

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, OCTOBER 17, 2011 TIME: 7:00PM

## AGENDA

- I. CALL TO ORDER [7:00PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PROCLAMATIONS

1. National Arts and Humanities Month
2. Small Business Saturday in Portsmouth

### PRESENTATION

1. Trustees of the Trust Funds

### V. ACCEPTANCE OF MINUTES – OCTOBER 3, 2011

### VI. PUBLIC COMMENT SESSION

### VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE I, SECTION 7.103, 7.104, AND FURTHER AMEND CHAPTER 1, ARTICLE IV, SECTION 1.412 ENTITLED THE PARKING AND TRAFFIC SAFETY COMMITTEE

### VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Police Department Donation and Grant Awards
  - Donation from William Mortimer to the Police Honor Guard in memory of retired officers Robert Knight and Richard Maddock - \$100.00
  - Acceptance of Edward Byrne Memorial Justice Assistance Grant from the Office of Justice Programs - \$13,950.00
  - Acceptance of Police Standards and Training Council Grant for mid-level management course for two lieutenants - \$2,000.00
  - Acceptance of Department of Juvenile Justice and Delinquency Prevention Grant to continue funding of the New Hampshire Internet Crimes Against Children Task Force (ICAC) - \$234,318.00

***(Sample motion – move to approve and accept the grants and donation to the Portsmouth Police Department, as listed)***

### IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Proposed Resolution regarding Solar Power Tax Exemption

- B. First reading of Proposed Resolution to Levy Property Tax on Right-of-Way Use by Utilities
- C. First reading of Ordinance Amendment to Chapter 7, Article III – Traffic Ordinance – No Through Traffic by the deletion of Broad Street; Commercial Alley, between Penhallow Street and Market Street; and Vaughan Street, between Congress Street and Hanover Street
- D. First reading of Ordinance Amendment to Chapter 7, Article XI, Section 7.1100 - Speed Limits – sub-section C 15 MPH by the addition of Bow Street, Chapel Street, and Penhallow Street
- E. Second reading of Ordinance Amendment (***tabled from the April 18, 2011 City Council meeting***) to Chapter 7 Article IV, Section 7.402 – Off-Street Parking Areas – Parrott Avenue Parking Lot (Downtown Parking Omnibus) by the Placement of Parking Meters
- F. Second reading of Ordinance Amending Chapter 7, Article I, Section 7.103, 7.104, and further amend Chapter 1, Article IV, Section 1.412 entitled the Parking and Traffic Safety Committee

## X. CONSENT AGENDA

### ***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

- A. Acceptance of Donations to the Coalition Legal Fund
  - Town of Holderness - \$1,000.00
  - Town of Hebron - \$1,000.00
  - Town of Newington - \$1,000.00

***(Anticipated action – move to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund)***
- B. \*Acceptance of Donation to the USS Virginia Party
  - Sevigney Lyons - \$250.00

***(Anticipated action – move to approve and accept the donation for the USS Virginia, as presented)***
- C. Request for a License from Dennis Randall, owner of Earthtec for property located at 76 Congress Street to install a projecting sign (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a 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 the 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***

D. Request for a License from Doreen Mellon, owner of Ellenette for property located at 214 State Street to install a projecting sign on an existing bracket (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a 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 the 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***

E. Request for a License from Mark McNabb (signs #1-3) and Michael Buckley (sign #4), owner of Martingale Wharf, LB (signs #1-3) and Surf Portsmouth RNC (revised license) (sign #4) for property located at 99 Bow Street to install projecting signs (***Anticipated action – move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director and, further, authorize the City Manager to execute the License Agreements 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 the 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***

## XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Ann Radwan, Publicity Chair, 2011 Festival of Trees, requesting permission to place a banner at the corner of Route 33 and Peverly Hill Road adjacent to the cemetery on city-owned land from November 6, 2011 through November 21, 2011

## XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

#### Items Which Require Action Under Other Sections of the Agenda

1. First Reading of Proposed Resolutions and Ordinance Amendments:
  - 1.1 First Reading of Proposed Resolution regarding Solar Power Tax Exemption **(Action on this matter should take place under Section IX of the Agenda)**
  - 1.2 First Reading of Proposed Resolution to Levy Property Tax on Right-of-Way Use by Utilities **(Action on this matter should take place under Section IX of the Agenda)**
  - 1.3 First Reading of Ordinance Amendment to Chapter 7, Article III – Traffic Ordinance – No Through Traffic by the deletion of Broad Street; Commercial Alley, between Penhallow Street and Market Street; and Vaughan Street, between Congress Street and Hanover Street **(Action on this matter should take place under Section IX of the Agenda)**
  - 1.4 First Reading of Ordinance Amendment to Chapter 7, Article XI, Section 7.1100 - Speed Limits sub-section C 15 MPH by the addition of Bow Street, Chapel Street, and Penhallow Street **(Action on this matter should take place under Section IX of the Agenda)**
2. Second Reading of Proposed Ordinance Amendment:
  - 2.1 Second Reading of Ordinance Amendment **(tabled from the April 18, 2011 City Council meeting)** to Chapter 7, Article IV, Section 7.402 – Off-Street Parking Areas – Parrott Avenue Parking Lot (Downtown Parking Omnibus) by the Placement of Parking Meters **(Action on this matter should take place under Section IX of the Agenda)**
3. Public Hearing/Second Reading of Proposed Ordinance Amendments:
  - 3.1 Public Hearing/Second Reading of Ordinance Amending Chapter 7, Article I, Section 7.103 and 7.104, Parking and Traffic Safety Committee **(Action on this matter should take place under Section IX of the Agenda)**

### **City Manager's Items Which Require Action**

1. Request for Public Hearing Adopting Hazard Mitigation Plan Update 2010
2. \*Request to Establish a Work Session Re: Future Downtown Development
3. Approval of Purchase Price Re: Land on Constitution Avenue (Joseph R. Baroni Family, LLC)
4. Approval of Inter-Municipal Sewer Agreement Re: Town of Greenland
5. Approval of Indoor Pool Agreement Re: Save the Indoor Portsmouth Pool

### **Informational Items**

1. Events Listing
2. \*Update on Scheduling a Presentation Re: Proposed Army Reserve Center at 1900 Lafayette Road
3. \*African Burying Ground Trust Donations
4. Quarterly Report on Chamber/City Partnership
5. \*Ribbon Cutting Re: New Madbury Water Treatment Plant

### **B. MAYOR FERRINI**

1. Appointments to be Considered:
  - Robert Pollard – Reappointment to the Peirce Island Committee
  - Steven Marison – Reappointment to the Peirce Island Committee
  - John McVay – Reappointment to the Peirce Island Committee
  - Richard Smith – Reappointment to the Peirce Island Committee
  - Harold Whitehouse – Reappointment to the Peirce Island Committee
  - John Simon – Reappointment to the Peirce Island Committee
  - John Ricci – Reappointment to the Planning Board
  - James Feehley – Reappointment to the Taxi Commission
  - Paul Ford – Reappointment to the Taxi Commission
  - Peter Bresciano – Reappointment to the Taxi Commission
  - T. Stephen McCarthy – Appointment to the Portsmouth Housing Authority
2. Appointments to be Voted:
  - John O'Leary – Reappointment to the Board of Library Trustees
  - Grace Lessner – Reappointment to the Board of Library Trustees

3. \*Appointments to Blue Ribbon Committee on Transportation (*Sunset Date of April 15, 2012*)
  - Eric Spear
  - Bill Lyons
  - Rick Chellman
  - Paige Roberts
  - Ken Smith
  - Chris Dwyer
  - Cliff Sinnott

**C. COUNCILOR KENNEDY**

1. \*Letter of Support for TIGER Grant

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]**

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

*\*Indicates Verbal Report*

**INFORMATIONAL ITEMS**

1. Notification that the Historic District Commission Minutes of August 3, 2011 and September 7, 2011 meetings are available on the City's website for your review

**NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED:** Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** October 14, 2011  
**To:** Honorable Mayor Thomas G. Ferrini and City Council Members  
**From:** John P. Bohenko, City Manager  
**Re:** City Manager's Comments on October 17, 2011 City Council Agenda

---

***Presentation:***

1. **Trustees of the Trust Funds.** As requested on Monday evening, the Trustees of the Trust Fund will give an update to the City Council on their activities including a review of the MS-9 and MS-10 ([see attached](#)).

