

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MARCH 16, 2020 TIME: 6:00PM

AN ANTICIPATED NON-PUBLIC SESSION WILL BE HELD AT THE END OF THE CITY COUNCIL MEETING RE: MCINTYRE – RSA 91-A:3, II (e)

- I. 6:00PM WORK SESSION – SAGAMORE AVENUE SEWER EXTENSION
- II. PUBLIC DIALOGUE SESSION *[when applicable – every other regularly scheduled meeting]*
- III. CALL TO ORDER [7:00 p.m. or thereafter]
- IV. ROLL CALL
- V. INVOCATION
- VI. PLEDGE OF ALLEGIANCE

- VII. ACCEPTANCE OF MINUTES – JANUARY 28, 2020

- VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS
 - Recognition of 5th Grade Little Harbour School student Aadhavan “Addy” Veerendra, winner of the NH Spelling Bee with Principal Lawson and Spelling Bee Club teacher Molly Green

- IX. PUBLIC COMMENT SESSION

- X. PUBLIC DIALOGUE SUMMARY *[when applicable]*

- XI. PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS
 - A. First reading of Ordinance amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area (***Sample motion – move to pass first reading and schedule a public hearing and second reading at the April 6, 2020 City Council meeting***)

- XII. MAYOR BECKSTED
 1. Appointments to be Considered:
 - Appointment of Beth Margeson to the Conservation Commission as an Alternate
 - Reappointment of Jessica Blasko to the Conservation Commission
 - Reappointment of Allison Tanner to the Conservation Commission
 - Reappointment of Jackie Cali-Pitts to the Recreation Board
 - Reappointment of Lisa Louttit to the Recreation Board
 2. *Appointments to be Voted:
 - Reappointment of Barbara McMillan to the Conservation Commission
 - Reappointment of William Townsend to the Peirce Island Committee
 - Reappointment of John Simon to the Peirce Island Committee
 - Appointment of Kara Rodeneizer to the Portsmouth Housing Authority
 - Reappointment of Robin Pickering to the Portsmouth Housing Authority – Resident Member

- Appointment of David Cosgrove to the Citywide Neighborhood Committee
 - Appointment of Mark Syracuse to the Citywide Neighborhood Committee
3. *Establish Committee for Negotiations Re: Boyle

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR SPLAINE

1. *Jones Avenue Landfill
2. *Coronavirus Planning and Preparation – and Observations/Concerns from Economic Development Commission meeting of Friday, March 6, 2020

B. COUNCILOR McEACHERN

1. *Creation of a Subcommittee comprised of 2 Council members and 4 residents selected by the Mayor and approved by the Council to discuss current ADU Approval process and ways to improve

C. COUNCILOR WHELAN

1. *McIntyre Subcommittee Report

D. COUNCILOR KENNEDY

1. Impact Fees
I would recommend the following suggestions to support The City of Portsmouth's Infrastructure:
 For projects over two units the following impact fees would apply:
 1-Bedroom or 1,000 sq. ft. or less \$25,000/unit
 2-Bedrooms or 1,500 sq. ft. or less \$50,000/unit
 3-Bedrooms or 2,000 sq. ft. or less \$75,000/unit
 4-Bedrooms or 2,500 sq. ft. or less \$100,000/unit
 5-Bedrooms or 3,000 sq. ft. or less \$125,000/unit
 The following motion I will be making:
(Sample motion – move to have the City Manager, Legal Staff, Fees Committee and Planning Board Review and Report Back on the suggested Impact Fees by the April 20, 2020 City Council meeting. I would also encourage other suggestions from these groups on Impact Fees with a Report Back on April 20, 2020)

E. COUNCILOR HUDA

1. Annual Budget Spending Request by Department

Does that mean the Department Manager has the ability to spend those dollars on anything as long as they stay within the budget dollars appropriated to them?

(Sample motion – move to request a report back from the City Manager on the following: (In a language & format that can be understood by all City residents)
 - ***To Clarify the dollar limit spending authority granted to different positions (i.e. Directors, Department Managers, City Purchasing Agent, City Manager)***

- **To discuss if there is a dollar limit restriction on the City Department Directors or Managers ability to transfer dollars among the various line items in their appropriated budgets. Do these transfers require the approval of either the Finance Director or City Manager.**
 - **Please include references to source documentation that authorizes such dollar limits.**
 - **Please include a discussion on the various controls applied to the above.**
2. To Clarify the City Managers, Interpretation of Section 7.23 Information Technology Management of the City Charter as it relates to the Information Technology section of the Administrative Code?
 - **Is there any conflict?**
 - **Based on the interpretation of the above, is the City following the City Charter or the Administrative Code?**

