

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, DECEMBER 2, 2019 TIME: 6:00PM

I. 6:00PM - WORK SESSION – UPDATE RE: PRESCOTT PARK MASTER PLAN

II. CALL TO ORDER [7:00 p.m. or thereafter]

III. ROLL CALL

IV. INVOCATION

V. PLEDGE OF ALLEGIANCE

PRESENTATION:

1. Report and Recommendations on Scholarship Funds Policies from Trustees of the Trust – Thomas Watson, Trustee (***Sample motion – move to adopt the Trustees of the Trust recommendations regarding this report***)

VI. ACCEPTANCE OF MINUTES – SEPTEMBER 16, 2019, OCTOBER 7, 2019 AND OCTOBER 28, 2019

VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

VIII. PUBLIC COMMENT SESSION

IX. PUBLIC HEARING ON ORDINANCES AND/OR RESOLUTION

- A. Public Hearing/Second Reading of Ordinance – Zoning Ordinance – Flood Plain Overlay District: (***Public Hearing continued from November 12, 2019 Council meeting***)

Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 6 – Overlay Districts and Article 15 – Definitions – Flood Plain District

- B. Third and Final Reading of Ordinance – Food Licensing and Regulations:

Third and Final Reading of Ordinance amending Chapter 4, Article I, Sections 4.103 – Adoption of Specific Parts HE-P 2300, and Section 4.105 - License

- C. Third and Final Reading of Ordinance – Fire Codes:

Third and Final Reading of Ordinance amending Chapter 5, Article VIII – Alarm Systems and Article IX – Adopted Fire Codes

- D. Third and Final Reading of Ordinance – International Building Code & International Residential Code & International Plumbing Code, International Mechanical Code, Fuel Gas Installations and National Electrical Code:

Third and Final Reading of Ordinance amending Chapter 12, Part I – International Building Code, and Part II – International Residential Code & Chapter 15, Part I – International Plumbing Code, Part II – International Mechanical Code, Part III – Fuel Gas Installations, and Part IV – National Electrical Code

E. Third and Final Reading of Ordinance – Conservation Ordinance:

Third and Final Reading of Ordinance amending Chapter 8, Article V – Conservation Ordinance

F. Third and Final Reading of Ordinance – Wetlands Protection:

Third and Final Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection

X. **MAYOR BLALOCK**

1. *Appointment to be Considered:

- Beth Moreau appointment to the Rockingham Planning Commission as the Planning Board Representative

2. *Appointments to be Voted:

- John Formella reappointment to the Zoning Board of Adjustment
- Arthur Parrott reappointment to the Zoning Board of Adjustment
- Dana Levenson reappointment to the Trustees of the Trust Funds
- Jonathan Sandberg appointment as regular member to the Parking & Traffic Safety Committee
- Erica Wygonik appointment as an Alternate to the Parking & Traffic Safety Committee

3. Market Street Gateway Park (***Sample motions – 1) move to suspend the rules to suspend Council Rule 44 – Naming of Municipal Buildings, Parks and Facilities, 2) move to name the Market Street Gateway Park as the Bohenko Gateway Park***)

4. Thank you letter from Michael Griffin & Marga Coulp regarding George R. Laderbush Bridge Opening (***Sample motion – move to accept and place on file***)

XI. **CITY COUNCIL MEMBERS**

A. COUNCILOR ROBERTS

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the November 7, 2019 meeting (***Sample motion – move to approve and accept the Action Sheet and Minutes of the November 7, 2019 Parking and Traffic Safety Committee***)

B. COUNCILOR DENTON

1. Request for the Portsmouth High School Eco Club to receive additional City of Portsmouth reusable tote bags to help raise funds at their Craft Fair for their permaculture greenhouse project

XII. APPROVAL OF GRANTS/DONATIONS

1. *Acceptance of Donation to the Coalition Fund
 - Town of Moultonborough - \$5,000.00***(Sample motion – move to approve and accept the donation, as listed, to be placed in the Coalition Fund)***

XIII. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

City Manager’s Items Which Require Action:

1. 3 Pleasant Street Community Space Easements
2. Market Street Property – Recommendation for Acceptance of Sewer Line Easement
3. Lafayette Road Sewer Extension Into Rye

XIV. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Donald N. Gorvett of Piscataqua Fine Arts for property located at 123 Market Street ***(Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request)***

Planning Director’s Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Letter from Lilia Potter-Schwartz, Education For All Children (EFAC) requesting to hold the 5th annual Race to Educate on Sunday, May 24, 2020 at 12:30 p.m. ***(Anticipated action – move to refer to the City Manager with power)***