***Acceptance of Grants/Donations:***

1. **Acceptance of Police Department Donation and Grant Awards.** [Attached under Section VIII of the Agenda is a memorandum](#), dated September 22, 2011, from Gerald W. Howe, Chairman of the Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve a donation and grants.

At the September 21st monthly Police Commission meeting, the Board of Police Commissioners approved and accepted the following grants and donation:

- a) A donation in the amount of \$100 from Commissioner William Mortimer to the Police Honor Guard in memory of retired officers Robert Knight and Richard Maddock, both of whom passed away this year.
- b) An FY'11 Edward Byrne Memorial Justice Assistance Grant from the Office of Justice Programs in the amount of \$13,950.
- c) A training grant in the amount of \$2,000 from the Police Standards and Training Council for a mid-level management course for two lieutenants.

At the August 17<sup>th</sup> monthly Police Commission meeting, the Board of Police Commissioners approved and accepted the following grant:

1. A grant in the amount of \$234,318 from the Department of Juvenile Justice and Delinquency Prevention to continue funding of the New Hampshire Internet Crimes Against Children Task Force (ICAC).

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

*I would recommend that the City Council move to approve and accept the grants and donation to the Portsmouth Police Department, as listed. Action on this matter should take place under Section VIII of the Agenda.*

## ***Items Which Require Action Under Other Sections of the Agenda:***

### **1. First Reading of Proposed Resolutions and Ordinance Amendments:**

- 1.1 **First Reading of Proposed Resolution Regarding Solar Power Tax Exemption.** Attached under Section IX of the Agenda is a proposed Resolution regarding a solar power tax exemption. In 1977 the City adopted a Solar Power System tax exemption by referendum. Since that time changes in solar power technology and state legislation are such that the City's existing exemption is out of date. Accordingly, City staff has recommended the adoption of a new exemption. The elements of the proposal are as follows:

1. Exemption from assessed value of property (rather than tax)
2. Solar equipment costs as documented
3. 5 year term
4. Cap of \$25,000 per year
5. Applies to April 1, 2011 tax year and subsequent years
6. Expires upon sale of property

Attached with the Resolution is a detailed memorandum from Robert P. Sullivan, City Attorney, explaining the proposed Resolution.

Under existing law the exemption may be adopted by the City Council resolution process so that no referendum is required. In the alternative, the referendum process could be followed. The resolution process is recommended for its simplicity of adoption and ease of later amendment.

*I would recommend the City Council move to schedule a public hearing on the proposed Resolution, as presented, at the November 21<sup>st</sup> City Council meeting. Action on this item should take place under Section IX of the Agenda.*



- 1.2 **First Reading of Proposed Resolution to Levy Property Tax on Right-of-Way Use by Utilities.** After several years of litigation, primarily involving the City of Rochester, it now appears that the City will be able to tax the value of the use by utilities of the municipal rights-of-way. An example would be the value of the occupation of public space in a street right-of-way by a gas utility. The City's authority, in part, to do so arises under the provision of RSA 72:23(I)(b) which requires agreements which allow use and occupation of municipal property to authorize such taxation. [Attached with the Resolution is a detailed memorandum from Robert P. Sullivan, City Attorney](#), explaining the proposed Resolution.

Accordingly, [under Section IX of the Agenda is a proposed Resolution](#) for first reading which would have the effect of amending those leases and other agreements under which the City has allowed for use or occupation of the municipal rights-of-way to include the requirement that properly assessed taxes be paid.

Notwithstanding the past litigation the law is not entirely settled on this point. It may be that further litigation will occur. However, adoption of the proposed resolution would put the City in the best possible position to tax utility use of the City's rights-of-way.

*I would recommend the City Council move to schedule a public hearing on the proposed Resolution, as presented, at the November 21<sup>st</sup> City Council meeting. Action on this item should take place under Section IX of the Agenda.*

- 1.3 **First Reading of Ordinance Amendment to Chapter 7, Article III, - Traffic Ordinance – No Through Traffic.** [Attached under Section IX of the Agenda, I am bringing back for first reading a proposed ordinance amendment](#) to Chapter 7, Article III, Traffic Ordinance – No Through Traffic. During the City Council meeting of October 3, 2011, the Council approved the Traffic and Safety Minutes of September 8, 2011 which require an ordinance amendment for No Through Traffic. The following streets are being deleted: Broad Street, Commercial Alley, between Penhallow Street and Market Street; Vaughan Street, between Congress Street and Hanover Street.

