

CITY COUNCIL MEETING

Remote Meeting via Zoom Conference Call

To register in advance for this meeting, click on the link below or copy and paste it into your web browser:

https://zoom.us/webinar/register/WN_a_682R1LTp2MILXPM262Nw

You are required to register in advance to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. Please note, this meeting will also be broadcast on the City's YouTube Channel. Public comments for the Council's consideration can be emailed in advance via the City's web site:

<https://www.cityofportsmouth.com/citycouncil/contact-all-city-councilors>.

Per NH RSA 91-A:2 III (b) the Chair has declared COVID-19 Outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-25, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

DATE: MONDAY, FEBRUARY 8, 2021

TIME: 6:00PM

AGENDA

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

- VII. **ACCEPTANCE OF MINUTES – JANUARY 25, 2021 AND JUNE 15, 2020**
- VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
- IX. **PUBLIC COMMENT SESSION – (*Via Zoom*)**
- X. **PUBLIC DIALOGUE SUMMARY [when applicable] - **POSTPONED****
- XI. **PUBLIC HEARINGS AND VOTES ON ORDINANCES AND/OR RESOLUTIONS**

First Reading of Ordinances:

- A. First Reading of Ordinance amending Chapter 1, Article III, Section 1.310 – Zoning Board of Adjustment and Article IV, Section 1.404 – Historic District Commission
- B. First Reading of Ordinance amending Chapter 7, Article IX, Section 7.901 – Penalties, Forfeitures and Separability

Public Hearing – Capital Improvement Plan (CIP):

- C. CAPITAL IMPROVEMENT PLAN (CIP) FY 2022-2027
 - **PRESENTATION** (*Presentation was held at the January 13, 2021 Work Session*)
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

(Action on CIP will take place at the March 8, 2021 City Council meeting)

Public Hearing & Adoption of Resolutions

D. Public Hearing Re: Elderly Exemption

Resolution Pursuant to RSA 72-39-b the City hereby amends the elderly exemption from property tax, based on assessed value for qualified taxpayers, such that the exemptions shall be available only when the qualifying taxpayer(s) have a net income of not more than \$43,928 for a single taxpayer or \$60,400 for married taxpayers, inclusive of social security payment. The elderly exemption shall remain unchanged except as amended hereby

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

E. Public Hearing Re: Disabled Exemption

Resolution Pursuant to RSA 72:37-b, City hereby amends the disabled exemption from property tax, based on assessed value for qualified taxpayers, such that the exemptions shall be available only when the qualifying taxpayer(s) have a net income of not more than \$43,712 for a single taxpayers or \$60,103 for married taxpayers, inclusive of social security. The disabled exemption shall remain unchanged except as amended hereby

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

XII. MAYOR BECKSTED

1. Appointments to be Considered:
 - Richard Duddy to the Recreation Board
 - Rebecca O'Brien to the Sustainable Practices Blue Ribbon Committee
2. Announcement of Appointments to the Arts and Non-Profit Blue Ribbon Committee
 - Lawrence Yerdon
 - Courtney Perkins

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR SPLAINE

1. *Scheduling of Meeting for Priority and Goals Check-In with the City Manager

B. COUNCILOR McEACHERN

1. *Public Comment Post Pandemic (***Sample motion – move to extend the use of Zoom to Public Comment participants after the Council resumes meeting in person***)

C. COUNCILOR WHELAN

1. *McIntyre Update

D. COUNCILOR HUDA

1. Preliminary FY22 Budget Guidance (***Sample motion – move to finalize the Preliminary FY22 Budget Guidance given at the Council Meeting of January 8, 2021***)
2. CIP (Capital Improvement Plan) (***Sample motion – move for the following clarifications to be included in the CIP Discussion:***
 - ***When the Council Votes to Accept the CIP – Does that mean that the Council has approved and agreed to all of the items in that 6 year plan?***
 - ***Does the Approval of the CIP by the Council constitute the “authorizing” of the amount listed by line item and amount for that specific project?***
 - ***Please clarify what happens when an item is listed on the CIP for a number of years, then is not listed in the current plan? If the amount in the prior plan was approved/authorized, then where do the funds go, if the line item goes away?***
 - ***Please discuss the effect if any on authorized but unissued bonds related to the above. Are these projects considered authorized but unissued from a bonding perspective?)***

