking away from parking at Foundry Garage. She stated there should be more discussion about ancillary parking in Portsmouth and how it effects parking at the Foundry Garage. Parking Director Ben Fletcher responded that the Connect Church has plans to develop the lot. The City's lease agreement expires in February 2020, but the shuttle ends on Labor Day. Parking Director Ben Fletcher did not anticipate the shuttle would run again next year.

Harold Whitehouse questioned if there was anything in the contract that put a time limit on when the land around the Foundry Garage needed to be developed. Parking Director Ben Fletcher was not sure.

Deputy City Manager Nancy Colbert Puff moved to accept the financial reports dated May 31, 2019 and June 30, 2019, seconded by Ralph DiBernardo. **Motion passed 8-0.**

V. PUBLIC COMMENT:

Marc Stettner spoke to agenda item VII.E. He stated the intent of the motorcycle spots set up in downtown Portsmouth was to attract compact vehicles such as motorcycles. Mr. Stettner opposed the fee of \$2.00 an hour that was approved at the June PTS meeting. He stated the City's Fee Committee should be setting the fee rate. Mr. Stettner submitted a letter questioning if the PTS Committee had the legal authority to set fees. He requested the Committee move to suspend the fee approved in June until the legality questions are resolved by the City's Legal Department.

Jason Combs spoke to traffic volumes and speeding on Middle Road. He stated that because of bridge construction there is an increase in traffic and speeding on Middle Road. Cars are not stopping for pedestrians in the crosswalks. Police Captain Mark Newport confirmed that he would follow up on the police report mentioned by Mr. Combs. Eric Eby stated a traffic camera could be placed on Middle Road to monitor traffic. There is a speed display sign in front of the Chase Home and the crosswalk was recently repainted. Chairman Doug Roberts confirmed that staff would monitor and report back. Mary Lou McElwain supported Mr. Comb's concerns.

Marc Stettner spoke a second time. He suggested raising parking meter fees to direct cars into the lots and garages. He stated the fees needed to be reasonable.

VI. PRESENTATION:

No presentation.

VII. NEW BUSINESS:

Deputy City Manager Nancy Colbert Puff moved to suspend the rules and address agenda item VII.E. next, seconded by Mary Lou McElwain. **Motion passed 8-0.**

E. Letter from Marc Stettner regarding dedicated motorcycle, moped and scooter parking. Chairman Doug Roberts noted that Mr. Stettner raised some good points and the Ordinance was a little unclear. It says that if one person on a motorcycle pays for a regular space and parks in it, then other motorcycles can park in the same space for free. Chairman Doug Roberts recommended suspending the current vote in place and consulting the City Attorney to clarify legal issues. In the interim, the Committee could make recommendations on discounted motorcycle parking to staff and suggest a revision to the Ordinance.

Ralph DiBernardo agreed with Mr. Stettner's concerns. Condensing five motorcycle spots into one regular spot is a good idea, however, there is not enough income to be made on these spots to tip the budget. Previously, if one motorcycle displayed a valid ticket for the space then it would cover all the spaces. Ralph DiBernardo supported maintaining that process. Harold Whitehouse agreed.

Chairman Doug Roberts agreed that they should maintain a discount for motorcycles, but how it is executed remains to be determined.

Ralph DiBernardo moved to suspend the previous vote made on June 6, 2019 to establish a fee of \$1.50 per hour when using the ParkMobile App or \$2.00 per hour at the display meter, maximum three hours for the motorcycle-specific spaces in the designated motorcycle parking area and refer to the City's Legal Department and staff for a report back at a future meeting, seconded by Mary Lou McElwain.

Motion Passed 7-1. Harold Whitehouse opposed.

A. Hill Street parking. Eric Eby stated that the Committee voted to prohibit parking on Hill Street last year. City Council removed the item from the Omnibus, which would allow parking on this street once finalized. The roadway is between 15-18 feet wide at the narrowest point. Traffic would be blocked if on street parking was allowed on both sides of the street. He stated the Committee can evaluate if parking should be allowed on some portions, or if it should be totally prohibited.

Ralph DiBernardo noted that this street would not have a sidewalk. If parking was allowed on both sides there would be nowhere for people to walk except for in the street. The Committee has a responsibility to maintain safe streets for cars and pedestrians.

Fire Chief Todd Germain supported the motion as written. If parking were allowed on the street, it would restrict access for fire safety equipment.

Jonathan Sandberg commented that he knows people living on Hill Street. Originally, they were upset to learn they would be losing on street parking, but they understand it is a safety issue.

Eric Eby stated a letter from Elizabeth Bratter dated July 31, 2019 was received and copies were provided to the Committee this morning. She suggested adding parking between Tanner Street and Autumn Street. There is room for two parking spaces, but it would only leave a 12-foot wide travel lane. Chairman Doug Roberts stated the area proposed was where the Fire Department had expressed concern about not having ample room for equipment and maneuvering.

Deputy City Manager Nancy Colbert Puff moved to prohibit parking on both sides of the public portion of Hill Street, between Bridge Street and Autumn Street, seconded by Mary Lou McElwain. **Motion passed 8-0.**

B. Request for parking restrictions at the end of Little Harbor Road, by residents of Little Harbor Road. Eric Eby stated that at the site visit on Wednesday the Committee members did not see any cars, but cars are often parked there on the weekends. When cars are parked too close to driveways, it is very difficult for residents to get out. This also creates an emergency vehicle access concern. Parking is currently allowed. The City can monitor and observe and report back on a recommendation.

Harold Whitehouse asked when staff would report back. Eric Eby responded that he anticipated it would be at the next meeting.

Mary Lou McElwain moved to refer to staff for observations and report back at the next meeting, seconded by Deputy City Manager Nancy Colbert Puff. **Motion passed 8-0.**

C. Concerns with speeding vehicles on Little Harbor Road, by Shel Krasker. Eric Eby stated staff had started data collection on Little Harbor Road. If given more time, staff would continue data collection and report back at the next meeting.

Mary Lou McElwain moved to refer to staff for observations and report back at the next meeting, seconded by Police Captain Mark Newport. **Motion passed 8-0.**

D. Change 15-minute space back to 3-hour space on Deer Street opposite High Street. Eric Eby stated the space was voted on last year to create a 15-minute space in front of a retail business. That business has since closed. There is no longer a need for that 15-minute space. It is currently getting very little use, and would provide more revenue as a 3-hour parking spot.

Ralph DiBernardo moved to change time limit from 15 minutes to 3 hours for parking space on Deer Street opposite High Street, seconded by Mary Lou McElwain. **Motion passed 8-0.**

VIII. OLD BUSINESS:

A. Request for loading zone on Vaughan Street for 111 Maplewood Avenue building, by the Kane Company. Chairman Doug Roberts noted that in previous discussions the Fire Department expressed concern about a fire hydrant at the location. Eric Eby stated the fire hydrant was moved as part of the construction on Vaughan Street. There is now plenty of room for a loading zone, and the hydrant would not be blocked.

Mary Lou McElwain clarified that it was an open loading zone, and not specifically reserved for Kane Company. Eric Eby responded that was correct. It is time restricted to 6 AM to 9 AM. Ralph DiBernardo asked if it would revert to a regular metered space after the time restriction and Eric Eby confirmed that was correct.

Ralph DiBernardo moved to approve loading zone on south side of Vaughan Street at the corner of Raynes Avenue, with hours of 6 AM to 9 AM, seconded by Mary Lou McElwain. **Motion passed 8-0.**

B. Report back, proposed lane use changes at Congress Street and Fleet Street, and Pleasant Street at Market Square. Eric Eby presented an aerial photo showing the layout of the proposed lane changes. The new roadway markings will help drivers know which lane they need to be in to make right hand and left hand turns. The diagram also shows removing one of the left hand turn lanes on Pleasant Street. This will make the area less confusing. This change could be done with painting. These changes would make the traffic flow through the area less confusing. There is a loading zone on Congress Street between Fleet Street and the Vaughan Mall. It creates one through lane in that section of roadway.

Ralph DiBernardo asked that the changes be monitored to ensure they did not create unwanted congestion. Eric Eby confirmed that would be done.

Chairman Doug Roberts stated he supported the changes on Congress Street, but was not sure if he supported the changes on Pleasant Street. The City is looking at capital improvements to Market Square within the next couple of years. He expressed concern about too many changes in a short period.

Mary Lou McElwain commented that pedestrian traffic was already very heavy. If there were ways to make it safer for pedestrians, she would support it. She also supports installing an audio crosswalk at Fleet Street.

Ralph DiBernardo commented that one of the problems with the Pleasant Street crosswalk is the tip down in front of the North Church. People tend to cross at the tip down instead of using the crosswalk.

Harold Whitehouse commented that once pedestrians were in the crosswalk they have the right-of-way, however, they do not seem to abide by the rules.

Chairman Doug Roberts questioned if it made sense to shorten the crosswalk on Pleasant Street with bollards to prevent people from going outside the crosswalk. Eric Eby responded that something like that could be done, but they would have to be careful not to block the on-street parking.

Eric Eby noted that these measures could be taken separately or together depending on what makes sense. Jonathan Sandberg supported the changes and thought they would make the area less confusing.

Chairman Doug Roberts commented that the only way to know if the plan will work is to implement it. Eric Eby stated the plan could be implemented on a trial basis, and staff will evaluate and report back. This plan could help inform future decisions.

Harold Whitehouse questioned if the loading zone in front of Popovers would remain the same. Eric Eby responded that the loading zones would remain as they are.

Fire Chief Todd Germain moved to implement the lane use changes on Congress Street and Fleet Street, and Pleasant Street at Market Square in the fall of 2019 on a trial basis and report back, seconded by Police Captain Mark Newport. **Motion passed 8-0.**

IX. INFORMATIONAL:

A. Neighborhood Parking Program, referral from City Council. Chairman Doug Roberts noted that the City Council decided not to enact the Neighborhood Parking Program. He volunteered to propose an alternative plan. The proposal will come back to the Committee for discussion in the future. Elizabeth Bratter's letter dated July 31, 2019 regarding the NPP was provided to the Committee.

B. Parking Principles Discussion. Chairman Doug Roberts proposed discussing this at the next meeting to allow the Committee more time to review.

C. Funding for pedestrian-activated Rectangular Rapid Flashing Beacon (RRFB) on Dutton Avenue near Memorial Bridge parking lot. Eric Eby commented that they have found funding for the Rectangular Rapid Flashing Beacon. They are in the process of getting quotes for the purchase and installation.

D. Quarterly Accident Report by Police Captain Mark Newport. Police Captain Mark Newport provided an overview of the quarterly accident report. Chairman Doug Roberts noted that accidents were down compared to the past two years. Police Captain Mark Newport commented that there is a lot of construction activity so people could be driving slower. The majority of accidents happen on Lafayette Road and Woodbury Avenue. The Police Department has stepped up enforcement, which has probably contributed to the decline in accidents. Chairman Doug Roberts questioned if they were targeting Lafayette Road specifically. Police Captain Mark Newport responded that most of the accidents on Lafayette were low speed accidents because traffic is bumper to bumper.

Ralph DiBernardo questioned if it was legal to radar for speeds at the Islington Street overpass and have a cruiser further down to pull people over. Police Captain Mark Newport responded that it was legal.

Mary Lou McElwain commented on the tractor-trailer bike accident. There is more tractor-trailer traffic in the City and there should be more awareness. Deputy City Manager Nancy Colbert Puff agreed and commented that mirrors can stick out from vehicles as well.

E. PTS Open Action Items. No Committee discussion.

X. MISCELLANEOUS:

Mary Lou McElwain requested the Committee discuss moped parking in the downtown and the City's policy at a future meeting. There have been mopeds parked on public sidewalks. Chairman Doug Roberts confirmed it would be added to a future agenda.

XI. ADJOURNMENT – Harold Whitehouse moved to adjourn the meeting at 9:05 a.m., seconded by Mary Lou McElwain. **Motion passed 8-0.**

Respectfully submitted by:

Becky Frey
PTS Recording Secretary

DATE: September 11, 2019

TO: CITY COUNCIL

FROM: FEE COMMITTEE, COUNCILOR DWYER AND COUNCILOR RAYNOLDS

RE: REPORT BACK ON MEETING WITH SIPP AND PROPOSED MOTION TO APPROVE LICENSE FEES FOR PRESCOTT PARK LICENSE AGREEMENTS

REPORT BACK ON FEE COMMITTEE MEETING WITH SIPP.

On August 7, 2019 the Fee Committee met with Save the Indoor Pool, Inc. (“SIPP”) members Tom Conneen, Chuck Doleac and Michael Chubrich and Recreation Director Russ Wilson to discuss SIPP’s proposed \$3 per lane per hour increase in swim team fees. SIPP discussed the history of the Lease and Operation Agreement with the City and explained to the Committee SIPP’s record of successful management of the Portsmouth Public Pool. SIPP explained that current lane rental rate of \$15 per hour has not been raised in the last eight years and is substantially below the market rate. The Committee expressed citizens’ concern about what was perceived as a rapid increase in the lane fees and the Fee Committee’s goal of predictability for citizens when fees are increased. Councilor Raynolds pointed out that there is a substantial difference at area pools between the advertised or posted “one-off” lane rental rates and the “negotiated/contractual rates” paid by area swim teams to rent lanes at those pools, and that the “market rate” for our purposes means the latter – the Fee Committee wants the rates charged at the Portsmouth Indoor Pool to achieve parity with, and not exceed, the negotiated/contractual rates charged at other area pools.

The Fee Committee proposed and SIPP agreed to increase the lane fees by \$2 per lane per hour over the next five years not to exceed market rate.

Councilor Raynolds discussed increasing the City’s contribution to the Portsmouth Public Pool and the Committee discussed the possibility of putting money in the Capital Plan for the pool as a Public/Private partnership.

FEE COMMITTEE’S RECOMMENDATION FOR APPROVAL OF LICENSE FEES FOR PRESCOTT PARK LICENSE AGREEMENTS

The City has entered into License Agreements with three nonprofits (Prescott Park Arts Festival, NH Art Association and the Gundalow Company) for the use of Prescott Park. The License Agreements were approved by the City Council and set the annual license fee for the first year of the term and provide that the Fee Committee shall recommend the license fees for years 2-5 to the City Council for its approval.

All three License Agreements have similar provisions which require the Licensee to contribute to the City's costs and expenses associated with the administration, maintenance, operation and upkeep of Prescott Park. The annual license fee amount is determined by balancing the City's need for financial support for the park with the public benefit received by the Licensees' programming. The annual license fees for the first year have been paid and were \$20,000 for the Prescott Park Arts Festival, \$1,500 for the NH Art Association and \$6,500 for the Gundalow Company. The Fee Committee discussed the provision in the License Agreements that authorize the City Manager to adjust the license fee if exigent circumstances cause a disruption in the Licensee's operation. The Fee Committee recommends that any amount of the annual license fee that has been adjusted will be deferred, not waived.

The Fee Committee recommends the following annual license fees for years 2-5 for the License Agreements with the Prescott Park Arts Festival, the NH Art Association and the Gundalow Company:

Year 2	Same as year 1
Years 3-5	License Fee of the previous year increased by the Boston Cambridge Nov-Nov CPI.

Any adjustment the City Manager makes to the annual license fee will be deferred, not waived.

Proposed Motion: Move to accept the recommendation of the Fee Committee regarding annual license fees and any adjustment for years 2-5 of the License Agreements with the Prescott Park Arts Festival, the NH Art Association and the Gundalow Company.

h/jferrini/citymanager/prescottparkfeecommittee/feecommitteereportback

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: September 12, 2019
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on September 16, 2019 City Council Agenda

Non-Public Session:

6:15 p.m. Anticipated Non-Public Session Re: Boyle Supreme Court Appeal in accordance with RSA 91-A:3, II (e)

Public Hearings & Votes on Ordinances and/or Resolutions:

1. **Public Hearing/Second Reading of Ordinance Amending Chapter 3, Article IX – Distribution of Single-Use Disposables.** At the September 3, 2019 City Council meeting, the Council voted to pass first reading and schedule a public hearing and seconding reading regarding Councilor Denton's ordinance on Single-Use Disposables. [Attached is the ordinance](#) submitted by Councilor Denton, which has been re-numbered to fit the City's ordinance book. Also, [see attached amendments](#) from Councilor Denton.

For your information, any cost associated with enforcement of this proposed Ordinance would be assigned to the Enforcement Officer and the Legal Department. This cost would also include any overtime. We will not know the cost until we have experience.

In addition, there may be cost associated with the schools for their food programs. I would recommend if the City Council passes this ordinance that it take effect September 2020 to give the schools appropriate time to adjust to any new requirements.

If the City Council wishes to proceed, the following motion is required:

Move to pass second reading and schedule third and final reading at the October 7, 2019 City Council meeting.

2. **Third and Final Reading of Ordinance Amending Chapter 7, Article III, Section 7.328 – Limited Parking – Three Hours Maplewood Avenue: both sides, between Raynes Avenue and Vaughan Street.** At the September 3, 2019 City Council meeting, the Council voted to pass second reading and schedule third and final reading on the aforementioned [attached proposed Ordinance](#). At their June 6, 2019 meeting, the Parking and Traffic Safety Committee voted to recommend that the City Council adopt an ordinance to create a three (3) hour parking limit on both sides of Maplewood Avenue between Raynes Avenue and Vaughan Street.

The Parking and Traffic Safety Committee voted to recommend the removal of the existing 15 minute time limit on these two parking spaces in order to create the three (3) hour parking limit along Maplewood Avenue.

I recommend the City Council move to pass third and final reading of the proposed Ordinance, as recommended by the Parking and Traffic Safety Committee.

3. **Third and Final Reading of Ordinance Amending Chapter 7, Article III, Section 7.326 – Limited Parking – Fifteen Minutes – by deletion of Maplewood Avenue: easterly side, the first two spaces commencing 140 feet northerly from Vaughan Street.** At the September 3, 2019 City Council meeting, the Council voted to pass second reading and schedule third and final reading on the aforementioned [attached proposed Ordinance](#). At its June 6, 2019 meeting, the Parking and Traffic Safety Committee voted to recommend that the City Council vote to amend Chapter 7, Article III, Section 7.326 to remove the 15 minute parking time limit on the two parking spaces on Maplewood Avenue on the easterly side beginning 140 feet northerly from Vaughan Street.

I recommend the City Council move to pass third and final reading of the proposed Ordinance, as recommended by the Parking and Traffic Safety Committee.

City Manager's Items Which Require Action:

1. **Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers Association.** The Portsmouth Fire Commission and the Portsmouth Fire Officers Association have reached a four (4) year collective bargaining Agreement.

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

- [A letter from City Negotiator Thomas Closson, outlining the terms of the Tentative Agreement.](#)

- The Portsmouth Professional Fire Officers Association Contract showing the insertions and deletions to implement the Agreement if approved.
- Cost Analysis.

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

<http://files.cityofportsmouth.com/files/benefits/FireOfficersAssociation2019DraftCBAAugust262019.pdf>

I recommend the City Council move to approve the proposed Four (4) Year Agreement between the Portsmouth Fire Commission and The Portsmouth Professional Fire Officers Association from July 1, 2019 to expire on June 30, 2023.

2. **Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters.** The Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters have reached a four (4) year collective bargaining Agreement.

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

- A letter from City Negotiator Thomas Closson, outlining the terms of the Tentative Agreement.
- The Portsmouth Professional Fire Fighters Contract showing the insertions and deletions to implement the Agreement if approved.
- Cost Analysis.

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

<http://files.cityofportsmouth.com/files/benefits/Firefighters2019RedlinedCBAAugust262019.pdf>

I recommend the City Council move to approve the proposed Four (4) Year Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters from July 1, 2019 to expire on June 30, 2023.

3. **Report Back Re: Contact Information (Deferred Action at the September 3, 2019 City Council meeting).** At the September 3, 2019 City Council meeting, the Council deferred action regarding the report back on contact information. Also, at that meeting, Valerie Rochon, President and Chief Collaborator of The Chamber Collaborative of Greater Portsmouth, submitted a letter that was under Written Communications. The City Council voted to accept and place the letter on file, and further, provide a copy of the letter in the September 16, 2019 City Council packet for reference (see attached).

At the City Council meeting of August 12, 2019, Councilor Pearson requested home addresses for the City Council be removed from publication on our website and various informational correspondence.

City Clerk Kelli Barnaby conducted a search of 12 communities and how they list the contact information of elected officials ([see attached](#)). As the City Council discussed at the last meeting, any contact information that we restrict would include the Mayor, City Council Members, as well as Board and Commission members.

Action is required regarding this matter.

4. **Vaughan Street Hotel LLC Amendment to Easement Agreement.** Vaughan Street Hotel, LLC (Portsmouth AC Hotel) is requesting a sign easement from the City to allow a sign to be erected in the same area over the Vaughan Street sidewalk and under the same terms as its canopy easement previously granted by the Council. Board of Adjustment, Historic District Commission and the Planning Board approvals are in place to the extent required. The Legal Department has approved the form of the easement. Planning and Legal are recommending that the Council grant the authority for the requested easement. [See attached documents.](#)

I recommend the City Council move to grant the City Manager the authority to negotiate, execute and deliver a sign easement as requested by Vaughan Street Hotel, LLC, for recording.

5. **799 South Street Sidewalk Easement.** On August 15, 2019, the Planning Board approved an application from the Noele M. Clews Trust to subdivide a property located at 799 South Street into three lots.

As approved, the Subdivision Approval required that the applicant provide an easement for the City for an existing sidewalk that is located on a portion of the property. The easements allows the City to maintain the sidewalk and includes a 2' section for snow storage paralleling the sidewalk. [See attached Sidewalk Easement Deed.](#)

All of the foregoing has been approved by the Planning Board and is recommended by the Planning and Legal Departments.

If the City Council is in agreement with the recommendation, an appropriate motion would be:

Move to accept a sidewalk easement for 799 South Street, as presented.

6. **Polling Hours – November 5, 2019 Municipal Election.** Attached is a memorandum from City Clerk Kelli L. Barnaby recommending that the polling hours for the Municipal Election on November 5, 2019 be set from 8:00 a.m. to 7:00 p.m. In addition, the City Clerk’s memorandum refers to the extension of polling hours.

As you will recall, at the July 9, 2018 City Council meeting, the Council requested a report back regarding the expansion of polling hours. At the October 1, 2018 City Council meeting, City Clerk Barnaby provided the City Council with information relative to a survey of twelve communities regarding extended polling hours, as well as the recruitment of poll workers and the stipend paid to poll workers for the day. I worked with City Clerk Barnaby and we increased the pay scales for the election officials. City Clerk Barnaby recommends that the polling hours begin an hour earlier and be instituted for the September Primary Election in 2020.

The following motion is required:

- 1) *Move to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Municipal Election on Tuesday, November 5, 2019.*

If the City Council wishes to proceed, the following motion is appropriate:

- 2) *Move to set the polling hours an hour earlier beginning with the September Primary Election in 2020 from 7:00 a.m. to 7:00 p.m.*

Informational Items:

1. **Household Hazardous Waste Collection Day.** As a reminder, Household Hazardous Waste Collection Day will be held on Saturday, October 5, 2019 from 8:00 a.m. to Noon at the Department of Public Works, 680 Peverly Hill Road, Portsmouth. This collection is for residents of Portsmouth, Greenland & Newington and proof of residency is required. Additional information is on the City’s website: <https://www.cityofportsmouth.com/publicworks/solid-waste-recycling/household-hazardous-waste-day>
2. **Sagamore Sewer Project.** The Sagamore Avenue Low Pressure Sewer System will extend sewer service to homes on the north and south sides of the Sagamore Avenue Bridge over Sagamore Creek. See attached schematic. As you are aware this project is required as part of the Second Modification to the City’s Consent Decree with the Environmental Protection Agency and must be completed by June 2022. In order to meet this deadline, the City’s engineer has to start work this fall on survey and other field information in order to complete the design. City staff held a public meeting on September 4, 2019 to review the overall project approach, project limits, summarize some of the technical aspects of the work and to take public input. The dominant concerns at the meeting were the overall costs for the project, how those costs would be apportioned, and what party would be responsible for the costs (City or private homeowner).

In order to address cost apportionment, the City Council will be asked at a future meeting to make a policy decision on cost because this project is required by a Consent Decree. City Staff will prepare information for the City Council's consideration regarding the percentage each property owner should pay. As an example, maybe 50% of the sewer main and service to the edge of road should be covered by the sewer enterprise fund and 50% by the property owner. City staff will prepare the cost amounts for different scenarios and a recommendation for a decision and vote by the City Council. Our recommendation will assume a shared cost between the property owner and the sewer fund. We will also recommend that any cost assumed by the property owner may be paid over 10 years with a loan from the sewer fund.

The Consent Decree Second Modification is located at the link below. Reference to the Sagamore Avenue Low Pressure Sewer System is located on page 8, Item 8.d.

<http://www.portsmouthwastewater.com/PDFs/September2016ConsentDecreeSecondModificationSagamoreAveSouthSewerSchedule.pdf>



at Law

Attorneys

Jackson Lewis P.C.
100 International Drive
Suite 363
Portsmouth, NH 03801
Tel 603 559-2700
Fax 603 559-2701

www.jacksonlewis.com

Representing Management Exclusively in Workplace Law and Related Litigation

ALBANY, NY	GRAND RAPIDS, MI	MORRISTOWN, NJ	RALEIGH-DURHAM, NC
ALBUQUERQUE, NM	GREENVILLE, SC	NEW ORLEANS, LA	RAPID CITY, SD
ATLANTA, GA	HARTFORD, CT	NEW YORK, NY	RICHMOND, VA
AUSTIN, TX	HONOLULU, HI	NORFOLK, VA	SACRAMENTO, CA
BALTIMORE, MD	HOUSTON, TX	OMAHA, NE	SAINT LOUIS, MO
BIRMINGHAM, AL	INDIANAPOLIS, IN	ORANGE COUNTY, CA	SALT LAKE CITY, UT
BOSTON, MA	JACKSONVILLE, FL	ORLANDO, FL	SAN DIEGO, CA
CHICAGO, IL	LAS VEGAS, NV	OVERLAND PARK, KS	SAN FRANCISCO, CA
CINCINNATI, OH	LONG ISLAND, NY	PHILADELPHIA, PA	SEATTLE, WA
CLEVELAND, OH	LOS ANGELES, CA	PHOENIX, AZ	STAMFORD, CT
DALLAS, TX	MEMPHIS, TN	PITTSBURGH, PA	TAMPA, FL
DAYTON, OH	MIAMI, FL	PORTLAND, OR	WASHINGTON DC REGION
DENVER, CO	MILWAUKEE, WI	PORTSMOUTH, NH	WHITE PLAINS, NY
DETROIT, MI	MINNEAPOLIS, MN	PROVIDENCE, RI	

THOMAS M. CLOSSON
DIRECT DIAL: 603-559-2729
THOMAS.CLOSSON@JACKSONLEWIS.COM

To: City Manager Bohenko, Mayor Blalock and Members of the Portsmouth City Council
From: Tom Closson
Re: Tentative Agreement with the Portsmouth Professional Fire Officers Association
Date: August 22, 2019

This City’s negotiating team has reached a tentative agreement with the Portsmouth Professional Fire Officers Association (“the Union”) on a new four (4) year collective bargaining agreement. I am pleased to recommend this tentative agreement to you. The material terms of the tentative agreement are summarized below.

<u>CBA SECTION</u>	<u>CHANGE</u>
Duration (and elsewhere in the CBA as necessary)	Four years – July 1, 2019 through June 30, 2023.
Section I - Recognition	Modify Paragraph B to provide <u>only</u> as follows: “Each employee included in the bargaining unit will be given the opportunity to join the Association by completing the requisite authorization card and by agreeing in writing to pay the full Association dues. Upon receipt of a properly executed authorization card, the City will deduct the full Association dues from the employee’s pay and remit such dues to the Union. No employee included in the bargaining unit will be required to join the Association as a condition of hire, reemployment or continued employment with the City.”

Section I – Recognition (and elsewhere in the CBA as necessary)	Add Fire Prevention Officer to the bargaining unit and adopt agreed upon language applicable to Fire Prevention Officer.
Section II – Employment And Termination	Delete paragraph A.
Section V – Pay Increases, Longevity, Medical Insurance	Change COLA CPI-U from Boston-Brockton-Nashua to Boston-Cambridge-Newton, MA-NH.
Section V - Pay Increases, Longevity, Medical Insurance	COLA increase based on 10 year rolling average CPI-U for Boston-Cambridge-Newton, MA-NH (not less than 2.0% and not greater than 5.0%) on July 1, 2019, July 1, 2020, July 1, 2021 and July 1, 2022. Change Master’s classification to make employees eligible for a 1.5% increase after 10 years as Lieutenant or Captain, and eligible for an additional 2.0% increase after 14 years as Lieutenant or Captain.
Section V - Pay Increases, Longevity, Medical Insurance	Delete paragraph F1.
Section V - Pay Increases, Longevity, Medical Insurance	Modify paragraph F2 to change employer/employee premium cost-sharing arrangement on the AB 20 RX 10/20/45 plan to 89%/11% on July 1, 2019; 87.5%/12.5% on July 1, 2020; and 85%/15% on July 1, 2021.
Section V - Pay Increases, Longevity, Medical Insurance	Add a new paragraph to provide that if the Affordable Care Act generates any kind of Cadillac Tax or similar penalty on the basis of the parties’ current health insurance plan, the parties will reopen the contract on the issue of health insurance only to select a comparable health insurance plan that does not generate any kind of Cadillac Tax or similar penalty.
Section IX - Equipment	Modify paragraph D to condition the reimbursement of the clothing allowance on the employee’s submission of approved receipts.
Section XV(A)(3) & (5) – Stipends	Change “With Fire Protection Certificate” to “In a profession-focused major in the fire and emergency services field such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; Paramedic Care.”
Section XV - Stipends	Increase Hazmat Technician stipend by .5% on July 1, 2019, July 1, 2020 and July 1, 2021.