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence ***(Sample motion – move to accept and place on file)***
- B. Letter from Rabbi Ira Korinow, Temple Israel Board of Directors regarding Request to display a Hanukkah menorah in Market Square ***(Sample motion – move to accept the Temple Israel recommendation for a menorah in Market Square)***

- C. Letter from Hannah of Seacoast Chabad Jewish Center requesting to place a nine-foot Menorah in Market Square *(See attached Memorandum from City Attorney Sullivan)*
(Sample motion – move to accept and place the letter on file)
- D. Letter from Attorney Derek Durbin regarding Release of Interest in Tax Map 206, Lot 1 (Off Brackett Lane) ***(Sample motion – move to refer to the Planning Board from Report Back)***

XVI. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. Board / Committee Input to the Guiding Parking Principles

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*

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: November 28, 2019
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on December 2, 2019 City Council Agenda

6:00 p.m. – Work Session:

1. **Update Re: Prescott Park Master Plan.** A representative from Weston and Sampson will give an update to the City Council regarding the Prescott Park Master Plan.

Presentation:

1. **Report and Recommendations on Scholarship Funds Policies from Trustees of the Trust.** On Monday evening, Thomas Watson, Chair of the Trustees of the Trust, will make a presentation to the City Council regarding the Report and Recommendations for revision of scholarship fund policies. *Attached is a copy of the Report* outlining the Trustees of the Trust recommendations that include a policy. The Trustees of the Trust are looking for the City Council to adopt the recommendations of this Report.

Motion: Move to adopt the Trustees of the Trust recommendations regarding the attached Report.

Public Hearings & Votes on Ordinances and/or Resolutions:

1. **Public Hearing and Second Reading of Floodplain Overlay District Zoning Amendments (Public Hearing Continued from November 12, 2019 City Council Meeting).** As previously summarized, these proposed amendments to the Zoning Ordinance, Article 6 – Overlay Districts, Section 10.620 – Flood Plain District and Article 15 – Definitions include revisions for complying with National Flood Insurance Program

regulations, addressing impacts of climate change and projected sea level rise, and strengthening thresholds for when properties are required to come into compliance with Flood Plain standards for development.

The Planning Board voted to recommend the amendments to the City Council at the September 19, 2019 meeting and the Planning Department held two public information meetings in November.

The Council held a public hearing on the proposed amendments on November 12, 2019 and voted to continue the second reading and public hearing to the December 2, 2019 Council meeting. At that time, staff was asked to address a few of the questions raised by the public during the public hearing.

When staff discussed some of the questions with the state of New Hampshire Floodplain Program Management staff, we learned that the 2015 Building Code (which was recently adopted by the state) includes a requirement that all construction in flood zones be raised 1-foot above the base flood elevation. The City's current zoning requires construction in the flood zone only be elevated to the base flood elevation, and the previously proposed amendments only required elevating above the base flood elevation for new construction. To make sure the Zoning Ordinance and the Building Code are consistent, staff is recommending that the minimum requirement in the special flood hazard area be increased to 1-feet above base flood elevation.

In response to public questions and discussion with the state floodplain program staff, City staff is recommending a few additional amendments for the Council to consider at second reading. The proposed amendments are individually listed in the [Ordinance document attached and a redlined version of the revisions to the existing Ordinance](#) is provided for reference as well. At Council's request, the redlined version has been color-coded to distinguish the changes required by the National Flood Insurance Program and the additional amendments proposed to address impacts of climate change. A summary of the proposed changes to the previous draft amendments is provided below:

Changes proposed to clarify and fine-tune amendments based on public input:

- Revise “substantial improvement” definition to remove the requirement that construction costs be calculated as cumulative costs over time and clarify that the appraised value is calculated at the time the building permit application is submitted.
- Revise “new construction” definition to apply only to projects started after January 1, 2020.
- Revise definition of development to clarify that storage of equipment and materials are only subject to the flood district regulations if they have potential to impact flood storage capacity.

Changes proposed for consistency with state building code:

- Raise minimum required elevation in special flood hazard areas from base flood elevation (BFE) to base flood elevation +1-foot.

	1 st Reading	2 nd Reading	2 nd Reading (revised)
New construction in Special Flood Hazard and Extended Flood Hazard Areas	2-feet above BFE	2-feet above BFE	2-feet above BFE
Substantial Improvement in Special Flood Hazard Area	BFE	BFE	1-foot above BFE

Staff will be prepared to further explain the proposed changes and elaborate on other questions discussed with NH Floodplain Program Management staff at the December 2, 2019 City Council meeting.