E. COUNCILOR TABOR

1. *Waiver of Fees for Restaurant Outdoor Seating (***Sample motion – move to give the City Manager authority to relieve restaurants of fees for outdoor seating due to COVID-19 as was done in 2020***)
2. *Fee Committee Update

XIV. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Portsmouth Police Department in the amount of \$2,500.00 from Paul Gormley and Kimi Iguchi (***Sample motion – move to accept the donation in the amount of \$2,500.00 to the Police Department***)
- B. *Acceptance of Donation to the Portsmouth Fire Department in the amount of \$2,500.00 from Paul Gormley and Kimi Iguchi (***Sample motion – move to accept the donation in the amount of \$2,500.00 to the Fire Department***)

XV. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. 60 Penhallow Street (Brick Market) Construction License

2. Proposed Public Art Donation
3. City Council Policy No. 2012-02 Regarding Use of City Property for Sidewalk Cafes
4. Middle Street Baptist Church Parking Contract Renewal
5. Report Back to Council on Request for Release of City Interest in an Unimproved Portion of Cliff Road

XVI. CONSENT AGENDA

- A. Letter from John Mortimer, Millennium Running, requesting permission to hold the St. Patty's 5k & 10k on Saturday, March 13, 2021 (***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. Letter from Tina Sawtelle, The Music Hall, requesting permission for the closure of Chestnut Street for outdoor events beginning May 1, 2021 through October 31, 2021 and the service of alcohol
- C. Request of Restoration of Involuntary Merged Lot – 900 Middle Road (***Sample motion – move to refer to the Planning Board and Assessor for report back***)

XVIII. CITY MANAGER'S INFORMATIONAL ITEMS

1. Liability Insurance for Sales of Alcoholic Beverages on City Property

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

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(603) 610-7201

Date: February 4, 2021

To: Honorable Mayor Rick Becksted and City Council Members

From: Karen S. Conard, City Manager *KSC*

Re: City Manager's Comments on City Council Agenda of February 8, 2021

Peirce Island Work Session:

At this evening's meeting, there will be a work session with the City Council and the Peirce Island Committee. Topics covered include the sewer treatment plant, public art, dog park, Peirce Island bridge, and vegetation clean-up.

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

A. **First Reading of Ordinance Amending Chapter 1, Article III, Section 1.310 – Zoning Board of Adjustment and Article IV, Section 1.404 – Historic District Commission:**

By vote of the City Council on January 25, 2021, an ordinance affecting the land use regulatory board appointment process has been placed on this evening's agenda for first reading. Its intended purpose is to standardize the process so that appointments to the Board of Adjustment and Historic District Commission are made in the same way as the current process for appointments to the Planning Board. If the ordinance passes, all three Boards shall have vacancies filled by appointment of the Mayor as approved by the Council. The specific language changes to accomplish this result are shown on the [attached draft proposed ordinance](#).

B. **First Reading of Ordinance Amending Chapter 7, Article IX, Section 7.901 – Fine Structure for Parking Citations:**

In its ongoing effort to ensure compliance with applicable City ordinances, the Parking Division deploys a citation protocol with a view to encouraging residents and visitors to pay the meter system for the use of City parking spaces. The citation protocol includes patrolling the City's parking spaces to ensure payment, and to issue parking citations when payment is not made or a driver has allowed their session to expire without renewal.

The current fine structure was last revisited in 2013. Presently, the Parking Division recognizes that the fine structure no longer encourages the desired effect, particularly as it pertains to the new daily maximum rates under the Stay and Pay system.

Out-of-town guests who find a \$15 citation on their vehicle are now even more prone than before to simply skip payment for the remainder of the day, rather than be encouraged to either vacate the space or continue their parking session. Additionally, research of surrounding towns shows that Portsmouth lags behind peer averages in myriad violation categories.

To address this ongoing issue, the Parking Division recommends revisiting the fine structure as it pertains to four of the most common violations. Please see the [attached spreadsheet](#) detailing in blue the current fines, recommended changes, and peer town averages, and the [draft ordinance amendments](#).

Because these recommendations are regarding fines as opposed to fees, they are presented to the Council, not the Fee Committee. Appropriately, they were brought before the Parking and Traffic Safety Committee on March 5, 2020, resulting in a unanimous vote to forward to the City Council for first reading on March 16, 2020. Subsequently, the COVID-19 outbreak put this item on hold.