This tentative agreement has been approved by both the Union and the Portsmouth Fire Commission. I believe that this tentative agreement is both fair and reasonable, and I recommend it to you for ratification. I will also be happy to answer any questions that you have about this tentative agreement.

WORKING AGREEMENT

BETWEEN

THE BOARD OF FIRE COMMISSIONERS OF
THE CITY OF PORTSMOUTH

AND

THE PORTSMOUTH PROFESSIONAL FIRE OFFICERS ASSOCIATION

~~July 1, 2014 – June 30, 2018~~ July 1, 2019 – June 30, 2023

WORKING AGREEMENT

The Portsmouth Board of Fire Commissioners (hereinafter referred to as the Commission) and the Portsmouth Professional Fire Officers Association (hereinafter referred to as the Association), in order to maintain the existing harmonious relationship between the Fire Chief who is Chief Executive Officer of the Fire Department and its employees as delegated by the Commission, and their employees, join in this Agreement to promote the morale, equal rights, well-being and security of the Association, the Fire Chief representing the Commission and the Association, hereby agree as follows:

SECTION I RECOGNITION

- A. Association personnel covered by this agreement are Shift Lieutenants ~~and~~ Shift Captains and Fire Prevention Officers of the Portsmouth Fire Department (hereinafter referred to as the Fire Department).
- B. ~~Each employee included in the bargaining unit will be given the opportunity to join the Association by completing the requisite authorization card and by agreeing in writing to pay the full Association dues. Upon receipt of a properly executed authorization card, the City will deduct the full Association dues from the employee's pay and remit such dues to the Association. No employee included in the bargaining unit will be required to join the Association as a condition of hire, reemployment or continued employment with the City. Whenever the Fire Department or the Commission re-employ personnel, employs new employees, such individuals, provided they are Fire Department company officers, shall become members of the Association within eight (8) days after completion of probation period or pay a service fee as set forth below.~~
- ~~1. Employees in this bargaining unit shall be notified in writing by the Association that each member shall have the opportunity to withdraw from membership for a fifteen day period from July 1 to July 15. Each individual notice of withdrawal of membership shall be in writing postmarked during notice period.~~
 - ~~2. Nothing in this provision, however, shall diminish the withdrawing member's financial obligation to make payment of a service fee to the Association in the amount set by the Association, not to exceed an amount equal to the cost of the Association's Collective Bargaining service and contract administration. The Association shall inform the City from time to time of the amount of such service fees.~~
 - ~~3. Any deduction made by the City pursuant to 1 and 2 shall be authorized by each employee in writing.~~
- C. The following position classifications are in the bargaining unit.

Shift Captain
Shift Lieutenant
Fire Prevention Officer

Formatted: Indent: Left: 0"

- D. The Commission hereby recognizes that the Association as the sole exclusive representative of the permanent, full-time Shift Captains ~~and~~ Shift Lieutenants and Fire Prevention Officers of the Fire Department for the purpose of bargaining with respect to wages, hours of work and working conditions, and the Association unreservedly accepts and recognizes the necessity of the Fire Department to operate within its budget as set by the City Charter as amended. The parties agree that any references to Captains and Lieutenants in this Agreement shall mean Shift Captains or Shift Lieutenants, respectively.
- E. The Commission agrees for itself and any of its authorized agents that it will not bargain with any individual covered by this Collective Bargaining Agreement on matters pertaining to wages, hours of work, working conditions, transfers or promotions.
- F. The Association agrees that no member of the Bargaining Unit will bargain with the Commission or any of its authorized agents on matters pertaining to wages, hours of work, working conditions, transfers or promotions.

SECTION II EMPLOYMENT AND TERMINATION

- ~~A.~~ ~~All Bargaining Unit members covered by this agreement shall have a check off of their Association dues upon signed authorization of the member.~~
- ~~B.~~ All appointments in the bargaining unit will be made for a working test period of three months subject to close review as to his/her competency to carry out his/her assignments. The Commission may, upon request of the Fire Chief, extend this working test period to a maximum of an additional three months if, in their opinion, it is necessary. This period supplements the formal examination, etc., and is the final determination of whether the person shall be given regular status. Fire Lieutenants shall work a minimum six-month probation period. The Fire Chief, with the approval of the Commission may extend the probation for an additional six months, for just cause.
- ~~B.~~ The relative fitness of the applicants for appointments or promotion for a position within the classified service, will be determined by consideration and rating of any or all of the following qualification factors: experience, general adaptability, special aptitudes, physical fitness, knowledge, skills, personality, character, education and examination. All factors being equal, seniority shall determine appointment.
- ~~C.~~ All new Captain-Lieutenant and/or Fire Prevention Officer vacancies shall be posted on the bulletin boards in advance for a period of ten (10) working days prior to the filling of the position.
1. Written evaluations, initiated by the Fire Chief or individual member, may be used as the basis for conferences pertaining to promotions. All parties are to initial the evaluation following the conference to indicate the evaluation has been read, but does not mean all parties agree with the evaluation.
 2. Each bargaining unit member shall be entitled to access to his/her personnel file.

3. In the event that the Fire Chief or his representative removes materials from a bargaining unit member's file, a dated notation shall be placed in the file by the person or persons removing the material.
4. No information contained in the files of bargaining unit member will be released to outside persons or agencies without prior approval of the member, except for verifying employment, duration of employment, or salary. Each bargaining unit member during normal working hours, shall have the right of reviewing or duplicating materials in his/her file.
5. Although the Commission agrees to protect the confidence of personal references and other similar material, it shall not maintain a separate personnel file which is not available for his/her inspection.

~~ED.~~ When bidding on a new job (via promotion or transfer), the permanent full time employee shall have a trial period of three months in which he/she may request to be reinstated in his/her previous position.

~~FE.~~ Bargaining unit members separated from the service through no fault of their own will be placed on a re-employment list in inverse order of the lay-off. Bargaining unit personnel who are re-hired shall retain their seniority.

~~GF.~~ The Commission agrees that it will not discriminate against, intimidate, or coerce Association members in the exercise of their rights to bargain collectively through the Association because of his/her membership their or his/her activities on behalf of the bargaining unit.

SECTION III SENIORITY

- A. On or about January of each year, the Fire Chief shall provide to PPFOA a seniority list for the bargaining unit. Seniority shall be determined by date and time of promotion to any rank within the bargaining unit for employees who have completed their probationary period. If two employees are promoted on the same date, the order in which the employees are promoted will determine seniority.
- B. In the event of reduction in force ("RIF"), the officer with the least seniority (that is years of service as a Fire Officer as set forth in Paragraph A above) will be the first to be laid off so long as the remaining officers are qualified to perform the available work.
- C. In the event of a RIF which results in the layoff of one or more officers, said officers will have the following rights:
 1. Said officers shall have first right to fill any vacancy within the Department, if qualified;
 2. Said officers shall have the first right to be recalled to vacancies with the bargaining unit which shall continue for three years so long as the officer remains

qualified to fill the vacancy; and

3. Said officers shall be given priority for other vacancies which occur within the Department so long as they are qualified to fill the vacancy and no other employee has recall rights to the position. Said preference shall remain in effect for three years.
- D. In the event of layoff, the employee so laid off shall be responsible for informing the Department of his/her current address and shall be given two weeks notice of recall mailed via certified mail to his/her last known address and during that two weeks the employee must notify the Department in writing of his/her intention to return to work. In the event that the employee fails to make himself available for work within thirty days from notification, he or she shall lose recall rights under this Agreement.
- E. The Commission shall provide at least two weeks notice or pay in lieu thereof, to any employee who is to be laid off during a reduction in force.
- F. A bargaining unit member shall not forfeit seniority during absence caused by:
1. Illness resulting in total temporary disability due to his/her regular work with the Fire Department, certified by an affidavit from the Worker's Compensation Carrier.
 2. Illness related to his/her employment and not the result of his/her own misconduct resulting in total temporary disability, certified to be a physician's affidavit every three months.
- G. If a bargaining unit member leaves the service of the Fire Department in good standing and is subsequently re-employed, he/she shall incur no loss of longevity benefits accrued prior to his/her leaving said service, and all longevity shall be restored to him/her upon re-employment.

SECTION IV LEAVE OF ABSENCE

- A. Bargaining unit members shall be entitled to the following leaves of absence:
1. Leave may be granted to bargaining unit members for the purpose of attending conferences, committees or meetings; of the like without loss of salary or benefits subject to the approval of the Fire Chief. This leave may be granted to one member for three (3) days or three members for one (1) day each as requested by the Union.
 2. Two (2) days leave may be granted for personal business which cannot be transacted at any other time. Said personal leave; shall be non-accumulative and based on the contract year usage (July 1st to June 30th). Whenever possible, twenty-four hours notice shall be given and the leave must be approved by the Department Head prior to use. Personal days must be taken in one-half or full day

shift increments.

3. Bereavement leave; may be granted up to five (5) calendar days for each death of a member of their immediate family. Immediate family shall be defined as follows: spouse, child (including adopted children and stepchildren), parent (including parent by adoption), brother, sister, grandparent, grandchild, aunt, uncle and only the following in-laws — the grandmother, grandfather, mother, father, brother or sister of the employee's current spouse.
4. Paid leave juror or witness service; will be granted for the period of time he/she is unable to return to work. A copy of all or any subpoena along with any monies received from this service (other than personal expenses, such as travel) shall be transmitted to the City Comptroller.
5. All bargaining unit members agree to attend up to four meetings as directed by the Fire Chief. There will be no compensation for said meetings. Each meeting will not exceed four (4) hours in length.

B. Leave Without Pay

Written leaves of absence without pay may be granted by the Commission as appropriate for a period of six months. Upon expiration of the leave, the employee will be reinstated to the position held before the leave was granted.

C. Accidental Injuries

1. The City shall provide and maintain Worker's Compensation insurance coverage on each employee covered by this agreement.
2. In case of accidental personal injury to any employee covered by this agreement arising out of and in the course of his/her employment, the City shall adjust the employee's pay so that he/she nets the same amount as accomplished by either paying the difference to the employee, or if the Worker's Compensation benefit is more than the net pay, the City shall deduct the amount of the difference from a withholding account. Any payment by the City shall be made until the employee is able to return to work, but in no event shall such payments by the City exceed fifty-two (52) weeks. It is understood that an employee receiving Supplemental Worker's Comp pay under this section who is released for Temporary Alternate Duty by his/her doctor and who is offered appropriate temporary alternate duty by the Department, and who refuses to perform the work shall not receive any Supplemental Worker's Comp pay under this section.
3. If, during the incapacitation of any employee due to injury arising out of the course of his employment, the employee shall be entitled to annual leave earned time in accordance with this Section V paragraph A, then said employee shall be indemnified in pay or awarded annual leave at a later date equal to the annual leave lost because of the said injury at the discretion of the Fire Chief.

D. Military Leave of Absence

Any bargaining unit member who is ordered for active military service as a member of the Armed Forces of the United States of America, or who engages in activities in the Reserve Forces of the United States of America, or State National Guard, shall be granted leave of absence to perform such military duties with the City paying the difference in salary between the employee's base pay and his military pay for said duty and without loss of leave time. Such leave shall be considered military leave and shall not exceed fourteen (14) working days per calendar year.

**SECTION V
PAY INCREASES, LONGEVITY, MEDICAL INSURANCE**

- A. 1. ~~Effective July 1, 2019, b~~Bargaining unit members shall be paid the following ~~base salaries; y increase:~~

	Lieutenant EMT Basic	Lieutenant EMT- Intermediate/Advanced EMT
Step A	\$60,961	\$62,791
Step B	\$63,194	\$65,090
Step C	\$67,015	\$69,025

	Captain EMT Basic Fire Prevention Officer EMT Basic	Captain EMT- Intermediate/Advanced EMT Fire Prevention Officer EMT- Intermediate/Advanced EMT
Step D	\$70,843	\$72,969
Step E	\$73,676	\$75,855
Step F	\$76,624	\$78,921

~~July 1, 2014 through June 19, 2016~~

~~Lieutenant EMT Basic ————— Lieutenant EMT Intermediate/Advanced EMT~~

~~Step A: \$54,945 ————— Step A: \$56,594
Step B: \$56,957 ————— Step B: \$58,666
Step C: \$60,402 ————— Step C: \$62, 214~~

~~Captain EMT Basic ————— Captain EMT Intermediate/Advanced EMT~~

~~Step D: \$63, 852 ————— Step D: \$65,768
Step E: \$66,405 ————— Step E: \$68,397~~

~~Step F: \$69,062~~ ~~Step F: \$71,133~~

~~Effective June 20, 2016. The wage schedule will be adjusted by 2.5%~~

~~June 20, 2016 through June 30, 2016~~

~~Lieutenant EMT Basic~~ ~~Lieutenant EMT Intermediate/Advanced EMT~~

~~Step A: \$56,319~~ ~~Step A: \$58,009~~

~~Step B: \$58,381~~ ~~Step B: \$60,133~~

~~Step C: \$61,912~~ ~~Step C: \$63,769~~

~~Captain EMT Basic~~ ~~Captain EMT Intermediate/Advanced EMT~~

~~Step D: \$65,448~~ ~~Step D: \$67,412~~

~~Step E: \$68,065~~ ~~Step E: \$70,107~~

~~Step F: \$70,789~~ ~~Step F: \$72,911~~

~~Effective July 1, 2016, the salary schedule will be adjusted by a 2% COLA~~

~~Lieutenant EMT Basic~~ ~~Lieutenant EMT Intermediate/Advanced EMT~~

~~Step A: \$57,445~~ ~~Step A: \$59,169~~

~~Step B: \$59,549~~ ~~Step B: \$61,336~~

~~Step C: \$63,150~~ ~~Step C: \$65,044~~

~~Captain EMT Basic~~ ~~Captain EMT Intermediate/Advanced EMT~~

~~Step D: \$66,757~~ ~~Step D: \$68,760~~

~~Step E: \$69,426~~ ~~Step E: \$71,509~~

~~Step F: \$72,205~~ ~~Step F: \$74,369~~

~~Effective July 1, 2017 and July 1, 2018, the salary schedule will be adjusted by the CPI using the current formula.~~

Formatted: Indent: Left: 0.5", First line: 0"

Lieutenants shall start at Step A and move to Step B after completion of twelve (12) months; they shall move to Step C after an additional 12 months. Lieutenants promoted to Captain shall start at Step D and be moved to Step E after twelve (12) months; they shall move to Step F after an additional twelve (12) months. Fire Prevention Officers shall start at Step D and be moved to Step E after twelve (12) months; they shall move to Step F after an additional twelve (12) months. Upon initial appointment to the rank, ~~Lieutenants and Captains~~ and Fire Prevention Officers shall serve a six (6) month probationary period.

After completing a total of ~~fourteen (14)~~ten (10) years of service in the ranks of Lieutenant, ~~and/or,~~ Captain and/or Fire Prevention Officer in the Portsmouth Fire Department, the officer shall be eligible for the Master's classification, which shall be ~~three and one-half percent (3.5%)~~1.5% higher than the step on the salary scale that the

officer currently holds. After completing a total of fourteen (14) years of service in the ranks of Lieutenant, Captain and/or Fire Prevention Officer in the Portsmouth Fire Department, the officer shall be eligible for an additional Master's classification, which shall be an additional 2.0% higher than the step on the salary scale that the officer currently holds.

COLA Adjustment

Effective July 1, ~~2017-2020~~, July 1, 2021 and July 1, 2018~~22~~, a COLA Adjustment percentage increase shall be computed which shall not be less than 2% nor more than 5. The COLA Adjustment percentage shall be determined by the rolling ten (10)-year average in the CPI-U for the Boston-Cambridge-Newton, MA-NH all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the ten (10) most recent calendar years preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.

Formatted: Indent: Left: 0", Space Before: 0 pt, After: 0 pt

~~The COLA Adjustment percentage shall be determined by the annual increase in the CPI-U for the Boston-Brockton-Nashua—MA-NH-ME-CT all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the most recent calendar year preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.~~

Thus if the CPI-U for the Boston SMSA calendar year 2003 (Nov. 2002-Nov. 2003) is 1.5% the applicable COLA Adjustment on July, 2004 would be 2%; if it is 3.5% the applicable COLA Adjustment would be 3.5%; if it is 5.5% the applicable COLA Adjustment would be 5.0%.

Formatted: Indent: Left: 0.5"

Applicability After Contract Expires: It is clearly understood that in the event that the ~~four-four~~ year Working Agreement expires without a successor Working Agreement being settled prior to July 1, 201~~8~~⁹~~23~~ that no further COLA Adjustments after July 1, 2017~~8~~⁹~~22~~ will be generated under the Working Agreement even if the Working Agreement has an evergreen clause. It is further agreed that continuation of COLA Adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, 201~~8~~⁹~~23~~.

Formatted: Font: Italic

B. Any bargaining unit member working more than his work week as set forth in section VI A shall be paid at the rate of one and one-half (1 1/2) times his/her rate of pay.

C. All members of the Fire Department shall be subject to recall for emergencies at the discretion of the Chief of the Department or his assistant and the members of Unions shall be paid the rate of pay equal to one and one-half (1 1/2) times their usual hourly rate for all hours worked under such emergency conditions. In the event that a firefighter covered by this Agreement works less than two (2) hours in response to such emergency, he/she shall be paid for two (2) hours at such overtime rate. Call-back pay will not be compounded, pyramided or added

to compensation for any purpose.

An employee who is recalled for non-emergency reasons after hours shall be paid a minimum of two (2) hours at one and one-half (1 1/2) times their rate of pay providing that if such employee's regular duty commences within a two (2) hour block, he/she will be paid at the overtime rate for only the time before regular duty. Once on regular duty, his/her normal rate of pay shall apply. Call-back pay will not be compounded, pyramided or added to compensation for any purpose.

D. An bargaining unit member promoted to a position which has a higher maximum hourly rate shall receive a pay raise for one step over his/her present rate upon promotion or to the minimum of the new position, whichever is greater, and such increase as is set forth in the salary plan, thereafter, based upon the date of promotion.

E. All general increases shall be additional to the step increases to which the employees are entitled.

F. 1. The City will offer Employees health insurance coverage under the AccessBlue 20 plan with a \$10/\$20/\$45 prescription plan. Effective September–July 1, 20162019, the City will pay 9089% of the premium cost of the cost of the AccessBlue 20 with a \$10/\$20/\$45 prescription plan and the Employee will pay 11% of the premium cost. If an employee chooses to enroll in BlueChoice, the City will pay only 90% of the AB20 Premium towards the higher premium plans. Effective July 1, 2020, the City will pay 87.5% of the premium cost, and the Employee will pay 12.5% of the premium cost. Effective July 1, 2021, the City will pay 85% of the premium cost, and the Employee will pay 15% of the premium cost.

2. If the Affordable Care Act generates any kind of “Cadillac Tax” or similar penalty on the basis of the parties’ current health insurance plan, the parties will reopen the contract on the issue of health insurance only to select a comparable health insurance plan that does not generate any kind of “Cadillac Tax” or similar penalty.

~~Effective July 1, 2014, the City will pay up to a maximum of 84.5% of the premium of the cost of a Matthew Thornton Plan. If an employee chooses to enroll in BlueChoice or Comp 100, the City will pay only 84.5% of the Matthew Thornton Premium towards the higher premium plans.~~

~~2. Effective December 1, 2016, the Union will move entirely to AB 20 RX 10/20/45 with the City paying 90% of the premium cost and the employee paying 10% of the premium cost. If an employee chooses to enroll in BlueChoice20 10/20/45, the City will pay only 90% of the AB20 10/20/45 premium toward the higher premium plan.~~

3. New employees will be eligible for health insurance under these provisions on the first of the month after the first day of work.

4. Local #4039 will serve on the City-wide committee to study health insurance options.

5. SchoolCare will be added as a coverage option if the unit in its entirety, decides to make a change in coverage.

Health Insurance: Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this ~~four five (4.5)~~four (4) year agreement - such plan would only become effective if ratified by the Association, approved by the Fire Commission and approved by the City Council.

F.2. The parties agree that employees currently receiving stipends in lieu of health insurance coverage will continue to receive them at the dollar level in effect at the time this agreement is reached. No additional employees shall receive such stipends. Further the City will not provide Health and/or Dental Coverage if an employee is already covered by the same or similar health and/or dental plan by the City or School Department.

G. Longevity Bonus: In December following five (5) years of municipal service, an employee shall become entitled to an annual bonus. The bonus shall be paid in accordance with the following schedule:

	July 1, 2014	July 1, 2016
Longevity Step	Bonus	
0 through 4 years of service	\$0	\$0
5 years of completed service	\$151.28	\$154.31
6 years of completed service	\$186.19	\$189.91
7 years of completed service	\$221.10	\$225.52
8 years of completed service	\$256.02	\$261.14
9 years of completed service	\$290.92	\$296.74
10 years of completed service	\$325.84	\$332.36
11 years of completed service	\$360.75	\$367.97
12 years of completed service	\$395.66	\$403.57
13 years of completed service	\$430.57	\$439.18
14 years of completed service	\$465.48	\$474.79
15 years of completed service	\$500.39	\$510.40
16 years of completed service	\$535.31	\$546.02
17 years of completed service	\$570.21	\$581.62
18 years of completed service	\$605.13	\$617.23
19 years of completed service	\$640.04	\$652.84
20 years of completed service	\$674.95	\$688.45
21 years of completed service	\$698.22	\$712.18
22 years of completed service	\$814.60	\$830.89
23 years of completed service	\$930.97	\$949.59
24 years of completed service	\$1,047.34	\$1,068.29
25 years of completed service	\$1,163.70	\$1,186.97
26 years of completed service	\$1,280.07	\$1,305.67
27 years of completed service	\$1,396.45	\$1,424.38
28 years of completed service	\$1,512.82	\$1,543.08
29 years of completed service	\$1,629.20	\$1,661.77
30 years of completed service	\$1,745.57	\$1,780.48

Formatted Table

~~The next regularly scheduled longevity payment after July 1, 2017, will be increased consistent with the COLA increases to wages referenced in Section V. The Longevity payment after July 1, 2018, will be increased consistent with the COLA increases to wage referenced in Section V.~~

- H. The City shall undertake to defend and pay any judgment issued against an employee covered by this agreement arising out of an act or omission of the employee for personal injury, including death or damage to property while the employee was engaged in the performance of his duties.
- I. DENTAL INSURANCE: The City shall enroll bargaining unit members in the Delta Dental Plan II for the individual, two person, or family coverage or equal and comparable coverage to plan Delta Dental II.
- J. LIFE INSURANCE: The City shall provide a group life insurance policy for eligible members of the bargaining unit in the amount of the employee's annual base salary, in accordance with the conditions set forth in the insurance policy.
- K. LONG TERM DISABILITY: The City shall obtain disability Income Insurance for eligible members of the bargaining unit equal to 66 2/3% of the base monthly salary not to exceed five thousand dollars (\$5,000) per month. Said insurance shall be effective after the 61st day of disability. Said insurance shall continue as long as the member remains disabled or until age sixty-five and shall be coordinated with Social Security.

SECTION VI HOURS OF WORK AND OVERTIME

- A. The work week of a bargaining unit member shall be an average of a 42 hour work week consisting of fourteen (14) ten-hour day shifts and fourteen (14) fourteen-hour night shifts over an eight week work cycle in accordance with the attached schedule. Exceptions to this work schedule may be made with mutual agreement between the individual and the Fire Chief, for the purpose of attending professional schools and seminars as deemed appropriate by the Fire Chief. All professional schools and seminars will be distributed equitably amongst the Fire Officers. Bargaining unit members shall be compensated for each holiday at the established base salary divided by 260. The schedule of a Fire Prevention Officer will be established by the Fire Chief and will normally be five (5) days per week and eight (8) hours per day. The Fire Chief may schedule a Fire Prevention Officer to work outside normal hours on any given day and such time shall be made up during the same work week. Fire Prevention Officers will earn overtime only for call-out emergencies.
- B. Non-bargaining unit members may work overtime only on condition that members of bargaining unit are not available.
- C. Any bargaining unit member who shall perform duties of a higher rank for more than four (4) consecutive shifts, shall be paid at the higher rate of pay while performing such duty, but at no time shall any bargaining unit member be paid at a lower rate than that at which he/she is classified except for demotion because of physical incapacity or under Section II

- D. At least one (1) Captain or Lieutenant will be assigned to each station per shift.
- E. The parties will form a Joint Committee to meet and discuss the possible addition of an Administrative Officer position to address the City's concerns about overtime.

**SECTION VII
LEAVE**

- A. **EARNED TIME:** It is the intent of this policy to explain the provisions and conditions of the Earned Time Program. The program has been created to provide, as equitably as possible, paid time off, to be used at the employee's discretion, while protecting an allotment of time for disability, hospitalization or injury.

Earned time is a combination of vacation and personal absence days. A separate account per year is accumulated for disability time (seven days per year).

Earned Time is an alternative approach to the traditional manner of converting absences for vacation, sick leave, interim disability, maternity leave, by combining all these plans into one program. Instead of dividing benefits into a specific number of days for each benefit, Earned Time puts these days together into a single benefit. The exact amount of Earned Time accrued each year will depend on the years of service with the Portsmouth Fire Department.

Effective the date of this policy, employee's vacation time will be converted to earned time. Employee's sick time balance will be converted to the Disability Bank.

Effective on the date of this policy, employees will begin accruing earned time based on the following schedule:

<u>Years of Service</u>	<u>Accrual Rate</u>	<u>Total</u>	
	<u>Earned Time</u>	<u>Bank</u>	<u>Combined</u>
1 - 5 yrs. Incl.	17(1.417 days/month)	7	24
6 years incl.	18(1.5 days/month)	7	25
7 years incl.	19(1.583 days/month)	7	26
8 years incl.	20(1.667 days/month)	7	27
9 years incl.	21(1.75 days/month)	7	28
10 years incl.	22(1.833 days/month)	7	29
11 years incl.	23(1.917 days/month)	7	30
12 years incl.	24(2 days/month)	7	31
13 years incl.	25(2.083 days/month)	7	32
14 years incl.	26(2.167 days/month)	7	33
15 years incl.	27(2.25 days/month)	7	34
16 years incl.	27(2.25 days/month)	7	34
17 years incl.	27(2.25 days/month)	7	34
18 years incl.	27(2.25 days/month)	7	34
19 years incl.	27(2.25 days/month)	7	34

20 years incl.	28(2.333 days/month)	7	35
25 years incl.	29(2.416 days/month)	7	36

All absences from regularly scheduled work will be charged to an employee's Earned Time. Exceptions are:

1. Administrative Leave
2. Unpaid leaves of absence
3. After absence due to personal illness/injury for more than three consecutive working days an employee may use his/her Disability Bank, if available.
4. Emergency Leave
5. Military Leave
6. Worker's Compensation
7. Disciplinary Suspension
8. Personal Days

Applicable request forms will be completed, signed by the Shift Officer and approved by the Fire Chief prior to the use of earned time whenever possible.

Earned Time begins accruing on the 15th of the month after the date of hire. Employees may use their earned time as soon as it earned once they have completed their probationary period.

Accumulated Earned Time may be used for personal illness or accident, immediate family illness or accident, or compelling personal reasons.

Accumulated Earned Time must be taken in full or half day shift increments.

All Earned Time payments are computed at the employee's current base rate. Employees are responsible for the Earned Time balance reflected on their pay stubs. Any errors should be reported immediately.

At separation, any unused earned time days will be cashed out at full value.

B Unused Earned Time Carryover

Employees are allowed to accumulate up to a maximum of 60 earned time days as of January 1st of any calendar year. Any days over the 60 day limit but no more than ten (10) in a year may be cashed out at fifty percent (50.0%) or deposited to the Disability Bank. Any days over the 60 day limit but no more than 10 in a year may be cashed out by an employee hired after January 1, 1996 at ninety percent (90.0%) or deposited to the Disability Bank.

C Disability Bank

In addition to the original sick leave balance that was transferred to the Disability Bank at the time this program was implemented, days will accumulate at the rate of seven (7) days per year (or .583 per month).

The Disability Bank hours are to be used for extended illness, injury, disability related to pregnancy, or hospitalization only. Usage of the Disability Bank commences with the 4th consecutive day of absence from work due to illness or injury. A physician's report must accompany the request to use the Disability Bank Days. Periodic updates from the employee's physician may be required. In the event that an employee is hospitalized or has surgery (this includes day surgery procedures) for something other than a work-related problem, the Disability Bank may be used starting with the first day of hospitalization. Any disability related to pregnancy will be treated like any other medical condition.

An exception to the policy that requires the usage of three (3) Earned Time days before being permitted to access the Disability Bank when the disability is certified by a physician to be the same as for the original use or from the same cause as the original Disability Bank usage.

D. Return to Work: Following a period of absence due to illness/injury, medical documentation supporting the employee's ability to perform the essential functions of the job is required prior to returning to work.

The use of the Disability Bank for extended illness or injury requires medical documentation and may indicate the need for use of the Family Medical Leave Act and the need to contact the Human Resource Department concerning long-term disability.

Employees hired prior to January 1, 1991 may accumulate Disability Bank days without limitation. Firefighters hired after January 1, 1991 shall have Disability Bank accumulation limited to 150 days. Upon death of an employee while in the employment of the City, the City shall pay to his/her spouse or next of kin an amount equal to 100% of the value of his/her Disability Bank days. Upon retirement from employment, upon voluntary termination of his/her employment, the City shall pay to the employee an amount equal to 90% of the value of his/her accumulated Disability Bank days. Firefighters hired after January 1, 1996 shall receive no pay out at all for accumulated Disability Bank days either for retirement or termination.