XIV. APPROVAL OF GRANTS/DONATIONS

1. Acceptance of Donations to the Portsmouth Police Department:
 - Mr. Gormley and Ms. Inguchi in support of Portsmouth Police Department – \$1,000.00
 - Ms. Marchi in support of Police Explorer Cadets - \$20.00

(Sample motion – move to accept and approve the donations for the Police Department as presented)
2. Acceptance of Grant from the NH Department of Safety for Night Vision Equipment - \$37,500.00 ***(Sample motion – move to accept and approve the grant for the Police Department as presented)***

XV. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Market Street Property Purchase from NH Department of Transportation
2. Report Back from Planning Regarding 27 Thaxter Road
3. Foundry Place Agreements and Easements
4. Request to Establish a Work Session Regarding Prescott Park
5. Request to Renew Seacoast Growers’ Association (Farmer’s Market) Proposed 2020 License Agreement
6. Request for Public Hearing Regarding Bonding of Fire Apparatus
7. Request to Establish Public Hearing Regarding Petition for Discontinuance of a Portion of Cate Street Connector Road

XVI. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Harrison Schoaneu of Fresh House for property located at 76 Congress 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. Request for License to Install Projecting Sign for owner Nuttaya Nicholas of 5 Thai Bistro for property located at 40 Pleasant 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***

- C. Letter from Monte Bohanan, Portsmouth Halloween Parade, requesting permission to hold the 26th Annual Portsmouth Halloween Parade on Saturday, October 31, 2020 at 7:00 p.m. (***Anticipated action – move to refer to the City Manager with authority to act***)

XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. *Report from the City's Health Department regarding Covid-19
- C. Letter from Marc Stettner Re: Designated Motorcycle Moped Parking Area

- D. Letter from Craig M. Steigerwalt Re: Petition for Release of Interest in Paper Street contiguous to 276 Dennett Street (Tax Map 143, Lot 13) pursuant to RSA 231:51 and 231:52 (**Sample motion – move to refer to the Planning Board for report back**)
- E. Letter from Attorney Daniel C. Hoefle Re: Request for Release of Paper Street Pursuant to NH RSA 231:51 and 231:52 – 294 Dennett Street (Tax Map 143, Lot 26) (**Sample motion – move to refer to the Planning Board for report back**)
- F. Letter from Seth Levine regarding the Middle Street Bike Lanes (**Sample motion – move to accept and place on file**)
- G. Letter from Jim Fernald regarding proposed dock on 21 Fernald Court
- H. Background Information from Deb & Ken Jennings on 27 Thaxter Road

XVIII. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. Market Street Pedestrian Bridge
- 2. *Questions from Councilor Huda from the 3/2/20 City Council meeting
- 3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

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

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

** Indicates verbal report*



Karen S. Conard
City Manager

CITY OF PORTSMOUTH

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

Date: March 12, 2020
To: Honorable Mayor Rick Becksted and City Council Members
From: Karen Conard, City Manager *KSC*
Re: City Manager's Comments on City Council Agenda of March 16, 2020

Work Session:

The City Engineer, Terry Desmarais, and the Deputy City Attorney, Suzanne Woodland, will facilitate a work session regarding the Sagamore Avenue Sewer Extension Project. The purpose of the work session is to discuss in detail those aspects of the project that would benefit from City Council decision-making in terms of scope, apportionment of costs, funding and other policy aspects of the project. Please reference the City's [Sagamore Avenue Sewer Extension project webpage](#) for additional background information.

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

1. **First Reading of Ordinance Amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area:**

In June 2019, the Parking and Traffic Safety Committee approved an amendment to the Designated Motorcycle Parking Area Ordinance (Chapter 7, Article I, Section 7.105 C). A citizen raised concerns regarding the amendment, and in August the Committee rescinded its approval and requested a report back from City staff. Upon review, the Committee voted to request a revised amendment in September. On February 6, 2020, the Parking and Traffic Safety Committee voted to approve the [attached amendment](#) to Chapter 7, Article I, Section 7.105 C and to refer it to the City Council to request first reading. At its March 2nd meeting, the City Council voted to bring back the ordinance for a first reading this evening.

Ben Fletcher, Director of Parking, will provide a brief presentation on the amended ordinance.

I recommend that the City Council move to approve the first reading of an amendment to Chapter 7, Article I, Section 7.105 C, the Designated Motorcycle Parking Area Ordinance, and schedule a public hearing and a second reading at the April 6, 2020 Council meeting.