I recommend the City Council move to pass second reading on the proposed amendments as revised to the Flood Plain District sections of the Zoning Ordinance and schedule a third and final reading for the December 16, 2019 City Council meeting.

2. **Third and Final Reading Re: Amendments to Building, Life Safety and Health Codes.**

At the November 12, 2019 City Council meeting, the Council voted to pass second reading and schedule third and final reading for the December 2, 2019 meeting regarding amendments to the Building, Life Safety and Health Codes.

In December of 2017, the City Council adopted amendments to our Building Code (Chapters 12 and 15), Fire Code (Chapter 5) and our Food Code (Chapter 4) to reflect more current versions of the State Building and Fire Code, formally adopt and amend the 2009 Food Code and certain provisions the N.H. Code of Administrative Rules, He-P 2300, Sanitary Production and Distribution of Food. The amendments to our City Codes revised our local amendments to reflect the updated versions of the State Codes. The State has recently amended the State Building and Fire Codes to incorporate updated version of International Codes. Our current City Codes and local amendments need to be amended again to reflect the updated State Codes. Most of the proposed amendments to the [attached City Codes](#) are not substantive but are housekeeping in nature to reflect the updated State Codes (outlined below) and to delete local amendments now made unnecessary due to the State Code updates.

- [Chapter 4, Food Licensing and Regulations](#), adopting definitions and standards for food processing plants from He-P 2300, the N.H. Code of Administrative Rules
- [Chapter 12, Part I](#): International Building Code (IBC), from 2009 to 2015 version, SBC*
- [Chapter 12, Part II](#): International Residential Code (IRC), from 2009 to 2015 version, SBC*
- [Chapter 15, Part I](#): International Plumbing Code (IPC), from 2009 to 2015 version, SBC*
- [Chapter 15, Part II](#): International Mechanical Code, (IMC), from 2009 to 2015 version, SBC*
- [Chapter 15, Part III](#): Fuel Gas Installations, from Fuel Gas Installations to 2015 National Fuel Gas Code
- [Chapter 15, Part IV](#): National Electrical Code, 2017, SBC*
- [Chapter 5, Article IX](#): International Fire Code, 2015: Uniform Fire Code, NFPA 1, from 2009 to 2015, SFC**

(Although the Codes below are included in the State Building and Fire Codes, we do not have any local amendments to these Codes):

- Life Safety Code, 2015 (NFPA 101), SFC**
- International Energy Conservation Code, from 2009 to 2015, SBC*
- International Existing Building Code, from 2009 to 2015. SBC*
- **International Swimming Pool and Spa Code, 2015, SBC***

*SBC indicates Codes included in the State Building Code

**SFC indicates Codes included in the State Fire Code

In December of 2017 the City Council finalized Guiding Principles Related to Code Adoption in Portsmouth which recommends prompt revision of our ordinances to reflect the most recently adopted State codes and to evaluate current codes to improve code administration. The Inspection and Fire Departments held a public informational session on the Building and Fire Code updates on October 31, 2019. The Inspection and Fire Departments established a separate webpage on the Inspection Department's website that contains the proposed amendments and code information. The Health Department held its

public information session on Food Code updates on Thursday, October 17, 2019 at 2:00 p.m., in Conference Room A and has established a webpage that contains the proposed amendments and state regulations. This outreach to the community supports another of the Council's Guiding Principles Related to Code Adoption [attached](#) in the Agenda packet.

I recommend the following motions:

- a) *Move to pass third and final reading of amendments to Chapter 4 (Food Code);*
- b) *Move to pass third and final reading of the amendments to Chapter 5 (Fire Code); and,*
- c) *Move to pass third and final reading of the amendments to Chapter 12 and Chapter 15 (Building Codes).*

3. **Third and Final Reading of a Minor Ordinance Change to Conservation Ordinance.**

At the November 12, 2019 City Council meeting, the Council voted to pass second reading and schedule third and final reading for the December 2, 2019 meeting regarding a minor Ordinance change to the Conservation Ordinance.

At Chapter 8, Article V, the City has a Conservation Ordinance for purposes of protecting land and interests in land (easements) received or purchased for conservation purposes. The Ordinance lists properties subject to conservation protection and sets forth processes for managing those properties.