If an employee wants his or her accumulated disability bank to be paid out over more than one year, he or she may give up to three years of notice. However, it is understood that once payment begins the employee may not withdraw his or her notice of retirement or voluntary termination.

Disability leave must be taken in full or half day shift increments.

E. Exhaustion of Earned Time/Disability Bank. An employee on an approved absence who has used all Earned Time and Disability Bank days will be placed on leave without pay. If the illness/injury qualifies for FMLA leave benefits will continue for the period of the Family Medical leave. Employees will not accrue earned time while they are on a leave without pay status.

SECTION VIII HOLIDAYS

Bargaining unit members shall be paid in accordance with Section VI A for the following legal holidays:

New Year's Day
Martin Luther King, Jr. Day (which is the State's Civil Rights Day)
Washington's Birthday
Good Friday (1/2 day)
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Day after Thanksgiving
Christmas Day

One-half day preceding Christmas Day when Christmas Day comes on Wednesday or Friday. Monday if Christmas comes on Tuesday. Friday if Christmas comes on Thursday.

When a holiday falls on a Saturday, the preceding Friday shall be considered a holiday for bargaining unit members. If a holiday falls on Sunday, the following Monday shall be considered a holiday.

SECTION IX EQUIPMENT

- A. The Fire Commission shall have the right to make regulations for the safety and health of its employees during their hours of employment. Representatives of the Department and the Association may meet once in ninety days at the request of either party to discuss such regulations. The Association agrees that [its] bargaining unit members will comply with the department's rules and regulations relating to safety, economy, continuity and efficiency of the service to the department and the public.
- B. Each Fire Department Officer will be provided by the City with the following articles of protective clothing and gear. This clothing and equipment shall be of the highest quality to assure maximum for individual protection and safety and shall meet or exceed either N.F.P.A. standards or departmental safety rules, regulations or policy. It is understood that this language shall not require the department to replace outer protective equipment of fire officers because of a change in N.F.P.A. standards unless adopted and approved by the Fire Commission and then the change-over shall be accomplished within the time frames as established by the Fire Commission.
1. Fire helmet
 2. Turnout Coat
 3. Turnout pants/suspenders
 4. Short boots (night hitch)
 5. Protective gloves/mittens
 6. Eye protection
 7. Any other item deemed necessary by the Chief

- C. The Association and all bargaining unit members agree to exercise proper care and to be responsible for all department property issued or entrusted to them.
- D. Upon submission of approved receipts, ~~B~~bargaining unit members shall ~~receive-be reimbursed~~ six hundred dollars (\$600) clothing allowance per year to purchase both work and dress uniforms as prescribed by the Chief's approved list, and in accordance with department policy as set by the Board of Fire Commissioners. Once an officer has received two allowances at the \$600 level, the officer will be required to maintain a dress uniform.
- E. The City agrees to provide beds, bedding, linens, blankets and towels for each bargaining unit member working a night shift.

**SECTION X
GRIEVANCE PROCEDURE**

- A. A grievance shall mean a complaint by an employee or group of members arising out of an interpretation of the provisions of this agreement or conditions of employment implied but not necessarily stated in this agreement.

A grievance to be considered under this procedure must be initiated by the member within seven (7) working days of its occurrence.
- B. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved member to proceed to the next step. A decision on the grievance shall be rendered within the time limit set forth or the grievance shall be deemed favorable to the grievant. Failure at any step of this procedure to appeal a grievance to the next step within the time limits shall be deemed to be acceptance of the decision rendered at that step.
- C. Any member who has a grievance shall put it in writing with the Fire Chief, in an attempt to resolve the matter at that level.
- D. If, as a result of the submission of the grievance, the matter is not resolved to the satisfaction of the member within seven (7) working days, he/she shall set forth the grievance in writing to the Commission specifying:
 1. The nature of the grievance and date occurred,
 2. The nature and extent of the loss or inconvenience,
 3. His/her dissatisfaction with decisions previously rendered,
 4. The results of previous discussion.

The Commission shall communicate their decision to the grievant in writing within seven

(7) working days of receipt of the written grievance.

- E. If a grievance is not resolved to the union's satisfaction, the union will notify the Commission within 15 working days after receipt of the decision of its intention to arbitrate or the decision rendered will be binding on both parties. Arbitrators shall be selected according to the procedures established by the P.E.L.R.B. The parties will share the cost of the arbitrator's fee on a 50/50 basis.
- F. It is further agreed that any arbitration rendered under this contract shall be subject to the review provisions of RSA 542.
- G. An arbitrator deciding a grievance under this contract shall have no authority to alter, amend, change, add or delete, the terms of the contract of the parties.
- H. For the purposes of this section, working days shall be Monday through Friday excluding Saturday, Sundays and holidays.
- I. It is understood that only one grievance will be heard at one time at any one arbitration unless the parties mutually agree with respect to a specific situation.

SECTION XI FIRE DEPARTMENT PROMOTIONS

Any opportunity for advancement in the fire department shall be posted on bulletin boards at all fire stations in the City of Portsmouth a minimum of ten (10) days prior to the date for testing. All bargaining unit members who apply shall be allowed to go through the testing process along with any other applicants. Preference shall be given to bargaining unit members should they be in the top three of those tested. It is understood that if more than one bargaining unit member is in the top three that the Commission shall have the discretion to choose the person to be promoted. Further, it is understood that the preference shall not be absolute. If the preference does not result in a person getting the promotion, an explanation shall be given. Fire Prevention Officers may apply to promotion to Lieutenant for up to 24 months from appointment to Fire Prevention Officer provided that, prior to that appointment, the employee has met all the requirements per Department policy for promotion to Lieutenant.

SECTION XII AMENDMENT

- A. The signing of this Agreement by the authorized representative of the bargaining unit and the Commission shall constitute the effective date of July 1, 2019. ~~of July 1, 2014.~~
- B. This Agreement remains in effect until June 30, 2018~~923~~. Should neither party to this Agreement initiate negotiations as required by law, this Agreement shall automatically be renewed.
- C. Meetings between the bargaining unit and the Fire Commission shall be conducted at mutually agreeable times and places.

**SECTION XIII
CONFLICT**

In the event of a conflict between the provisions of this Agreement and the existing policies and procedures of the City or the Fire Department in regard to wages, hours of work and working conditions, it is agreed that this Agreement shall govern the relationship between the parties.

**SECTION XIV
COPIES**

Copies of this Agreement shall be provided to all Association members along with any appendices at the Department's expense.

**SECTION XV
STIPENDS**

A. Advanced Education Degrees

The stipends shall not be additive

<u>DEGREE</u>	<u>STIPEND</u>
<u>Associates Degree</u>	<u>2% of base pay</u>
<u>Associates Degree in a profession-focused major in the fire and emergency services field, such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; and Paramedic Care.</u>	<u>3.5% of base pay</u>
<u>Bachelors Degree (Arts or Sciences)</u>	<u>3.75% of base pay</u>
<u>Bachelors Degree (Arts or Sciences) in a profession-focused major in the fire and emergency services field, such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; and Paramedic Care</u>	<u>4.0% of base pay</u>

1 Associates Degree Accredited College 2.0% of base

Formatted: Indent: First line: 0"

Formatted: Indent: Left: 0", First line: 0"

3. ~~Associates Degree~~ ~~3.5% of base~~
~~With Fire Protection Certificate~~

4. ~~Bachelors Degree~~ ~~3.75% of base~~
~~either Arts or Science~~

5. ~~Bachelor Degree with Fire~~ ~~4.0% of base~~
~~Protection Certificate or~~
~~Business Administration~~

~~Specialty Team~~ ~~Stipend~~
~~Hazmat Technician~~ ~~2.0% of base~~
~~Shipboard Technician~~ ~~2.0%~~
~~Boat Operator over 28'~~ ~~2.0%~~
~~Paramedic~~ ~~5%~~

<u>CERTIFICATION/SPECIALTY TEAM</u>	<u>STIPEND</u>
<u>Boat Operator (over 28')</u>	<u>2.0% of base pay</u>
<u>Hazmat Technician</u>	<u>2.5% of base pay in year one of the CBA; 3% of base pay in year two of the CBA; 3.5% of base pay in year three of the CBA</u>
<u>Shipboard Technician</u>	<u>2.0% of base pay</u>
<u>Paramedic</u>	<u>5.0% of base pay</u>

Employees must keep certificates current to be entitled to stipends under this Section. Also the Commission retains the right to decide under what conditions it will reimburse officers for the training to achieve the various status as set forth above, ~~in paragraphs "A" through "E"~~.

An external candidate appointed to the position of Fire Prevention Officer will not be eligible to receive the above stipends except with the express written approval of the Fire Chief. An internal candidate appointed to the position of Fire Prevention Officer will be eligible to continue to receive the stipends they are receiving on the date of appointment to the position of Fire Prevention Officer, but shall not be eligible for any additional stipends after the date of appointment to the position of Fire Prevention Officer unless approved in writing by the Fire Chief.

SECTION XVI. DRUG AND ALCOHOL TESTING

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0"

Formatted: Indent: Left: 0", First line: 0"

Formatted: Indent: Left: 0"

All members will be subject to random drug and alcohol testing as outlined in the policy to be adopted by the Fire Commission.

**SECTION XVII
RETREAT RIGHTS**

A fire officer who has completed his probationary period and earned permanent status in the PPFOA bargaining unit shall have retreat rights to said unit based on his/her seniority date in the PPFOA in the event such an officer accepts another position in the Portsmouth Fire Department outside the PPFOA bargaining unit. Retreat rights shall mean that the employee may bump back into the unit based on his PPFOA seniority in the event the employee is demoted or his job outside the bargaining unit is eliminated. An employee may retreat to either a captain or lieutenant position based on previous qualification and seniority. In the event there are not sufficient positions for all officers after retreat rights have been exercised, the RIF provisions in Section III of the contract shall control.

SIGNATURES

Executed this _____ day of _____, 201~~679~~ after approval by the City Council.

President Richard Gamester, Fire Commissioner
PPFOA

Vice President Michael Hughes Fire Commissioner
PPFOA

Chief Negotiator Jennifer J. Mosher-Matthes,
PPFOA Fire Commissioner

Thomas Closson, City Negotiator

~~Portsmouth Board of Fire Commissioners~~

~~Richard Gamester Chairman~~

~~Thomas Closson, City Negotiator~~

Portsmouth Professional Fire Officers Association

William McQuillen
President PFOA

Richard E. Molan, Attorney

DRAFT

INDEX

	<u>PAGE</u>
WORKING AGREEMENT	2
SECTION I	
Recognition	2
SECTION II	
Employment and Termination	3
SECTION III	
Seniority	4
SECTION IV	
Leave of Absence	5
SECTION V	
Pay Increases	7
COLA Adjustment	8
Medical Insurance	9
Longevity	10
Dental Insurance	11
Life Insurance	11
Long Term Disability	11
SECTION VI	
Hours of Work and Overtime	11
SECTION VII	
Earned Time	11
Disability Bank	13
SECTION VIII	
Holidays	14
SECTION IX	
Equipment	15
SECTION X	
Grievance Procedure	16

|

	<u>PAGE</u>
SECTION XI Fire Department Promotions	17
SECTION XII Amendment	17
SECTION XIII Conflict	17
SECTION XIV Copies	17
SECTION XV Stipends	18
SECTION XVI Drug and Alcohol Testing	18
SECTION XVII Retreat Rights	18
SIGNATURES	19

DRAFT

Portsmouth Professional Fire Officers, Local 4039 IAFF, and the City of Portsmouth

Memorandum of Agreement on Fire Inspector
August 2007

The Portsmouth Professional Fire Officers (Union) and the City of Portsmouth (City) have reached an agreement regarding the Position of Fire Inspector.

Formatted: Centered

1. The Fire Inspector will be paid on Step A of the Captain's salary schedule as described in the collective bargaining agreement between the Union and the City with an expiration date of June 30, 2008.

Formatted: Centered, Indent: Left: 0", First line: 0"

2. The schedule of the Fire Inspector will be established by the Fire Chief and will normally be five (5) days per week and eight (8) hours per day.

3. The Chief may schedule the Fire Inspector to work hours outside normal hours on any given day and such time shall be made up during the same work week. The Fire Inspector will earn overtime only for call-out emergencies.

4. An external candidate appointed Fire Inspector will not be eligible to receive the stipends in the collective bargaining agreement except with the express written approval of the Fire Chief. An internal candidate appointed Fire Inspector will be eligible to receive the stipends they are receiving on the date of the appointment, but shall not be eligible for any additional stipends after that date.

5. This agreement shall not be construed as a precedent and shall not be deemed to be past practice with respect to any other situation that may arise between the parties.

Formatted: Centered, No bullets or numbering

Formatted: Centered

Date: _____
For the Union

Date: _____
For the City

Date: _____
For the Fire Department

Portsmouth Professional Fire Officers Association

FTE's	13	14	14	14	14
COLA		2.00%	2.00%	2.00%	2.00%
Haz Mat Stipend	2.00%	2.50%	2.50%	2.50%	2.00%
Health Insurance Employee Contribution Share	10.0%	11.0%	12.5%	15.0%	15.0%

GENERAL FUND ONLY:

CURRENT CONTRACT-(Steps only/No COLA)

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	895,545	977,541	993,490	1,003,649	1,003,649	3,978,329
Longevity	5,940	6,545	7,249	8,113	8,855	30,762
Stipends	110,126	114,348	118,858	125,290	125,290	483,787
						-
Retirement	322,603	330,519	336,887	342,139	342,362	1,351,907
Medicare	14,668	15,927	16,234	16,487	16,498	65,147
						-
Health Ins Savings	-	-	-	-	-	-
						-
	1,348,882	1,444,881	1,472,718	1,495,679	1,496,654	5,909,932

Year-to-Year CURRENT Gross Budget Change

% Change	95,998	27,838	22,961	975
	7.12%	1.93%	1.56%	0.07%
	*Reduction in Retirement Rate			

147,772	Total Yr-to-Yr Increase*
10.96%	Change FY20 to FY23
2.74%	Avg % Change

PROPOSED TENTATIVE AGREEMENT- GROSS BUDGET

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	895,545	997,092	1,033,627	1,065,080	1,086,382	4,182,181
	5,940	6,676	7,542	8,442	9,584	32,244
Stipends	110,126	126,199	132,299	140,439	137,816	536,753
						-
Retirement	322,603	340,007	353,097	365,281	371,245	1,429,630
Medicare	14,668	16,385	17,015	17,602	17,890	68,892
						-
Health Ins Savings	-	(3,070)	(7,675)	(15,349)	(15,349)	(41,443)
						-
	1,348,882	1,483,289	1,535,906	1,581,496	1,607,568	6,208,258

Year-to-Year PROPOSED Gross Budget Change

	134,406	52,617	45,590	26,072
	9.96%	3.55%	2.97%	1.65%
	*Reduction in Retirement Rate			

258,685	Total Yr-to-Yr Increase
19.18%	Change FY20 to FY23
4.79%	Avg % Change per yr

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	-	19,551	20,586	21,294	21,302	82,733
	-	131	162	36	401	730
Stipends	-	11,851	1,590	1,707	(2,623)	12,525
	-	-	-	-	-	-
Retirement	-	9,488	6,722	6,932	5,741	28,883
Medicare	-	457	324	334	277	1,392
	-					-
Health Ins Savings	-	(3,070)	(4,605)	(7,675)	-	(15,349)

TOTAL COST OF TENTATIVE AGREEMENT

-	38,408	24,779	22,629	25,097
	2.85%	1.71%	1.54%	1.68%

110,914	Total Yr-to-Yr Increase
8.22%	Change FY20 to FY23
2.06%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	-	19,551	40,137	61,431	82,733	203,852
	-	131	293	329	730	1,482
Stipends	-	11,851	13,441	15,149	12,525	52,966
	-	-	-	-	-	-
Retirement	-	9,488	16,210	23,142	28,883	77,723
Medicare	-	457	781	1,115	1,392	3,745
	-					-
Health Ins Savings	-	(3,070)	(7,675)	(15,349)	(15,349)	(41,443)

TOTAL COST OF TENTATIVE AGREEMENT

-	38,408	63,187	85,817	110,914
---	--------	--------	--------	---------

298,325	Net Cost FY20-FY23
---------	--------------------

22.12%	Total Cumulative FY20-FY23
5.53%	Avg % Change per yr



at Law

Attorneys

Jackson Lewis P.C.
100 International Drive
Suite 363
Portsmouth, NH 03801
Tel 603 559-2700
Fax 603 559-2701

www.jacksonlewis.com

Representing Management Exclusively in Workplace Law and Related Litigation

ALBANY, NY	GRAND RAPIDS, MI	MORRISTOWN, NJ	RALEIGH-DURHAM, NC
ALBUQUERQUE, NM	GREENVILLE, SC	NEW ORLEANS, LA	RAPID CITY, SD
ATLANTA, GA	HARTFORD, CT	NEW YORK, NY	RICHMOND, VA
AUSTIN, TX	HONOLULU, HI	NORFOLK, VA	SACRAMENTO, CA
BALTIMORE, MD	HOUSTON, TX	OMAHA, NE	SAINT LOUIS, MO
BIRMINGHAM, AL	INDIANAPOLIS, IN	ORANGE COUNTY, CA	SALT LAKE CITY, UT
BOSTON, MA	JACKSONVILLE, FL	ORLANDO, FL	SAN DIEGO, CA
CHICAGO, IL	LAS VEGAS, NV	OVERLAND PARK, KS	SAN FRANCISCO, CA
CINCINNATI, OH	LONG ISLAND, NY	PHILADELPHIA, PA	SEATTLE, WA
CLEVELAND, OH	LOS ANGELES, CA	PHOENIX, AZ	STAMFORD, CT
DALLAS, TX	MEMPHIS, TN	PITTSBURGH, PA	TAMPA, FL
DAYTON, OH	MIAMI, FL	PORTLAND, OR	WASHINGTON DC REGION
DENVER, CO	MILWAUKEE, WI	PORTSMOUTH, NH	WHITE PLAINS, NY
DETROIT, MI	MINNEAPOLIS, MN	PROVIDENCE, RI	

THOMAS M. CLOSSON
DIRECT DIAL: 603-559-2729
THOMAS.CLOSSON@JACKSONLEWIS.COM

To: City Manager Bohenko, Mayor Blalock and Members of the Portsmouth City Council
From: Tom Closson
Re: Tentative Agreement with the Professional Firefighters of Portsmouth
Date: August 26, 2019

This City’s negotiating team has reached a tentative agreement with the Professional Firefighters of Portsmouth (“the Union”) on a new four (4) year collective bargaining agreement. I am pleased to recommend this tentative agreement to you. The material terms of the tentative agreement are summarized below.

<u>CBA SECTION</u>	<u>PROPOSED CHANGE</u>
Duration (and elsewhere in the CBA as necessary)	Four years – July 1, 2019 through June 30, 2023.
Section V(A) – Salary Schedule	Eliminate Salary Schedule for FF/EMT Basic, grandfathering only current employees.
Section V – COLA Adjustment	Change COLA CPI-U from Boston-Brockton-Nashua to Boston-Cambridge-Newton, MA-NH.
Section V – COLA Adjustment	COLA increase based on 10 year rolling average CPI-U for Boston-Cambridge-Newton, MA-NH (not less than 2.0% and not greater than 5.0%) on July 1, 2019, July 1, 2020, July 1, 2021 and July 1, 2022.

Section V – Wages	Increase base wages by an additional .5% on July 1, 2019, July 1, 2020 and July 1, 2021.
Section V(C) – Clothing Allowance	Increase annual clothing allowance to \$700/year; condition reimbursement of the clothing allowance on the employee’s submission of approved receipts; and provide that the Fire Chief will meet at least annually with Union leadership to discuss items to be included on an approved list for reimbursement.
Section VII(F) – Health Insurance	Change employer /employee premium cost-sharing arrangement on AB 20 RX 10/20/45 plan to 89%/11% on July 1, 2019; 87.5%/12.5% on July 1, 2020; and 85%/15% on July 1, 2021.
Section VII(F) – Health Insurance	Add new paragraph to provide that if the Affordable Care Act generates any kind of Cadillac Tax or similar penalty on the basis of the parties’ current health insurance plan, the parties will reopen the contract on the issue of health insurance only to select a comparable health insurance plan that does not generate any kind of Cadillac Tax or similar penalty.
Section XIII(A) - Training	Payment of the EMT-Paramedic stipend will commence in the first full payroll after the employee receives the full, proper licensure, provided the employee has given the Department written notice of his/her intent to pursue such licensure at least six (6) months prior to the start of the fiscal year in which such licensure is expected to be earned.
Section XIII(A) – Training	Change “With Fire Protection Certificate” to “In a profession-focused major in the fire and emergency services field such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; Paramedic Care.”

This tentative agreement has been approved by both the Union and the Portsmouth Fire Commission. I believe that this tentative agreement is both fair and reasonable, and I recommend it to you for ratification. I will also be happy to answer any questions that you have about this tentative agreement.

WORKING AGREEMENT

BETWEEN

CITY OF PORTSMOUTH, NEW HAMPSHIRE

(The Portsmouth Board of Fire Commissioners)

AND

FIREFIGHTERS ASSOCIATION OF PORTSMOUTH, NEW HAMPSHIRE

LOCAL #1313

AFFILIATED WITH

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

July 1, ~~2014-2019~~ through June 30, ~~2019~~2023

INDEX

ABSENTEEISM20

APPENDIX 123

BUILDING MAINTENANCE AND OTHER DUTIES19

CHECK OFF5

 APPOINTMENTS AND PROMOTIONS7

 NEW EMPLOYEES5

 PERSONNEL REDUCTION6

 PLATOON AND DUTY STATION CHANGES7

 WORKING OUT OF CLASSIFICATION7

 PROMOTIONS6

 REHIRED EMPLOYEES6

 SENIORITY6

 SENIORITY LISTS6

 SHIFT ASSIGNMENT6

 SENIORITY6

 UNION DUES 5

CLOTHING ALLOWANCE10

COLA ADJUSTMENT 9

DEFENSE OF LAW SUITS17

DEFERRED TAX SAVINGS PLAN17

DRUG AND ALCOHOL TESTING 22

EMERGENCIES10

EQUAL EMPLOYMENT OPPORTUNITY21

EXCHANGE OF DAYS OFF11

GRIEVANCE PROCEDURE17

HOLIDAYS AND HOLIDAY PAY11

HOURS OF DUTY.....	10
INSURANCE	
ACCIDENTAL INJURIES.....	14
DENTAL PLAN.....	17
HEALTH INSURANCE.....	16
LIFE INSURANCE.....	17
LONG TERM DISABILITY.....	17
LEAVES	
DISABILITY BANK.....	13
EARNED TIME.....	11
EMERGENCY LEAVE.....	16
EXHAUSTION OF EARNED TIME.....	14
MILITARY LEAVE.....	16
LODGING.....	10
LONGEVITY BONUS.....	9
MANAGEMENT RIGHTS.....	4
PENSION AND RETIREMENT PLAN.....	19
PREAMBLE.....	4
PROTECTION OF PROPERTY AND EQUIPMENT.....	19
RECOGNITION.....	4
SAFETY AND HEALTH.....	18
SALARY SCHEDULE.....	7
SIGNATURES.....	22
SUBSTANCE ABUSE TESTING.....	25
TEMPORARY ALTERNATIVE DUTY.....	14
TRAINING.....	20
UNION BUSINESS.....	17
UNION SECURITY.....	5
WORKING RULES.....	19

PREAMBLE

The City of Portsmouth, hereafter referred to as City and the Firefighters Association of Portsmouth, New Hampshire, Local #1313, affiliated with the International Association of Firefighters, hereinafter referred to as Union, in order to arrange and maintain fair and equitable labor rates and operating conditions, and to promote methods of fair and amicable means of adjustment of any and all disputes which may arise between the parties hereto, and to continuing the existing harmonious relationship between the City and its permanent employees of the Fire Department, and to promote the morale, equal rights, well-being and security of the employees covered by this Agreement, agrees as follows:

SECTION I. RECOGNITION

The City and the Board of Fire Commissioners recognizes the Union as the sole collective bargaining agent and sole exclusive representative of all permanent fire fighters of the Portsmouth Fire Department with the rank of private or Firefighter Engineer who are now or become during the term of this Agreement, members of the Union for the purpose of bargaining with respect to wages, hours of duty and working conditions, subject to conditions of probation. Discharge of probationary employees may be with or without cause and shall not be subject to the grievance procedure or to a PELRB charge for breach of contract.

SECTION II. MANAGEMENT RIGHTS

The City and the Fire Commission, as appropriate, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws of the Constitution of the State of New Hampshire and of the United States. Further, all rights which ordinarily vest in and are exercised by employers except such as specifically relinquished herein are reserved to and remain vested in the City.

- A. To manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of materials, tools and equipment to be used and the discontinuance of any services, material or methods of operation;
- B. To introduce new equipment, methods, machinery or processes, change or eliminate existing equipment and institute technological changes, decide on materials, supplies, equipment and tools to be purchased;
- C. To determine the number, location and type of facilities and installations;
- D. To determine the size of the work force and increase or decrease its size;
- E. To hire, assign, and layoff employees to reduce the workweek or the workday or effect reductions in hours worked by combining layoffs and reductions in workweek or workday;
- F. To permit municipal employees not included in bargaining unit to be allowed to perform bargaining unit work in case of emergency only after all permanent fire fighters have been assigned;

- G. To direct the work force, assign work and determine the number of employees assigned to operations;
- H. To determine lunch, rest periods, and cleanup times, the starting and quitting time and the number of hours to be worked over forty-two;
- I. To establish a work schedule;
- J. To discipline and discharge employees for just cause;
- K. To adopt, revise and enforce working rules and carry out cost and general improvement programs;
- L. To transfer, assign and re-assign employees from one assignment, division or shift to another;
- M. To determine the qualifications and competency of employees to perform available work subject to the terms of this Agreement.

This article shall not give authority to the City or the Commission to vary terms of this Contract without mutual agreement to the parties hereto.

SECTION III. UNION SECURITY

The City and the Commission agrees that all employees as defined in Section I, may become members of the Union within thirty (30) days. The City and the Commission agree not to interfere with the decision to become a Union member, if he or she so desires. The Commission shall have the exclusive right to determine the selection of applicants for employment and shall be the sole judge of the requirements and qualification of such applicants.

SECTION IV. CHECK OFF

- A. **UNION DUES:** Upon written authorization by an employee, as defined in Section I., approved by the Union President, the City agrees to deduct from each employee the sum authorized per month for Union dues, to be collected from the first paycheck of each month only, and deliver the same to the Union Treasurer at his/her request, providing, however, that if any employee has no check coming to him, or the check is not large enough to satisfy the assignment, then and only in that event no collection will be made from the said employee for that month. In no case will the City attempt to collect fines or special assessments for the Union. The Union agrees in return for itself and its members that they will individually and collectively perform loyal and efficient work and service and will use their influence and best efforts to promote and advance the interest of the citizens of Portsmouth. The Union will indemnify and save the Department harmless against any liability which shall arise because of dues checked off under this Section.
- B. **NEW EMPLOYEES:** 1). All new employees shall have no seniority rights during their probationary period. All employees who have worked twelve (12) months and satisfactorily complete their probationary period shall be known as permanent employees. Seniority shall commence from the first day of employment as a probationary employee on a full time basis.

2.) Effective January 1, 1996, all new employees shall either possess the EMT-I or EMTI/A-EMTI certification within one year of their date of employment and maintain it throughout his/her career.

C. **REHIRED EMPLOYEES:** Any rehired employee who has already served a probationary period shall not be required to serve another probationary period.

D. **SENIORITY LISTS:** The Commission shall establish a seniority list and it shall be brought up to date on January 1st of each year and immediately posted thereafter on the Central Fire Station Bulletin Board for a period of no less than thirty (30) days and a copy of same shall be mailed to the Secretary of the Union. Any objection to the Seniority List as posted shall be reported to the Fire Chief within fourteen (14) days from the date such list is posted or it will stand approved.

E. **SHIFT ASSIGNMENT:** It shall be the goal of the Commission and the Union to insure that all fire fighters are proficient in operating all fire equipment and apparatus in the Department. In order to insure continued proficiency, shift assignments shall be made by the Chief of the Department based upon:

1 **SENIORITY:** A firefighter's normal work assignment shall be determined on the basis of seniority. The most senior employee on a shift shall select his/her preference for his/her job assignment and shall be assigned to said job provided he/she is qualified for the position consistent with the requirement for the department to maintain a level of proficiency of the department as set forth above. The Department Head shall be the sole judge of qualifications and ability provided that such judgment shall not be exercised arbitrarily or unreasonably. At the request of the Union, the Department Head shall provide written reasons for the denial of a senior employee's request to an assignment and the same shall be subject to the grievance procedure under this contract. For purposes of this Section, the ambulance shall not be considered as part of the firefighter apparatus. The least senior employee on a shift shall be assigned to ambulance duties unless a firefighter with a higher level of medical certification (EMT-I, EMTI/A-EMT) is on duty. At least one EMT-I or EMTI/A-EMT shall be assigned to an ambulance when possible.

F. **PROMOTIONS:** The parties will follow the policies as outlined in Fire Department Policy #100-20 with respect to promotions.

G. **PERSONNEL REDUCTION:** In case of personnel reduction in the Fire Department personnel, an employee with the least seniority shall be laid off first and employees with the most seniority shall be rehired first for a period of three (3) years after the lay-off. A laid-off employee must inform the Department of his/her current address and respond within ten (10) business days of the postmark of the recall notice.