*I would recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance amendment, as presented, at the November 21<sup>st</sup> City Council meeting. Action on this item should take place under Section IX of the Agenda.*

- 1.4 **First Reading of Ordinance Amendment to Chapter 7, Article XI - Speed Limits sub-section C.** [Attached under Section IX of the Agenda, I am bringing back for first reading a proposed ordinance amendment](#) to Chapter 7, Article XI, - Speed Limits sub-section C. During the City Council meeting of October 3, 2011, the Council approved the Traffic and Safety Minutes of September 8, 2011 which require an ordinance amendment for Section 7.1100 ( c ) Speed Limit – 15 mph by the addition of Bow Street, Chapel Street and Penhallow Street.

*I would recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance amendment, as presented, at the November 21<sup>st</sup> City Council meeting. Action on this item should take place under Section IX of the Agenda.*

2. **Second Reading of Proposed Ordinance Amendment.**

- 2.1 **Second Reading of Ordinance Amendment (tabled from the April 18, 2011 City Council meeting) to Chapter 7, Article IV, Section 7.402–Off-Street Parking Areas – Parrott Avenue Parking Lot (Downtown Parking Omnibus) by the Placement of Parking Meters.** As you may recall, the second reading of an Ordinance Amendment to Chapter 7, Article IV, Section 7.402 – Off-Street Parking Areas – Parrott Avenue Parking Lot (Downtown Parking Omnibus) by the Placement of Parking Meters was tabled at the April 18, 2011 City Council meeting ([see attached Ordinance](#)). A motion to amend by changing the fee for Parrott Avenue meter to 25 cents per hour FAILED on a 3-5 roll call vote. Assistant Mayor Novelline Clayburgh, Councilors Hejtmanek and Spear voted in favor. Voted on a 5-3 roll call to table until the October 17, 2011 City Council meeting. Assistant Mayor Novelline Clayburgh, Councilors Lister and Kennedy voted opposed.

The following is from the City Council minutes:

Councilor Dwyer moved to postpone the second reading of the ordinance indefinitely. There was no second to this motion. City Attorney Sullivan reviewed the options of postponing the ordinance or tabling the ordinance. Councilor Spear moved to postpone the ordinance to the October 17, 2011 City Council meeting. Seconded by Councilor Coviello. Councilor Spear explained that he wanted to postpone but have a set date so it doesn't get forgotten and gives enough time for construction to be done. Councilor Kennedy stated the people have been here several times on this issue and feels they deserve an answer. Councilor Coviello stated that there are still issues to resolve and is sorry if people will have to come back. Assistant Mayor Novelline Clayburgh stated she feels this Council is wishy-washy and have been talking about this forever. She agrees that this needs to be voted tonight. Councilor Lister concurred. Motion to postpone to October 17, 2011 passed on a 5-3 roll call vote. Assistant Mayor Novelline Clayburgh, Councilors Lister and Kennedy voted opposed.

*The City Council has the following options:*

- 1) *Move to approve or deny second reading,*

*or*

- 2) *Move to table the issue.*

3. **Public Hearing/Second Reading of Proposed Ordinance Amendments:**

- 3.1 **Public Hearing/Second Reading of Ordinance Amending Chapter 7, Article I, Section 7.103 and 7.104, Parking and Traffic Safety Committee.** As a result of the October 3rd City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance](#) amending Chapter 7, Article I, Section 7.103 and 7.104. This amendment will delete the existing language under both of the aforementioned sections and under Section 7.103 create a Parking and Traffic Safety Committee; under 7.104 provide the City Manager with the authorities as outlined in the Ordinance; and further creating a new provision entitled Chapter 1, Article IV, Section 1.412 entitled the Parking and Traffic Safety Committee.

*I would recommend the City Council move to pass second reading and schedule a third and final reading on the proposed Ordinance, as presented at the November 21st City Council meeting. Action on this item should take place under Section IX of the Agenda.*

**Consent Agenda:**

1. **Acceptance of Donations to the Coalition Legal Fund.** [Attached are copies of checks](#) from the Town of Holderness in the amount of \$1,000.00; the Town of Hebron in the amount of \$1,000.00; and the Town of Newington in the amount of \$1,000.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

*I would recommend the City Council move to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund. Action on this matter should take place under Section X of the Agenda.*

2. **Acceptance of Donation for USS Virginia.** The City of Portsmouth has received a donation in the amount of \$250.00 from Seigney Lyons Insurance Agency for the USS Virginia party.