XIV. Approval of Grants/Donations:

1. Police Department Donations:

At its February 25th meeting, the Board of Police Commissioners accepted the following donations:

- a. A donation of \$1,000 from Mr. Gormley and Ms. Iguchi in support of the Portsmouth Police Department.
- b. A donation in the amount of \$20 from Ms. Marchi in support of the Portsmouth Police Explorer Cadets.

I recommend that the City Council move to approve and accept the donations to the Portsmouth Police Department as presented.

2. Police Department Grant:

At its March 6th Special meeting, the Board of Police Commissioners accepted the following grant:

- a. A grant in the amount of \$37,500 from the New Hampshire Department of Safety for Night Vision Equipment.

I recommend that the City Council move to approve and accept the grant to the Portsmouth Police Department as presented.

XV. City Manager's Items which Require Action:

1. Market Street Property Purchase from NH Department of Transportation:

Department of Public Works staff have been working with the New Hampshire Department of Transportation (NHDOT) to procure a 7,834 sq. ft parcel of land on Market Street (see [attached map](#)) from the State of NH to improve stormwater maintenance associated with a pond bounded by Market Street, Maplewood Avenue, McGee Drive and the Heritage Hill Condominiums.

Purchase of this land is necessary to improve access to drainage structures that control the water level in this pond. The need for added control of this pond was identified during the stormwater design of the on-going Maplewood Avenue Reconstruction Project. The State has valued the parcel at \$1,100 which would be paid for as part of the Maplewood Avenue project cost. With Planning Board concurrence and City Council approval, City staff will work with the State to complete the purchase of this land.

I recommend that the City Council move to refer procurement of land from the NHDOT to the Planning Board for a recommendation back to City Council.

2. Report Back from Planning Regarding 27 Thaxter Road:

This memorandum represents the most recent chapter of a lengthy consideration by the City government concerning a request by a property owner on Thaxter Road to separate two lots which had been previously conjoined by the City and an objection to that action taken by the owners of an abutting lot.

On May 20, 2019 the City Council reviewed a request from Chad Callihan and a recommendation from the Planning Board, subsequently voting to unmerge two lots on Thaxter Road owned by Mr. Callihan. The lots were believed to have been involuntarily merged by the City. See NH RSA 674:39-aa (copy is [attached](#) for reference).

Abutters Kenneth and Deborah Jennings of 63 Thaxter Road then appealed that decision of the City Council to the Board of Adjustment as allowed by the statute. The Board of Adjustment heard the appeal on September 17, 2019 and then continued its deliberations to the October 15, 2019 meeting. At the first hearing on the appeal, Attorney Ralph Woodman, on behalf of the appealing abutters, indicated to the Board of Adjustment that there was information which had not been available to the City Council at the time of its initial vote, and that the information should have been considered prior to granting the unmerging of the lots. The hearing and the deliberation of the Board of Adjustment on this matter may be reviewed on YouTube at <https://youtu.be/kXgZE42ztOk?t=1296> (September 17, 2019 hearing) and <https://youtu.be/MOfxZ5gIur4?t=1374> (October 15, 2019 meeting). Subsequent to the hearing and deliberation, the Board of Adjustment voted to remand the matter to the City Council for the Council to take whatever action it deemed to be appropriate under the circumstances.

The matter went back to the Council on December 16, 2019. At that time, attorneys for each side were asked to present their arguments in writing, with a limit of seven pages each. Those writings are [attached](#). After some discussion and subsequent to the failure to pass a motion to uphold the City Council's previous decision to unmerge the lots, the City Council moved to refer the unmerging question to the Planning Board.

On January 16, 2020 the referral from the City Council was addressed by the Planning Board. At that time, the Planning Board "recommended to the City Council restoration of the involuntarily merged lots, as originally recommended."

Therefore, the matter is back before the City Council, with a recommendation from the Planning Board that the Council uphold its previous decision of May 20, 2019 to unmerge the lots.

I recommend that the City Council move to approve the unmerging of the two involved lots at 27 Thaxter Road as requested by the applicant Chad Callihan and as recommended by the Planning Board.

3. **Foundry Place Agreements and Easements:**

After several years of development, Deer Street Associates (DSA) is prepared to move forward with “The Hotel at Foundry Place”, located at 165 Foundry Place. This development has the approval of both the Technical Advisory Committee (January 30, 2018) and the Planning Board (February 15, 2018). The Planning Board’s approval of this project stipulated that a community space easement ([Exhibit D](#)), a construction and access easement ([Exhibit E](#)), and a landscaping license agreement ([Exhibit F](#)) be executed, each of which requires City Council acceptance. In addition, because the City purchased the property for the Foundry Garage from DSA as a part of its development of the surrounding lots, the City and DSA are required by a contract, the Post Closing Obligations Agreement (PCOA), to enter into additional agreements relating to this development, which are also before City Council.