The proposed Ordinance amendments consist of the following:

- a) Adding one property to the list of protected properties (property located on Lois Street) and deleting one property that should not be included on Heritage Avenue (it is a pump station);
- b) Updating the property identifiers with extended parcel IDs and book and page information; and
- c) Adding a new section to allow for the City to maintain municipal infrastructure located on such properties.

The Conservation Commission is supportive of these amendments and the Planning Board does not have a role. [Attached are the proposed Ordinance amendments.](#)

I recommend the City Council move to pass third and final reading on the proposed amendments to Chapter 8, Article V, as presented.

4. **Third and Final Reading on Wetlands Regulations Zoning Amendments.** At the November 12, 2019 City Council meeting, the Council voted to pass second reading and schedule third and final reading for the December 2, 2019 meeting regarding the Wetlands Regulations Zoning Amendments.

These proposed amendments will provide additional detail to assist the Conservation Commission and Planning Board in their implementation of wetland protection regulations and include best practices for working in and near wetland environments throughout the City. The proposed amendments to the Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection include clarifying the characterization of impacts to the wetland and buffer, adding information related to the compensatory removal of impervious surface and the requirements for a wetland buffer enhancement plan, providing guidance on living shorelines for tidal areas and use of porous pavement in the wetland buffer, and delineating wetland buffer areas.

The proposed amendments are listed in the [attached document and a redlined version of the existing Ordinance](#) is provided for reference as well. Planning Department staff will provide a presentation on the proposed changes at the Council meeting.

The Conservation Commission reviewed the proposed amendments and provide feedback during a work session on July 10, 2019. The Planning Board held a work session on these proposed amendments on August 22, 2019 and a public hearing on September 19, 2019. As a result of their review, the Board voted to recommend approval to City Council of the proposed wetlands protection amendments.

The Planning Department held two public informational meetings to go over these amendments and to answer questions from the public on October 29, 2019 and November 6, 2019.

I recommend the City Council move to pass third and final reading to the Wetlands Protection section of the Zoning Ordinance, as presented.

Approval of Grants and Donations:

1. **Acceptance of Donation to the Coalition Fund.** The City of Portsmouth has received the following donation to the Coalition Fund, which will be utilized to continue to monitor the education funding formula and any changes to the statewide property tax:

➤ Town of Moultonborough	\$5,000.00
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I would recommend the City Council move to approve and accept the donation, as listed, to be placed in the Coalition Fund.

Consent Agenda:

1. **Request for License to Install Projecting Sign.** Attached is a request for a projecting sign license (see attached memorandum from Planning Director Juliet Walker):
 - Donald Gorvett, owner of Piscataqua Fine Arts for property located at 123 Market Street

I recommend the City Council move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and authorize the City Manager to execute the License Agreement for this request.

City Manager's Items Which Require Action:

1. **3 Pleasant Street Community Space Easements.** On September 19, 2019, the Planning Board granted site plan review approval for an application from Dagny Taggart, LLC for property located at 3 Pleasant Street to construct a 4-story addition and new 4th floor on an existing building.

As permitted by Section 10.5A43.33 of the Zoning Ordinance, the Planning Board's approval allowed the project to exceed the maximum building height permitted in the zoning district by approximately 2 feet. Per the provisions of that section, the development is allowed up to one additional story in height (or up to 10 feet) if at least 20% of the property is assigned and improved as community space. Such community space, as defined by the Zoning Ordinance, must have permanent deeded access to the City of Portsmouth.

The community space, as approved by the Planning Board, is shown on the attached plans and includes a wide pedestrian sidewalk and a plaza accessed by pedestrian alleys from Daniel Street, Pleasant Street, and Penhallow Street. The developer has also proposed a future expansion of the development with the addition of a new building at the corner of Penhallow Street and Daniel Street, which will also include an increase in the community space to 30% of the property area. That proposed expansion is still pending land use approvals.

As there are three lots involved in the development and the community space crosses all three, there are three separate easement deeds required.

Furthermore, the City currently holds a restriction from a 1910 conveyance over the 3 Pleasant Street lot to the effect of the following: "the approaches and driveways around the old City Hall building on said premises shall be kept open and unencumbered" (the 1910 restriction). This existing restriction prevents construction of buildings on the two alleyways adjacent to 3 Pleasant Street.

The new easements described above will supersede and exceed the 1910 restriction because all the community space in all three parcels will be regulated similarly to a public sidewalk.

This increase in legal rights leads the Planning Board, and the Planning and Legal Departments, to recommend the City Council release any rights it holds on the 3 Pleasant Street parcel and to accept the three new easements. (See attached.)

