

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, NOVEMBER 21, 2011 TIME: 7:00PM

AGENDA

- 6:30PM – CITY COUNCIL PHOTOGRAPH

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

MAYOR'S AWARD

1. Scarecrows of the Port Committee

PRESENTATION

1. Update Re: Wastewater Master Plan

V. ACCEPTANCE OF MINUTES – OCTOBER 17, 2011

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS

- A. RESOLUTION REGARDING SOLAR POWER TAX EXEMPTION
- B. RESOLUTION TO LEVY PROPERTY TAX ON RIGHT-OF-WAY USE BY UTILITIES
- C. 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. 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. HAZARD MITIGATION PLAN UPDATE 2010

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from the Lafayette Park Neighborhood Association - \$2,378.57
(Sample motion – move to accept the donation of \$2,378.57 from the Lafayette Park Neighborhood Association for the purposes of purchasing and installing park benches at the Lafayette Park and Playground)

- B. *Acceptance of \$10,000.00 Grant from State of New Hampshire for NH Arts Satellite Network “pass through” Funds (**Sample motion – move to accept and approve the grant, as submitted**)
- C. Acceptance of Police Department Donations and Grant Award
 - Acceptance of Training Grant for Officer Scott Pearl and Officer Eric Kinsman to attend the HITS K-9 training seminar - \$942.67
 - Donation from John Bobbett to the Police Honor Guard - \$5,000.00
 - Donation from Mr. M. Chubrich to the Police Honor Guard - \$18.00**(Sample motion – move to approve and accept the grant and donations to the Portsmouth Police Department, as listed)**

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Adoption of Proposed Resolution regarding Solar Power Tax Exemption
- B. Adoption of Proposed Resolution to Levy Property Tax on Right-of-Way Use by Utilities
- C. First Reading of Ordinance Amending Chapter VII, Article IV - Off-Street Parking, Section 7.402 - Areas Established and Described.
- D. Second 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
- E. Second 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
- F. Adoption of Hazard Mitigation Plan Update 2010
- G. Third and final 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 Jackson - \$250.00
 - Town of Bridgewater - \$1,250.00**(Anticipated action – move to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund)**
- B. *Acceptance of Funds for Art-Speak
 - Robin Albert Lehman & Wayne Lehman - \$150.00
 - NH Charitable Foundation Thomas W. Haas Fund - \$2,000.00**(Anticipated action – move to accept the donations to Art-Speak, as presented, to support Art-Speak’s Art & Economic Prosperity Survey)**

- C. Letter from Patti Maccabe, Arthritis Foundation, requesting permission to hold the 18th Annual Jingle Bell Run and Walk on December 3, 2011 *(new route due to bridge construction arranged through Police Department)* **(Anticipated action – move to refer to the City Manager with power)**
- D. Letter from Lt. Erin Rischawy, The Salvation Army, requesting permission to place “Christmas Kettles” in Market Square beginning November 18, 2011 through December 24, 2011 **(Anticipated action – move to refer to the City Manager with power)**
- E. Request for Approval of Pole License – Installation of 4 poles located on State Street for PSNH **(Anticipated action – move to approve the license with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)**

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Austin Gallagher requesting the installation of a bike path from Coakley Road to Colonial Drive

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

- 1. Consideration of First Reading of Proposed Ordinance Amendments:
 - 1.1 First Reading of Ordinance Amending Chapter VII, Article IV - Off-Street Parking, Section 7.402 - Areas Established and Described. **(Action on this matter should take place under Section IX of the Agenda)** Public Hearing and Adoption of Proposed Resolutions:
- 2. Public Hearing and Adoption of Proposed Resolutions:
 - 2.1 Public Hearing and Adoption of Proposed Resolution regarding Solar Power Tax Exemption **(Action on this matter should take place under Section IX of the Agenda)**
 - 2.2 Public Hearing and Adoption 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)**
 - 2.3 Public Hearing and Adoption of Hazard Mitigation Plan Update 2010 **(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 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**)
 - 3.2 Public Hearing/Second 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**)
4. Third and Final Reading of Proposed Ordinance Amendments:
 - 4.1 Third and Final 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. Report Back Re: Letter from Tony LaCava regarding Sale of Property at 95 Mechanic Street
2. Report Back Re: Letter from Dexter Legg requesting a License for a New Driveway at 4 Moebus Terrace
3. Report Back Re: Letter from Linda Smith, New Hampshire Department of Transportation, regarding an offer for the Acquisition of Land as required for the Reconstruction of the US Route 1 Bypass
4. Proposed Zoning Ordinance Amendments – Office Research District
5. Request to Institute Overnight Closure of City Parks
6. *Sale of Portsmouth Fire Department Old Engine 6, 1994 International/Central States/RK Quint
7. Purchase of Sagamore Creek Island
8. Polling Hours for January 10, 2012 Presidential Primary Election
9. Request for St. John's Masonic Association Lot 10-Year Agreement
10. *Disposal of Surplus Equipment Police Department Uninterrupted Power Supply Battery
11. Report Back Re: Vaughan Street – Traffic Pattern Change