These recommendations have been updated to account for the new Stay and Pay system's higher daily maximums.

I recommended that the City Council move to schedule a public hearing and second reading at the February 22, 2021 City Council meeting.

C. Public Hearing: Capital Improvement Plan (CIP) FY2022-2027:

In accordance with Section 7.7 of the City Charter, the City Council is conducting a public hearing at this evening's City Council meeting on Tuesday, February 8, 2021, regarding the [proposed Capital Improvement Plan for FY 2022 – FY 2027](#). In addition to this evening's public hearing, the City Council held a work session on January 13, 2021. At the work session, a presentation of the proposed CIP was made by City staff. Copies of the plan were made and are still available to the public via the City's website. As you are aware, the City Council is required, in accordance with Section 7.8 of the City Charter, to adopt the Capital Plan subsequent to the public hearing and before the City Manager submits the budget to the City Council. It is anticipated the proposed FY 2022 budget will be transmitted on or about April 24, 2021.

I recommend that at the City Council meeting on Monday, March 8, 2021, City Council adopt the Capital Improvement Plan as presented.

Public Hearing and Adoption of Resolutions

Annually, the City of Portsmouth reviews the income and asset levels for both the elderly and disabled exemptions and makes recommendations to these levels. The following recommendations were made at the January 25, 2021, City Council meeting, at which the City Council voted to hold a public hearing.

Additionally, the City increased the exemption amounts for both the elderly and disabled exemptions last year; these adjustments were based on an analysis of valuation increases from prior years.

The City did not conduct a revaluation for FY 2021 and is not conducting one for FY 2022.

Current Exemption Amount

- Age 65 to 74 \$235,000
- Age 75-79 \$285,000
- Age 80 + \$335,000
- Disabled \$235,000

Current impact on the City’s revenue and tax rate is as follows:

- Revenue Loss \$498,918
- Impact on Tax Rate 8 Cents on the current tax rate

New applicants must submit an application and required documentation by April 15, 2021 in order to qualify.

D. Public Hearing Regarding Elderly Exemption:

Option 1 (1.3%) – 2021 Social Security COLA Adjustment

- Single \$43,712 increase of \$561
- Married \$60,103 increase of \$771

Option 2 (1.8%) – November to November ten-year rolling average of the Boston-Cambridge-Newton, MA-NH consumer price index

- Single \$43,928 increase of \$777
- Married \$60,400 increase of \$1,068

Option 3 – No Change. Current qualifications would not change; no vote required.

City Council may move to adopt the Elderly Resolution for Option 1 or Option 2 as presented. If the Council prefers Option 3, no vote is required this evening. Amounts will remain the same.

E. Public Hearing Regarding Disabled Exemption:

Option 1 (1.3%) – 2021 Social Security COLA Adjustment

- Single \$43,712 increase of \$561
- Married \$60,103 increase of \$771

Option 2 (1.8%) – November to November ten-year rolling average of the Boston-Cambridge-Newton, MA-NH consumer price index

- Single \$43,928 increase of \$ 777
- Married \$60,400 increase of \$1,068

Option 3 – No Change. Current qualifications would not change; no vote required.

City Council may move to adopt the Disabled Resolution for Option 1 or Option 2 as presented. If the Council prefers Option 3, no vote is required this evening. Amounts will remain the same.

XIV. Approval of Grants/Donations:

A. Acceptance of Donation to the Portsmouth Police Department - \$2,500:

At the January 19, 2021 Police Commission meeting, the Board of Police Commissioners approved and accepted a donation from Paul Gormley and Kimi Iguchi in the amount of \$2,500.

I recommend that the City Council move to accept a donation in the amount of \$2,500 to the Police Department.

B. Acceptance of Donation to the Portsmouth Fire Department - \$2,500:

At the January 20, 2021 Fire Commission meeting, the Board of Fire Commissioners accepted a donation from Paul Gormley and Kimi Iguchi in the amount of \$2,500.

I recommend that the City Council move to accept a donation in the amount of \$2,500 to the Fire Department.

XV. City Manager's Items which Require Action:

1. 60 Penhallow Street (Brick Market) Construction License:

On January 16, 2020 the Planning Board granted site plan review approval for an application from Dagny Taggart, LLC for property located at 60 Penhallow Street for the second part of the proposed Brick Market development to construct a new 4-story commercial building.