H. **SENIORITY:** Seniority shall also be the ruling factor in choice of vacation dates.

I. **APPOINTMENTS AND PROMOTIONS:** All appointments and promotions shall be made from the ranks, provided the member appointed or promoted is qualified for the positions

J. **PLATOON AND DUTY STATION CHANGES:**

1. The Chief of the Department may detail a firefighter from one station to another or from one platoon to another as part of a tour of duty when, in his/her judgment, it is in the best interest of the Department.
2. Compensation for such platoon change will be based on the total number of hours worked in each cycle. Any amount of time required over the total number of hours usually worked in a work cycle will be paid at time and one-half at that person's usual hourly rate of compensation. The work cycle is defined as that number of weeks in which a complete rotation of schedule is established.
3. **WORKING OUT OF CLASSIFICATION:** Whenever possible only those fire fighters whose names are on the Officers Eligibility List shall be designated to temporarily fill an officer assignment. The City agrees to accept the revised position classification for the position of firefighter.

SECTION V.

A. **SALARY SCHEDULE:**

~~July 1, 2014 through June 19, 2016~~ Effective July 1, 2019, base wages will be as follows:

	<u>Firefighter/EMT Intermediate</u> <u>Advanced EMT</u>
<u>Start of probation</u>	<u>\$43,899</u>
<u>End of probation</u> <u>(12 months)</u>	<u>\$46,303</u>
<u>End of 24 months</u>	<u>\$48,849</u>
<u>End of 36 months</u>	<u>\$51,535</u>
<u>End of 48 months</u>	<u>\$54,370</u>
<u>End of 60 months</u>	<u>\$57,362</u>

- Formatted: Left
- Formatted: Centered
- Formatted: Left

Notwithstanding the preceding Salary Schedule, firefighters hired prior to January 1, 1996 shall not be required to obtain EMT-I or EMTI/A-EMTI certification.

~~FireFighter/EMT Basic~~ — ~~FireFighter/EMT~~

Intermediate/Advance EMT

Start of Probation period	\$38,218	\$39,365
End of Probation 12 months	\$40,320	\$41,530
End of 24 months	\$42,538	\$43,814
After One additional Year 36 months	\$44,876	\$46,223
After One Additional Year 48 months	\$47,345	\$48,765
After 5 years 60 months	\$49,951	\$51,449

Effective June 20, 2016 wages will be adjusted by 2.5%.

FireFighter/EMT Basic	FireFighter/EMT Intermediate/Advance EMT
-----------------------	---

Start of Probation period	\$39,174	\$40,349
End of Probation 12 months	\$41,328	\$42,568
End of 24 months	\$43,601	\$44,909
After One additional Year 36 months	\$45,998	\$47,379
After One Additional Year 48 months	\$48,528	\$49,984
After 5 years 60 months	\$51,200	\$52,736

Effective, July 1, 2016 wages will be adjusted by the 10 year rolling COLA average of 2.00%.

FireFighter/EMT Basic	FireFighter/EMT
-----------------------	-----------------

~~Intermediate/Advance EMT~~

Start of		
Probation period	\$39,957	\$41,156
End of Probation		
12 months	\$42,155	\$43,420
End of 24 months	\$44,473	\$45,807
After One additional		
Year 36 months	\$46,918	\$48,326
After One Additional		
Year 48 months	\$49,499	\$50,984
After 5 years		
60 months	\$52,224	\$53,790

COLA ADJUSTMENT

Effective July 1, ~~2017-2020, July 1, 2021 and July 1, 2018~~~~22~~, a COLA Adjustment percentage increase shall be computed which shall not be less than 2% nor more than 5. The COLA Adjustment percentage shall be determined by the rolling ten (10)-year average in the CPI-U for the Boston-Cambridge-Newton, MA-NH all items index as computed by the Bureau of Labor Statistics of the U.S. Department of Labor for the ten (10) most recent calendar years preceding the July 1 adjustment. BLS's calendar year for this index is November through November, it is not published on a December to December basis. The reference base is 1982-1984 equals 100 until BLS updates the reference base at which time the parties agree to adopt the official reference based as used by BLS.

Formatted: Indent: Left: 0", Space Before: 0 pt, After: 0 pt

Thus if the CPI-U for the Boston SMSA calendar year 2003 (Nov. 2002-Nov. 2003) is 1.5% the applicable COLA Adjustment on July, 2004 would be 2%; if it is 3.5% the applicable COLA Adjustment would be 3.5%; if it is 5.5% the applicable COLA Adjustment would be 5.0%.

Applicability After Contract Expires: It is clearly understood that in the event that the four year Working Agreement expires without a successor Working Agreement being settled prior to July 1, ~~2019-2023~~ that no further COLA Adjustments after July 1, ~~2018~~ ~~2022~~ will be generated under the Working Agreement even if the Working Agreement has an evergreen clause. It is further agreed that continuation of COLA Adjustments are not to be deemed "status quo" as the term has been used by the PELRB in the event that a successor agreement has not been settled by July 1, ~~9~~~~2023~~.

In addition to the foregoing COLA adjustments, base wages will also be increased by .50% on July 1, 2020 and .50% on July 1, 2021.

B. **LONGEVITY_BONUS:** In the December following five (5) years of municipal

service, an employee shall become entitled to an annual longevity bonus. ~~Effective July 1, 2014, bonus shall be to be~~ paid in accordance with the following schedule:

Longevity Step	Bonus	
	July 1, 2014	July 1, 2016
0 through 4 years of service	\$ 0	
5 years of completed service	\$116.37	\$118.70
6 years of completed service	\$151.28	\$154.31
7 years of completed service	\$186.19	\$189.91
8 years of completed service	\$221.10	\$225.52
9 years of completed service	\$256.02	\$261.14
10 years of completed service	\$290.92	\$296.74
11 years of completed service	\$325.84	\$332.36
12 years of completed service	\$360.75	\$367.97
13 years of completed service	\$395.66	\$403.57
14 years of completed service	\$430.57	\$439.18
15 years of completed service	\$465.48	\$474.79
16 years of completed service	\$500.39	\$510.40
17 years of completed service	\$535.31	\$546.02
18 years of completed service	\$570.21	\$581.62
19 years of completed service	\$605.13	\$617.23
20 years of completed service	\$640.04	\$652.84
21 years of completed service	\$698.22	\$712.18
22 years of completed service	\$814.60	\$830.89
23 years of completed service	\$930.97	\$949.59
24 years of completed service	\$1,047.34	\$1,068.29
25 years of completed service	\$1,163.70	\$1,186.97
26 years of completed service	\$1,280.07	\$1,305.67
27 years of completed service	\$1,396.45	\$1,424.38
28 years of completed service	\$1,512.82	\$1,543.08
29 years of completed service	\$1,629.19	\$1,661.77
30 years of completed service	\$1,745.57	\$1,780.48

- C. **CLOTHING ALLOWANCE:** Upon the submission of approved receipts, t~~The~~ City agrees to ~~credit-reimburse~~ each firefighter ~~up to with a clothing allowance of~~ \$600700.00 per year ~~as a clothing allowance toward the purchase of Department approved items. The Fire Chief or his/her designee agrees to meet with Union leadership at least annually to discuss the items to be included on an approved list for reimbursement. -payable by July 15 of each year.~~ This Section shall not be deemed to cede or waive any management rights regarding the Commissions authority to establish and implement uniform policies and regulations. In addition to the clothing allowance, each employee shall receive protective clothing for firefighting duties which require special clothing at the expense of the City. All

special clothing will meet N.F.P.A. standards OSHA standards or standards as set by the Board of Fire Commissioners. It is understood that when standards are changed that new clothing may be phased in over time The City will provide one Class A uniform to new firefighters at the end of their probationary period of employment.

- D. **LODGING:** The City agrees to provide beds, bedding, linens, blankets, and towels for each firefighter from 10:00 p.m. to 7:00 a.m.

SECTION VI.

- A. **HOURS OF DUTY:** The present hours of duty will remain in force. The 42-hour (average) workweek shall consist of 14, ten (10) hour day shifts and 14, fourteen (14) hour night shifts over an eight (8) week cycle per schedule in effect. The starting times being 7:30 a.m. and 5:30 p.m. Chart of shifts and cycle attached (Appendix A).
- B. **EMERGENCIES:** All members of the Fire Department shall be subject to recall for emergencies at the discretion of the Chief of the Department or his assistant and the members of Unions shall be paid the rate of pay equal to one and one-half (1 1/2) times their usual hourly rate for all hours worked under such emergency conditions., In the event that a firefighter covered by this Agreement works less than two (2) hours in response to such emergency, he/she shall be paid for two (2) hours at such overtime rate. Firefighters who work less than two (2) hours in response to emergencies, shall be paid for two (2) hours at such overtime rate. Call-back will not be compounded, pyramided or added to compensation for any purpose.

An employee who is recalled for non-emergency reasons after hours shall be paid a minimum of two (2) hours at one and one-half (1/2) times their rate of pay providing that if such employee's regular duty commences within two (2) hour block, he/she will be paid at the overtime rate for only the time before regular duty. Once on regular duty, his/her normal rate of pay shall apply. Call-back pay will not be compounded, pyramided or added to compensation for any purpose.

- C. **EXCHANGE OF DAYS OFF:** The Fire Chief may grant the request of any two members of the Department to exchange hours of duty of days off. All exchanges must take place within the calendar year. Applicable request forms will be completed, signed by the shift officer and approved by the Fire Chief prior to the exchange of hours of duty, whenever possible.
- D. **HOLIDAYS AND HOLIDAY PAY:** All employees covered by this Agreement shall be compensated for all holidays listed below at a rate of pay established by the annual base salary divided by 260.

New Year's Day
Dr. Martin Luther King, Jr. Holiday
Washington's Birthday
Memorial Day
Veteran's Day

1/2 Day on Good Friday
 Independence Day
 Labor Day
 Columbus Day
 Thanksgiving Day
 Day after Thanksgiving
 Christmas Day
 1/2 Day the day preceding Christmas Day when Christmas Day comes between Tuesday through Friday.

SECTION VII.

A. EARNED TIME. It is the intent of this policy to explain the provisions and conditions of the Earned Time Program. The program has been created to provide, as equitably as possible, paid time off, to be used at the employee's discretion, while protecting an allotment of time for disability, hospitalization or injury.

Earned time is a combination of vacation and personal absence days. A separate account per year is accumulated for disability time (seven days per year).

Earned Time is an alternative approach to the traditional manner of converting absences for vacation, sick leave, interim disability, maternity leave, by combining all these plans into one program. Instead of dividing benefits into a specific number of days for each benefit, Earned Time puts these days together into a single benefit. The exact amount of Earned Time accrued each year will depend on the years of service with the Portsmouth Fire Department.

Effective the date of this policy, employee's vacation time will be converted to earned time. Employee's sick time balance will be converted to the Disability Bank. Employees will accrue earned time based on the following schedule:

<u>Years of Service</u>	<u>Earned Time</u>	<u>Accrual Rate</u>	<u>Disability Bank</u>	<u>Total Combined</u>
1 - 5 yrs. Incl.	17	(1.417 days/month)	7	24
6 years incl.	18	(1.5 days/month)	7	25
7 years incl.	19	(1.583 days/month)	7	26
8 years incl.	20	(1.667 days/month)	7	27
9 years incl.	21	(1.75 days/month)	7	28
10 years incl.	22	(1.833 days/month)	7	29
11 years incl.	23	(1.917 days/month)	7	30
12 years incl.	23	(1.917 days/month)	7	30
13 years incl.	24	(2 days/month)	7	31
14 years incl.	24	(2 days/month)	7	31
15 years incl.	25	(2.083 days/month)	7	32
16 years incl.	25	(2.083 days/month)	7	32
17 years incl.	26	(2.167 days/month)	7	33
18 years incl.	26	(2.167 days/month)	7	33

19 years incl.	27	(2.25 days/month)	7	34
20 years incl.	28	(2.333 days/month)	7	35
25 years incl.	29	(2.416 days/month)	7	36

All absences from regularly scheduled work will be charged to an employee's Earned Time. Exceptions are:

1. Administrative Leave
2. Unpaid leaves of absence
3. After absence due to personal illness/injury for more than three consecutive working days an employee may use his/her Disability Bank, if available.
4. Emergency Leave
5. Military Leave
6. Worker's Compensation
7. Disciplinary Suspension

Applicable request forms will be completed, signed by the Shift Officer and approved by the Fire Chief prior to the use of earned time, whenever possible.

Earned Time begins accruing on the 15th of the month after the date of hire. Employees may use their earned time as soon as it earned once they have completed their probationary period.

| Accumulated Earned Time may be used for personal illness or accident, immediate family illness or accident, or compelling personal reasons.

| Earned Time must be taken in one-half or full shift increments.
All Earned Time payments are computed at the employee's current base rate.

Employees are responsible for the Earned Time balance reflected on their pay stubs. Any errors should be reported immediately.

At separation, any unused earned time days will be cashed out at full value.

Unused Earned Time Carryover

| Employees are allowed to accumulate up to a maximum of 60 earned time days as of January 1st of any calendar year. Any days over the 60 day limit but no more than ten (10) in a year may be cashed out at fifty percent (50.0%) or deposited to the Disability Bank. Any days over the 60 day limit but no more than 10 in a year may be cashed out by an employee hired after January 1, 1996 at ninety percent (90.0%) or deposited to the Disability Bank.

Disability Bank

In addition to the original sick leave balance that was transferred to the Disability Bank at the time this program was implemented, days will accumulate at the rate of seven (7) days per year (or .583 per month).

The Disability Bank hours are to be used for extended illness, injury, disability related to pregnancy, or hospitalization only. Usage of the Disability Bank commences with the 4th consecutive day of absence from work due to illness or injury. A physician's report must accompany the request to use the Disability Bank Days. Periodic updates from the employee's physician may be required. In the event that an employee is hospitalized or has surgery (this includes day surgery procedures) for something other than a work-related problem, the Disability Bank may be used starting with the first day of hospitalization. Any disability related to pregnancy will be treated like any other medical condition.

An exception to the policy that requires the usage of three (3) Earned Time days before being permitted to access the Disability Bank when the disability is certified by a physician to be the same as for the original use or from the same cause as the original Disability Bank usage.

Disability days must be taken in one-half or full day shift increments.

Return to Work: Following a period of absence due to illness/injury, medical documentation supporting the employee's ability to perform the essential functions of the job is required prior to returning to work.

The use of the Disability Bank for extended illness or injury requires medical documentation and may indicate the need for use of the Family Medical Leave Act and the need to contact the Human Resource Department concerning long-term disability.

Employees hired prior to January 1, 1991 may accumulate Disability Bank days without limitation. Firefighters hired after January 1, 1991 shall have disability leave bank accumulation limited to 150 days. Upon death of an employee while in the employment of the City, the City shall pay to his/her spouse or next of kin an amount equal to 100% of the value of his/her accumulated disability bank. Upon retirement from employment, upon voluntary termination of his/her employment, the City shall pay to the employee an amount equal to 90% of the value of his/her accumulated disability bank. Firefighters hired after January 1, 1996 shall receive no pay out at all for accumulated disability bank either for retirement or termination.

Exhaustion of Earned Time/Disability Bank. An employee on an approved absence who has used all Earned Time and Disability Bank days will be placed on leave without pay. If the illness/injury qualifies for FMLA leave benefits will continue for the period of the Family Medical leave. Employees will not accrue earned time while they are on a leave without pay status.

D. **ACCIDENTAL INJURIES:** The City shall provide and maintain workers' compensation insurance coverage on each employee covered by this Agreement.

1. In case of accidental personal injury to any employee covered by this Agreement arising out of and/or in the course of his/her employment, the City shall adjust the employee's pay so that he/she nets the same amount as if he/she had actually worked. This shall be accomplished by either paying

the difference to the employee, or if the workers' compensation benefit is more than the net pay, the City shall deduct the amount of the difference made until the employee is able to return to work, but in no event shall such payments by the City exceed 52 weeks.

2. If, during the incapacitation of any employee due to the injury arising out of the course of his/her employment, the employee shall be entitled to earned time in accordance with this Section VII, Paragraph A, then said employee shall be indemnified in pay or awarded earned time at a later date equal to the earned time lost because of said injury at the discretion of the Fire Chief.

E. TEMPORARY ALTERNATIVE DUTY

(1) In compliance with RSA 281-A:23-b, the Commission may provide temporary alternate duty assignments (light duty) for injured employees.

(2) Employees covered by this working agreement who have been on authorized leave due to illness or injury, may request a light duty assignment. The employee must provide management with a release from his or her physician utilizing the State forms outlining the duties that can and can not be performed. The employee will return to a light duty assignment within the Fire Department. Said assignments shall be in accordance with the following:

- a) Employees who request light duty in accordance with this section will have the same work schedule, subject to authorization from his/her physician and the availability of a light duty assignment. The Department will make a reasonable attempt to insure that the employee's days off and hours of light duty will coincide, to the extent possible, with the firefighters selected shift. If a firefighter can not be assigned to his/her previously selected shift due to the lack of light duty work, the Department shall consider the firefighters individual circumstances in making a light duty assignment.

(3) Nothing in this agreement shall be construed as conflicting with the injured leave section of the contract.

(4) It shall be entirely optional for employees with non-work related injuries or illnesses to accept a light duty assignment. It is the sole discretion of the Fire Chief whether or not to offer a light duty assignment to firefighters who are injured off-duty. Employees who return to a light duty position due to an off duty injury will receive compensation for the hours worked. Employees with work related injuries shall have priority for light duty assignments.

(5) It is understood by the parties that light duty is not intended to be used as a means of punishment. The Fire Chief will not require a firefighter to report for light duty if there is no light duty work available.

(6) Light duty assignments shall not affect the shift assignments or shift bid possibilities, of other employees. Firefighters assigned to light duty shall be assigned to the same shift as their assignment before the injury, subject to the limitations in Paragraph 2 (a) above.

(7) The Fire Chief may require a firefighter to be examined by the Work Performance Center anytime after four weeks if the Chief has a concern that the firefighter is fit for regular duty. The firefighter may request a mutually acceptable neutral physician to render an opinion if he/she contests the Fire Department's ruling. The neutral physician shall be designated jointly by the City's physician and the employee's physician as soon as practicable under the circumstances. The two (2) physicians shall endeavor to designate a neutral physician capable of examining the employee within seven (7) calendar days of his/her designation as neutral physician. The costs of the neutral physician shall be borne by the City. If the report of the neutral physician supports the assignment of full duty, the employee shall forthwith report for appropriate duty. If the report does not support the assignment of full duty, the employee shall remain on light duty status. Each physician who administers an examination under this procedure shall be provided, by the City a detailed analysis of the physical requirements of the task(s) to which the employee shall be assigned if returned to limited duty, and shall be asked to make his/her determination of the fitness of the examined employee to perform limited duty based on the specific physical requirements of each limited duty task. Each physician who determines that an examined employee is capable of being assigned to limited duty shall be required to specify in his/her report which, if any, limited duty task(s) the examined employee is capable of performing, and the recommended number of hours per day and per week that the employee may be assigned to limited duty.

(8) Firefighters assigned to light duty are not eligible to work any overtime.

(9) An employee whose physician has approved him/her for a light duty assignment and who loses any workers compensation benefits for refusal to accept temporary alternate duty offered by the Fire Department shall not be eligible for injured leave.

F. HEALTH INSURANCE:

Health Insurance: Should the parties agree in writing to establish a cafeteria style plan dealing in insurance issues during the course of this four (4) year agreement - such plan would only become effective if ratified by the Association, approved by the Fire Commission and approved by the City Council.

~~Effective March 1, 2014, the City will pay up to a maximum of 84.5% of the premium of the cost of a Matthew Thornton Plan. If an employee chooses to enroll in BlueChoice or Comp 100, the City will pay only 84.5% of the Matthew Thornton Premium towards the higher premium plans.~~

~~The City will offer Employees health insurance coverage under the AccessBlue 20 plan with a \$10/\$20/\$45 prescription plan. Effective September- July 1, 2016-2019, the City will pay 90.89% of the premium cost of the cost of the AccessBlue 20 with a \$10/\$20/\$45 prescription plan and the Employee will pay 11% of the premium cost. If an employee chooses to enroll in BlueChoice, the City will pay only 90% of the AB20 Premium towards the higher premium plans. Effective July 1, 2020, the City will pay 87.5% of the premium cost, and the Employee will pay 12.5% of the premium cost. Effective July 1,~~

2021, the City will pay 85% of the premium cost, and the Employee will pay 15% of the premium cost.

If the Affordable Care Act generates any kind of "Cadillac Tax" or similar penalty on the basis of the parties' current health insurance plan, the parties will reopen the contract on the issue of health insurance only to select a comparable health insurance plan that does not generate any kind of "Cadillac Tax" or similar penalty.

Local #1313 will serve on the City-wide committee to study health insurance options

SchoolCare will be added as a coverage option if the unit in its entirety, decides to make a change in coverage.

Effective as soon as practicable after City Council approval of this Agreement, the City shall offer to bargaining unit members health insurance for same-sex domestic partners. Eligibility for coverage under this provision shall be governed by the rules in place for employees of the University of New Hampshire as of November 1, 2003. (Appendix II).

- G. **EMERGENCY LEAVE:** In addition to sick leave, all persons covered by this Agreement shall be entitled to emergency leave up to three (3) calendar days, with pay, if needed, if death in the family. An additional two (2) days may be granted by the Chief or his designee at his discretion for a death in the immediate family. Immediate family shall be defined as follows: spouse, child (including adopted children and stepchildren), parent (including parent by adoption), brother, sister, grandparent, grandchild, aunt, uncle and only the following in-laws--the grandmother, grandfather, mother, father, brother or sister of the employee's current spouse.
- H. **MILITARY LEAVE:** Any employee covered by this Agreement who is called to active military service as a member of the Armed Forces of the United States, or who is engaged in activities in the reserve forces of the National Guard shall be granted a leave of absence to perform such military duties and the City shall pay to said employee the difference in salary between the pay which he/she receives from the United States and his/her base pay as a firefighter. Said employee shall not suffer any loss of leave time or other benefits because of said military duty. Such leave shall be considered "Military Leave". Said military leave shall not exceed fourteen (14) days per year.
- I. **INSURANCE DENTAL PLAN:** The City agrees to provide the single (employee), two-person or family membership in the Delta Dental Plan V.
- J. **LIFE INSURANCE:** Within sixty (60) days after this Agreement is approved, the City shall provide a group life insurance policy for eligible members of the bargaining unit in the amount of the employee's annual base salary, in accordance with the conditions set forth in the insurance policy.
- K. **LONG TERM DISABILITY:** Within sixty (60) days after this Agreement is approved, the City shall obtain disability Income Insurance for eligible members of the bargaining unit equal to 66 2/3% of the base monthly salary not to exceed five thousand dollars (\$5,000) per month. Said insurance shall be effective after

the 61st day of disability. Said insurance shall continue as long as the member remains disabled or until age sixty-five and shall be coordinated with Social Security.

- L. **DEFERRED TAX SAVINGS PLAN:** Employees shall have the option to participate in the Professional Firefighters of NH Deferred Tax Savings Plan through payroll deduction.

SECTION VIII. DEFENSE OF LAW SUITS:

The City shall undertake to defend and pay any judgment issued against any employee covered by this Agreement arising out of an act or omission of the employee for personal injury, including death or damage to property while the employee was engaged in the performance of his/her duties as a firefighter.

SECTION IX. UNION BUSINESS:

- A. Officers of the Union and their representatives shall be entitled to leave with pay for official union business and conventions provided 48 hours notice is provided to the Chief. The leave will be limited to a total of seven (7) days per year and may be taken in whole or half day increments.
- B. The above listed Union leave is in addition to leave which is granted for fire fighters acting in official capacities in grievance hearings, arbitration hearings, negotiation sessions and state legislative business. It is understood that the number of fire fighters eligible to receive leave with pay during negotiations shall not exceed two.

SECTION X. GRIEVANCE PROCEDURE:

The purpose of the grievance procedure is to settle employee grievances on as early a basis as possible and as quickly as possible to maintain efficiency and employee morale. It is the responsibility of all parties to this contract to come to a quick and amicable solution to the employee grievances. If any difference arises between the Management and an employee or employees as to the application of any of the provisions of this Agreement or if there is any grievance by an employee or employees with respect thereto, notice must be given to the Fire Chief or his designee within two (2) days of the employee's knowledge of its occurrence and an earnest effort shall be made to adjust such difference, complaint, or grievance otherwise the grievance shall be waived by negotiations pursuant to the following procedures:

- A. First, an effort shall be made to resolve said differences by a meeting between the employee or employees, the Union Steward, and the Fire Chief or his designee;
- B. If such grievance is not resolved within two (2) calendar days thereafter, the employee or employees shall present his/her grievance to the Executive Board of the Union in writing within two (2) calendar days. The Executive Board of the Union shall then discuss the grievance in accordance with the Constitution and Bylaws of the Union and handle all grievances so presented to them within two (2) calendar days, and report their action to the subsequent meeting of the Union.

- C. In the event the Executive Board decides that the grievance is justified it shall notify the Chief of its decision in writing with a request to meet for the propose of resolving said grievance within two (2) calendar days. Said meeting shall take place within seven (7) calendar days of receipt by the Chief of the written request of the Executive Board and an earnest effort will be made to resolve said grievance. The Chief shall, thereafter, render his decision in writing within five (5) days of said meeting.
- D. In the event the Executive Board does not accept the decision of the Fire Chief then it shall request a hearing within two (2) calendar days with the Board of Fire Commissioners in writing which shall take place within seven (7) calendar days of receipt by the Board of Fire Commissioners of said request. The parties shall meet in an effort to resolve said dispute and the Board of Fire Commissioners shall render this decision in writing within five (5) calendar days of said meeting
- E. Should the Board of Fire Commissioners decision be unsatisfactory to the Executive Board of the Union, then it shall submit the grievance to arbitration under the Voluntary Labor Arbitration Rules of the PELRB. The parties further agree to accept the arbitrators award as final and binding upon them. Cost of said arbitration shall be paid as follows: 50% by the losing party and 50% by the successful party to the complaint. To be timely under this section, the Union must request arbitration in writing both to the PELRB and the Commission within twenty-one (21) days of its receipt of the Commission's written decision.
- F. **TIME LIMIT:** A decision on the grievance shall be rendered within the time limit set forth or the grievance shall be deemed favorable to the grievant. Failure at any step of this procedure to appeal a grievance to the next step within the time limits shall be deemed to be acceptance of the decision rendered at that step.
- G. No arbitrator shall have the authority to alter or amend, add to or delete from this contract or any of its provisions. Appealability of arbitration awards under this contract shall be subject to RSA 542.

SECTION XI.

- A. **SAFETY AND HEALTH:** The City and the Union shall fully cooperate in matters of safety, health and sanitation affecting the employees. This shall include provision for proper working facilities, equipment tools, safety devices, protective clothing and other modern implements of firefighting so as to provide the City with an efficient and safety minded firefighting organization. If an employee has followed the procedures set forth in the New Hampshire Workers compensation Statute and has been advised under RSA 141-6 (regarding notification of Firefighters, etc. after exposure to infectious diseases) and the firefighter then becomes infected with said disease or disability within its normal incubation period, said disease or disability shall be considered a work related injury as defined by the New Hampshire Workers Compensation Statute whether or not the firefighter is still in the employ of the City unless there is clear and convincing evidence that the disease was contracted otherwise.
- B. **BUILDING MAINTENANCE AND OTHER DUTIES:** No employee shall be required to perform major structural alterations, repairs or renovations to existing

facilities or vehicles, or to construct or assist in the construction of new facilities during his/her regular work cycle. The Union agrees that normal, routine housekeeping and maintenance is exempt under this Section.

- C. **PENSION AND RETIREMENT PLAN:** The members of the bargaining unit shall be covered by the New Hampshire Permanent Fireman Retirement System and any amendments thereto and the City shall make such payments as may be required to provide such coverage for each employee. If any amendment requires approval, such amendment is not incorporated into this Agreement until voted by the City Council.
- D. **PROTECTION OF PROPERTY AND EQUIPMENT:** It shall be the responsibility of any employee having custody of any equipment and property to see to it that it is properly cared for, kept clean and returned to its place for storage.

SECTION XII.

- A. **WORKING RULES:** The Board of Fire Commissioners shall have the right to make such reasonable rules and regulations, not in conflict with this Agreement as it may from time to time deem best for the purposes of maintaining order, safety, and/or effective operation of the Fire Department, and to require compliance therewith by the employees after advance notice of the promulgation of any new or modified rule has been given to the Union and by posting the same on the bulletin boards for both the Central and Sub-stations. Union reserves the right to question the reasonableness of such rules or regulations through grievance and arbitration procedure up to three (3) week days after posting.

Infractions of the rules and regulations established by the City and/or the Commission as appropriate, may constitute just cause for disciplinary action, and willful violations may constitute just cause for discharge. Union will not encourage violation of any rules by its representatives or by the employees, and will assist the City and the Fire Commission in the enforcement of the rules. The Chief or his designee shall notify the Union of any claimed infraction of a rule or regulation within ten (10) working days after the department has knowledge of its occurrence, otherwise the infraction shall be waived. It is agreed that any employee may be discharged for reporting to work under the influence of intoxicating liquor while on the job, theft, or other offenses involving moral turpitude. Any employee discharged or disciplined shall be entitled to the provisions of the grievance procedure set forth herein and may be allowed a representative of his/her choosing. If it is determined or agreed at any step in the grievance procedure or decided by the arbitrator that any employee has been disciplined or discharged unjustly, the Fire Commission shall put them back on his/her job and pay the employee the amount he/she would have earned had he/she been working, without offset of outside earnings.