These documents include a parking agreement ([Exhibit G](#)), the termination of water and sewer easements over DSA property ([Exhibit H](#)), and an affidavit addressing the relocation of the Railroad Agency Office ([Exhibit I](#)).

As explained below, the first set of documents require City Council acceptance prior to execution, while the second set of documents arise from approvals granted by the City Council on August 15, 2016.

History of the Planning Board Approvals

On September 7, 2016, the Planning Board approved a subdivision of land owned by DSA adjacent to Deer Street and Bridge Street. That subdivision created six lots. A highlighted version of the subdivision plan is [attached as Exhibit A](#) for reference. DSA sold Lot 1 to the City, where the City constructed the Foundry Garage and Foundry Place, a public right of way. Lot 2 was reserved for community space, and Lots 2 through 6 were retained by DSA for development.

On February 15, 2018, the Planning Board granted site plan review approval for property located at 165 Deer Street, marked as Lot 3 on [Exhibit A](#). This site plan approval was for a 5-story mixed use building including a hotel restaurant and first floor parking garage with a footprint of 22,073 square feet and 104,020 square feet gross floor area. The Planning Board approved the development, which is 5 stories and 60 feet tall, where 4 stories and 50 feet are permitted in this district. The Planning Board also approved the 22,073 square foot footprint, which exceeds the 20,000 square foot footprint permitted in this district. Each of these conditional use permits were granted pursuant to Section 10.5A46 of the Zoning Ordinance.

Per Section 10.5A46.10 of the Zoning Ordinance, DSA is providing 5,301 square feet of community space to the City in order to receive the above-mentioned incentives for its building. The [attached Exhibit B](#) reflects the allocation of community space between the primary lot, Lot 3, and the adjacent lot, Lot 2. The area shaded in blue is community space allocated for the Lot 3 incentives, and the green shaded area is reserved for Lot 6. Per Section 10.5A46.22 (2), 3,881 square feet of community space will be located on

Lot 2, which, pursuant to Planning Board stipulations, must be conveyed to the City prior to the issuance of a Certificate of Occupancy. Lot 2 is also secured by a mortgage, and DSA is required to post a bond for the construction of the improvements on Lot 2.

The remaining 1,420 square feet of required community space will be located on Lot 3, and is included in the community space easement, attached as [Exhibit D](#).

In addition to the community space easements, the project as approved by the Planning Board includes areas where the upper story of the building will encroach into Lot 2. While Lot 2 is owned by an entity related to DSA, DSA intends to convey Lot 2 to the City as community space, and therefore City Council approval is required for the City to convey this interest in land. These locations are shown on the easement plan attached as [Exhibit C](#), and as described in the easement [attached as Exhibit E](#), and will not interfere with the use of that space as open community space.

The Planning Board approval also required that DSA enter into a landscape agreement, whereby DSA can maintain the area of land between the sidewalk and Foundry Place, the City right of way. That agreement is [attached as Exhibit F](#).

All of the foregoing has been approved by the Planning Board and is recommended by the Planning and Legal Departments. In order for the City to accept these easements, City Council approval of the form of the documents is needed. However, the City Council is empowered only to review the form of the documents, and not to overrule the previous regulatory decisions of the Planning Board. See Ehrenberg v. Concord, 120 N.H. 656 (1980).

History of the City Acquisition of the Foundry Garage and the PCOA

In 2016, the City Council not only approved the execution of a purchase and sale agreement to effect the sale of Lot 1, but City Council also approved the execution of the PCOA. While the purchase and sale agreement governed how the land and money would be transferred, the PCOA set forth the responsibilities and obligations of DSA and the City moving forward. Given the complex reality of the land transfers, the PCOA addressed additional outstanding issues related to the transaction. Therefore, in order to complete the transaction, the City and DSA are contractually bound to comply with the terms of the PCOA, and execute all documents as defined thereunder. Several of these agreements, listed below, are still outstanding.

Therefore, pursuant to the authority granted by the 2016 vote, the following documents have been fully negotiated, and are now presented to City Council for informational purposes.

The Parking Agreement

When the City purchased the land for the Foundry Garage from DSA in 2016, the development was intended to fall under Section 10.1113.111 of the Zoning Ordinance. That section permits a developer to locate required parking on a lot other than principal use if the development included the construction of a municipal parking garage. Therefore, an agreement had to be drafted to govern DSA’s use of parking spaces in the Foundry Garage. The PCOA required this agreement be drafted, and that the parties agree to several essential terms.