Informational Items

1. Events Listing
2. *Reminder of Cate Street Rezoning Neighborhood Input Session on December 6th at 6:30 p.m. in the Levenson Room at the Library
3. *Free Holiday Parking
4. *Presentation and Report on Downtown Parking Capacity – December 1, 2011
5. *Work Session of December 12, 2011 on Future Downtown Development
6. News Release Re: City Budget Receives 6th Prestigious National Award

B. MAYOR FERRINI

1. Appointments to be Considered:
 - John Rice – Reappointment to the Planning Board
 - William Gladhill – Reappointment to the Planning Board
 - Chris Hubbard – Reappointment to the Peirce Island Committee
 - Stephen Philp – Reappointment to the Peirce Island Committee
 - Elisabeth Blaisdell – Appointment to the Sustainable Practices Blue Ribbon Committee
 - Susan Chamberlin – Reappointment to the Zoning Board of Adjustment
 - Arthur Parrott – Reappointment to the Zoning Board of Adjustment
2. Appointments to be Voted:
 - 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
3. Resignations:
 - Tom Rooney from the Mayor’s Blue Ribbon Committee on Sustainable Practices
 - Kathy Pearce from the Cable Television and Communications Commission
4. 4th Annual Boards & Commissions Recognition Ceremony

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the October 13, 2011 meeting
2. Parking Committee Action Sheet and Minutes of the October 13, 2011 meeting

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 Conservation Commission Minutes of September 14, 2011 meeting are available on the City's website for your review
2. Notification that the Planning Board Minutes of August 18, 2011 and September 1, 2011 Work Session meetings are available on the City's website for your review
3. Notification that the Site Review Technical Advisory Committee Minutes of October 4, 2011 meeting are available on the City's website for your review
4. Notification that the Zoning Board of Adjustment Minutes of August 16, 2011 meeting 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: November 17, 2011
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on November 21, 2011 City Council Agenda

6:30 p.m. – City Council Photograph.

A group photograph will be taken of the City Council Members, City Clerk, City Manager and City Attorney.

Presentation:

1. **Wastewater Master Plan Update.** On Monday evening, City staff and the City's consultant AECOM will be presenting a status update of the Wastewater Master Plan to the City Council. The presentation will include a brief overview of the wastewater program including the Long-Term Control Plan - sewer separation projects, as well as the progress on the technology selection process for the Peirce Island Wastewater Treatment Plant Upgrades.

Over the past 6 months work has progressed in a number of areas on the implementation of the preliminary design and technology verification pilot study. The project team has been engaged in a number of activities that are designed to provide the information needed to allow the City to make the best decision possible. Efforts to date have included:

- An analysis of the anticipated wastewater flows to the new plant including a review of those numbers with the regulators.
- An ongoing wastewater characterization program that provides detailed data on the make-up of the wastewater coming into the Peirce Island facility.
- A rigorous evaluation of eight different technologies in order to develop a short-list of the three processes to be pilot tested on site.

- Installation and start-up of the selected technologies.

The presentation will also include a brief update on the status of the regulatory issues and the Great Bay Community Coalition efforts.

Acceptance of Grants/Donations:

1. **Acceptance of Donation from the Lafayette Park Neighborhood Association.** The Lafayette Park Neighborhood Association has donated \$2,378.57 to be used for the purchase and installation of park benches in Lafayette Park.