- B. **ABSENTEEISM:** Employees not expecting to work because of emergency or because of other justifiable causes, must notify the superior officer on duty as soon as such emergency or other just cause is known to the employee.

SECTION XIII. TRAINING

It is the goal of the department and the Union to insure that the personnel covered by this Agreement are properly trained to operate the fire equipment and apparatus of this Department. In this regard, it shall be the duty of the Department to maintain a regular training schedule covering all phases of the suggested voluntary standards for firefighting published by the New Hampshire Fire Standards and Training Commission or other curriculum approved by the Fire Chief.

The Department and the Union agree that once a proper training program has been initiated and conducted that the parties will implement the suggested voluntary standards for firefighters.

~~A. A. Certification and d~~ Degree stipends: Each firefighter who has earned and maintains the ~~certifications or~~ degree set forth below shall be entitled to an annual stipend based on the highest ~~certification or~~ degree achieved and maintained. The stipends are not cumulative.

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

Formatted: Indent: Left: 0", First line: 0"

<u>DEGREE</u>	<u>STIPEND</u>
Associates Degree	2% of base pay
Associates Degree in a profession-focused major in the fire and emergency services field, such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; and Paramedic Care.	3.5% of base pay
Bachelors Degree (Arts or Sciences)	3.75% of base pay
Bachelors Degree (Arts or Sciences) in a profession-focused major in the fire and emergency services field, such as Fire and Emergency Management; Fire Science; Fire Protection Engineering; Fire Inspection; Fire Administration; Fire and Arson Investigation; Emergency Medical Services; and Paramedic Care	4.0% of base pay

Formatted: Indent: Left: 0.25", First line: 0"

~~Associate's Degree 2%~~
~~Associates Degree 3.5%~~
~~With Fire Protection Certificate~~
~~Bachelors Degree 3.75%~~
~~Either Arts or Science~~
~~Bachelor Degree with Fire 4.0%~~
~~Protection Certificate or~~

Formatted: Indent: Left: 0"

~~Business Administration~~
~~EMT Paramedic~~ ————— ~~5% of base pay~~

~~B. B.~~ The following annual stipends will be paid. Certification must be obtained and written notification provided to the Fire Chief at least six (6) months prior to the beginning of the fiscal year in which the stipend will be paid. Payment of the EMT-Paramedic stipend will commence in the first full payroll after the employee receives the full, proper licensure, provided the Employee has given the Department written notice of his/her intent to pursue such licensure at least six (6) months prior to the start of the fiscal year in which such licensure is expected to be earned.

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.75"

<u>CERTIFICATION/SPECIALTY TEAM</u>	<u>STIPEND</u>
<u>Boat Operator (28' & over)</u>	<u>2.0% of base pay</u>
<u>Hazardous Materials Technician (START or PFD)</u>	<u>2.0% of base pay</u>
<u>Shipboard Firefighter Technician</u>	<u>2.0% of base pay</u>
<u>EMT-Paramedic</u>	<u>5.0% of base pay</u>

Formatted: Indent: Left: 0.25", First line: 0"

~~Specialty Team~~ ————— ~~Stipend~~
~~Boat Operator (28' & over)~~ ————— ~~2.0%~~
~~Hazardous Materials Technician (START or PFD)~~ — ~~2.0%~~
~~Shipboard Firefighter Technician~~ ————— ~~2.0%~~

Formatted: Indent: Left: 0.25", First line: 0"

C. It shall be the sole responsibility of the department to provide all training necessary for re-certification at the Advanced EMT or Paramedic level of certification at no cost to the firefighter. A thirty (30) day notice will be given for scheduled training. Should a firefighter miss a class for any reason, other than approved Worker's Compensation, extended sick leave with doctor's note, or funeral leave, he/she must make it up on his/her own time. All training necessary to obtain and maintain certification in the areas listed in Paragraph B above shall be the sole responsibility of the firefighter. The City will not reimburse firefighters for the cost or expenses of the training or compensate firefighters for time spent in obtaining or maintaining such certification.

Engineers. Firefighter Engineers, in addition to their normal firefighter duties, shall be responsible for having knowledge of fireground operations and procedures, and perform the position of an officer in charge within the incident command structure in the absence of a senior fire officer. Firefighter Engineers

shall also oversee the restocking and returning to service of all apparatus after an incident. A Firefighter will become eligible to receive the Engineer's stipend based on Department Policy which shall require fourteen (14) years of full-time service as a Fire Fighter in the Portsmouth Fire Department and certifications acceptable to the Chief as Driver/Operator — All Vehicles, Driver/Operator — Pumps, and Driver/Operator — Aerial Devices. The stipend shall be 3.5% of base pay.

SECTION XIV. EQUAL EMPLOYMENT OPPORTUNITY

The Fire Commission agrees that all personnel actions and employment practices will be based solely on merit and fitness in a manner that will demonstrate equal employment opportunity to all persons without regard to race, sex, color, religion or national origin, disability Viet Nam era veterans or any other protected class. It is agreed between the parties that in the policies and practices of the Union that there shall be no discrimination against any employee because of race, sex, marital status, sexual orientation, color, religion, national origin, disability, age or veterans status.

Each party agrees to advise the other of equal employment opportunity problems of which they are aware. The Commission and the Union will jointly seek solutions to such problems through personnel management procedures and programs provided in this Agreement and in the Department Regulations.

SECTION XV.

- A. The signing of this Agreement by the authorized representatives of the Union and the City shall constitute the effective date of this Agreement.
- B. This Agreement will remain effective until ~~July 1, 2019~~June 30, 2023 or until superseded by a new Agreement.
- C. Should neither party to this Agreement initiate negotiations as required by State Law, this Agreement will be considered to have been automatically renewed for another year.

SECTION XVI. DRUG AND ALCOHOL TESTING

All members will be subject to drug and alcohol testing as outlined in the policy attached as Appendix 1.

SIGNATURES

In Witness Whereof, the Parties have executed this Agreement at Portsmouth, New Hampshire, this ____ day of _____ 20172019

IAFF Local #1313

City of Portsmouth, New Hampshire
Board of Fire Commissioners

President
IAFF Local #1313

Richard Gamester, Fire Commissioner

Vice President
IAFF Local #1313

Michael Hughes Fire Commissioner

Chief Negotiator
IAFF Local #1313

Jennifer J. Mosher-Matthes,
Fire Commissioner

Thomas Closson, City Negotiator

APPENDIX I
AGREEMENT REGARDING PAYMENT OF SALARY
AND GRANTING OF LEAVE TO
ALLOW SUBSTANCE ABUSE REHABILITATION

THIS AGREEMENT is made on the date written below by the Portsmouth Fire Department and _____, member of the Fire Department.

WHEREAS, the member is employed by the City of Portsmouth Fire Department, an important public safety position, and as a condition of this employment the member shall obey the Rules and Regulations of the Department which requires the member to be alert and not under the influence of alcohol, drugs or controlled substances when on duty, not to possess or use controlled substances on Department premises, and not to engage in conduct which is violative of any criminal law, is unbecoming a member of the Department or tends to lower the service in the estimation of the public;

WHEREAS, the member has elected to undergo a rehabilitation program for substance abuse which will require him/her to be away from duty for up to thirty (30) days;

WHEREAS, the member requests that he/she be granted earned time and disability bank leave for up to thirty (30) days, (if all earned time and disability bank has been exhausted, the leave will be unpaid).

WHEREAS, the Department is committed to providing a safe substance free workplace and also is committed to assisting members of the Department who are working to overcome problems caused by substance abuse; and

WHEREAS, above all else, the Department is dedicated to providing fire protection service in a manner that enhances the safety of the public and the members of the Department.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for the good and valuable consideration, the receipt of which is hereby acknowledged, the Department and the member AGREE as follows:

1. The member shall be granted leave from all assigned duties a period of up to thirty (30) days in order to undergo treatment for substance abuse.
2. The member is hereby ordered upon completion of this leave to attend meetings of the Employees Assistance Program (EAP) sponsored by the Portsmouth Fire Department and to follow the guidelines established by the coordinator of this program for a period of one year following the date

this AGREEMENT is signed. Attendance at such meetings shall be on the members own time.

3. If the member fails to follow the guidelines of the coordinator of the program, the coordinator shall notify the Fire Chief. The Fire Chief shall impose discipline upon the member if the Chief finds that the member has not followed the guidelines established by the EAP coordinator. If the coordinator notifies the Fire Chief a second time within twelve (12) months of the date of this AGREEMENT that the member has failed to abide by the guidelines of the EAP coordinator, the Fire Chief shall order charges to be preferred against the member for failure to abide by the terms of this AGREEMENT with the Department. The member specifically agrees that his/her failing to follow the orders of the Fire Chief to attend the EAP and to abide by the guidelines of the EAP coordinator shall constitute just cause for the imposition of discipline, suspension or discharge.
4. The member agrees to submit to a physical examination and/or substance testing to determine his/her fitness for duty upon order of the Fire Chief at any time within one year of the signing of this AGREEMENT. If the member appears unfit at the time of the examination, or if the substance testing indicates the presence of alcohol or a controlled substance, the member shall be considered to be unfit for duty. Charges shall be preferred against the member by the Fire Chief for violation of the Rules and Regulations of the Department and for violation of the guidelines of the coordinator of the EAP. The member acknowledges and agrees that his/her history with the Department and the circumstances which have preceded the signing of this AGREEMENT constitutes probable cause for requiring the member to submit to such physical examination and substances testing.
5. The member acknowledges that he/she has read this AGREEMENT and that he/she understands this AGREEMENT.

Signed as a sealed instrument on this _____ day of _____.

PORTSMOUTH FIRE DEPARTMENT:

MEMBER:

Witness

SUBSTANCE ABUSE TESTING

I. The Parties recognize that illegal drug use and the abuse of alcohol by members of this Department pose serious threats to the public welfare and to the employees of the Department. It is the goal of this Policy to detect and to prevent substance abuse when ever possible and to assist in the rehabilitation of employees rather than to terminate the employment of members who are abusing drugs and alcohol. No member of the Portsmouth Fire Department will be discharged for problems caused by the use of illegal drugs or the abuse of alcohol without first having been offered the opportunity to discontinue use by treatment and enrollment in the Department Employee Assistance Program.

II. EDUCATION

The Department and Local #1313 will cooperate on an educational program that addresses all current related substance issues.

This educational program will be scheduled at reasonable intervals to ensure that not only are the goals of this rule met, but that all members are familiar with the issues, problems and current trends of thought concerning substance abuse.

III. TESTING FOR PRESENCE OF SUBSTANCES OF ABUSE

A. STANDARD FOR TESTING

The Fire Chief, or his designee, based upon reasonable suspicion, may require that a member submit to substances screening by urinalysis which shall be administered by a competent testing laboratory. Such testing laboratory to be a member of the National Institute for Drug Abuse.

"Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a prudent member to suspect that an employee is using, is in possession or control of, or is under the influence of drugs or alcohol while on duty. For purposes of this policy, "possession" shall included concealing drugs or alcohol in any place accessible to the employee while on duty, including, but not limited to a locker, bag, or clothing.

Circumstances which may constitute a basis for reasonable suspicion include but are not limited to:

Examples:

1. Direct observation of drug/alcohol use while on duty;
2. Member found to be in possession of alcohol/drugs while on duty;

3. Spontaneous unusual, abnormal, erratic, or unacceptable behavior, or behavior which otherwise indicates that the member is under the influence of an intoxicating substance (e.g.) the presence of bloodshot eyes, glassy eyes, slurred speech, lack of coordination or other indications of intoxication or substance use.
4. Documented pattern of unusual, erratic or unacceptable behavior;
5. Extended or patterned sick leave use which indicates that the member is unable to work due to substance abuse;
6. A major on duty accident or injury in which safety precautions were violated or careless acts were performed;
7. Reporting for work unfit to duty.

B. PROCEDURES FOR TESTING

All Department members initiating testing action on the basis of reasonable suspicion will be required to detail in writing the specific facts, symptoms or observations which formed the basis for their conclusion that reasonable suspicion existed to warrant testing of the member.

The initial report will be reviewed by the Fire Chief or chief officer on call who shall determine whether the request for testing is appropriate, and if so, shall order that the test be performed. The results of the test shall be provided by the laboratory only to the Fire Chief or chief officer on call, who shall provide a copy to the member and the Fire Commission.

A member who fails to undergo a test as ordered or to provide a test sample as directed by the testing laboratory will be subject to disciplinary action including possible termination.

Members returning from suspension will be tested if such is required by the Fire Chief in the order imposing the suspension.

Applicants seeking reinstatement to the Portsmouth Fire Department after resignation or termination will be subject to testing as condition of re-employment.

A drug/alcohol test shall be conducted as a component of pre-employment physical. The presence of illegal drugs shall constitute a basis for the applicant to be by-passed.

IV. COLLECTION AND TESTING PROCEDURES

THE City will follow drug and alcohol procedures contained in 49 CFR 40, entitled "Procedures for Transportation Workplace Drug Testing Programs" and 49 CFR 382 which includes preparation for testing specimen collection procedures, laboratory requirements, retention of samples and Medical Review Officer (MRO) qualifications and functions. Selection of a laboratory to implement the drug testing procedures described in this Policy shall be by mutual agreement of the parties, neither of whom shall unreasonably withhold their consent.

The collection site procedures shall provide for the collection of split sample urine specimens.

Chain of custody and quality control of samples shall follow at a minimum U.S. DOT Guidelines to assure the accuracy of collection and testing procedures. A quality control program for drug testing will be maintained including the submission of blind samples in accordance with U.S. DOT regulations to assure the accuracy of collection and testing procedures.

An employee shall, upon request, be provided a split sample at the time of testing.

If the initial test proves positive, the MRO will require a second confirmatory test. If the confirmatory test proves negative, a negative result will be reported to the employee first and then to the Fire Chief.

If the confirmatory test is positive, the MRO shall consider the test results and review the individual's medical history and/or any other relevant biomedical factors. The MRO shall interview the employee and discuss the test result at which time the employee will have the opportunity to present any relevant medical information that would provide legitimate medical explanation for a positive test result. If the MRO verifies a positive result, the MRO shall refer the employee's case to the Fire Chief, after notifying the employee of the result, for further action as provided under this policy.

If the MRO determines after the appropriate review that there is a legitimate medical explanation for the confirmed positive test result other than the authorized use of all unauthorized controlled substances, the MRO shall report this as a negative test result and so inform the employee regarding his finding which shall remain confidential.

The MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO shall cancel the test result and record it as a negative result.

Should any questions arise as to the accuracy or validity of a positive drug test, the employee may request within 72 hours of the employee's having actual notice of the positive test result, a request that the MRO direct that the split sample be tested. If the re-analysis fails to reconfirm the positive results, the MRO shall cancel the test and report the cancellation as a negative test result both to the fire Chief and the employee.

V. CONFIDENTIALITY

The MRO shall not disclose to any third party, medical information provided by the employee to the MRO as part of the testing verification process. All records pertaining to this testing shall be required to be confidential.

Any employee who is tested under these provision shall, upon written request, have access to any records relating to their test and any records relating to the results of any relevant certification review or revocation of certification proceedings.

The City shall maintain confidentiality of all records and information it has in its possession with respect to drug testing and shall not disclose this information to any third party without the written consent of the employee.

VI. EMPLOYEE ASSISTANCE PROGRAM

The Portsmouth Fire Department maintains an Employee Assistance Program (EAP) which is available twenty-four hours a day, seven days a week. This program is for the benefit of all members. Voluntary participation, which is participation because a member believes he or she may benefit by attending meetings of the EAP, is confidential and is at the option of the member.

A. REHABILITATIVE ABSENCE

Members of the Department who will benefit from treatment on an inpatient basis in a rehabilitative substance abuse program may be entitled to be carried on an earned time or disability bank leave for a maximum of thirty (30) days provided the member agrees to and signs the substance abuse agreement included in the Appendix to this rule. If all earned time and disability bank leave have been exhausted, the leave shall be unpaid. The member will participate in the EAP program, as directed by the Program Coordinator, for a period of one year from the date of entrance into the rehabilitative substance abuse program.

If the member fails to follow the guidelines of the Coordinator of the program, the Coordinator shall notify the Fire Chief. The Fire Chief may impose a suspension of five (5) days upon the member if the Fire Chief finds that the member has not followed the guidelines established by the EAP.

If the Coordinator notifies the Fire Chief a second time within twelve (12) months of the date of leave that the member has failed to abide by the guidelines of the EAP Coordinator, the Fire Chief shall order charges to be preferred against the member for failure to abide by the agreement.

Members who received leave with pay to participate in a rehabilitative absence may be tested for the presence of drugs/alcohol at any time within one year of the leave. Charges will be preferred against the member if the test indicates the member reported for duty under the influence of drugs or alcohol.

If the member returns for rehabilitative treatment at any later time the member may utilize disability bank leave or earned time in order to receive compensation, otherwise the member will be carried with loss of pay.

B. MANDATORY PARTICIPATION

There may be occasions when the Fire Chief shall require that a member participate in the EAP program, such as, for example, when a member has received a paid leave for the purpose of entering an inpatient rehabilitative program or when a member has been ordered to participate due to a violation of the Rules and Regulations of the Department. In such circumstances, the requirements for mandatory participation in the Employee Assistance Program areas follows:

PHASE 1

- 1) The member must attend a minimum of three substance abuse meetings per week for the first three months;
- 2) Two visits per week to the EAP office for three months. If a member attends the substance abuse meeting that is held at EAP quarters, it will constitute one meeting per month.

PHASE 2

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit per week to the EAP office for three months.

PHASE 3

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit biweekly to the EAP office.

PHASE 4

- 1) The member must attend a minimum of three substance abuse meetings per week for three months; and
- 2) One visit per month to the EAP office.

Attendance at substance abuse or EAP meetings shall be on off-duty time when ever possible.

Professional Firefighters of Portsmouth

FTE's	45	47	48	48	48
COLA/Wage Adjustment		2.50%	2.50%	2.50%	2.00%
Health Insurance Employee Contribution Share	10.0%	11.0%	12.5%	15.0%	15.0%

GENERAL FUND ONLY:

CURRENT CONTRACT-(Steps only/No COLA)

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	2,366,442	2,466,482	2,541,784	2,574,724	2,605,420	10,188,410
Longevity						-
Stipends	155,699	158,012	160,036	161,190	162,186	641,423
Retirement	804,311	789,710	812,977	823,236	832,773	3,258,697
Medicare	36,571	38,055	39,176	39,671	40,130	157,033
Health Ins Savings	-	-	-	-	-	-
Total	3,363,023	3,452,260	3,553,973	3,598,821	3,640,509	14,245,563

Year-to-Year CURRENT Gross Budget Change

% Change

	89,237	101,713	44,848	41,688
	2.65%	2.95%	1.26%	1.16%
	*Reduction in Retirement Rate			

277,486	Total Yr-to-Yr Increase*
8.25%	Change FY20 to FY23
2.06%	Avg % Change

PROPOSED TENTATIVE AGREEMENT- GROSS BUDGET

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	2,366,442	2,528,144	2,670,462	2,772,696	2,861,867	10,833,170
Longevity						-
Stipends	155,699	161,962	168,137	173,584	178,150	681,833
Retirement	804,311	809,453	854,134	886,536	914,741	3,464,864
Medicare	36,571	39,007	41,160	42,721	44,080	166,968
Health Ins Savings	-	(9,921)	(24,803)	(49,607)	(49,607)	(133,939)
Total	3,363,023	3,528,645	3,709,090	3,825,930	3,949,232	15,012,896

Year-to-Year PROPOSED Gross Budget Change

	165,622	180,445	116,840	123,302
	4.92%	5.11%	3.15%	3.22%
	*Reduction in Retirement Rate			

586,209	Total Yr-to-Yr Increase
17.43%	Change FY20 to FY23
4.36%	Avg % Change per yr

BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET

YEAR-TO-YEAR Change Over Prior Year Base

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	-	61,662	67,016	69,294	58,475	256,447
Longevity	-	-	-	-	-	-
Stipends	-	3,950	4,152	4,292	3,570	15,964
Retirement	-	19,743	21,414	22,142	18,669	81,969
Medicare	-	951	1,032	1,067	900	3,950
Health Ins Savings	-	(9,921)	(14,882)	(24,803)	-	(49,607)
TOTAL COST OF TENTATIVE AGREEMENT	-	76,385	78,731	71,992	81,614	308,723
		2.27%	2.28%	2.03%	2.27%	

308,723	Total Yr-to-Yr Increase
9.18%	Change FY20 to FY23
2.29%	Avg % Change

CUMULATIVE TENTATIVE AGREEMENT COST

Difference Between "CURRENT" Gross Budget and "PROPOSED" Gross Budget

Wages	FY19 Base Year	FY20*	FY21	FY22	FY23	Projected 4-Yr Total
Salary	-	61,662	128,678	197,972	256,447	644,759
Longevity	-	-	-	-	-	-
Stipends	-	3,950	8,102	12,394	15,964	40,410
Retirement	-	19,743	41,157	63,299	81,969	206,167
Medicare	-	951	1,983	3,050	3,950	9,935
Health Ins Savings	-	(9,921)	(24,803)	(49,607)	(49,607)	(133,939)
TOTAL COST OF TENTATIVE AGREEMENT	-	76,385	155,116	227,109	308,723	767,333

767,333	Net Cost FY20-FY23
22.82%	Total Cumulative FY20-FY23
5.70%	Avg % Change per yr

Berlin

Name

Term

Phone number

Claremont

Term

Email addresses

Phone Number

Concord

Name

City Hall Address

Email link

Phone Number

Dover

Term

Address

Telephone

Email link

Physical address listed after
clicking on name for people to
write correspondence

Website encourages contacting
City Hall Address

Franklin

Name

Term

Phone Number

Email link

Keene

Name

Term

Address

Phone Number

Email to City of Keene

Laconia

Name

Ward Representation

City Hall Address

City Hall Phone Number

Email link

Lebanon

Name

Term

Ward Representation

Address

Phone Number

City Email Addresses

Manchester

Name

Ward Representation

Address

Phone Number

Email link

Nashua

Name

Ward Representation

Address of City Hall

Mailing Address PO Box for
City Hall

City Hall Phone Number

Councilor Home Number

Email link

Rochester

Name

Address

Phone Number

Email link

Contact Information listed City

physical address

Somersworth

Name

Term

Ward Representation

Physical Address

Address at City Hall

Phone Number

Email link

TO: Portsmouth City Council
FROM: Valerie Rochon, President, Chamber Collaborative, and the
Board of Directors of the Chamber Collaborative
DATE: August 20, 2019
RE: Publication of Personal Home Addresses

During the August 12, 2019 City Council meeting, Councilor Pearson proposed that home addresses for Councilors and speakers at City meetings be removed from general publication, including on the City's website and in public meeting Minutes.

The Chamber Collaborative's Board of Directors would like to support that suggestion because a) the practice is outdated as there are many forms of communication other than by postal mail that can be used to reach Councilors and speakers, and b) speakers might be reluctant to speak in fear that the publication of their home address could put them and their families at risk for retaliation or harassment.

Thank you for your consideration.

Best,
Valerie

Valerie T. Rochon, President & Chief Collaborator
The Chamber Collaborative of Greater Portsmouth
500 Market Street; P.O. Box 239
Portsmouth, NH 03802 U.S.A.
Direct: 603.610.5517; Fax: 603.436.5118
Valerie@PortsmouthCollaborative.org
www.PortsmouthCollaborative.org
www.GoPortsmouthNH.com

The Chamber _____
COLLABORATIVE
_____ of Greater Portsmouth

Return to:
Stebbins, Lazos & Van Der Beken PLLC
889 Elm St, 6th Floor
Manchester, NH 03101
Attn: Robert A. Previti, Esq.

AMENDMENT TO EASEMENT AGREEMENT
TAX MAP 124 LOT 10 (CANOPY)

This AMENDMENT TO EASEMENT AGREEMENT TAX MAP 125 LOT 10 (CANOPY) (this “*Amendment*”) is entered into as of the ___ day of [____], 2019, by and between the **City of Portsmouth**, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire 03801 (the “*City*”) and **Vaughan Street Hotel LLC**, a New Hampshire limited liability company, having an address of 1359 Hooksett Road, Hooksett, New Hampshire 03106 (“*VSH*”, and together with the City, the “*Parties*”).

RECITALS

A. The Parties entered into that certain Easement Agreement Tax Map 124 Lot 10 (Canopy) dated as of February 7, 2018 and recorded at the Rockingham County Registry of Deeds in Book 5904, Page 2797 (the “*Easement Agreement*”) pursuant to which the City granted a canopy overhang easement in the public airspace to VSH, as more particularly described therein (the “*Canopy Easement*”) in the area shown as “Easement 7” on the plan entitled “License, Easement & Land Transfer Plan of Tax Map 123, Lot 15 & Tax Map 124, Lots 10 & 11, Vaughan Street & Green Street, Portsmouth, New Hampshire” dated August, 2017 by Doucet Survey Inc. and recorded in the Rockingham County Registry of Deeds as Plan # D-40760 (the “*Easement Area*”).

B. VSH has received all required variances and approvals to install an 18 square foot sign within the Easement Area (the “*Sign*”).

C. The Parties wish to amend the Easement Agreement to grant to VSH an easement within the Easement Area to install, maintain and repair the Sign.

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby amend the Easement Agreement as follows:

1. Section 1 of the Easement Agreement is hereby deleted and replaced with the following new Section 1:

1. The GRANTOR grants to GRANTEE its successors and assigns the below described easements in connection with the Subject Property in the area shown on the Easement Plan as Easement 7 as is more particularly described on Exhibit A attached hereto. The below described easements are appurtenant to the Subject Property:

EASEMENT 7 on the Easement Plan.

An easement for the purpose of constructing, maintaining, repairing and replacing a canopy overhang extending into the public air space, all appurtenant to the GRANTEE's building.

An easement for constructing, installing, maintaining, repairing and replacing an 18 square foot sign extending into the public air space, all appurtenant to the GRANTEE's building.

Said Easement 7 being described on the Easement Plan as "Canopy Easement in the City of Portsmouth Right of Way to Benefit Map 124, Lot 10.

2. **Recitals**. Recitals A through C are hereby incorporated herein by reference.
3. **Defined Terms**. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Easement Agreement.
4. **Amendments to the Easement Agreement**. Except as otherwise set forth herein, the Easement Agreement is not otherwise modified and remains in full force and effect and is hereby ratified and confirmed by the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED as of the day and year first above-written.

VAUGHAN STREET HOTEL LLC

By: _____
Name:
Its: Manager
Duly Authorized

CITY OF PORTSMOUTH

By: _____
Name:
Its:
Duly Authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This Deed was acknowledged before me on this ____ day of _____, 2019
by _____ the Manager of Vaughan Street Hotel LLC,
a New Hampshire limited liability company, on behalf of the limited liability company.
Before me,

Justice of the Peace/Notary Public
My commission expires:
Name: _____
[print]

THE STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This Deed was acknowledged before me on this ____ day of _____, 2019
by _____ the _____ of the City of
Portsmouth, New Hampshire, on behalf of the City of Portsmouth.
Before me,

Justice of the Peace/Notary Public
My commission expires:
Name: _____
[print]



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

May 24, 2019

Vaughan Street Hotel LLC
1359 Hooksett Road
Hooksett, New Hampshire 03106

Re: Property at 299 Vaughan Street, Permit LU 19-43
Assessor Plan 124, Lot 10

Dear Applicant:

The Board of Adjustment at its regular meeting on May 21, 2019, considered your application, tabled at the April 16, 2019 meeting and described as follows:

Application:

Case 4-2

Petitioners: Vaughan Street Hotel LLC

Property: 299 Vaughan Street

Assessor Plan: Map 124, Lot 10

District: Character District 5 and the Downtown Overlay District

Description: Signage and lighting for a proposed hotel

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for a individual wall sign;
- b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;
- d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and
- e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

Action:

The Board voted to remove the petition from the table and **reopen** the public hearing. The Board **clarified** that the 70± s.f. wall sign listed in the agenda as Sign #2 under Item a) should correctly be identified as Sign #5. After further discussion, the Board voted to **grant** the following:

- Item a), Sign #1 - a 124± s.f wall sign.
- Item c), Sign #2 - allowing internal illumination.
- Item e), Light L20 - allowing a luminaire at 32'9" ± above grade.

The Board voted to **deny** the following:

- Item a), Sign #5 (incorrectly designated in the agenda as Sign #2) – a 70± s.f. wall sign.
- Item b), Sign #5 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- Item d), Accent Light #1 to allow lights above 25' on the building surface.

Review Criteria:

*The above items [Item a), Sign #1, and Items c) and e)] were **granted** for the following reasons:*

- Granting these variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Allowing these signs requiring minimal relief from the ordinance and parking lot lighting that is largely obscured will not alter the essential character of the neighborhood and the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the granted signage will benefit the applicant while maintaining the essential character of the area with no detriment to the general public.
- The value of surrounding properties will not be diminished by the granted signage and parking lot lighting.
- Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions of the property which include the manner in which it is set back on streets that would be mainly travelled by seekers of this destination. The signage is appropriate to allow people in the proximity to identify the building. There are also special conditions of the structure having an elevated parking deck and an enclosing "C"-shaped structure, distinguishing it+ from other properties in the area. Due to the special conditions there is no fair and substantial relationship between the purposes of the ordinance regarding signage and their specific application to the property.