[Attached as Exhibit G](#), the parking agreement fulfils the requirements of the PCOA. The PCOA requires that DSA receive 68 paid parking passes in the Foundry Garage. Due to the nature of the bonding for the Foundry Garage, only 10% minus one pass may be allocated to one private entity on a non-terminable basis. Therefore, because the Foundry Garage contains 616 spaces, the parking agreement provides 60 paid parking passes in the Foundry Garage to DSA on a non-terminable basis. The remaining 8 spaces must also be paid for by DSA, and are terminable by the City upon 50-days written notice.

Under the terms of this agreement, DSA will be subject to the same terms and conditions as any other user of the garage. While DSA may assign the parking garage spaces to owners of the various lots, it may only do so if the assignment would not violate any site plan approval. This document has the recommendation of the Legal, Planning and Parking Departments.

This document still awaits final approval of bond counsel, and has yet to be approved in final form by DSA, however this is the form recommended by the Legal Department.

The Termination of the Municipal Waterline Easement and Municipal Sewer Easement

Before the City acquired the Foundry Garage parcel, there were sewer and water lines within easements crossing the property DSA wished to develop. As a part of the transaction, the City also acquired the land which is now Foundry Place, a public right of way. The PCOA required that the sewer and water lines would be relocated to the new right of way, and the easements would then be extinguished. These utility lines have since been relocated to the right of way, and this release fulfils the City’s corresponding contractual obligation imposed by the 2016 City Council approval. This termination agreement is attached as [Exhibit H](#).

Assumption Agreement Regarding the Railroad Agency Office

The PCOA required that the City house a Railroad Agency Office within the Foundry Garage. The Agency Office benefits Boston and Maine Corporation, and is currently located within the Foundry Garage. Due to restrictions within the purchase and sale agreement, the Foundry Garage parcel must house the Agency Office. The attached affidavit ([Exhibit I](#)) confirms that the Agency Office is located on City property, and

pursuant to the PCOA, it confirms that the City has assumed all obligations relative to the Agency Office. This document is executed in lieu of a formal assumption agreement as required by the PCOA, and the attached limited release agreement ([Exhibit J](#)) from DSA confirms that this affidavit extinguishes any outstanding requirement relative to the Agency Office.

I recommend that the City Council move to authorize the City Manager to negotiate, execute and accept the community space easement ([Exhibit D](#)), an easement for construction and egress on Lot 2 ([Exhibit E](#)), and a landscape license agreement ([Exhibit F](#)) in a form similar to those attached.

4. **Request to Establish a Work Session Regarding Prescott Park:**

City staff would like to request a work session with the City Council be scheduled for April 6, 2020 at 6:00 p.m in Council Chambers. At this session, representatives from Weston and Sampson will update the Council on progress made on the Prescott Park Master Plan.

I recommend that the City Council move to schedule a work session on April 6, 2020 for the purposes of reviewing the Prescott Park Master Plan.

5. **Request to Renew Seacoast Growers' Association (Farmers' Market) Proposed 2020 License Agreement:**

[Attached](#) please find a License Agreement between the City of Portsmouth and Seacoast Growers' Association to allow a Farmers' Market at the City's municipal complex. The Seacoast Growers' Association has been conducting their Farmers' Market at the municipal complex for over ten years.

I recommend that the City Council move to authorize the City Manager to execute the License Agreement allowing Seacoast Growers' Association to operate a Farmers' Market on Saturdays from May 2, 2020 through November 7, 2020.

6. **Request for Public Hearing Regarding Bonding of Fire Apparatus:**

Please find [attached](#) a letter from Fire Chief Todd Germain requesting that the City Council establish a public hearing at the April 6, 2020 Council meeting regarding the authorization to bond One Million Four Hundred Dollars (\$1,400,000) for the purchase of one fire apparatus. This item has been identified in the FY21 Capital Improvement Plan ([element sheet attached](#)). Chief Germain would like to receive authorization on this expenditure to both take advantage of current pricing (prices will be increasing at the end of April) and to start the procurement process. These types of apparatus take over 14 months to build once an order is placed. A draft bond authorization resolution is [attached](#).

I recommend that the City Council move to establish a public hearing for the April 6, 2020 Council meeting regarding the bonding of up to One Million Four Hundred Dollars (\$1,400,000) for the acquisition of one fire apparatus.

7. **Request to Establish Public Hearing regarding Petition for Discontinuance of a Portion of Cate Street Connector Road:**

Last year, the City Council approved a land swap involving City and privately-owned land as well as a development agreement between the City and a private developer, both of which relate to the future construction of what has been referenced as the “Cate Street Connector Road”. The land swap conveys to the City the portion of private property required to complete a new road extension in return for a portion of what is currently City land to be used by Cate Street Development LLC (a private developer) for the construction of the West End Yards mixed-use development project. In addition, the development agreement entered into between the City and the project developer outlines the specifics of the conveyance of land as well as the allocation of responsibility for construction and funding of the new public road, which is to be shared between the City and the developer.