In addition, the Association requests that dated identification plates be affixed to the benches and contain the following language: *For the pleasure and enjoyment of the community – donated by the Lafayette Park Neighborhood Association.* [A copy of the original communication received from the Association is attached.](#)

I would recommend the City Council move to accept the donation of \$2,378.57 from the Lafayette Park Neighborhood Association for the purposes of purchasing and installing park benches at the Lafayette Park and Playground as described above. Action on this matter should take place under Section VIII of the Agenda.

2. **Acceptance of \$10,000.00 Grant from State of New Hampshire for NH Arts Satellite Network “pass through” Funds.** Art-Speak requests that \$10,000 from the New Hampshire State Council on the Arts Grant be accepted by the City Council on behalf of Art-Speak. The funds are “pass-through” funds for the Creative Communities Network (CCN) for FY12 which Art-Speak administers for the NH State Council on the Arts.

The NH Creative Communities Network (formerly the Arts Satellite Network), established in October, 2008, is a consortium of evolving and established local and regional arts councils, municipally associated arts commissions, statewide arts service organizations and other entities (chambers of commerce, main street programs, municipal economic development departments) that support strengthening the arts infrastructure in their communities/regions. Their mission is: *To strengthen and promote economic and community development across New Hampshire through the arts, artists and creative industries.*

The CCN has been funded by a \$10,000 annual grant from the New Hampshire State Council on Arts. For the past 2 years, (FY10 & FY11), Art-Speak, as a nonprofit, has served as the fiscal agent for this grant and receives \$500 per year from this grant for administrative services. The remaining \$9,500 of the grant, funds the project coordinator’s (Judy Rigmont’s) labor and expenses, and other costs, as authorized by the CCN members. This \$10,000.00 grant supports the statewide Arts Satellite Network of which Art-Speak is a member and is acting as the pass through entity for receipt of New Hampshire State Council on the Arts grant funds.

I would recommend the City Council move to accept and approve the grant, as submitted. Action on this matter should take place under Section VIII of the Agenda.

3. **Acceptance of Police Department Donations and Grant Awards.** [Attached under Section VIII of the Agenda is a memorandum](#), dated November 2, 2011, from Gerald W. Howe, Chairman of the Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve donations and a grant.

At the October 26th monthly Police Commission meeting, the Board of Police Commissioners approved and accepted the following grant and donations:

- a) A training grant in the amount of \$942.67 for Officer Scott Pearl and Officer Eric Kinsman to attend the HITS K-9 training seminar.
- b) A donation in the amount of \$5,000 from Mr. John Bobbett in support of the Portsmouth Police Honor Guard.
- c) A donation of found monies in the amount of \$18 from Mr. M. Chubrich to the Portsmouth Police Honor Guard.

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 grant and donations 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. Consideration of First Reading of Proposed Ordinance Amendments:

- 1.1 **First Reading of Ordinance Amending Chapter VII, Article IV - Off-Street Parking, Section 7.402 - Areas Established and Described.** The Parking Committee, the Library Trustees and the School Board have all requested that the City Council consider first reading at its November 21st meeting of an ordinance which would designate the parking area between the Library and the Middle School as a municipal off-street parking lot. The conditions under which those entities desire that the lot be operated are as follows ([see attached map](#)):

1. Thirty-One (31) spaces shall be designated for Library parking only with a four (4) hour parking limit.
2. All remaining spaces be undesignated, but have a two (2) hour parking limit.
3. No overnight parking in the lot.

Under Section IX of the Agenda, [attached is a proposed Ordinance](#), which has been drafted to meet those specifications. In order to be able to complete consideration of the ordinance before this Council completes its term, the Council is requested to pass first reading of this ordinance and set second reading and public hearing for the first meeting

in December. Also, [attached is a letter from the Library Board of Trustees](#), regarding this matter.

I would recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the December 5, 2011 City Council meeting. Action on this item should take place under Section IX of the Agenda.

2. **Public Hearing and Adoption of Proposed Resolutions:**

2.1 **Public Hearing and Adoption of Proposed Resolution Regarding Solar Power Tax Exemption.** As a result of the October 17th City Council meeting, [attached under Section VII of the Agenda, I am bringing back for public hearing and adoption 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 adopt the proposed Resolution, as presented. Action on this item should take place under Section IX of the Agenda.

2.2 **Public Hearing and Adoption of Proposed Resolution to Levy Property Tax on Right-of-Way Use by Utilities.** As a result of the October 17th City Council meeting, [under Section VII of the Agenda, I am bringing back for public hearing and adoption the attached 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.