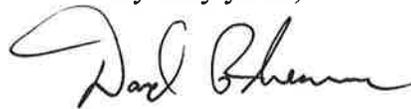
*The above items [Item a), Sign #5, and Items b) and d)] were **denied** for the following reasons:*

- All the criteria necessary to grant the variances were not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. A sign not facing a street and on a façade without a public entrance is not found on other similar properties and would alter the essential character of the neighborhood. Concerns raised by abutters about the negative effect of the proposed extensive elevated accent lighting on public health, safety and welfare are valid.
- There were no conditions about the property in regard to the denied requests that would result in an unnecessary hardship so that a fair and substantial relationship does exist between the purposes of the ordinance regarding signage and their application to these specific requests.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,



David Rheume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Peter J. Loughlin, Esq.

5. 299 Vaughan Street (misc.)

- Recommend Approval

Background: This applicant is requesting approval to add two signs that were recently approved by the Board of Adjustment. Note that these signs were also shown on the HDC approved plans. Additionally, the applicant is seeking approve for a small increase in flood area for the rooftop deck area an upper floor mechanical screen.

Staff Comment: Recommend Approval.

APPROVED: 6-1 

Historic District Commission Work Session or Administrative Approval Application

LUHD-5

Applicant

👤 Eben Tormey
☎ 603-518-2132
@ etormey@xsshotels.com

Location

299 VAUGHAN ST
Portsmouth, NH 03801

Application Type

Please select application type from the drop down menu below

Administrative Approval

Project Information

Brief Description of Proposed Work

Certificate of Appropriateness request for Sign Variances granted by Board of Adjustment and minor Changes to 4th floor rooftop equipment screen and extent of terrace paver area at rooftop restaurant.

Description of Proposed Work (Planning Staff)

--

Project Representatives

If you selected "Other", please state relationship to project.

--

State

NH

City/Town

Hooksett

Email Address

etormey@xsshotels.com

Full Name (First and Last)

Eben Tormey

Mailing Address (Street)

1359 Hooksett Road

Phone

603-518-2132

Relationship to Project

Owner

Business Name (if applicable)

XSS Hotels / Vaughan Street Hotel LLC

Zip Code

03106

Acknowledgement

I certify that the information given is true and correct to the best of my knowledge.

true

I hereby certify that as the applicant for permit, I am

Other

By checking this box, I agree that this is equivalent to a handwritten signature and is binding for all purposes related to this transaction

true

If you selected "Other" above, please explain your relationship to this project. Owner authorization is required.

Owner's Representative

INTERNAL USE ONLY -- Historic District Commission Review and Approval

HDC Certificate of Approval Granted

HDC Approval Date

--

--

Planning Staff Comments

--

INTERNAL USE ONLY -- Letter of Decision Information

Owner Addressee Full Name and Title

Owner Addressee Prefix and Last Name

--

--

Owner Organization / Business Name

Owner Contact Street Address

--

--

Owner Address State

Owner Address City

--

--

RE: (memo field)

Meeting Date

--

--

Owner Address Zip

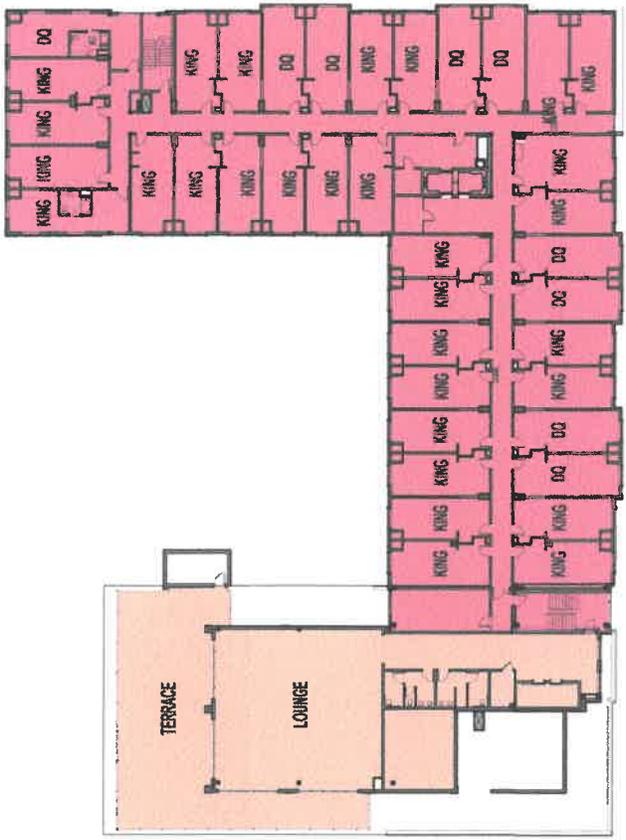
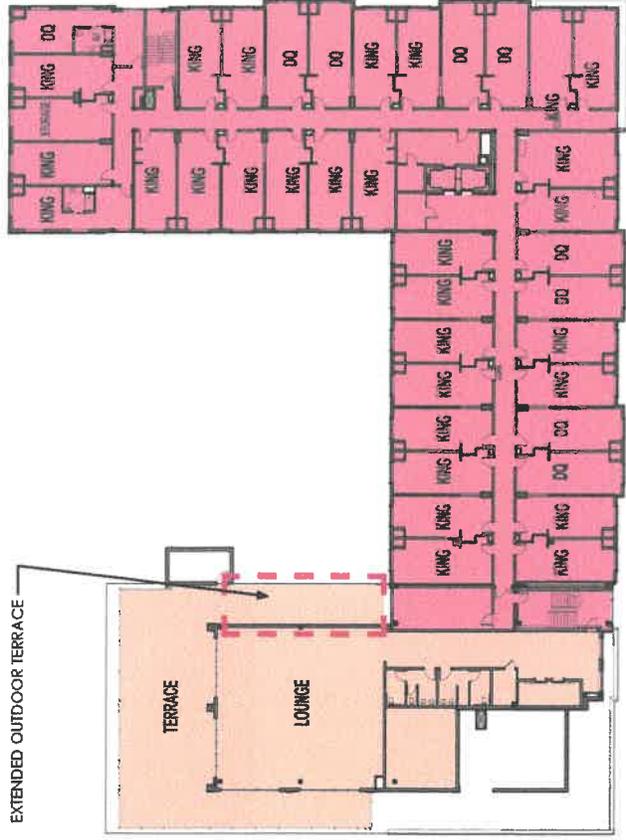
Assessor Map and Lot

--

--

Zoning District Information

--



4.2a



FOURTH FLOOR
PLAN
HDC APPLICATION FOR AMENDED APPROVAL-JUNE 5, 2019

299 VAUGHAN STREET
PORTSMOUTH, NEW HAMPSHIRE

ATTACHMENT

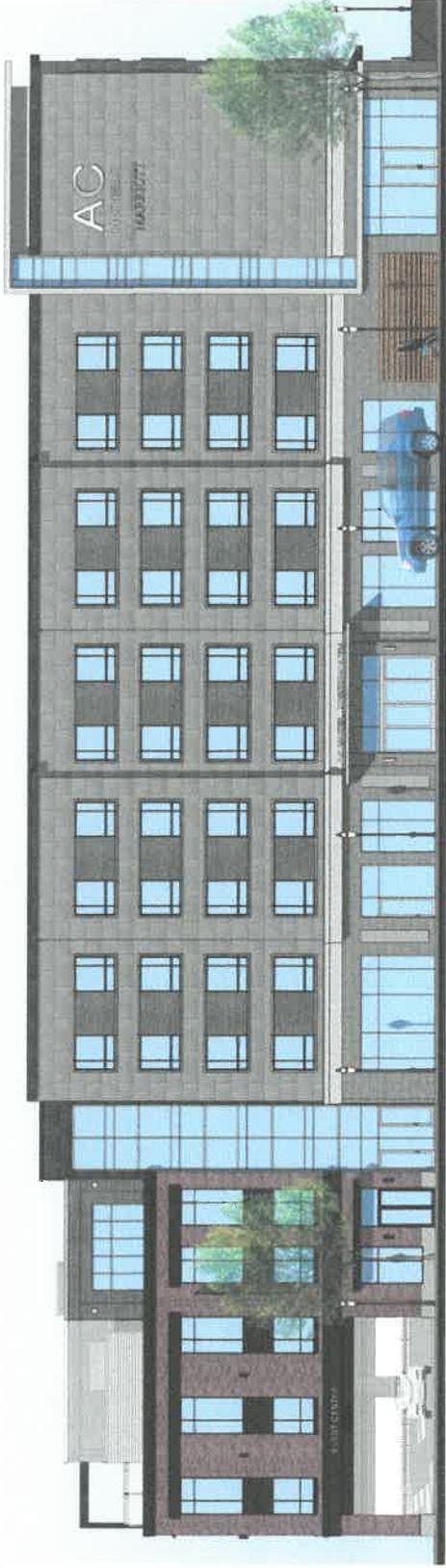
To permit the following: _____

Pursuant to 10.1221.30 of the City Code we are Requesting a Certificate of Appropriateness for signs requiring a Variance from the Board of Adjustment. At its regular meeting on May 21, 2019 the Board of Adjustment granted the following variances:

- a) Sign #1 from Section 10.1251.20 to allow a 124 sf wall sign where 40 sf is the maximum allowed for an individual wall sign.
- c) Sign #2, from Section 1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District.

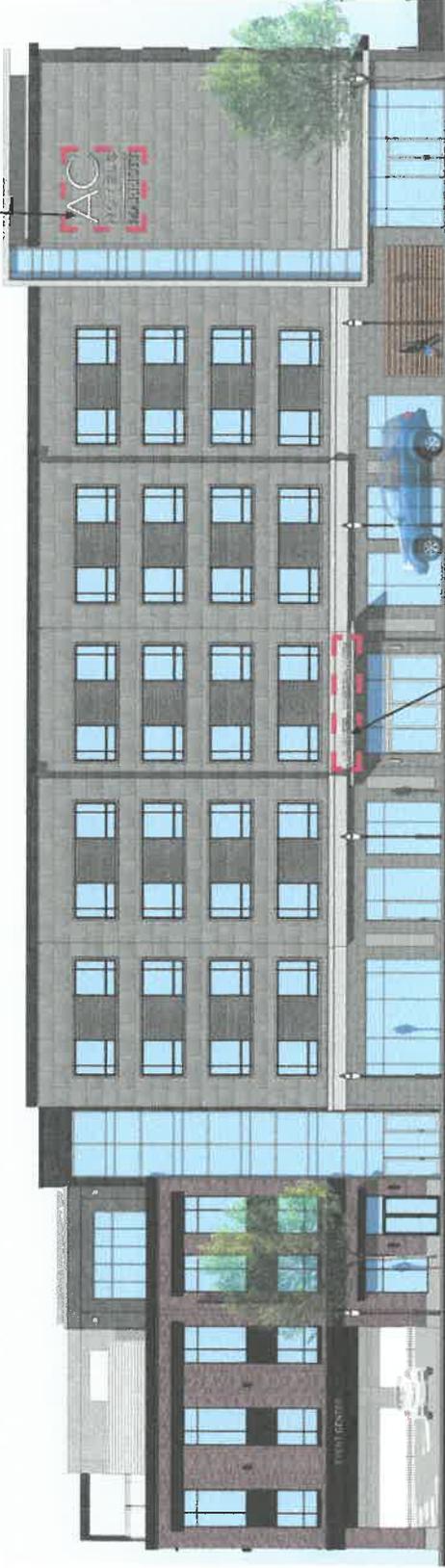
Sign #1 has been shown on the elevations submitted to and reviewed by the Historic District Commission throughout the approval process. While it exceeds the maximum area allowed for a single wall sign the total signage proposed (less than 200sf) is significantly less than the 818 sf of aggregate signage allowed for the building based on frontage. The sign is appropriate to the scale of the building and the facade on which it is to be mounted.

Sign #2 has also been shown on the elevations submitted to and reviewed and approved by the Historic District Commission throughout the approval process. The sign is comprised of 12" high letters spelling out AC HOTEL PORTSMOUTH and is a total of 18sf. The letters cannot be Halo lit in the location they are proposed and external illumination would require a number of goose neck fixtures that would clutter the area and not be in keeping with the more modern aesthetic of the building. The proposed internal illumination granted relief by the Board of Adjustment consists of channel letters with white acrylic faces illuminated from behind by white LED modules.



PREVIOUSLY APPROVED

SIGN 1:
VARIANCE FOR SIZE



PROPOSED

SIGN 2: VARIANCE FOR INTERNAL ILLUMINATION

299 VAUGHAN STREET
PORTSMOUTH, NEW HAMPSHIRE

SOUTH ELEVATION

HDC APPLICATION FOR AMENDED APPROVAL: JUNE 5, 2019



5.0



PREVIOUSLY APPROVED



PROPOSED

299 VAUGHAN STREET
 PORTSMOUTH, NEW HAMPSHIRE

WEST ELEVATION

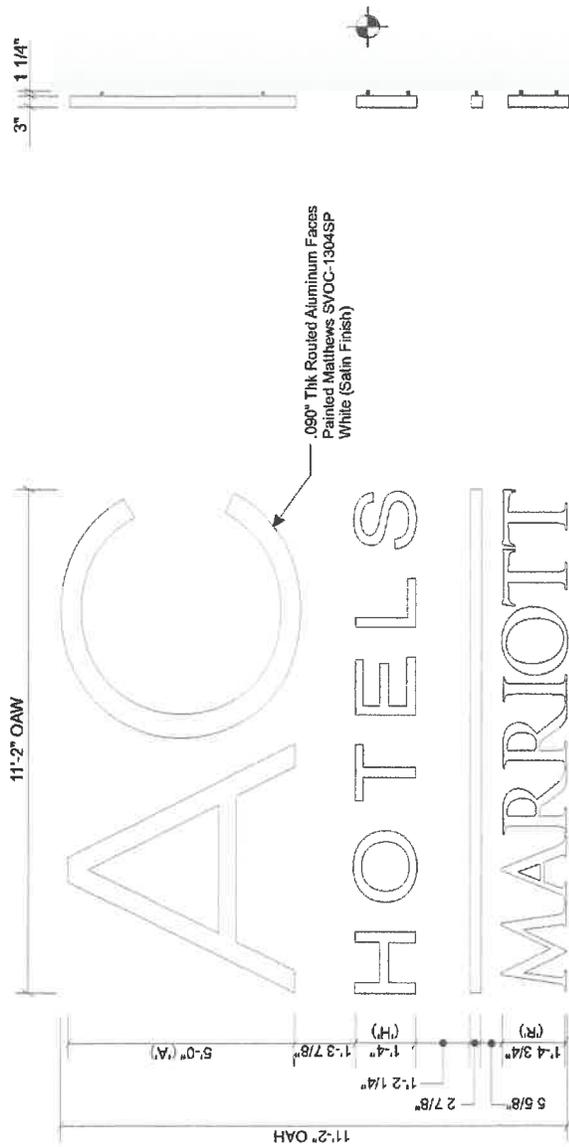
RDC APPLICATION FOR AMENDED APPROVAL, JUNE 5, 2019



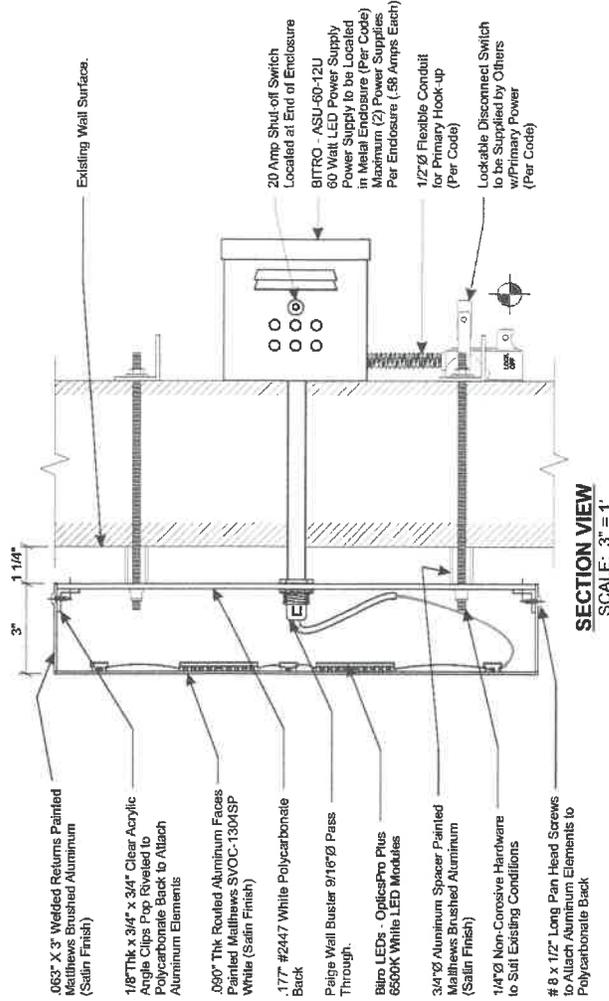
5.3

ENGINEERING
SHOP
VINYL / LAYOUT
ROUTING / KNIFE

Square Footage: 124



IL-CL-CUST MT- SOUTH ELEVATION
SCALE: 3/8"=1'-0"



SECTION VIEW
SCALE: 3" = 1'

**PERMITS
ONLY**

ELECTRICAL LOAD
(2.32) Amps @ 120 Volts
ELECTRICAL REQ/MTS
(1) 20 Amp/120 Volt Circuits

STANDARD LETTER NOTES:

1. Sufficient Primary Circuit In Vicinity Of Sign By Others.
2. Letter To Letter Wiring & Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Mounting Hardware By Sign Installer.
5. Full Size Drilling Template Furnished With Sign.

Note: This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

PHILADELPHIASIGN
BRINGING THE WORLD'S BRANDS TO LIFE
707 West Sprung Garden Street
Paterson, New Jersey 07655
Phone: 856.225.1460
Fax: 856.225.8549
www.philadelphiaign.com

CUSTOMER:
AC HOTELS

JOB NUMBER:
MT299

SIGN TYPE:
VARIOUS

LOCATION:
**299 VAUGHAN ST
PORTSMOUTH, NH**

DATE:
08/10/2018

DRAWN BY:
JEG

REVISION:
Number: 3
Date: 05/29/2019
By: RVR
ENG DEPT

SHEET:
1 OF 4

DWG NUMBER:
B79583

ENGINEER SEAL:

MAX DESIGN WIND SPEED 90 MPH
EXPOSURE C

THIS IS AN UNFINISHED UNPAINTED SIGNING SURFACE. THE SIGN IS TO BE COMPLETED PERSONAL USE IN CONJUNCTION WITH A PROJECT BEING PLANNED FOR YOU BY PHILA. IT IS NOT TO BE SUBMIT TO ANYONE OUTSIDE YOUR COMPANY UNLESS IT IS TO BE USED, COPIED, REPRODUCED, OR EXAMINED BY ANY PERSON.

ENGINEERING
SHOP
VINYL / LAYOUT
ROUTING / KNIFE

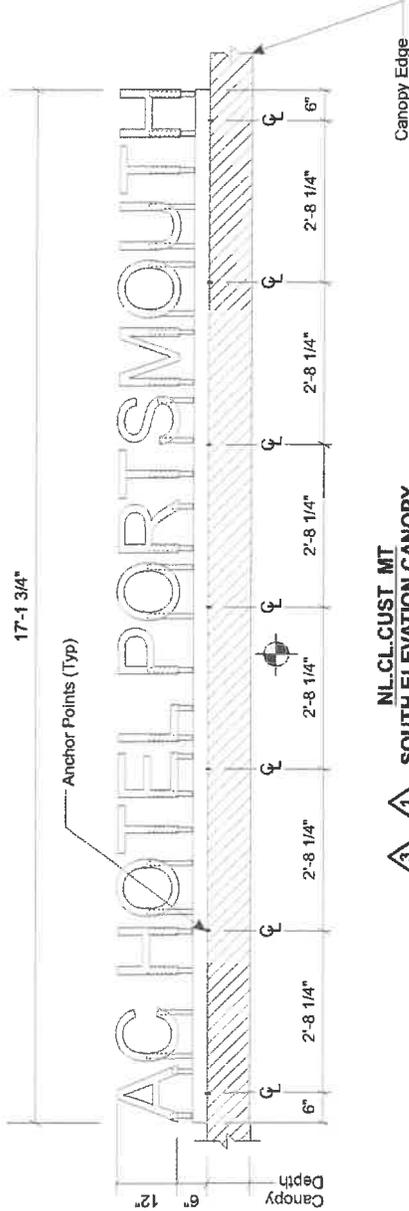
1 Square Footage: 18
11-20-18

PHILADELPHIASIGN
BATHING THE WORLD'S BRANDS TO LIFE
707 West Spring Garden Street
Patterson, New Jersey 08065
Phone: 609.899.1460
Fax: 609.899.8648
www.philadelphiaign.com

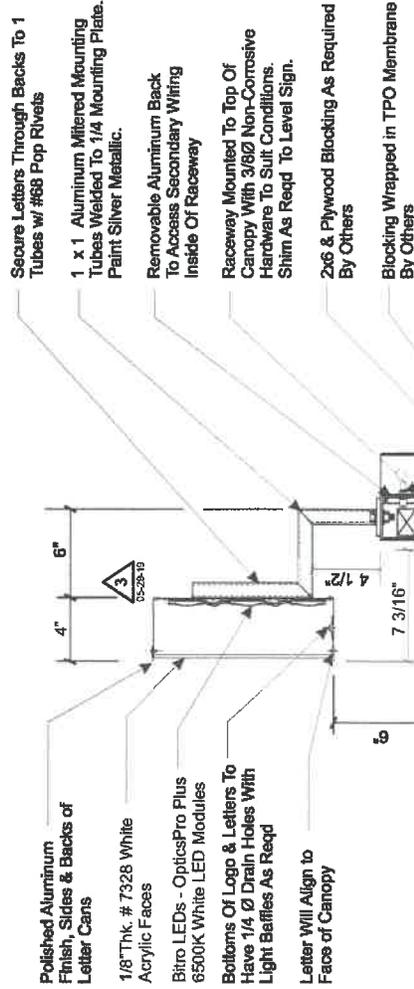
CUSTOMER:
AC HOTELS
JOB NUMBER:
MT299
SIGN TYPE:
VARIOUS
LOCATION:
**299 VAUGHAN ST
PORTSMOUTH, NH**
DATE:
08/10/2018
DRAWN BY:
JEG
REVISION:
Number: 3
Date: 05/29/2019
By: RVR
ENG DEPT:
2 OF 4
DWG NUMBER:
B79583
ENGINEER SEAL:

MAX DESIGN WIND SPEED 90 MPH
EXPOSURE C

THIS IS AN APPROXIMATE REPRESENTATION OF THE SIGN AS DESCRIBED IN THESE PLANS. IT IS NOT TO BE USED FOR PERMANENT USE IN CONSTRUCTION WITH A PROJECT BEING PLANNED FOR VIEW BY P.S.A. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR COMPANY UNLESS IT IS TO BE USED, COPIED, REPRODUCED, OR CONSULTED IN ANY MANNER.



3 11-20-18
1 NL-CL. CUST. MT
SOUTH ELEVATION CANOPY
SCALE: 1/2"=1'-0"
(1) Required



3 SIDE VIEW
SCALE: 1-1/2" = 1' 0"

EST. ELECTRICAL LOAD
(6.0) Amps @ 120 Volts
ELECTRICAL REQUIRES
(1) 20 Amp/120 Volt Circuits

STANDARD LETTER NOTES:

1. Sufficient Primary Circuit in Vicinity Of Sign By Others.
2. Letter To Letter Wiring & Final Primary Hook-up By Sign Installer, Where Allowed By Local Codes.
3. Sign Shall Be U.L. Listed.
4. Mounting Hardware By Sign Installer.
5. Full Size Drilling Template Furnished With Sign.

Note: This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

May 24, 2019

Vaughan Street Hotel LLC
1359 Hooksett Road
Hooksett, New Hampshire 03106

Re: Property at 299 Vaughan Street, Permit LU 19-43
Assessor Plan 124, Lot 10

Dear Applicant:

The Board of Adjustment at its regular meeting on May 21, 2019, considered your application, tabled at the April 16, 2019 meeting and described as follows:

Application:

Case 4-2

Petitioners: Vaughan Street Hotel LLC
Property: 299 Vaughan Street
Assessor Plan: Map 124, Lot 10
District: Character District 5 and the Downtown Overlay District
Description: Signage and lighting for a proposed hotel
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for a individual wall sign;
- b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;
- d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and
- e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

Action:

The Board voted to remove the petition from the table and **reopen** the public hearing. The Board **clarified** that the 70± s.f. wall sign listed in the agenda as Sign #2 under Item a) should correctly be identified as Sign #5. After further discussion, the Board voted to **grant** the following:

- Item a), Sign #1 - a 124± s.f wall sign.
- Item c), Sign #2 - allowing internal illumination.
- Item e), Light L20 - allowing a luminaire at 32'9" ± above grade.

The Board voted to **deny** the following:

- Item a), Sign #5 (incorrectly designated in the agenda as Sign #2) – a 70± s.f. wall sign.
- Item b), Sign #5 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- Item d), Accent Light #1 to allow lights above 25' on the building surface.

Review Criteria:

*The above items [Item a), Sign #1, and Items c) and e)] were **granted** for the following reasons:*

- Granting these variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Allowing these signs requiring minimal relief from the ordinance and parking lot lighting that is largely obscured will not alter the essential character of the neighborhood and the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the granted signage will benefit the applicant while maintaining the essential character of the area with no detriment to the general public.
- The value of surrounding properties will not be diminished by the granted signage and parking lot lighting.
- Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions of the property which include the manner in which it is set back on streets that would be mainly travelled by seekers of this destination. The signage is appropriate to allow people in the proximity to identify the building. There are also special conditions of the structure having an elevated parking deck and an enclosing "C"-shaped structure, distinguishing it+ from other properties in the area. Due to the special conditions there is no fair and substantial relationship between the purposes of the ordinance regarding signage and their specific application to the property.

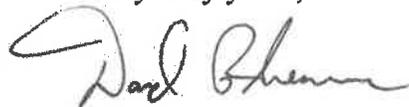
*The above items [Item a), Sign #5, and Items b) and d)] were **denied** for the following reasons:*

- All the criteria necessary to grant the variances were not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. A sign not facing a street and on a façade without a public entrance is not found on other similar properties and would alter the essential character of the neighborhood. Concerns raised by abutters about the negative effect of the proposed extensive elevated accent lighting on public health, safety and welfare are valid.
- There were no conditions about the property in regard to the denied requests that would result in an unnecessary hardship so that a fair and substantial relationship does exist between the purposes of the ordinance regarding signage and their application to these specific requests.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

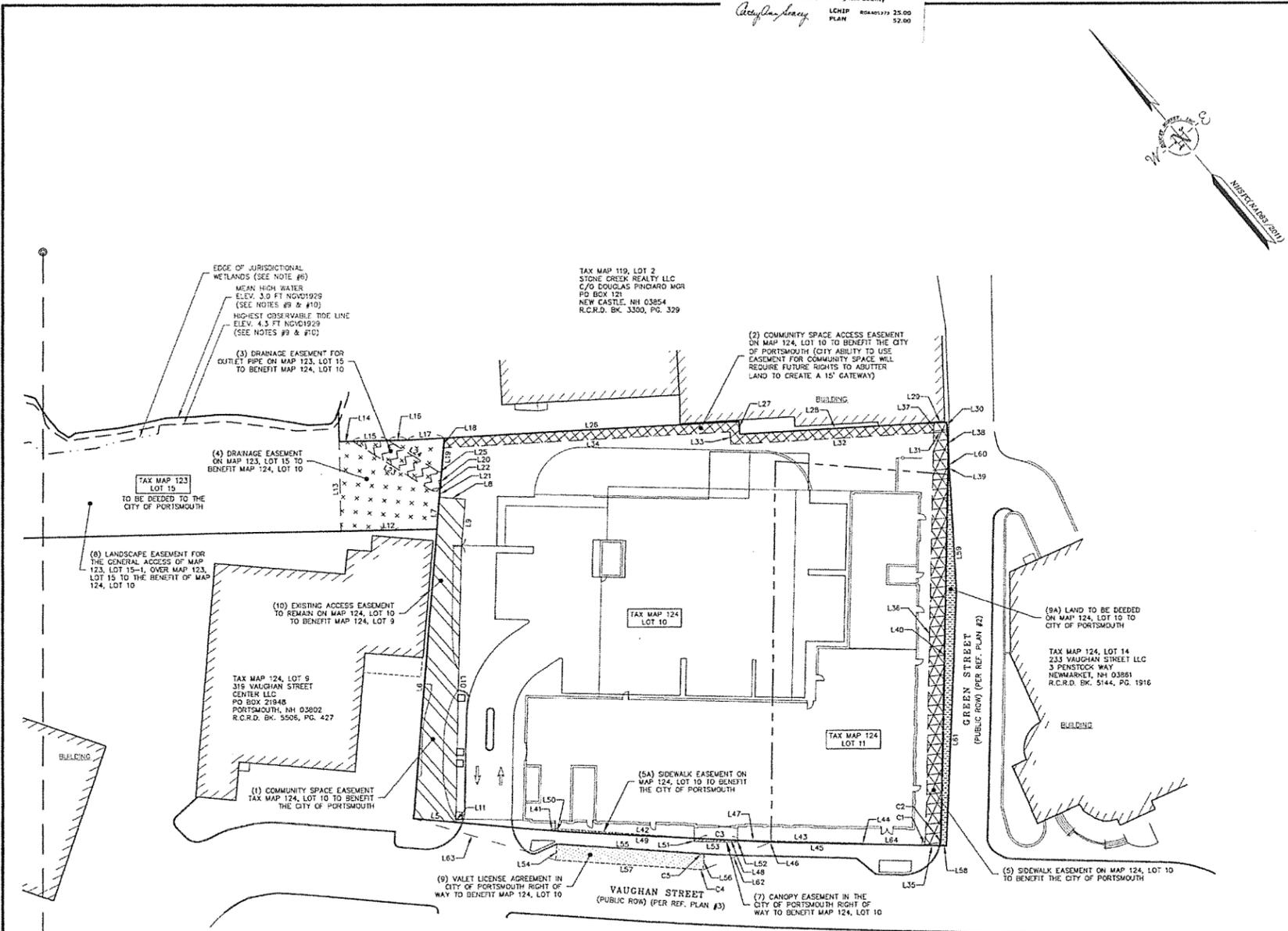
Very truly yours,



David Rheume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Peter J. Loughlin, Esq.