The Construction Mitigation and Management Plan (CMMP), signed in April 2020, identified temporary encumbrances of the public right-of-way on Penhallow Street and Daniel Street for project-related work during the project's construction. Encumbrances for a duration longer than 30 consecutive working days require a license approved by the City Council. In addition, the licenses are subject to the "License Fee for Encumbrance of City Property" City Council policy. (2018-02)

The Council previously approved a temporary construction license for this project that included closure of sidewalks on Penhallow Street and Daniel Street as well as three (3) parking spaces on Daniel Street and four (4) parking spaces on Penhallow Street. That license was extended at the January 25, 2021 Council meeting.

[In a letter dated February 2, 2021](#), the applicant is requesting a [new temporary construction license](#) for a partial road closure of Penhallow Street starting March 1, 2021 and ending on April 30, 2021. The proposal would close off Penhallow Street on the Daniel Street end, block off 860 square feet of public sidewalk and roadway, and convert Penhallow Street between Custom House Lane and State Street to two-way traffic flow. In addition, all of the on-street parking on Penhallow Street (a total of 10 parking spaces) would be temporarily removed in order to accommodate the two-way traffic pattern. The letter, incorporated as an Exhibit to the license, memorializes Dagny Taggart, LLC's agreement with abutting restaurant owners regarding redesign of outdoor dining footprints and additional assistance with set up and

construction of outdoor dining areas, which will be subject to final review and approval by the City in separate licenses with restaurant owners.

The plan proposed by McNabb Properties has been reviewed and approved by the City's Police Chief, Fire Chief, DPW Director, Transportation and Parking Engineer, and Planning Director and also allocates space for use by Cure, Ristorante Massimo, and Ceres Bakery for outdoor cafes during the period of the license.

The License Fee for the partial closure of Penhallow Street is \$2,623 for the street and sidewalk (860 sq. ft. X \$0.05 X 61 days) and \$30,500 for the parking spaces on Penhallow Street (10 spaces X \$50 X 61 days) for a total fee of \$33,123.

I recommend that the City Council move that the City Manager be authorized to execute and accept the temporary construction license for the partial closure of Penhallow Street, use of the 860 square feet of public sidewalk and roadway, and use of the ten on-street parking spaces on Penhallow Street between March 1, 2021 and April 30, 2021 as requested.

2. **Proposed Public Art Donation:**

The City has received an artwork donation offer from resident Dan Rawling. The artwork is a painting entitled “Victory of Peace Kimono” by local artist [Dustan Knight](#). It was made for the centennial celebration of the Japanese-Russian Peace Treaty of 1905 in Portsmouth and was part of an exhibit sponsored by Yoko Ono for the Peace Treaty Centennial in 2005. The painting is acrylic on canvas and measures 30” x 40.” It portrays a Japanese kimono with images of the Wentworth by the Sea Hotel, Russian dancers and peace doves. [A copy of the Art Donation Form is included.](#)

As you will recall from the recent McEachern Park whale sculpture donation, the criteria used for public art acquisitions is set forth in the Public Art Acquisition Policy 2009-06, which was readopted by this Council at the beginning of 2020. The evaluation criteria are as follows:

- The quality of the artwork;
- Appropriateness of the size, scale and materials for the site(s);
- Availability of an appropriate site;
- Costs of installation and maintenance of artwork;
- Condition and durability of the artwork;
- Aesthetic merit;
- Inclusion of a mandatory maintenance plan (including materials used and proper care for such materials).

Similar to the process with the whale sculpture, I recommend Council refer the request to an interim ad hoc advisory group for evaluation and a recommendation back to the City Council. The proposed ad hoc committee could consist of an artist or arts professional, a local expert on content such as Founder and President of the Japan America Society of New Hampshire and local resident Charles Doleac and the Public Works Director (or his designee).

I recommend that the City Council move to refer the proposed Portsmouth Peace Treaty Commemoration painting donation to the City Manager with power for establishment of an ad hoc advisory group for the purpose of evaluating the painting for compliance with the public art acquisition guidelines and recommendation back to the City Council.

3. City Council Policy No. 2012-02 Regarding Use of City Property For Sidewalk Cafés:

In 2012, the City adopted a [policy to regulate the use of public sidewalks for outdoor cafes](#). Prior to the 2020 season, license applications for use of sidewalks for outdoor cafés were reviewed and approved by the City Council in the spring each year.