This [proposed Resolution](#) 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 adopt the proposed Resolution, as presented. Action on this item should take place under Section IX of the Agenda.

- 2.3 **Public Hearing and Adoption of Hazard Mitigation Plan Update 2010.** As a result of the October 17th City Council meeting, under Section VII of the Agenda, I am bringing back for a public hearing and adoption the [attached proposed 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 to 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 the document can be reviewed at the City's Website www.cityofportsmouth.com or a copy of the Plan is available in the City Manager's Office.

I would recommend the City Council move to adopt the proposed Hazard Mitigation Plan Update 2010, as presented. Action on this item 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 Amendment to Chapter 7, Article III, - Traffic Ordinance – No Through Traffic.** As a result of the October 17th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second 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 second reading and schedule a third and final reading of the proposed Ordinance amendment, as presented, at the December 5, 2011 City Council meeting. Action on this item should take place under Section IX of the Agenda.

- 3.2 **Public Hearing/Second Reading of Ordinance Amendment to Chapter 7, Article XI - Speed Limits sub-section C.** As a result of the October 17th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached 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 second reading and schedule a third and final reading of the proposed Ordinance amendment, as presented, at the December 5, 2011 City Council meeting. Action on this item should take place under Section IX of the Agenda.

4. **Third and Final Reading of Proposed Ordinance Amendments:**

- 4.1 **Third and Final 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 17th City Council meeting, under Section IX of the Agenda, I am bringing back for third and final 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 am recommending that the City Council move to pass third and final reading on the proposed Ordinance, as presented. 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 Town of Jackson in the amount of \$250.00 and the Town of Bridgewater in the amount of \$1,250.00 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 Funds for Art-Speak.** Art-Speak requests that the following Art-Speak donations, totaling \$2,150, be accepted by the City Council on behalf of Art-Speak. These funds were donated to support Art-Speak's Art & Economic Prosperity Survey.

The checks are as follows:

Robin Albert Lehman & Wayne Lehman	\$150
NH Charitable Foundation Thomas W. Haas Fund	\$2,000

I would recommend the City Council move to accept the donations to Art-Speak, as presented, to support Art-Speak's Art & Economic Prosperity Survey. Action on this matter should take place under Section X of the Agenda.

3. **Request for Approval of Pole License.** Attached under Section X of the Agenda is the following request for a PSNH Pole License Agreement 63-0517 (see attached memorandum from Tom Richter, Engineering Technician, Public Works Department):
- a) License for four poles located on State Street in conjunction with the City's State Street Sidewalk Improvements Project.

I would recommend the City Council move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes. Action on this matter should take place under Section X of the Agenda.

City Manager's Items Which Require Action:

1. **Report Back Re: Letter from Tony LaCava regarding Sale of Property at 95 Mechanic Street.** As you will recall, at the September 6th City Council meeting, the Council referred the attached letter from Attorney Michael Chubrich, on behalf of Tony LaCava, regarding the sale of property at 95 Mechanic Street, to the Planning Board for report back to the City Council. As you will see in the attached memorandum from Rick Taintor, Planning Director, this property is adjacent to the Mechanic Street Pump Station and the Peirce Island Bridge, and further, attached is a memorandum from David Allen, Deputy Director of Public Works, stating that this land would be beneficial to the City in upgrading the Pump Station as part of the implementation of the Wastewater Master Plan. At its meeting on October 20, 2011, the Planning Board voted unanimously to recommend that the City acquire the LaCava property at 95 Mechanic Street and all interest in adjacent land between the Mechanic Street Pump Station and the Peirce Island Bridge.

I would recommend the City Council move to approve the aforementioned request as recommended by the Planning Board, and further, authorize the City Manager to negotiate the purchase of this parcel with final approval of purchase price to be made by the City Council.

2. **Report Back Re: Letter from Dexter Legg requesting a License for a New Driveway at 4 Moebus Terrace.** As you will recall, at the September 19th City Council meeting, the Council referred the attached letter from Dexter Legg requesting a License for a new driveway at 4 Moebus Terrace, to the Planning Board for report back to the City Council. Attached is a memorandum from Rick Taintor, Planning Director, regarding this matter. At its meeting on October 20, 2011, the Planning Board voted unanimously to recommend that the License be granted as requested.