The land swap, as previously approved by the City Council, will convey 136,919 square feet of private land to the City in exchange for 47,470 square feet of City land. The land conveyed to the City will enable the construction of a connector road to provide direct access between Bartlett Street to the Borthwick Avenue traffic signal on the Route 1 Bypass. At the Bartlett Street end, the proposed road will follow the existing Cate Street right-of-way for approximately 250 feet and then travel across what is currently private property to connect to the Bypass. All of the existing properties that currently abut Cate Street will have access to the newly re-aligned road, and the current connection to Cottage Street will remain.

Because the new road extension to Cate Street will require re-routing a portion of the existing Cate Street, the final step in this process is to discontinue the use of that land as a public street. Under New Hampshire State statutes, Cate Street is considered a “Class V public highway”. Once public highways are created, it is presumed that the rights of the public last indefinitely, unless a formal public decision is made to discontinue those rights (RSA 231:43). The City cannot simply relocate the subject portion of Cate Street without a formal discontinuance decision from City Council.

The requirements for discontinuing a public road require that a public hearing occur and that all direct abutters of the road be sent notification via certified letter 14 days prior to the public hearing.

I recommend that the City Council move to establish a public hearing for the April 6, 2020 Council meeting.

XVI. Consent Agenda:

A. **Projecting Sign License - 76 Congress Street:**

Permission is being sought to install a **projecting sign** that extends over the public right of way, as follows:

Sign dimensions: 28.5” x 30”

Sign area: 6 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1. The license shall be approved by the Legal Department as to content and form;*
- 2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, 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. Projecting Sign License - 40 Pleasant Street:

Permission is being sought to install a **projecting sign** that extends over the public right of way, as follows:

Sign dimensions: 38” x 38”
Sign area: 10 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1. The license shall be approved by the Legal Department as to content and form;*
- 2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3. Any disturbance of the sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, 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.*

XVII. Presentations and Consideration of Written Communications and Petitions:

- B. The City Health Department continues to monitor the Coronavirus (Covid-19) outbreak and assist in planning for response. Health Officer, Kim McNamara, will provide a brief presentation to update City Councilors and the public on the current status of these efforts.

XVIII. City Manager's Informational Items:

1. **Market Street Pedestrian Bridge:**

A Public Information Meeting will take place on March 25, 2020 at 6:00 p.m. at the Osprey Landing Community Center, 10 Sanderling Way in Portsmouth to discuss plans for the Market Street Pedestrian Bridge at Portsmouth Boulevard.

Last summer, the Department of Public Works completed a detailed engineering inspection of this bridge as part of the City's bridge maintenance program. The Market Street Pedestrian Bridge was previously identified as a priority candidate for preventative maintenance measures. The purpose of the meeting on March 25, 2020 is to gauge public interest in maintaining the bridge versus removing and replacing it with a signalized, "at-grade" pedestrian crossing.

This bridge is among the projects included in the City's Bridge Capital Improvement Program. All City bridges are inspected by the New Hampshire Department of Transportation, at a minimum, once every two years. Please find [attached](#) a press release outlining the project's details.

2. **Questions from Councilor Huda from the 3/2/20 City Council meeting:**

The following is in response to the questions placed on the March 2, 2020 City Council meeting under Councilor Huda's name. The Councilor's question/comments are in **orange**. The intention is to answer the questions and/or clear up any misconception as relates to these questions.

Discuss the Annual Budget Process:

Purpose>>Timing>>Results>>Relationship to Property Taxes

In regards to this comment, the [FY20 Proposed Annual Budget](#) document includes the budget process for the Capital Improvement Program and the Operating and Non-Operating budget. Charter requirements, budget cycle, budget schedule, purpose, and the relationship to property taxes are clearly outlined on pages 93-105.

The budget process approach over the last several years began as early as fall with the City Council or Joint Budget Committee in order to discuss the legal and inflationary expenditures facing the City for the next fiscal year. For fiscal year 2021, in light of the new City Council, a budget work session was not held until January 2020 after the new City Council inauguration.

**The following are questions from residents I received:
(These questions relate to the general fund based on the following statement).**

If the city is a "not for profit government entity" meaning that property taxes are billed to residents to fund the operations of the city government (general fund) and at year

end should net to zero. (This assumes the city should have spent the dollars requested of the taxpayers through property taxes).