In response to the COVID-19 pandemic last spring, the Council waived the license fees and expedited the approval process by delegating the approval of licenses for outdoor dining on public sidewalks and streets to the City Manager, in consultation with the Citizen Response Task Force.

The City Council has previously indicated support for continuing the 2020 approval process for the 2021 season. However, it would be helpful if the Council could:

- Verify by vote that the 2020 practices will continue to exist for 2021 and that the “sidewalk cafe” policy will also apply to locations where the use of a city street is requested; and
- Vote to grant an ability for the City Manager to waive some of the specific requirements of that policy on a case by case basis as appropriate. For example, the enclosure requirements for locations that are serving liquor are not currently required by the state during the COVID-19 state of emergency. In some locations, it would be useful if the City Manager could waive that requirement or provide some flexibility in its application. Another example of where some flexibility would be appropriate is that the policy requires that café seating must be appurtenant to and contiguous with a doorway accessing the main restaurant facility. This is not always possible in locations where the café is located on the street and there is a public sidewalk running along the building.

I recommend that the City Council vote to waive the license/permit fees for use of sidewalks and streets for outdoor dining for the 2021 calendar year.

I recommend that the City Council vote to grant the City Manager the power to approve licenses for use of city sidewalks and street for outdoor cafes consistent with the City Council Policy No. 2012-02 for the 2021 calendar year.

I recommend that the City Council vote to allow the City Manager to waive or amend specific requirements of the City Council Policy No. 2012-02 for the 2021 calendar year on a case by case basis.

4. **Middle Street Baptist Church Parking Contract Renewal:**

Since 2013, the Middle Street Baptist Church has leased seventeen (17) spaces to the City for the purposes of allowing certain Public Library staff the use of said space during Library business hours. The annual fee is \$1,000, and the term for [this agreement](#) is April 1, 2021 through March 31, 2022.

I recommend that the City Council move to approve the agreement renewal as presented.

5. **Request for Release of City Interest in Unimproved Portion of Cliff Road:**

At the November 23, 2020 meeting, the City Council considered a [request from Glenn Lael](#), owner of property at 45 Cliff Road to release any City interest in the unimproved portion of Cliff Road (otherwise referred to as a paper street) that abuts his property. Subsequently, the Council unanimously voted to refer this request to the Planning Board.

A “paper street” is one which shows on a plan, especially the City tax map, but which does not exist on the ground. The most common way for that situation to come about is when a street is “dedicated” to public use by a landowner recording a plan showing the street. This happened frequently in the days before Planning Board approval was required for the recording of plans. A street so dedicated becomes a public street only when “accepted” by the City. The acceptance can be formal, often by vote of the City Council, or by implication based on City use and maintenance of the street.

For a street dedicated (shown on a recorded plan) before 1969, the dedication was automatically terminated if the City did not accept the street within 20 years. The owners of lots fronting on those paper streets may have implied easements to use the paper streets for access and development, but such easements do not override local zoning and subdivision regulations.

While the City is being asked to formally release any interest it has in this paper street, such a vote would not necessarily have any impact, except to clarify the record. Additional title research will be required by anyone wishing to formally acquire the paper street in order to determine who else, if anyone, may have legal interest and/or ownership of this property.

Any requests for release of interest in land must be reviewed by the Planning Board prior to any action by the City Council. City staff have completed a review of this request and have not identified any prior history or current use of the property that serves a public purpose. Staff has not verified whether the City currently has any ownership rights or other interest in the property.

At the January 2021 Planning Board meeting, at the recommendation of staff, the Planning Board voted to recommend that the City Council release interest for the portion of the paper street shown in purple hatching on the [attached exhibits](#) and to extend the edge of right of way along the line shown in yellow. The area recommended to be released is approximately 2,060 square feet.

I recommend that the City Council vote to release any City interest in the portion of paper street that extends along a portion of the frontage of 45 Cliff Road to the center line of the paper street as shown on the exhibit prepared by City staff.

XVIII. City Manager's Informational Items:

1. Liability Insurance for Sales of Alcoholic Beverages on City Property:

Please [see attached for a memorandum](#) regarding the required liability insurance for alcohol sales on City property.