NOTES:

1. REFERENCE: TAX MAP 123, LOT 15
TAX MAP 124, LOTS 10 & 11
2. TOTAL PARCEL AREA
LOT 15-47,723 SQ. FT. OR 1.10 AC. (CALCULATED TO MEAN HIGH WATER)
LOT 10-38,365 SQ. FT. OR 0.88 AC.
LOT 11-17,706 SQ. FT. OR 0.41 AC.
3. OWNER OF RECORD: TAX MAP 123, LOT 15
299 VAUGHAN STREET, LLC
C/O CATHARTES PRIVATE INVESTMENTS
11 BEACON STREET, SUITE 1120
BOSTON, MA 02108
R.C.R.D. BOOK 5434, PAGE 2905

TAX MAP 124, LOT 10
TAX MAP 124, LOT 11
VAUGHAN STREET HOTEL, LLC
1359 HOOKSETT ROAD
HOOKSETT, NH 03106
R.C.R.D. BOOK 5848, PAGE 129
R.C.R.D. BOOK 5848, PAGE 1508

4. ZONE: CD4 (LOT 15) CD5 (LOTS 10 & 11)
OVERLAY DISTRICTS
-DOWNTOWN OVERLAY DISTRICT
-HISTORIC DISTRICT

ZONING DISTRICTS BASED ON THE CITY OF PORTSMOUTH ZONING MAP DATED 11/12/15 AS AVAILABLE ON THE CITY WEBSITE ON 2/4/18. SEE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE 5A, SECTION 10.5440 FOR DIMENSIONAL REGULATIONS. THE LAND OWNER IS RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE MUNICIPAL, STATE AND FEDERAL REGULATIONS.

THE SITE IS SUBJECT TO THE STATE OF NH SHORELAND WATER QUALITY PROTECTION ACT. SEE NHDES WEBSITE FOR SPECIFIC DIMENSIONAL REQUIREMENT.

5. FIELD SURVEY PERFORMED BY N.J.M. & J.P.E. DURING 12/15 USING A TRIMBLE S5 TOTAL STATION WITH A TRIMBLE TSC3 DATA COLLECTOR AND BY W.J.D. ON 12/15 USING A LEICA HDS SCANNER AND A (SOKKIA B21 AUTO LEVEL. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARE ANALYSIS.
6. MANMADE AND NATURAL JURISDICTIONAL BOUNDARIES WERE DELINEATED BY MARC JACOBS, CERTIFIED WETLAND SCIENTIST NUMBER 090, IN 12/15 ACCORDING TO THE STANDARDS OF THE US ARMY CORPS OF ENGINEERS - WETLAND DELINEATION MANUAL, TECHNICAL REPORT 1-87-1, JANUARY 1987; THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012, NH RSA 482-A; THE CODE OF ADMINISTRATIVE RULES, NH DEPARTMENT OF ENVIRONMENTAL SERVICES-WETLANDS BUREAU - CHAPTER ENV-WF 100-800, AS WELL AS THE CITY OF PORTSMOUTH ZONING -ARTICLE 10, SECTION 10.1010, WETLANDS CONSERVATION DISTRICT. PREDOMINANT HYDRIC SOILS WERE IDENTIFIED UTILIZING THE FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 3, APRIL, 2004 AND THE FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 7. THE INDICATOR STATUS OF HYDROPHYTIC VEGETATION WAS DETERMINED ACCORDING TO THE NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST REGION, U.S. FISH AND WILDLIFE SERVICE. COPIES OF SITE PLANS DEPICTING THE WETLAND DELINEATION WHICH HAVE BEEN REVIEWED BY THE WETLAND SCIENTIST ARE INDIVIDUALLY STAMPED, SIGNED AND DATED.
7. VERTICAL DATUM IS BASED ON NGVD29 PER DISK B2 1923.
8. HORIZONTAL DATUM BASED ON NEW HAMPSHIRE STATE PLANE(2000) NAD83(2011) DERIVED FROM REDUNDANT GPS OBSERVATIONS UTILIZING THE KEYNET GPS VRS NETWORK.
9. WATER BOUNDARIES ARE DYNAMIC IN NATURE AND ARE SUBJECT TO CHANGE DUE TO NATURAL CAUSES SUCH AS EROSION OR ACCRETION.
10. MEAN HIGH WATER (EL. 3.0' NGVD1929) AND HIGHEST OBSERVABLE TIDE (EL. 4.3' NGVD1929) ELEVATIONS PER "MAPLEWOOD AVENUE CULVERT REPLACEMENT AND NORTH MALL POND RESTORATION, WATERFRONT/STRUCTURAL BASIS OF DESIGN, BY WATERFRONT ENGINEERS, LLC, DATED DECEMBER 30, 2009", PROVIDED BY TIGHE & BOND GN 11-30-15.

REFERENCE PLANS:

1. "EXISTING CONDITIONS PLAN OF TAX MAP 123, LOT 15 & TAX MAP 124, LOTS 10 & 11, VAUGHAN STREET & GREEN STREET, PORTSMOUTH, NH", BY DOUCET SURVEY, INC., DATED FEBRUARY 3, 2016.
2. "SUBDIVISION PLAN OF TAX MAP 123, LOT 15 FOR VAUGHAN STREET, LLC, VAUGHAN STREET, PORTSMOUTH, NH" BY DOUCET SURVEY, INC., DATED MAY 19, 2017, TO BE RECORDED.

LEGEND

- PROPERTY LINE
- PROPOSED PROPERTY LINE
- MEAN HIGH WATER LINE (SEE NOTE #10)
- HIGHEST OBSERVABLE TIDE LINE (SEE NOTE #10)
- EASEMENT LINE (SEE NOTE #10)
- EDGE OF WETLAND EASEMENT IDENTIFIER

EASEMENT & LICENSE LEGEND

- (1) COMMUNITY SPACE EASEMENT=2,777 SQ. FT.
- (2) EASEMENT FOR FUTURE COMMUNITY SPACE=1,326 SQ. FT.
- (3) DRAINAGE EASEMENT=471 SQ. FT.
- (4) DRAINAGE EASEMENT=2,377 SQ. FT.
- (5) SIDEWALK EASEMENT=1,725 SQ. FT.
- (5A) SIDEWALK EASEMENT=95 SQ. FT.
- (6) PEDESTRIAN ACCESS EASEMENT=239 SQ. FT.
- (7) CANOPY EASEMENT=28 SQ. FT.
- (8) LANDSCAPE MAINTENANCE EASEMENT INTENTIONALLY OMITTED FROM PLAN
- (9) VALET LICENSE AGREEMENT AREA=608 SQ. FT.
- (9A) LAND TO BE DEEDED TO THE CITY OF PORTSMOUTH=721 SQ. FT.

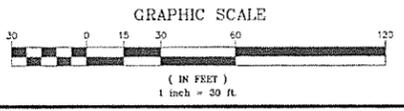
SEE SHEET 2 FOR LINE TABLE

LICENSE, EASEMENT & LAND TRANSFER PLAN
 FOR
299 VAUGHAN STREET, LLC
 TAX MAP 123, LOT 15
 &
VAUGHAN STREET HOTEL, LLC
 TAX MAP 124, LOTS 10 & 11
 VAUGHAN STREET & GREEN STREET
 PORTSMOUTH, NEW HAMPSHIRE

MATCH LINE SHEET 2
 MATCH LINE SHEET 1

NO.	DATE	DESCRIPTION	BY
1	11/02/17	REV. EASEMENT 2	UWF

NOTE:
 ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION. THEIR LOCATIONS ARE NOT PRECISE OR NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH. CALL 800-SAFE AT 1-888-80-SAFE.



TAX MAP 124, LOT 8
 R.F. MAPLEWOOD LLC
 30 TEMPLE STREET, SUITE 400
 NASHUA, NH 03060
 R.C.R.D. BK. 2573, PG. 84



PURSUANT TO RSA 678:18, III:
 I CERTIFY THAT THIS SURVEY PLAN IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

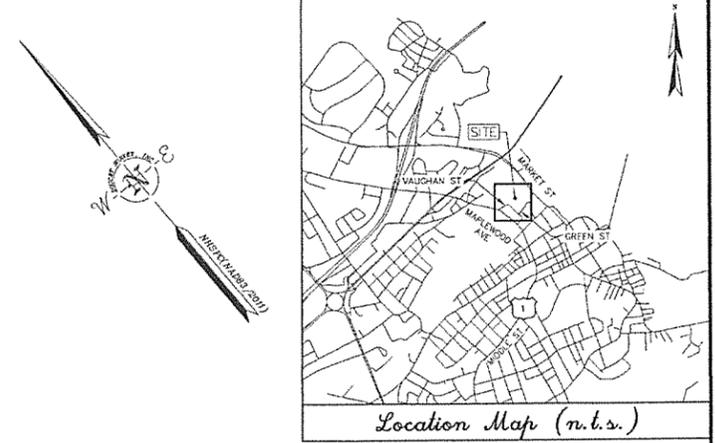
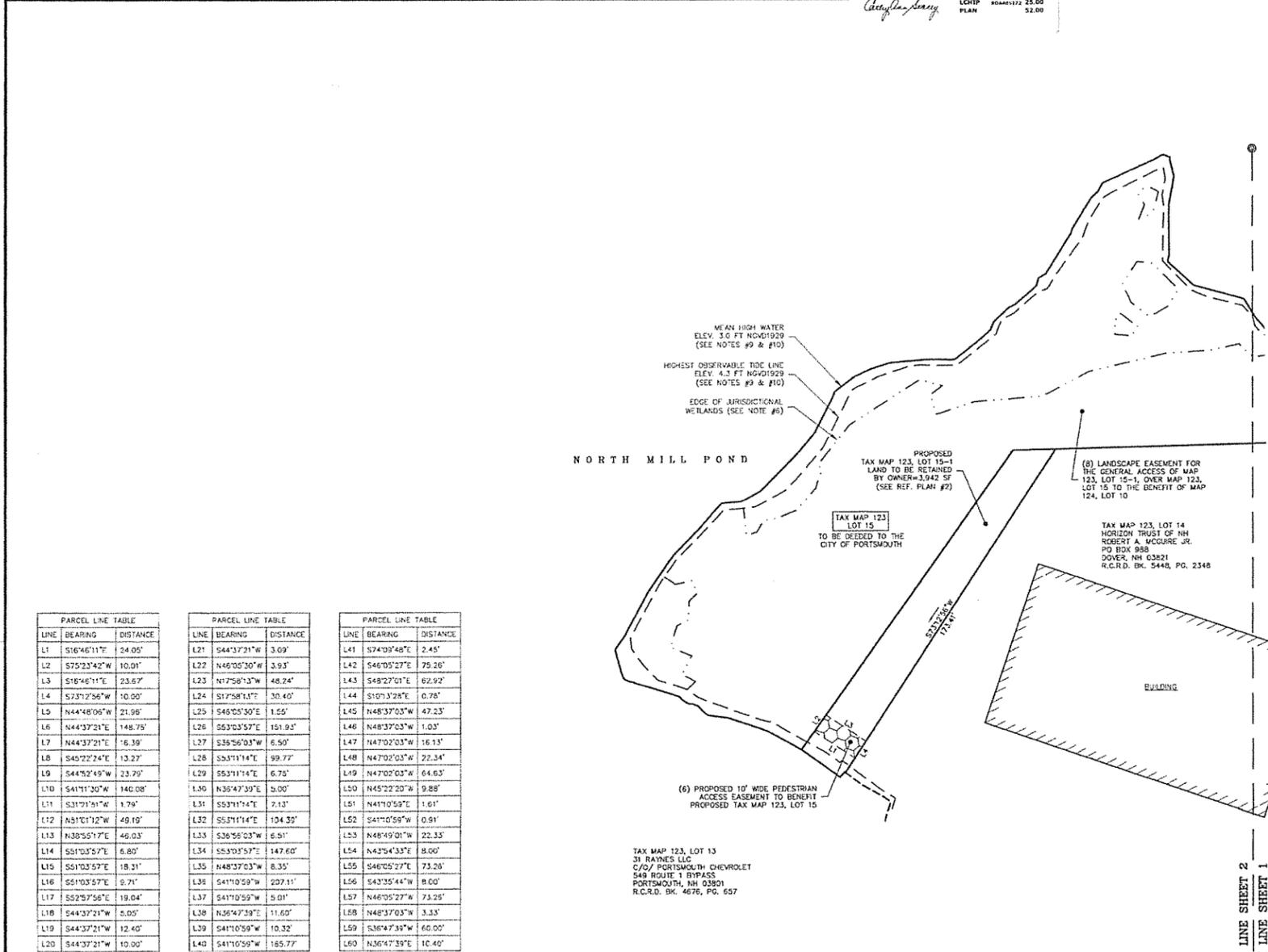
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH A PRECISION GREATER THAN 1:15,000."

L.L.S. #989
 7-15-18 DATE

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEED REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.

DRAWN BY:	W.D.C.	DATE:	AUGUST 2017
CHECKED BY:	M.W.F.	DRAWING NO.:	43B.3D
APP. NO.:	43B.3	SHEET:	1 OF 2





PARCEL LINE TABLE			PARCEL LINE TABLE			PARCEL LINE TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S16°46'11"E	24.05'	L21	S44°37'21"W	3.09'	L41	S74°09'48"E	2.45'
L2	S75°23'42"W	10.01'	L22	N46°05'30"W	3.93'	L42	S46°05'27"E	75.26'
L3	S16°46'11"E	23.67'	L23	N17°58'13"W	48.24'	L43	S49°27'01"E	62.92'
L4	S73°12'56"W	10.00'	L24	S17°58'13"E	30.40'	L44	S10°33'28"E	0.78'
L5	N44°48'06"W	21.98'	L25	S45°05'30"E	1.55'	L45	N48°37'03"W	47.23'
L6	N44°37'21"E	148.78'	L26	S53°03'57"E	151.93'	L46	N48°37'03"W	1.03'
L7	N44°37'21"E	6.39'	L27	S35°56'03"W	6.50'	L47	N47°02'03"W	16.13'
L8	S45°22'24"E	13.27'	L28	S53°11'14"E	99.77'	L48	N47°02'03"W	22.34'
L9	S44°52'49"W	23.79'	L29	S53°11'14"E	6.70'	L49	N47°02'03"W	64.63'
L10	S41°11'30"W	140.08'	L30	N35°47'39"E	3.00'	L50	N45°22'20"W	9.88'
L11	S31°11'51"W	1.79'	L31	S53°11'14"E	7.13'	L51	N41°10'59"W	1.61'
L12	N51°11'12"W	49.19'	L32	S53°11'14"E	134.39'	L52	S41°10'59"W	0.91'
L13	N38°55'17"E	46.03'	L33	S36°56'03"W	6.01'	L53	N48°49'01"W	22.33'
L14	S51°03'57"E	6.80'	L34	S53°03'57"E	147.60'	L54	N42°54'33"E	8.00'
L15	S51°03'57"E	18.31'	L35	N48°37'03"W	8.35'	L55	S46°05'27"E	73.26'
L16	S51°03'57"E	9.71'	L36	S41°10'59"W	207.11'	L56	S43°35'44"W	9.00'
L17	S52°57'58"E	19.04'	L37	S41°10'59"W	5.01'	L57	N46°05'27"W	73.25'
L18	S44°37'21"W	5.05'	L38	N36°47'39"E	11.60'	L58	N48°37'03"W	3.33'
L19	S44°37'21"W	12.40'	L39	S41°10'59"W	10.32'	L59	S36°47'39"W	60.00'
L20	S44°37'21"W	10.00'	L40	S41°10'59"W	185.77'	L60	N36°47'39"E	10.40'

PARCEL LINE TABLE			CURVE TABLE					
LINE	BEARING	DISTANCE	CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
L61	S42°18'41"W	130.43'	C1	4.57'	12.00'	22	N52°06'17"E	4.55'
L62	S72°03'35"E	37.59'	C2	4.53'	20.00'	13	S47°40'32"W	4.52'
L63	S33°42'11"E	76.10'	C3	20.26'	492.00'	2	S47°16'14"E	20.26'
L64	S48°37'03"E	31.15'	C4	2.74'	508.00'	0	S45°14'52"E	2.78'
			C5	2.74'	500.00'	0	N46°14'52"W	2.74'

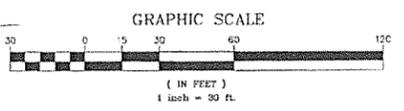
NO.	DATE	DESCRIPTION	BY
1	11/02/17	REV. EASEMENT 2	MMF

NOTE:
 ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FORM. THEIR LOCATIONS ARE NOT PRECISE OR NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH. CALL DIG-SAFE AT 1-888-DIG-SAFE.

PURSUANT TO RSA 676:16, II:
 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.
 I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH A PRECISION GREATER THAN 1:15,000.

Matthew W. Faggen-Auer
 L.L.S. #989
 3-15-17 DATE

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEED REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.



LEGEND

- PROPERTY LINE
- PROPOSED PROPERTY LINE
- MEAN HIGH WATER LINE (SEE NOTE #10)
- HIGHEST OBSERVABLE TIDE LINE (SEE NOTE #10)
- EASEMENT LINE
- EDGE OF WETLAND
- EASEMENT IDENTIFIER

EASEMENT & LICENSE LEGEND

- (1) COMMUNITY SPACE EASEMENT=2,777 SQ. FT
- (2) EASEMENT FOR FUTURE COMMUNITY SPACE=1,326 SQ. FT
- (3) DRAINAGE EASEMENT=421 SQ. FT
- (4) DRAINAGE EASEMENT=2,377 SQ. FT
- (5) SIDEWALK EASEMENT=1,725 SQ. FT
- (6A) SIDEWALK EASEMENT=95 SQ. FT
- (6) PEDESTRIAN ACCESS EASEMENT=239 SQ. FT
- (7) CANOPY EASEMENT=28 SQ. FT
- (8) LANDSCAPE MAINTENANCE EASEMENT INTENTIONALLY OMITTED FROM PLAN
- (9) VALET LICENSE AGREEMENT AREA=608 SQ. FT
- (9A) LAND TO BE DEEDED TO THE CITY OF PORTSMOUTH=721 SQ. FT

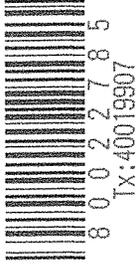
LICENSE, EASEMENT & LAND TRANSFER PLAN
 FOR
 299 VAUGHAN STREET, LLC
 TAX MAP 123, LOT 15
 &
 VAUGHAN STREET HOTEL, LLC
 TAX MAP 124, LOTS 10 & 11
 VAUGHAN STREET & GREEN STREET
 PORTSMOUTH, NEW HAMPSHIRE

DRAWN BY:	W.D.C.	DATE:	AUGUST 2017
CHECKED BY:	M.W.F.	DRAWING NO.:	4383D
DATE:	4/3/18	SHEET:	2 OF 2





TRANSFER TAX	RO078151	40.00
RECORDING		22.00
SURCHARGE		2.00



Return to: 
Stebbins, Lazos & Van Der Beken, PA
889 Elm St, 6th Floor
Manchester, NH 03101

**EASEMENT AGREEMENT
TAX MAP 124 LOT 10
(Canopy)**

CITY OF PORTSMOUTH, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire 03801 (hereinafter referred to as the "GRANTOR"), for consideration paid, grants to **VAUGHAN STREET HOTEL LLC**, a New Hampshire limited liability company, having an address of 1359 Hooksett Road, Hooksett, New Hampshire 03106 (hereinafter referred to as the "GRANTEE", which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), with **Quitclaim Covenants**, all its right, title and interest, and hereby enters into this Easement Agreement on behalf of itself and its successors and assigns.

This Easement Agreement is for the purpose of allowing the GRANTEE, its successors and assigns, to construct, install and maintain a certain canopy, in the GRANTOR's airspace, all appurtenant to a certain parcel of land located at 225 and 299 Vaughan Street in Portsmouth, County of Rockingham and State of New Hampshire, being shown on the City of Portsmouth's Assessor's Map as Tax Map 124 Lot 10 and shown on the plan entitled "License, Easement & Land Transfer Plan of Tax Map 123, Lot 15 & Tax Map 124, Lots 10 & 11, Vaughan Street & Green Street, Portsmouth, New Hampshire" dated August, 2017 by Doucet Survey Inc. and recorded in the Rockingham County Registry of Deeds as Plan # D-40760 (the "Easement Plan") (hereinafter the "Subject Property"). As a material condition hereof, the canopy overhang provided for in this Agreement shall be constructed no lower than ten (10) feet above the finished grade under it and in accordance with approvals issued or to be issued to the GRANTEE by the GRANTOR's Historic District Commission and Planning Board. GRANTEE acquired the Subject Property by two (2) deeds recorded in the Rockingham County Registry of Deeds at Book 5848, Page 0129, and Book 5848, Page 1508.

The terms and conditions of the Easement Agreement are as follows:

1. The GRANTOR grants to GRANTEE its successors and assigns the below described Easement in connection with the Subject Property, which area is shown on the Easement Plan as Easement 7 as is more particularly described on Exhibit A attached hereto. The below described Easement is appurtenant to the Subject Property:

EASEMENT 7 on the Easement Plan.

An Easement for the purpose of constructing, maintaining, repairing and replacing a canopy overhang extending into the public air space, all appurtenant to the GRANTEE's proposed building, said Easement 7 being described on the Easement Plan as "Canopy Easement in the City of Portsmouth Right of Way to Benefit Map 124, Lot 10".

2. GRANTEE agrees that all of its construction activities performed pursuant to this Easement Agreement shall be in strict conformance to terms, conditions and specifications approved by the Director of Public Works of the City of Portsmouth in writing prior to the initiation of any construction or renovation of the Subject Property.

3. GRANTEE agrees to maintain the area granted by this Easement Agreement in a clean, safe and sound fashion at all times; take any actions necessary to protect the public safety; and to conduct any maintenance or repairs deemed at any time to be reasonable or necessary by the Public Works Director of the GRANTOR.

4. GRANTEE agrees to indemnify, defend and hold harmless the GRANTOR and its officials, agents and employees from any and all claims for personal injury or property damage arising in any way out of the existence or use of GRANTEE's rights under this Easement and License Agreement.

5. The Easement created by this Agreement shall cease to exist in the event that the building shown on GRANTEE's Site Plan Approval for the Subject Property, dated June 15, 2017, shall cease to exist and is not reconstructed.

6. All terms and conditions of this Agreement are binding on the parties to this Agreement and to their successors and assigns of every kind however created.

IN WITNESS WHEREOF this 7 day of February, 2018.

(The remainder of this page has been intentionally left blank; signature page to follow.)

VAUGHAN STREET HOTEL LLC

By: [Signature]
Name: Jeffrey Johnston
Its: Manager
Duly Authorized

CITY OF PORTSMOUTH

By: [Signature]
Name: John P. Bohenko
Its: City Manager
Duly Authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This Deed was acknowledged before me on this 7th day of February, 2018
by Jeffrey Johnston the Manager of Vaughan Street Hotel LLC,
a New Hampshire limited liability company, on behalf of the limited liability company.
Before me,

[Signature]
Justice of the Peace/Notary Public
My commission expires:
Name: _____
[print]



THE STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This Deed was acknowledged before me on this 8th day of February, 2018
by John P. Bohenko the City Manager of the City of
Portsmouth, New Hampshire, on behalf of the City of Portsmouth.
Before me,

[Signature]
Justice of the Peace/Notary Public
My commission expires: 10/11/22
Name: Raeline A. O'Neil
[print]

My Commission Expires: 10/11/22

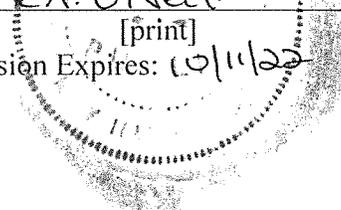


Exhibit A

Description of Easement 7

EASEMENT 7

BEGINNING AT A POINT ON THE NORTHERLY SIDE OF VAUGHAN STREET IN THE CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE, SAID POINT BEING N 48°37'03" W, A DISTANCE OF 1.03' (L46) AND N 47°02'03" W, A DISTANCE OF 16.13' (L47) FROM THE SOUTHWEST CORNER OF TAX MAP 124, LOT 10 AS SHOWN ON A PLAN ENTITLED "LICENSE, EASEMENT & LAND TRANSFER PLAN OF TAX MAP 123, LOT 15 & TAX MAP 124, LOTS 10 & 11, VAUGHAN STREET & GREEN STREET, PORTSMOUTH, NH", DATED AUGUST 2017, BY DOUCET SURVEY, INC.;

THENCE S 41°10'59" W A DISTANCE OF 0.91' TO A POINT (L52);

THENCE N 48°49'01" W A DISTANCE OF 22.33' TO A POINT (L53);

THENCE N 41°10'59" E A DISTANCE OF 1.61' TO A POINT ALONG THE NORTHERLY SIDE OF VAUGHAN STREET (L51);

THENCE ALONG VAUGHAN STREET S 47°02'03" E A DISTANCE OF 22.34' TO THE POINT OF BEGINNING (L48);

SAID AREA CONTAINS 28 SQUARE FEET, AND IS SHOWN AS CANOPY EASEMENT #7 ON A PLAN ENTITLED "LICENSE, EASEMENT & LAND TRANSFER PLAN OF TAX MAP 123, LOT 15 & TAX MAP 124, LOTS 10 & 11, VAUGHAN STREET & GREEN STREET, PORTSMOUTH, NH", DATED AUGUST 2017, BY DOUCET SURVEY, INC.

Return to:
Office of City Attorney
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

SIDEWALK EASEMENT DEED

CHRISTOPHER CLEWS, Trustee of the Noele M. Clews Revocable Trust, having an address of 67 Ridges Court, Portsmouth, County of Rockingham and State of New Hampshire (hereinafter referred to as the "**Grantor**", for consideration paid, grants to the **CITY OF PORTSMOUTH**, a municipal corporation, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, hereinafter the "**Grantee**", **with QUITCLAIM COVENANTS**, the following sidewalk easements over Grantor's real property shown as Lot 2 and Lot 3 on a plan entitled "Subdivision Plan Tax Map 132, Lot 24, Land of ; Noele M. Clews Revocable Trust, Christopher Clews, Trustee, Property Located at; 799 South Street, City of Portsmouth, State of New Hampshire" prepared by Ambit Engineering dated June 2019 revised through July 8, 2019, recorded as Plan D- . ("**Grantor Property**"), as herein provided:

1. **Permanent Easement Areas** – A permanent easement for the purpose of maintaining, repairing, and replacing a public sidewalk over the area ("**Permanent Easement Area**") on the land of Grantor, as shown on a plan entitled "Sidewalk Easement Plan, Tax Map 132- Lot 24, over land of Noele M. Clews Revocable Trust, Christopher Clews, Trustee, for benefit of City of Portsmouth, property located at 799 South Street, City of Portsmouth, County of Rockingham, State of New Hampshire" dated 8/25/19, and recorded on the Rockingham County Registry of Deeds as Plan # (the "**Plan**"), being more particularly described as follows:

Portsmouth, New Hampshire

Lot 2: Beginning at a railroad spike at the southwesterly corner of Lot 2 as shown on said Plan, said point being on the northerly side of South Street, so called, thence running along Lot 3 as shown on said Plan N 12° 54' 07" W a distance of 6.22 feet; thence turning and running over Lot 2 on said Plan the following two (2) courses N 78° 50' 51" E a distance of 73.70 feet; thence N 73° 40' 53" E a distance of 21.23 feet to an iron rod at the southeasterly corner of said Lot 2 and the southwesterly corner of Lot 1 as shown on said Plan, and the northerly side of said South Street; thence turning and running along the northerly side of said South Street the following two (2) courses S 72° 21' 54" W a distance of 63.41 feet; thence S 77° 05' 53" W a distance of 31.67 feet to a railroad spike and the point of beginning. The above described easement having an area of 307 square feet, more or less.

Lot 3: Beginning at a railroad spike at the southwesterly corner of Lot 3 as shown on said Plan, said point being on the northerly side of South Street, so called, and being the southeasterly corner of land now or formerly of Ali S. Kodal & Pamela Henry thence running along land now or formerly of said Kodal and Henry N 06° 36' 28" W a distance of 6.02 feet; thence turning and running over and across said Lot 3 the following three (3) courses N 72° 10' 13" E a distance of 25.18 feet; thence N 77° 53' 18" E a distance of 19.97 feet; thence N 78° 50' 51" E a distance of 54.31 feet to the westerly side of Lot 2 on said Plan; thence turning and running along said Lot 2 S 12° 54' 07" E a distance of 6.22 feet to a railroad spike at the southeasterly corner of said Lot 3, the southwesterly side of said Lot 2 and the northerly side of said South Street; thence turning and running along the northerly side of said South Street S 77° 05' 53" W a distance of 100.00 feet to a railroad spike and the point of beginning. The above described easement having an area of 722 square feet, more or less.