*I would recommend the City Council move to approve and accept the donation for the USS Virginia, as presented. Action on this matter should take place under Section X of the Agenda.*

3. **Request for a License from Dennis Randall, owner of Earthtec for property located at 76 Congress Street to install a projecting sign.** Attached under Section X of the Agenda is a request from Dennis Randall, owner of Earthtec for property located at 76 Congress Street for a Projecting Sign License (see memorandum from Rick Taintor, Planning Director).

*I would recommend the City Council move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request. Action on this matter should take place under Section X of the Agenda.*

4. **Request for a License from Doreen Mellon, owner of Ellenette for property located at 214 State Street to install a projecting sign.** Attached under Section X of the Agenda is a request from Doreen Mellon, owner of Ellenette for property located at 214 State Street for a Projecting Sign License (see memorandum from Rick Taintor, Planning Director).

*I would recommend the City Council move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request. Action on this matter should take place under Section X of the Agenda.*

5. **Request for License Agreements at 99 Bow Street to install projecting signs Re: Martingale Wharf, LP and Surf Portsmouth RNC.** Attached under Section X of the Agenda is a memorandum from Rick Taintor, Planning Director, regarding the following requests for License Agreements to install projecting signs at 99 Bow Street:

- a) Martingale Wharf, LP, owner Mark McNabb, for three signs (1-3 as outlined in the memo) for a revocable municipal license, and,
- b) Surf Portsmouth RNC, owner Michael Buckley, for one sign as outlined in the memo for a revised license.

*I would recommend the City Council move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director and, further, authorize the City Manager to execute the License Agreements for this request. Action on this matter should take place under Section X of the Agenda.*

### ***City Manager's Items Which Require Action:***

1. **Request for Public Hearing Adopting Hazard Mitigation Plan Update 2010.** In 2005, the City Council adopted the Hazard Mitigation Plan, which was compiled to assist the City of Portsmouth in reducing and mitigating future losses from natural hazard events. The Plan was developed by the Rockingham Planning Commission and participants from the City of Portsmouth Hazard Mitigation Committee and contains the tools necessary to identify specific hazards and aspects of existing and future mitigation efforts.

The following *natural* hazard as addressed:

- Flooding
- Hurricane – High Wind Events;
- Severe Winter Weather;
- Wildfire and Confulgation’
- Earthquakes; and
- Coast Storms

The list of *critical facilities* includes:

- Municipal facilities;
- Communication facilities;
- Fire stations and law enforcement facilities;
- Schools;
- Shelter;
- Evacuation routes; and
- Vulnerable Populations

The Plan is considered a work in progress and should be revisited frequently to assess whether the existing and suggested mitigation strategies are successful. Copies have been distributed to the Emergency Management Coordinator and the City Manager and a copy will remain on file at the Rockingham Planning Commission. A copy of this plan is also on file at the New Hampshire Homeland Security and Emergency Management (NHHSEM) and the Federal Emergency Management Agency (FEMA). This plan was approved by both agencies prior its adoption at the local level.

[Attached is a Certificate of Adoption, a copy of Chapter 1, the Introduction regarding the plan, as well as a 2005 Regional Land Use Delineated from Aerial Photo.](#) Because of the voluminous nature of the Plan, I have not included the entire document, but there is a copy of the Plan on file in the City Manager’s Office.

The City Council will need to establish a public hearing regarding this matter.

*I would recommend the City Council move to schedule a public hearing and adoption of the proposed Hazard Mitigation Plan Update 2010, as presented, at the November 21<sup>st</sup> City Council meeting.*

2. **Request to Establish a Work Session Re: Future Downtown Development.** As requested by the City Council, I am recommending a joint work session with the Economic Development Commission and Planning Board on Monday, December 12<sup>th</sup> at 6:30 p.m., regarding future downtown development.