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 grant authority for the City Manager to release the existing rights retained by the City in 3 Pleasant Street in the 1910 Deed.

And subsequently:

Move to grant authority for the City Manager to accept the Easement Deeds in a form similar to those attached.

2. **Market Street Property – Recommendation for Acceptance of Sewer Line Easement.**

The Department of Public Works is seeking to conduct needed repairs on an existing sewer line across a commercial lot located to the west of the intersection of Market Street and Russell Street. The City installed this sewer line over 100 years ago, but it is not within any recorded easement.

In August of 2019, the principles of North End Master Development, LP, came to an agreement with the City to execute and record an easement containing this sewer line. The Planning Board moved to recommend the City Council accept a sewer line easement from North End Master Development at the Planning Board meeting on August 15, 2019. However, prior to the City Council meeting on September 3, 2019, it was brought to the attention of the Legal Department that the underlying parcel was to be sold.

Port Harbor Land LLC has since purchased this parcel. The legal representatives of Port Harbor Land LLC have agreed to honor the previous agreement. [See the attached deed and the plan showing the location of the line.](#)

At the August 15, 2019 Planning Board meeting, the Planning Board moved to recommend the City Council accept a sewer line easement from North End Master Development LP.

I recommend the City Council move that the City Manager be authorized to negotiate, execute and accept a sewer easement from Port Harbor Land LLC.

3. **Lafayette Road Sewer Extension Into Rye.** For over a year, the City staff has been working intermittently with engineering and legal representatives of several Rye property owners who have been exploring a possible extension of Portsmouth's sewer system from the Portsmouth/Rye line on Lafayette Road up to Washington Road in Rye. The proposed extension would be at no cost to the City of Portsmouth or the Town of Rye, funded entirely

by the benefiting property owners. The extension would be built to City specifications and owned by the City once complete and operational.

There is general agreement that given the soils in that area and the Berry's Brook Watershed, a public sewer option along Lafayette would be preferable to additional septic systems. The City has since 1997 served the Adams Mobile Home Park on Lafayette Road in Rye following the failure of its septic system.

The Town of Rye voted by warrant article in March of 2019 to authorize the development of an Intermunicipal Agreement to facilitate a sewer extension ([see attached](#)). The property owners took this step with the Town of Rye early in the process not wishing to invest the engineering and legal resources to pursue this sewer line extension conversation with the Rye Sewer Commission and the City of Portsmouth if that hurdle could not be met.

Over the course of two meetings in November 2019, the Rye Sewer Commission approved a draft of an Intermunicipal Agreement between the Town of Rye and the City of Portsmouth. That [proposed Agreement is attached](#) and has been reviewed by the Legal Department. It is very similar to an Intermunicipal Agreement entered into in 2012 to extend the public sewer from Odiorne Point Road in Portsmouth along Sagamore Avenue to the roundabout with Elwyn Road in Rye. This sewer service serves the Atlantic Grill among other properties.

[Attached is a memorandum from Attorney Tim Phoenix providing additional details on the proposed sewer line extension and supporting documentation.](#)

Deputy City Attorney Suzanne M. Woodland and City Engineer Terry Desmarais, will be available to answer questions, as well as Attorney Tim Phoenix, representing the property owners.

I recommend the City Council move to bring forward for consideration at the December 16, 2019 City Council meeting an Intermunicipal Agreement between the City of Portsmouth and Town of Rye to extend sewer service at no cost to the City along a portion of Lafayette Road / Route 1 in Rye.

Informational Items:

1. **Board / Committee Input to the Guiding Parking Principles.** On March 25, 2019, the City Council held a joint work session with members of the Planning Board, Parking & Traffic Safety Committee and Zoning Board of Adjustment. The purpose of the work session was to provide an opportunity for elected and appointed officials who are involved with parking and transportation regulations and related policy decisions to have an opportunity to review and discuss the City's Guiding Parking Principles adopted by the Council in March 2012.

After a presentation from City staff, the attendees broke out into small group to review the guiding parking principles and discuss proposed modifications. As an outcome of the

work session, City staff prepared draft modifications to the Guiding Parking Principles based on these discussions, which were presented to the Council at the May 6, 2019 Council meeting. At that time, the Council requested that the proposed modifications be reviewed with each of the Boards / Committees that participated in the Work Session to provide input back to the Council.

Attached is a summary of the input received from each of the Boards / Committees and additional proposed changes discussed.