2. **Purpose and Rights-** The Grantee shall have a permanent easement and right of way in, under, across, and over the Permanent Easement Areas for the purpose of constructing, maintaining, repairing, and replacing a public sidewalk. Grantor shall not substantially change the grade or slope of the Permanent Easement Area. The Grantee shall have the right to remove trees, bushes, undergrowth, and other obstructions interfering with the activities authorized herein and to take such other action as may be necessary, useful, or convenient for the enjoyment of the easement rights herein granted.
3. **Personal Property** – It is agreed that any facilities installed by the Grantee within the Permanent Easement Area, whether fixed to the realty or not shall be and remain the property of Grantee.
4. **Easement to Run with the Land** –All rights, privileges, obligations, and liabilities created by this Sidewalk Easement Deed shall inure to the benefit of and be binding upon the heirs, devisees, administrators, executors, successors, and assignees of the Grantee and of the Grantor, the parties hereto, and all subsequent owners of the Grantor Property, and shall run with the land. Notwithstanding the foregoing the Grantee shall not have the

right to convey or assign its rights hereunder to any person, other than a body politic or related governmental authority.

MEANING AND INTENDING to convey an easement over a portion of the Grantor Property conveyed to Grantor by Deed of Hislop Realty Inc. recorded in the Rockingham County Registry of Deeds at Book 2203, Page 1239.

The undersigned Trustee as Trustee of the Noele M. Clews Revocable Trust, has full and absolute power in said Trust Agreement to convey any interest in real estate and improvements thereon held in said Trust and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the Trustee for the conveyance thereof. The Trust has not been revoked and is still in full force and effect.

THIS IS AN EXEMPT TRANSFER pursuant to NH RSA 78-B:2(I).

Executed this _____ day of _____ 2019.

GRANTOR:

Christopher Clews, Trustee
Noele M. Clews Revocable Trust

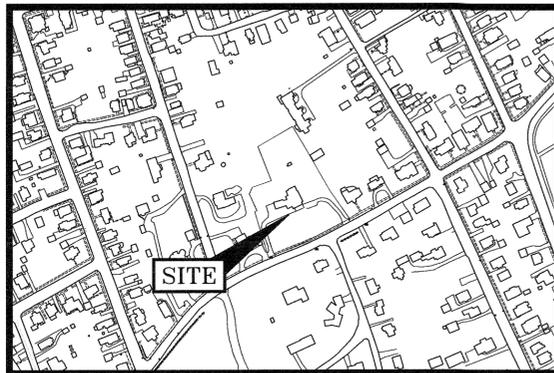
THE STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This Deed was acknowledged before me on this ___ day of _____, 2019 by Christopher Clews, Trustee of the Noele M. Clews Revocable Trust.

Before me,

Justice of the Peace/Notary Public
My commission expires:
Name: _____

[print]



LOCATION MAP

SCALE: 1" = 300'



PLAN REFERENCES:

1) SUBDIVISION PLAN TAX MAP 132 - LOT 24 OWNER: NOELE M. CLEWS REVOCABLE TRUST, CHRISTOPHER CLEWS, TRUSTEE, PROPERTY LOCATED AT: 499 SOUTH STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE. PREPARED BY AMBIT ENGINEERING, INC. DATED JUNE 2019, FINAL REVISION DATE JULY 8, 2019. TO BE RECORDED.



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S TAX MAP 132 AS LOT 24.
- 2) OWNERS OF RECORD:
NOELE M. CLEWS REVOCABLE TRUST
CHRISTOPHER CLEWS, TRUSTEE
67 RIDGES COURT
PORTSMOUTH, NH 03801
2338/525
- 3) PARCELS ARE NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259E. MAY 17, 2005.
- 4) EXISTING LOT AREA:
LOT 2: 58,885 S.F.
1.3518 ACRES

LOT 3: 9,000 S.F.
0.2066 ACRES
- 5) THE PURPOSE OF THIS PLAN IS TO SHOW SIDEWALK EASEMENTS TO BE GRANTED TO THE CITY OF PORTSMOUTH OVER SUBDIVISION LOTS 2 & 3 AS SHOWN ON A SUBDIVISION PLAN OF TAX MAP 132 LOT 24 IN THE CITY OF PORTSMOUTH.
- 6) SIDEWALK EASEMENT TO INCLUDE THE AREA 2' BEYOND FOR CONSTRUCTION & SNOW STORAGE.

LEGEND:

EXISTING		
N/F		NOW OR FORMERLY
RP		RECORD OF PROBATE
RCD		ROCKINGHAM COUNTY
		REGISTRY OF DEEDS
		MAP 11 / LOT 21
RR SPK FND	RR SPK SET	RAILROAD SPIKE FOUND/SET
IR FND	IR SET	IRON ROD FOUND/SET
IP FND	IP SET	IRON PIPE FOUND/SET
DH FND	DH SET	DRILL HOLE FOUND/SET
NHHB FND		NHDOT BOUND FOUND
TB FND		TOWN BOUND FOUND
BND w/DH	BND w/DH	BOUND w/ DRILL HOLE
ST BND w/DH	ST BND w/DH	STONE BOUND w/DRILL HOLE
D		STORM DRAIN
		UNDERGROUND ELECTRIC
		OVERHEAD ELECTRIC/WIRES
		EDGE OF PAVEMENT (EP)
		WOODS / TREE LINE
		UTILITY POLE (w/ GUY)
		WATER SHUT OFF/CURB STOP
		GATE VALVE
		HYDRANT
		METER (GAS, WATER, ELECTRIC)
		CATCH BASIN

EASEMENT LENGTH TABLE

E1	N06°36'28"W	6.02'
E2	S12°54'07"E	6.22'

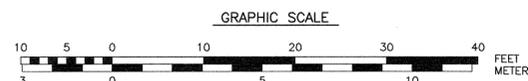
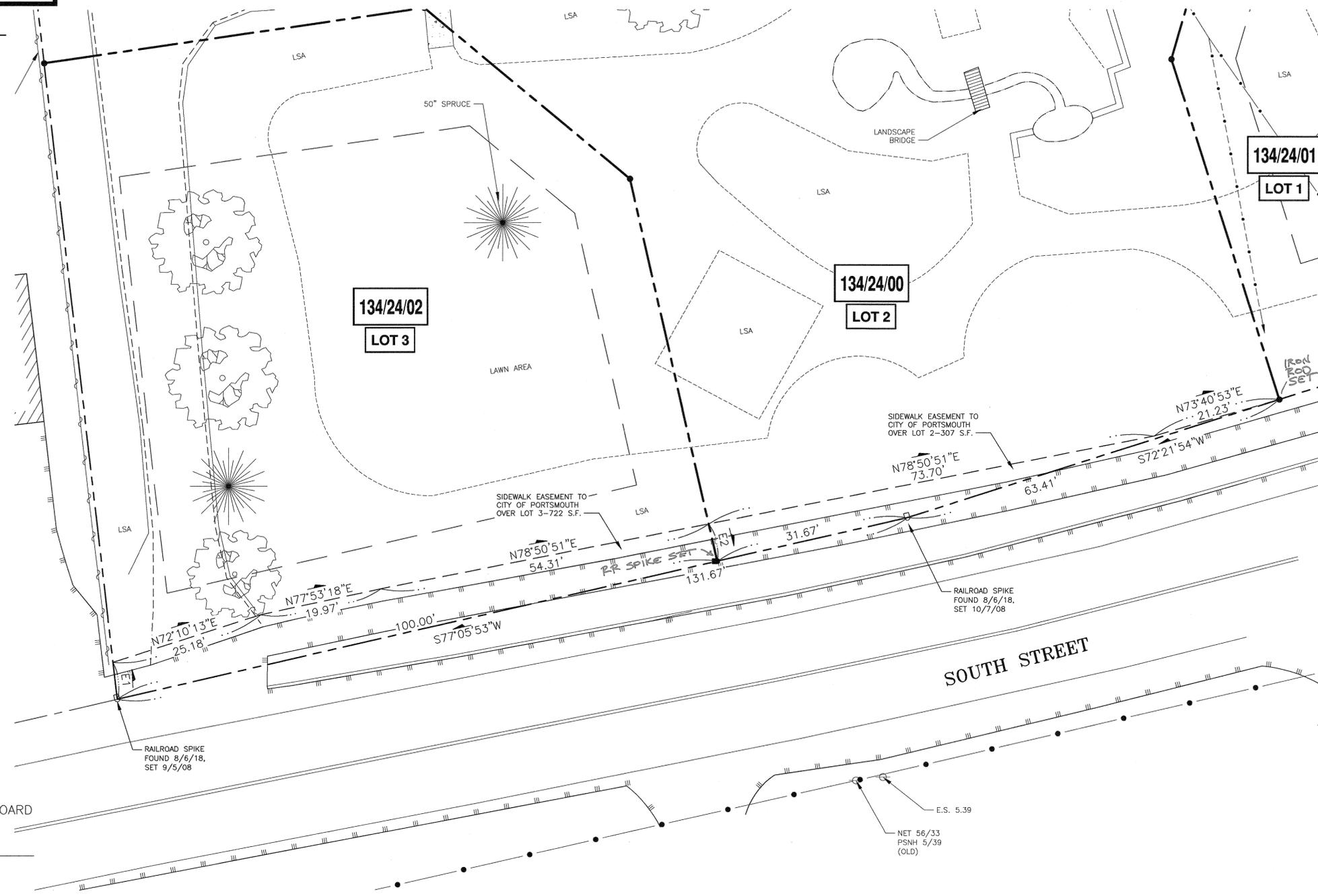


APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN _____ DATE _____

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

John R. Chagnon
JOHN R. CHAGNON, L.L.S. DATE 8-25-19



NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	8/25/19
REVISIONS		

SIDEWALK EASEMENT PLAN
TAX MAP 132 - LOT 24
OVER LAND OF:
NOELE M. CLEWS
REVOCABLE TRUST
CHRISTOPHER CLEWS, TRUSTEE
FOR BENEFIT OF:
CITY OF PORTSMOUTH
PROPERTY LOCATED AT:
799 SOUTH STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

OFFICE OF THE CITY CLERK

MEMORANDUM

TO: John P. Bohenko, City Manager
FROM: Kelli L. Barnaby, City Clerk
DATE: September 9, 2019
SUBJECT: Polling Hours for Municipal Election

In accordance with RSA 659:4, the City Council shall determine the polling hours for the election. I would request that the polling hours for the Municipal Election on November 5, 2019 be set from 8:00 a.m. - 7:00 p.m.

Also, I'm aware that the City Council is looking to have the polling hours begin an hour earlier and I would suggest we institute those hours for the September Primary Election in 2020. However, ultimately this is a decision for the City Council and I will ensure that the polls are open and adequately staffed for the time as determined by the Council.

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

CITY COUNCIL E-MAILS

September 4th – September 12, 2019 (9:00 a.m.)

Below is the result of your feedback form. It was submitted by Katie (no@no.com) on Thursday, September 5, 2019 at 22:23:35

address: NH

comments: Hello,

While I commend your desire to help the environment, I urge you to look at how harmful plastic straw bans are to those of us with disabilities. It's ableism and erasure. There are many articles and other resources about this. I urge you to read some and speak to some disabled folks before making an already hard to access world even more inaccessible.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by David Arseneau (RealEagleScout@gmail.com) on Sunday, September 8, 2019 at 05:54:49

address: 245 Middle St, Apt 609

comments:
Dear Council Members,

Now that the new Post Office is not any longer under any lease agreement there should be no Post Office regulation, or other compelling reason excepting partisan politics, as to how the portrait of the President of the United States cannot be displayed within.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Susan Richman (susan7richman@gmail.com) on Monday, September 9, 2019 at 16:34:48

address: 16 Cowell Drive, Durham

comments: We're a task force of Granite Staters who are active in many climate and energy related organizations in the state. We're contacting you because of your involvement in Portsmouth's Blue Ribbon Energy Committee, and because while the NH Legislature passed many excellent energy bills this year to help us transition to renewable energy, almost all of them were vetoed. 5 of these bills are especially important. We believe you can play a pivotal role in mustering the 2/3 majority needed to override the vetoes on these 5 bills. Your legislators, Laura Pantelakos and Tamara Le, are on record as having voted for some of these good energy bills this legislative session, but also of having been absent for one or more of the votes on these bills. Additionally, Representative Jacqueline Cali-Pitts has voted against 3 of the bills we are hoping to reinstate. We are deeply grateful for our dedicated citizen legislature, but when vote count is this urgent, we hope to get our very best turn-out. It would be great if you could persuade them to vote for more energy bills. We will hold a press conference about overriding these bills at the Legislative Office Building lobby at 11:30 AM on Wednesday, September 11th. Please RSVP if you would like to attend. Together, we can rally our key legislators to override vetoes when they meet on September 18 and 19. Expansion of Net Metering- HB365 would allow businesses, towns and school districts that want to

generate their own power to qualify for net metering(selling their excess energy production back to the electric grid) for renewable energy projects up to 5 megawatts (MW) in size. Right now the limit is 1 MW. Increases target for solar energy- SB168 would increase the percentage of solar energy utilities would have to include in the electricity they sell. It raises the percentage, called the Renewable Portfolio Standard (RPS), to 5.4% by 2025, as compared to the current 0.7%. Increase demand for renewable energy- SB72 NH requires that utilities must get 25% of their energy from renewable sources by 2025. This bill would prevent utilities from counting the solar panels people and businesses install, but don't register, toward meeting the utilities' renewable energy requirements.

Return control of energy efficiency programs to the PUC-SB205 The Systems Benefit Charge (SBC) is a small increment on everyone's electric bill that funds energy efficiency programs that are available for ratepayers, including programs for low income households. SB205 transfers the control over each change in the SBC from the legislature back to the Public Utilities Commission.

Workforce Wages -SB271 Although the focus of our veto override efforts is on energy policy, we also recognize the important role that the workforce plays in making a successful transition to a clean energy economy. SB271 would commit to pay prevailing wages on state awarded contracts. Please contact Representatives Pantelakos, Le, and Cali-Pitts today. Tell them how important their votes are, and why this matters to you! And please share this email with others in your community, and ask them to contact these representatives as well. Sincerely, Patricia Martin, Rindge Victoria Parmele, Northwood Sarah Thorne, Gilmanon Brieghan Gardner, Nottingham Dot Currier, Concord Susan Richman, Durham Fawn Gaudet, NH resident

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Allison Tanner (inventivetechologies@comcast.net) on Wednesday, September 11, 2019 at 16:32:06

address: 380 Greenleaf Ave

comments: I have been a member of the Conservation Commission for the City of Portsmouth for over 25 years. Single use plastics and styrofoam form the preponderance of trash in our wetlands and conservation areas. Please consider severely limiting their use in the City. Plenty of other places in the US and globally have done so, successfully. We like to think of our City as being an attractive place to live, and banning single use plastics will contribute to this.

includeInRecords: on
Engage: Submit



Pro Portsmouth Inc.
ARTS • CULTURE • HISTORY • COMMUNITY

RECEIVED

SEP 9 2019

CITY MANAGER
PORTSMOUTH, NH

September 5, 2019

Mayor Blalock & the City Council
1 Junkins Avenue
Portsmouth NH 03801

To Mayor Blalock & the City Council:

We've noted that the City is considering an ordinance impacting the use of Styrofoam and plastics at events held on City property. Since Pro Portsmouth, the independent non-profit that produces a number of these events, has been referenced specifically by Councilor Denton, we felt that a review of what we actually do might be helpful.

First Night: This is not a vendor-driven event. Outdoor activities taking place on City property include an ice sculpture, street dance, and fireworks display.

Anyone vending on December 31st does so with a permit from the City, not Pro Portsmouth. For example, vendors selling "glow sticks" are not sanctioned in any way by us.

NOTE: We have not included food/beverage vendors outdoors since 2000.

Children's Day: While we host a Block Party on Pleasant Street as part of the day's activities, this is not a vendor-driven event. Anyone selling food or beverages Downtown does so with a City permit.

Summer in the Street: Like the two previous events noted here, the music-centric event held on Pleasant Street is not vendor-driven.

Market Square Day 10K: While not in any way vendor-driven, we do use cups at each water stop on the course (on City streets). We started to transition to compostable cups in June 2019, and will continue to work through a supply of plastic cups in 2020. Throwing the plastics cups away simply doesn't make sense.

NOTE: There is a cost increase associated with the change to compostables.

P.O. Box 967
Portsmouth, NH 03802-0967
www.proportsmouth.org

Market Square Day Festival: While Pro Portsmouth does not vend, we typically have an average of 15 restaurants, vendors and non-profits selling food.

2019:

Portsmouth restaurants	11
Seacoast restaurants	1
Non-profits (Portsmouth)	2
Other	3
TOTAL	17

Crafters – selling/sampling 12

To date, we have requested that food vendors refrain from Styrofoam, single use plastics on Market Square Day.

We believe you all agree that Pro Portsmouth continues to be a responsible group, producing events for 42 years with the City's permission, and under the guidance and direction of the City in terms of compliance. With that in mind, please note the following:

- Any new ordinance goes into effect on January 1, 2021. We would give all participants 2020 as a grace period for compliance, and would require compliance in 2021. That would also be in keeping with past precedence; it strikes us that starting on December 31, 2019 is odd. Most, if not all, changes to ordinances take place with more lead time than three months.
- By using 2020 as a time for educating all road races, walks, and other events, compliance will be attained more responsibly from a financial point. As noted, we ourselves are transitioning from plastic to compostable cups for the 10K race. Throwing supplies away to go to a more expensive alternative is irresponsible, and would primarily impact non-profits.
- City approved vendors would also have the grace period.

For Market Square Day 2019, we went helium balloon free, and advised our participants of the change. For 2020, that change will apply to all event participants, so using 2020 as a grace/educational period would be in line with our past practices.

As always, we look forward to another year of events produced in cooperation with the City.

Sincerely,



Barbara Massar
Executive Director

cc: John P. Bohenko

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC
ATTORNEYS AT LAW

601 Central Avenue
Dover, NH 03820

TBL (603) 749-4529
(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

September 10, 2019

Portsmouth City Council
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, N.H. 03801
Attn: Mayor Jack Blalock

Re: Distribution of Single-Use Disposables Ordinance

Dear Mayor Blalock,

The purpose of this letter is to present research related to the legality of single-use disposable mitigation ordinances in the State of New Hampshire.

1. Single-use plastic bag legislation is rapidly occurring throughout the United States, including New England.

America's perception of single-use disposables has markedly changed in the last decade. In response to the overwhelmingly negative environmental impacts poised by the use of these plastics, many state legislatures are now rapidly introducing and enacting plastics legislation to combat the environmental damage and aesthetic blight caused by the unnecessary use of single-use disposables.

Although it is beyond the scope of this letter to provide a comprehensive analysis of proposed or enacted single-use plastics legislation throughout the country, an abridged review of relevant data illustrates national and regional trends.

- **8 states and 5 territories** have banned single use plastic bags, including American Samoa, California, Connecticut, Delaware, Guam, Hawaii, **Maine**, New York, the Northern Mariana Islands, Oregon, Puerto Rico, **Vermont**, and the U.S. Virgin Islands;¹

¹ National Conference of State Legislatures, State Plastic and Paper Bag Legislation *available at* <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx>.

- **16 states and 1 federal district** have enacted plastic bag legislation, including California, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, **Maine**, Mississippi, Missouri, New York, North Carolina, North Dakota, Oklahoma, Oregon, **Rhode Island**, and **Vermont**;²
- **122 municipalities** in the Commonwealth of **Massachusetts** have approved plastic bag regulations;³ and
- **New Hampshire** and **Massachusetts** currently have house bills tabled to reduce plastic bag pollution.⁴

2. **No law in the State of New Hampshire preempts municipalities from regulating single-use items.**

In the State of New Hampshire, certain municipal or “local” regulations can be preempted by state law.⁵ In *North Country Environmental Services v. Town of Bethlehem*, the New Hampshire Supreme Court comprehensively explained preemption, stating:

The state preemption issue is essentially one of statutory interpretation and construction — whether local authority to regulate under a zoning enabling act . . . is preempted by state law or policy. Preemption may be express or implied. [] Implied preemption may be found when the comprehensiveness and detail of the State statutory scheme evinces legislative intent to supersede local regulation. State law preempts local law also when there is an actual conflict between State and local regulation. A conflict exists when a municipal ordinance or regulation permits that which a State statute prohibits or vice versa. Even when a local ordinance does not expressly conflict with a State statute, it will be preempted when it frustrates the statute's purpose.

The mere fact that a state law contains detailed and comprehensive regulations of a subject does not, of itself, establish the intent of the legislature to occupy the entire field to the exclusion of local legislation." To determine whether the legislature has intended to occupy the field, the court may look to the whole purpose and scope of the legislative scheme and need not find such intent solely in the statutory language. The very nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest (citations omitted).⁶

² *See Id.*

³ *See* Massgreen.org, Plastic Bag Laws in Massachusetts, available at <http://www.massgreen.org/plastic-bag-legislation.html>.

⁴ *See generally* H.B. 559, 2019 Leg. (N.H. 2019); H.B. 3945, 2019 Leg. 191 (M.A. 2019).

⁵ *N. Country Envtl. Servs. v. Town of Bethlehem*, 150 N.H. 606, 611 (2004).

⁶ *Id.*

The *North Country* Court then identified the following questions to ask when determining state preemption of a local ordinance:

- “Does the ordinance conflict with state law;”⁷
- “Is the state law, expressly or impliedly, to be exclusive;”⁸
- “Does the subject matter reflect a need for uniformity;”⁹
- “Is the state scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation;”¹⁰ and
- “Does the ordinance stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the legislature?”¹¹

It follows that if a state preempts an entire regulatory field, then “any local law on the subject is preempted, regardless of whether the terms of the local and State law conflict.”¹²

Here, and in 2019, no term presented in a local or State law conflict because New Hampshire law does not currently address single-use plastic bags, and preemption does not apply.

3. New Hampshire’s solid waste regulations specifically encourage the reduction of landfill materials to minimize adverse impacts to the environment and public health.

New Hampshire’s Solid Waste Management Act (the “Act”) governs solid waste management in New Hampshire with the stated purpose to, “**...protect human health, to preserve the natural environment, and to conserve precious and dwindling natural resources through the proper and integrated management of solid waste.**”¹³ The stated goal of the Act is to 1) reserve landfill space for waste which cannot be reduced, reused, recycled or composted, and 2) lower the amount of material going to landfills by a combination of reducing, reusing, recycling, or composting.¹⁴ Section 11 of Act declares that the purpose of the regulation is to provide solid waste management options to ensure that New Hampshire’s

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.* at 334-35; *see also Casico v. City of Manchester*, 142 N.H. 312, 315 (1997).

¹³ *See generally* N.H. Rev. Stat. Ann. §149-M (2012); *See* RSA §149-M:1.

¹⁴ *See* RSA §149-M:2(I).

long-term solid waste management needs are met “while minimizing adverse environmental public health and long-term economic impacts.”¹⁵

To enforce this goal, the New Hampshire Division of Public Health Services (the “DPHS”), through the Department of Public works (the “DPW”), must regulate the state’s solid waste management practices under the following disposal hierarchy:¹⁶

- **Source Reduction;**
- Recycling and reuse;
- Composting;
- Waste-to-energy technologies (including incineration);
- Incineration without resource recovery; and
- Landfilling.

Applying this hierarchy, each town must manage and plan for solid waste management within its borders,¹⁷ while considering the: (i) environmental impacts; (ii) economic impacts; and (iii) area impacts related to its unique municipal needs, including the planning processes and solid waste management plans of other regional municipalities.¹⁸

In addition to the goals and hierarchy outlined above, the Act specifically bans certain battery products proven to be harmful to resident health and the environment.¹⁹ This ban is clearly an effort to keep certain pollutants out of New Hampshire and the state’s solid waste system.²⁰

4. Portsmouth’s ordinance seeks to protect the environment by disposing of solid waste and recycling materials.

The City of Portsmouth, New Hampshire regulates solid waste materials under the Public Health section of the City Ordinances (the “Ordinance”).²¹ The Ordinance’s stated purpose recognizes that solid waste programs must be developed and administered by the municipality to achieve the goal of disposing of solid waste, yard waste, and recycling materials for the convenience of its residents and to protect the environment.²² Additionally, Portsmouth requires

¹⁵ See RSA § 149-M:11(II).

¹⁶ See RSA §149-M:2(II); RSA § 149-M:2; RSA § 149-M:3

¹⁷ See RSA 149-M:5; RSA 149-M:23.

¹⁸ RSA § 149-M:23.

¹⁹ RSA § 149-M:28.

²⁰ See *id.*

²¹ Portsmouth, New Hampshire, Ordinances ch. 3, art. II §3.201 (2013).

²² *Id.*

that residents adhere to several regulations for trash and yard waste disposal, and mandates that all residents recycle.²³

5. Read in tandem, the Act and Ordinance allow the City of Portsmouth to ban single-use plastic bags and other harmful waste products.

Banning single-use Styrofoam containers, single-use plastic bags, or other single-use plastic materials reduces pollution by **source reduction**—the first enumerated method in the State’s disposal hierarchy—and does not conflict with the Act or the Ordinance. Although New Hampshire’s laws do not comprehensively address municipal authority to ban single-use disposables, the State does specifically allow municipalities to manage solid waste in the manner most beneficial to residents and the environment. Accordingly, under the Act and the Ordinance, Portsmouth has the ability to ban single-use Styrofoam.

Sincerely,

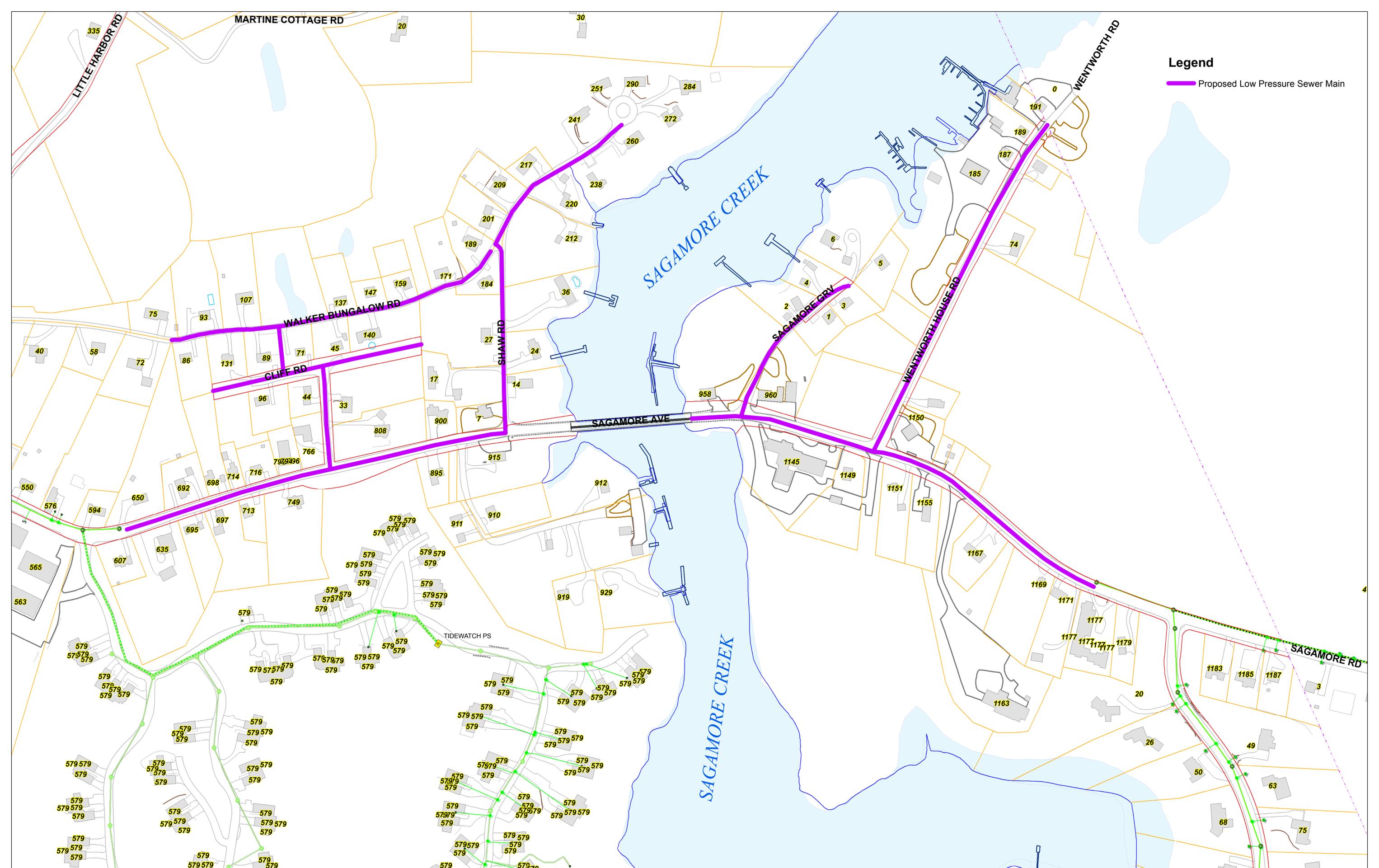


Joshua P. Lanzetta, Esq.
Counsel to the Surfrider Foundation, NH

²³ See Ordinance ch. 3, art. II.

Legend

Proposed Low Pressure Sewer Main



DISCLAIMER: The City of Portsmouth provides these Geographic Information System maps and data as a public information service. The maps and data provided are intended for informational purposes only. No guarantee or promise is made as to the accuracy of the maps and data and they should not be relied upon for any purpose other than general information.