*I would recommend the City Council move to establish a joint work session with the Economic Development Commission and Planning Board on Monday, December 12<sup>th</sup> at 6:30 p.m., regarding future downtown development.*

3. **Approval of Purchase Price Re: Land on Constitution Avenue (Joseph R. Baroni Family, LLC).** As you will recall, at the September 6th City Council meeting, the Council accepted the Planning Board's recommendation to approve the sale of the requested parcel of land on Constitution Avenue on such terms as the Council deemed acceptable, and authorized the City Manager to negotiate the sale of this parcel with final approval of purchase price to be made by the City Council. The Joseph R. Baroni Family, LLC, requested that the City convey a 35,904 sq. ft. parcel of land. [Attached is a copy of the memo by Rick Taintor](#), Planning Director, provided to you in the September 6<sup>th</sup> City Council packet. We have confirmed that the \$20,000 sale price offered is reasonable and within the appropriate value ([see attached](#)).

*I would recommend the City Council move to approve the purchase price for the sale of land on Constitution Avenue, and further, authorize the City Manager to proceed with the execution of the necessary documents.*

4. **Approval of Inter-Municipal Sewer Agreement Re: Town of Greenland.** The Town of Greenland has requested an extension of the City's sewer franchise to include an area east of the Winnicutt River along Route 33 and north of Route 33 up to the Great Bay ([see attached aerial map](#)). This sewer franchise extension would be accomplished via an inter-municipal agreement between the Town of Greenland and the City ([see attached](#)). Once completed the City would have the sole rights to provide sewer to customers within this expanded area. Sewer extensions would be completed at the expense of the benefiting party. No additional cost to provide service would be borne by existing sewer rate payers.

Currently, the City's sewer franchise extends to the Travelports of America Truckstop at the corner of Route 33 and Ocean Road. Within that franchise the City has two private agreements, one with the truckstop and the other with the Lowe's development. The current arrangement of completing individual agreements each time an additional property wants sewer extended does not allow for predictable planning of infrastructure needs and is time consuming to manage. For these reasons, the requested inter-municipal agreement is preferred over a case by case approach.

The City has inter-municipal agreements with the Town's of Rye and New Castle. The proposed agreement is similar to these previous agreements.

Expansion of the City's sewer franchise is in the best interest of the rate payers because it promotes an economy of scale which expands our user base spreading future capital and operations costs over a larger number of users. This larger user base will help reduce future rate impacts on existing rate payers. Exploring expansion of the City's sewer franchise is consistent with past Council direction and was included as part of recently completed Wastewater Master Plan.

City Staff recommends the City enter into the proposed inter-municipal agreement between the City and the Town of Greenland.

*I would recommend the City Council move to authorize the City Manager to enter into the proposed Inter-Municipal Agreement between the City and the Town of Greenland.*



5. **Approval of Indoor Pool Agreement Re: Save the Indoor Portsmouth Pool.** For the City Council's consideration is the proposed Consolidated Lease and Operations Agreement to Maintain the Portsmouth Public Pool (the "Agreement"). Representatives of the Legal Department and SIPP will be available at the meeting to discuss the proposed terms. This proposed Agreement between the City and Save the Indoor Portsmouth Pool (SIPP) would be effective upon execution and extend until June 30, 2016. Consideration of this draft Agreement follows the City Council's work session with SIPP on September 12, 2011. SIPP is organized as a non-profit 501(3)(c) corporation for the sole purpose of supporting a public pool.

A complete copy of the draft Agreement is attached. Below I have excerpted the key provisions of the draft Agreement from Article III that will bind the City Council to operate the public pool over the course of the next four budget cycles by:

*3.1 (a) Appropriating \$150,000.00 annually for the operation of the public indoor pool; such amount shall be transferred from the City's General Fund to the Indoor Pool Special Revenue Fund at the start of each fiscal year and shall be restricted and committed for expenditures for the operations of the indoor pool. All other operational expenses to be met through lesson, membership, day pass, rental fees and other revenues generated by activities at the indoor pool and such additional funds raised by SIPP.*

*(b) Employing such pool staff as is necessary to meet programming needs, consistent with the budget. All payroll and related employment costs shall be paid for from the Indoor Pool Special Revenue Fund. The City shall be responsible for State and Federal wage and employment related reporting requirements.*

*(c) Depositing all lesson, membership, day pass, rental fees and other revenues generated by activities at the indoor pool in the Indoor Pool Special Revenue Fund.*

*Section 3.3 Insurance: The City shall provide insurance coverage for property losses and shall provide liability insurance for pool operations and workers' compensation for its employees.....*

With regard to Capital Improvements, SIPP is committed in this Agreement to making capital improvements. SIPP is also prepared to cover all costs relative to ongoing and emergency repairs. Below are the key provisions.