Note: Property tax levy and property taxes for local governments are not set to “make a profit” as in the private sector. The annual budget is prudently established to pay for the operations of the services each local government has determined for its taxpayers, as well as obligations subject to externally enforceable legal purpose restrictions imposed by creditors, grantors, contributors, or laws and regulations of other governments through constitutional provisions or enabling legislation.

The tax levy (the amount raised from property taxes) is the difference between the adopted annual budget and estimated revenues for the next fiscal year for the local government.

[ANNUAL BUDGET *less* ESTIMATED REVENUES *equals* TAX LEVY]

Keep in mind that in the State of New Hampshire the tax rate is calculated by the Department of Revenue based on the annual budget adopted by the City Council, estimated revenues based on facts and trends, property valuation as of April 1 (after the budget adoption) and any adjustments mandated by the State of New Hampshire prior to the official tax rate.

During the fiscal year there are many events that can result in either a surplus or a deficit.

- In the event of a surplus, which is the net result of revenues exceeding expenditures during a specific period of time (for the City of Portsmouth, the fiscal year) then the surplus is closed to Fund Balance to be used to offset future property taxes.
- In the event of a potential deficit, which means revenues are not materializing resulting from a change in the economy or an overstatement of estimated revenues, the City Manager would have to freeze future expenditures outside of legal obligations, which could have a major impact on services for the remaining of the fiscal year. If this deficit is greater than anticipated and Fund Balance is depleted, the City would have to establish an additional tax levy through the Department of Revenue and send out a supplemental tax bill.

1) What does it mean when the City of Portsmouth has a year-end surplus in the General Fund? The City of Portsmouth had a surplus in the General Fund for the Last 3 years

Source:

FY17	\$5,550,104
FY 18	\$4,587,708
FY 19	<u>\$5,159,103</u>
3 Year Total	\$15,296,915

As answered above, a surplus is the net result of revenues exceeding expenditures during a specific period of time (a Fiscal Year).

The surpluses questioned above are the result of the fiscal year's activity and reported in the budget to actual statement. To understand what happens with a surplus at the end of the fiscal year, an understanding of the governmental Fund Balance sheet is essential. The General Fund Balance sheet is prepared using the current financial resources measurement focus and the modified accrual basis of accounting. In other words, with a few exceptions the governmental funds balance sheet reports cash and other financial resources (such as receivables) as assets and amounts owed that are expected to be paid off within a short period of time as liabilities. Meaning, no long-term assets or liabilities are reported on this balance sheet. The Fund Balance is essentially what is left over after the fund's current assets have been used to meet current liabilities.

As reported on page 45 of the [Comprehensive Annual Financial Report \(CAFR\) for Fiscal Year 2019](#), the City's Fund Balance is made of four sections:

- 1) Nonspendable Fund Balance – Inherently nonspendable (long-term loans receivable)
- 2) Committed Fund Balance – Reserves and stabilizations reserves
- 3) Assigned Fund Balance – Constraint purposes (encumbrances)
- 4) Unassigned Fund Balance – Not intended for any purpose

The following table depicts the activity that occurred in Fund Balance at the year-end close of fiscal year 2017, 2018 and 2019. Although there were surpluses to Fund Balance, there were also reductions as a result of the budgetary use of reserves in accordance with policies for long-term financial planning and use of Fund Balance during the budgetary process.

Over the last three fiscal years there was \$15,296,917 in surpluses added to Fund Balance. Over the same time period there was a net reduction to Fund Balance of \$16,618,919 primarily from budgetary use or supplemental appropriations of \$12,863,398; use of reserves to record abatement liabilities of \$3,684,590; and use of reserves for the health and leave at termination stabilization funds of \$1,441,052. Overall, from FY17 to FY19, total Fund Balance went down by \$1,322,002 (\$15,296,917 less \$16,618,919).

Fund Balance	FY 17	FY 18	FY 19	Total
Fiscal Year Surpluses	5,550,104	4,587,709	5,159,103	15,296,917
Adjustments to Fund Balance				
Change to Encumbrances	(128,972)	285,312	1,213,781	1,370,122
Abatement Liabilities	(669,977)	(747,051)	(2,267,562)	(3,684,590)
Health Stabilization	(63,620)	(548,897)	(860,512)	(1,473,028)
Leave at Termination	292,565	28,959	(289,547)	31,976
Budgetary Use-Reserve Tax Appraisal	(73,500)	(150,000)	(150,000)	(373,500)
Budgetary Use-Debt Service Reserve	(1,700,000)	(2,400,000)	(2,123,000)	(6,223,000)
Budgetary Use-Reserve for Bond Premium	(1,850,000)	(1,269,148)	(1,286,114)	(4,405,263)
Budgetary Use of Committed Fund Balance	(250,000)	(231,000)		(481,000)
Statewide Property Tax	(30,000)	(50,000)		(80,000)
Coakley Monitoring		(239,818)	(367,850)	(607,668)
Supplemental Appropriations	(665,800)	(27,167)		(692,967)
Total Net Adjustment	(5,139,304)	(5,348,810)	(6,130,804)	(16,618,919)
Total Change in Fund Balance	410,800	(761,101)	(971,701)	(1,322,002)

2) The City financial reports tell us that this surplus goes back into the General Fund so then where did this surplus go?