I would recommend the City Council move to approve the aforementioned License request as recommended by the Planning Board, and further, authorize the City Manager to execute a License Agreement for this request.

3. **Report Back Re; Letter from Linda Smith, New Hampshire Department of Transportation, regarding an offer for the Acquisition of Land as required for the Reconstruction of the US Route 1 Bypass.** As you will recall, at the October 3rd City Council meeting, the Council referred the aforementioned request (see attached) to the Planning Board for report back to the City Council. Attached is a memorandum from Rick Taintor, Planning Director, regarding the New Hampshire Department of Transportation’s request to acquire 300 sq. ft. of property and a 100 sq. ft. temporary slope easement on the City’s Lafayette Road Pump Station Parcel. These takings are part of a project to realign the intersection of Lafayette Road and the Route 1 Bypass. In addition, attached is a memorandum from David Allen, Deputy Public Works Director indicating that this proposed acquisition and easement will have no impact on the City’s pump station, and the Department of Public Works recommends approval of the requested land transfer and temporary slope easement. At its meeting on October 20, 2011, the Planning Board voted unanimously to recommend that the City approve the requested land transfer and temporary slope easement.

I would recommend the City Council move to approve the aforementioned request as recommended by the Planning Board, and further, authorize the City Manager to negotiate the purchase of this parcel with final approval of purchase price to be made by the City Council and execute a temporary slope easement.

4. **Proposed Zoning Ordinance Amendments – Office Research District.** As you will recall, Attorney Paul McEachern, on behalf of Aphrodite Georgopolous, submitted the attached letter dated July 12, 2011 to the City Council, requesting that seven parcels on the westerly side of Lafayette Road be rezoned from the Office Research (OR) district to the Gateway district. At the July 18, 2011 City Council meeting, the Council referred this request to the Planning Board for a recommendation, and the Planning Board held public hearings on this request on September 15 and October 20, 2011.

After considering the original request and comments at the public hearings, the Planning Board determined that rezoning the subject parcels to Gateway would not be advisable. Instead, following the Planning Department’s analysis and recommendations, the Planning Board voted unanimously on October 20, 2011, to recommend that the Zoning Ordinance be amended as follows:

1. Amend Section 10.531, Table of Dimensional Standards – Business and Industrial Districts, as follows (deletions from existing language ~~stricken~~; additions to existing language **underlined bold**):

	OR
Minimum Lot Dimensions	
Lot Area	3 <u>2</u> acres ¹
Continuous street frontage	300' <u>200'</u> ¹
Depth	300' <u>200'</u> ¹

	OR
Minimum Yard Dimensions	
Front	50' ^{1,3}
Side	75' <u>50'</u> ¹
Rear	50'

NA = Not Applicable NR = No Requirement

Notes:

1. See Section 10.532.10 for requirements for lots adjacent to North Mill Pond.
3. See Section 10.533 for special requirements on Lafayette Road.

2. Amend Section 10.440, Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, as follows:

Use	OR
2.10 Assisted living facility	
2.11 Assisted living center	N <u>P</u>
3.70 Club, fraternal or service organization	N <u>S</u>

Attached is a memorandum from Rick Taintor, Planning Director, outlining the background and analysis regarding this matter.

In addition to the recommended changes in dimensional standards, the Department recommended that two minor changes be made to the Table of Uses:

- Allow Assisted Living Center (currently prohibited in OR but allowed in the B and GB districts, and in the Gateway district by conditional use permit;
- Allow Club, Fraternal or Service Organization by special exception (currently prohibited in OR but allowed in B, GB and Gateway by special exception, and in CBB without a special exception).

The Planning Board held a public hearing on the above recommendations at its meeting on October 20, 2011. Following the public hearing, the Planning Board voted unanimously to recommend that the Zoning Ordinance be amended as set forth at the beginning of the attached memorandum.

As you are aware, it takes three readings in order to pass an ordinance. With this in mind, there are only two regular City Council meetings after tonight’s meeting. In order for this City Council to consider and take action on this proposed Zoning Ordinance Amendment, the Council would need to hold first reading at the December 5th City Council meeting and a public hearing and second reading at the December 19th City Council meeting. In addition, at the

December 19th meeting, the Council would need to consider a motion to suspend the rules in order to take up third and final reading of the proposed ordinance in order for this City Council to take action on this matter.