*Section 1.2 Capital Improvements: All capital improvements will be the responsibility of SIPP. SIPP will spend at least \$750,000.00, as defined in Section 1.5, over the five year term for capital improvements (plus 6 months for final completion). The schedule for undertaking capital improvement projects shall be mutually agreed upon between the parties and adjusted as necessary from time-to-time based on the physical needs of the facility, safety concerns, availability of SIPP funds, potential programming impacts and like conditions.*

*Section 1.3 Maintenance and Repairs: All costs associated with facility maintenance and repairs, both routine and emergency, shall be the responsibility of SIPP. Costs, in the first instance, may be satisfied from the Indoor Pool Special Revenue Fund. To the extent that costs*

*exceed budgeted amounts, SIPP shall raise or otherwise generate such additional available funds and/or revenues as are necessary to cover any budget deficiency.*

As you will recall, the City presently provides pool facility maintenance, including both routine and emergency repairs, janitorial services, technology support and related in-kind services. Under the Agreement, the City may, in its sole discretion, continue or discontinue such “in-kind” services. Should the City discontinue any such “in-kind” services, SIPP shall be responsible for raising or otherwise generating such additional funds and/or revenues necessary to secure replacement services or obtain written permission from the City to use volunteer or donated services.

SIPP is also required to raise annually funds for capital improvements in the following “benchmark” amounts:

By: June 30, 2012 at least \$50,000  
June 30, 2013 an additional \$150,000  
June 30, 2014 an additional \$175,000  
June 30, 2015 an additional \$200,000  
June 30, 2016 an additional \$175,000

In the event that SIPP does not perform the capital improvements, emergency repairs and its other obligations under this Agreement, the Agreement may be terminated and the City may close the pool at its discretion.

The Agreement may be renewed for an additional five year term. That renewal would not commit the City to additional annual appropriations of \$150,000. See Section 1.6.

SIPP has also requested in the Agreement the right to “name” portions of the premises that are internal to the building, such as lockers, as a fundraising tool. See section 2.5.

*I would recommend the City Council move to approve the Indoor Pool Agreement between the City and Save the Indoor Portsmouth Pool, and further, authorize the City Manager to execute the final Agreement.*

### ***Informational Items:***

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on October 3, 2011. In addition, this now can be found on the City’s website.
2. **Update on Scheduling a Presentation Re: Proposed Army Reserve Center at 1900 Lafayette Road.** As requested by the City Council, COL. Loretta Deaner, Army Reserve Installation Management Directorate, will make a presentation on Monday, December 5, 2011, regarding the proposed Armed Forces Reserve Center to be constructed at 1900 Lafayette Road.



3. **African Burying Ground Trust Donations.** The African Burying Ground Committee has received the following donations to the African Burying Ground Trust since its September 14, 2011 memo to City Council. The total donated to the trust to date is \$23,281.04.

- Rabbi Barry Krieger & Alice Passer, MD \$250
- Gerry Weidema & Joseph Simone \$150
- Craig Welch & Stefany Shaheen \$ 50
- Monique Shevlin, Signature Escrow & Title Services \$100

4. **Quarterly Report on Chamber/City Partnership.** At October 7, 2011 Economic Development Commission (EDC) meeting, Chamber of Commerce Tourism Manager Valerie Rochon reported on tourism for the period April 1 - September 30, 2011. You will recall that the report is part of the City of Portsmouth and Chamber of Commerce partnership for which the Council has requested copies of the quarterly reports presented to the EDC. [The report is attached for your review.](#)

5. **Ribbon Cutting Re: New Madbury Water Treatment Plant.** As you are aware, the City's new Madbury Water Treatment Plant is coming to final completion. We are requesting that the City Council consider a ribbon cutting for Saturday, November 19<sup>th</sup> at 9:30 a.m. As we did with the tour of the plant last year, we would offer a bus to ride up to Madbury together for this event. We will leave City Hall at 8:30 a.m. I would like the City Council's input on this matter.