This question was answered in question #1.

3) When the City has a surplus in the General Fund who decides where to apply that surplus?

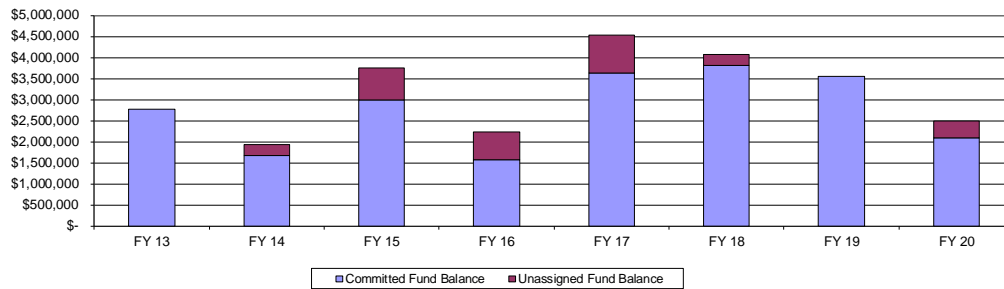
At year end, fiscal policies, City ordinance and current/future commitments drive the decision making of ending Fund Balance. The City has an Unassigned Fund Balance Ordinance to maintain Unassigned Fund Balance at a certain level. Use of health insurance and leave at termination stabilization reserves are utilized in accordance with the long term policies of the City. Use of Fund Balance is approved during the budget process and use of reserve for abatement liabilities are utilized to report the liabilities.

4) If the property taxes being paid are higher than what is needed to fund city operations, as estimated in the General Fund per the annual budget, should the surplus be put in a specific fund to decrease the following year’s property taxes?

Referring to the table and explanation above, the City does use Fund Balance to lower property taxes. Over the last three years, the net reduction of \$16,618,919 in Fund Balance was used rather than property taxes to fund operations and liabilities of the City.

The chart below shows the use of Fund Balance through the budgetary process and supplemental appropriations adopted by the City Council. This is a clear demonstration that

surpluses in any fiscal year are used to offset taxes and maintain fiscal stability. As depicted in the chart below, the City has used \$25,339,369 from Fund Balance from FY13 to FY20.



Use of:	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Total FY13-FY20
Committed Fund Balance	2,772,742	1,673,500	2,991,397	1,573,500	3,623,500	3,819,149	3,559,114	2,100,000	22,112,902
Unassigned Fund Balance	-	247,000	755,500	650,000	915,800	258,167	-	400,000	3,226,467
Total Use of Fund Balance	2,772,742	1,920,500	3,746,897	2,223,500	4,539,300	4,077,316	3,559,114	2,500,000	25,339,369
Average Use Per Year									3,167,421

5) Who has the authority to make the decision to set up a Special Fund?

Surplus at the end of the fiscal year is closed to Fund Balance. The City Council approves the use of Fund Balance to offset property taxes through the budget process annually.

3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00:

In response to the City Council’s interest in additional information regarding contracts over \$10,000 and the use of consultants and contracted services, the following documents are provided for information. These are working, internal documents and not maintained for purposes of publication and may contain typographical and other errors.

1. [Document 1](#) is a list of all Purchase Orders over \$10,000 for fiscal year 2019 (July 1, 2018 through June 30, 2019). There were 190 purchase orders over \$10,000 issued in FY19. These purchase orders cover everything from equipment to capital improvement construction projects to engineering services.
2. [Document 2](#) is an annotated version of the previously distributed “consultant/contracted service” list. This list was annotated to provide additional information on the nature of the work and whether the work could be performed “in-house” by City employees. Note that there will not be a corresponding purchase order in Document 1 above for each consultant/contracted service listed in Document 2.
3. [Document 3](#) is an excerpt of a current working excel spreadsheet maintained by the Purchasing Clerk for tracking potential bids and requests for proposals (RFP). The actual worksheet contains over 24 columns tracking sign offs, advertising, opening and award information. This excerpt has been made available for purposes of responding to the City Council’s interest in the subject of contracts. Sometimes bid and RFP numbers are assigned by the Purchasing Clerk for projected work, but the bid or RFP will not be finalized and advertised for a variety of reasons.