If the City Council wishes, the Council may schedule first reading on the proposed Zoning Ordinance Amendment, as presented, at the December 5th City Council meeting.

5. **Request to Institute Overnight Closure of City Parks.** Attached is a memorandum from [David Ferland, Police Chief](#), requesting that we post the closure of all City parks from 11:00 p.m. until 5:00 a.m. In accordance with the following City ordinance, I have the authority to do so with the approval of City Council:

Section 8.208: Park Operating Policy

A. Hours

Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during hours designated by the City Manager and approved by the Council. The opening and closing hours for each individual park shall be posted therein.

Therefore, I would recommend the City Council move to authorize the City Manager to institute the overnight closure of City parks from 11:00 p.m. to 5:00 a.m. in accordance with City ordinance.

6. **Sale of Portsmouth Fire Department Old Engine 6, 1994 International/Central States/RK Quint.** The City has purchased a new 2011 E-One pumper fire apparatus to replace Engine #6, a 1994 International/Central States/RK Quint. A local dealer, Greenwood Emergency Vehicles, has found a buyer who has offered \$12,000.00 for Engine #6 in light of the multiple mechanical problems.

In accordance with City Ordinance Section 1.505, property valued at \$500.00 or more must receive approval from the City Council for sale prior to competitive bidding, public auction, or any other means authorized by the City Council. If the sale is authorized by any means other than competitive bidding, or public auction, it must be by a 2/3's vote of the City Council and in accordance with procedures established by the Council.

Due to the current conditions of the old apparatus, Chief LeClaire believes the \$12,000.00 is a respectable offer and recommends that the City accept this offer and waives the bidding, public auction requirements.

I would recommend the City Council move to accept the offer and waive the bidding, public auction requirements for the sale of Fire Department Old Engine 6, and authorize the City Manager to proceed with the sale and execute any necessary documents.

7. **Purchase of Sagamore Creek Island.** As you will recall, at the October 3, 2011 City Council meeting, the Council accepted the Planning Board's report back to recommend that the City acquire the Sagamore Creek Island on such terms as the City Council may determine appropriate and referred this matter to the Conservation Commission for its concurrence (see attached letter from Robert Thoresen on behalf of David Linn and memorandum from Rick Taintor, Planning Director). At the October 12, 2011 meeting of the Conservation Commission, the Commission voted to recommend to the City Council the purchase of the Sagamore Island property Map 227 Lot 2 for the price of \$21,900 with the funds to come from the City's Conservation Fund (see attached memorandum from Peter Britz, Environmental Planner). Robert Thoresen has advised me that David Linn is willing to accept the assessed value as the purchase price for the island.

I would recommend the City Council move to accept the Conservation Commission's recommendation to approve the acquisition of the Sagamore Creek Island property Map 227 Lot 2 for the price of \$21,900 with the funds to come from the City's Conservation Fund, and further, authorize the City Manager to proceed with the execution of the necessary documents.

8. **Polling Hours for January 10, 2012 Presidential Primary Election.** Attached is a memorandum from Kelli L. Barnaby, City Clerk, recommending that the polling hours for the Presidential Primary Election on January 10, 2012 be set from 8:00 a.m. to 7:00 p.m.

I would recommend the City Council move to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Presidential Primary Election on January 10, 2012.

9. **Request for St. John's Masonic Association Lot 10-Year Agreement.** The St. John's Masonic Association has requested a 10-year agreement with the City to continue free public access to the 61 parking spaces in their parking lot. The annual compensation rate proposed for the 10-year agreement is \$21,500 (the same as 2011). This equates to \$352.45 per space for the year, or \$1.13 per space per day. The City has had agreements for use of the Mason's parking lot since the summer of 1998. The annual compensation to St. John's was \$21,000 from 2007-2009, \$21,210 in 2010 and \$21,500 in 2011 (see attached current Agreement). Of note, the City rehabilitated the parking lot in the spring of 2004 in lieu of annual compensation from 2004-2006. Public parking is permitted from Monday through Saturday, 6:00 a.m. to 7:30 p.m. throughout the calendar year. Sunday usage of the lot has also been permitted with permission from St. John's. Additionally, the lot is valuable as a staging area for races and as a satellite lot for various events in the City, especially when multiple events take place simultaneously. It would be beneficial for the City to have an extended agreement with St. John's and continue to supply free public parking on the periphery of the downtown area while keeping the annual compensation rate level for several years.

I would recommend that the City Council move to authorize the City Manager to enter into a Parking Lot Usage/Maintenance Ten-Year Agreement with St. John's Masonic Association for the period January 1, 2012 through December 31, 2022 and further to compensate St. John's Masonic Association in the amount of \$21,500.00 which shall be taken from the Parking Impact Fee Fund.

10. **Disposal of Surplus Equipment Police Department Uninterrupted Power Supply Battery.** The Police Department is requesting the City to dispose of an Uninterrupted Power Supply -General Electric SitePro 15KVA, UPS140FR Battery Cabinet with 30 batteries which was no longer sufficient enough to adequately supply back up power to critical components of the Police Department and City Hall. This unit has since been replaced with an adequate system.

The old UPS will require major repairs. However, in its current condition it is estimated to be worth \$5,000.00. It is recommended to dispose of the UPS through the bidding process.

In accordance with City Ordinance Section 1.505, property valued at \$500.00 or more must receive approval from the City Council for sale, prior to competitive bidding, public auction, or any other means authorized by the City Council.

I would recommend the City Council move to authorize the City Manager to dispose of surplus equipment by the sealed bid process.

11. **Report Back Re: Vaughan Street – Traffic Pattern Change.** As you know, the City Council referred the addition of metered on-street parking and the subsequent removal of parking on the opposite side of Vaughan Street to the Traffic & Safety Committee to review possible changes to accommodate parking on both sides of the street.

At the October 13, 2011 Traffic & Safety Committee meeting, it was recommended that Vaughan Street be changed to a one-way street, with traffic flowing from Maplewood Avenue to Green Street. At Green Street, the traffic would resume a two-way flow. This change would allow parking to remain on both sides of Vaughan Street. [Attached is a map showing the proposed changes to Vaughan Street.](#)

An ordinance change would be necessary to establish metered and timed parking on Vaughan Street, as no parking ordinance is currently in place for that area. An ordinance change would also be required to establish Vaughan Street as a one-way street from Maplewood Avenue to Green Street.

As previously stated, it takes three readings to pass an ordinance and since there isn't enough time for this City Council to effectuate a change on this matter, I would recommend the following motion:

Move to refer this matter to the new City Council for their review and action.

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 17, 2011. In addition, this now can be found on the City's website.

2. **Reminder of Cate Street Rezoning Neighborhood Input Session on December 6th at 6:30 p.m., in the Levenson Room at the Library.** This is a reminder as requested by the City Council, the Planning Department will be conducting a Neighborhood Input Session regarding the Cate Street Rezoning Proposal on Tuesday, December 6, 2011, at 6:30 p.m., in the Levenson Room at the Library.

3. **Free Holiday Parking.** Last year, we had free parking for three weeks during the Holiday Season, from Monday, December 13th through Saturday, January 1st. The Parking Committee recently approved free parking for three weeks again this Holiday Season, from Monday, December 12th through Monday, January 2nd.

Time limits and illegal parking will be enforced as usual. Inserts will be placed in all single-space and pay & display parking meters, stating, “Seasons Greetings, 2 Hours Free Parking” or “4 Hours Free Parking”, as appropriate. Each week of free parking costs the City approximately \$40,000 in parking revenues from meters and violations. After City Council approval on November 21st, a press release will be issued stressing that time limits are still in effect and will be enforced.

4. **Presentation and Report Re: Downtown Parking Capacity.** For your information, a presentation and report regarding the downtown parking capacity is scheduled for Thursday, December 1, 2011 at 7:00 p.m., in the Eileen Dondero Foley Council Chambers.

5. **Reminder of Joint Work Session.** Please note your calendars regarding the City Council Joint Work Session with the Planning Board, the Economic Development Commission and the Historic District Commission on Monday, December 12, 2011 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers, regarding future downtown development.

6. **News Release Re: City Budget Receives 6th Prestigious National Award.** I am pleased to provide you with the [attached news release](#) announcing that the Government Finance Officers Association (GFOA) has recognized the City of Portsmouth Fiscal Year 2012 budget document with the Distinguished Budget Document Presentation Award. This is the sixth year in a row that the City has received this award.