

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, MARCH 4, 2013 TIME: 7:00PM

## AGENDA

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

### PRESENTATION

1. Presentation from Lawrence Yerdon, President and CEO of Strawberry Banke Re: Skating Rink Proposed Project

### V. ACCEPTANCE OF MINUTES – FEBRUARY 4, 2013 AND FEBRUARY 19, 2013

### VI. PUBLIC COMMENT SESSION

### VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Police Department Grants:
  - NH Department of Highway Safety Grant for DWI/DUI Patrols - \$8,580.00
  - NH Department of Highway Safety Grant for Sobriety Checkpoints - \$12,168.00
  - NH Department of Highway Safety Grant for Pedestrian Patrols - \$7,436.00
  - NH Department of Highway Safety Grant for Red Light Running Patrols - \$7,436.00
  - NH Department of Highway Safety Grant for Speed Enforcement Patrols - \$7,436.00

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

### VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

*(There are no items under this section of the agenda)*

### IX. CONSENT AGENDA

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

- A. \*Acceptance of Donation to Fire Department Re: Kearsarge Fund
  - Flynn & McGee, P.A. - \$50.00

*(Anticipated action – move to approve and accept the donation to the Portsmouth Fire Department, as listed)*

- B. Request for a License from Mark McNabb, owner of Bull Moose Music on Congress Street for property located at 82-86 Congress Street to install two identical projecting signs (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Mark McNabb, owner of Bull Moose Music on Congress Street to install a projecting sign at 82-86 Congress Street 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, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- C. \*Acceptance of Donation to the Coalition Legal Fund
- Coalition of NH Taxpayers - \$100.00

***(Anticipated action – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)***

- D. Letter from Ben Anderson, Executive Director, Prescott Park Arts Festival requesting permission to briefly stop traffic crossing Memorial Bridge on Saturday, October 12, 2013 at 10:00 a.m. followed by the Memorial Bridge Road Race which is a collaborative effort between the Prescott Park Arts Festival and the Community Child Care Center of Portsmouth (***Anticipated action – move to refer to the City Manager with power***)

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Patrick Crimmins, P.E., Tighe & Bond requesting an Urbanized Shoreland Exemption at 299 Vaughan Street, LLC for a municipal parking lot to be constructed (***Sample motion – move to refer to City Manager for report back***)
- B. Letter from Jonathan N. Bursaw, Bursaw's Pantry, LLC, 3020 Lafayette Road, requesting to change the zoning on property from Mixed Residential Business (MRB) to Gateway District (***Sample motion – move to refer to the Planning Board for report back***)
- C. Letter from Islington Creek Neighborhood Association regarding proposed conditions for property at 21 Brewster Street

## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

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

1. Approval of Boarding House Permits
  - 21 Brewster Street
  - 350-352 Hanover Street
  - 278 Cabot Street
2. Report Back Re: Letter from Jean and Gordon Willis requesting the Transfer of Ownership of Artwill Avenue to the City of Portsmouth
3. Report Back and Request for Easement Re: 32 Livermore Street
4. Request for First Reading of Proposed Zoning Ordinance Amendments - Neighborhood Commercial Use
5. Request for First Reading of Proposed Zoning Ordinance Amendments - Signs
6. Request for First Reading of Proposed Zoning Ordinance Amendments - Dimensional Standards
7. Request for First Reading of Proposed Zoning Ordinance Amendments – Historic District Commission Work Sessions
8. Request for License Re: Container on Mechanic Street
9. Request to Establish a Work Session Re: Doble Center
10. Establish Time for April 6<sup>th</sup> FY14 Budget Presentations

#### **Informational Items**

1. Events Listing
2. Update on changes to site plan review process for earlier vesting of developments from zoning changes (with flowchart)

### B. MAYOR SPEAR

1. Appointments to be Voted:
  - Colby Gamester – Planning Board
  - Craig Welch – Portsmouth Housing Endowment Fund

**C. ASSISTANT MAYOR LISTER**

1. Ethics Committee Report Back (***Sample motion – move to accept the Ethics Committee Report***)

**D. COUNCILOR COVIELLO**

1. \*Worth Lot Lease (***Sample motion – move to direct the City Manager to report back on options to ground lease the Worth Lot for development with no loss of parking***)

**E. COUNCILOR DWYER**

1. \*Update on Middle School Project

**F. COUNCILOR SMITH**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the February 14, 2013 meeting (***Sample motion – move to approve and accept the action sheet and minutes of the February 14, 2013 Parking and Traffic Safety Committee meeting***)
2. \*Report on 2023 Committee

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. 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 the December 12, 2012 meeting are available on the City's website for your review
2. Notification that the Historic District Commission Minutes of the October 3, 2012 meeting are available on the City's website for your review
3. Notification that the Planning Board Minutes of the October 18, 2012 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:** February 28, 2013  
**To:** Honorable Mayor Eric Spear and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on March 4, 2013 City Council Agenda

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***Presentation:***

1. **Presentation from Lawrence Yerdon, President and CEO of Strawberry Banke Re: Skating Rink Proposed Project.** Lawrence Yerdon, President and CEO of Strawberry Banke, will be making a presentation to City Council on Monday evening, regarding the skating rink proposed project on the grounds of the Museum. [See attached letter.](#)

***Acceptance of Grants and Donations:***

1. **Acceptance of Police Department Grants.** [Attached under Section VII of the Agenda is a memorandum](#), dated February 20, 2013, from John F. Golumb, Chairman of the Portsmouth Police Commissioners, and Police Chief Stephen J. DuBois, requesting that the City Council approve the following grants:
  1. A grant in the amount of \$8,580 from the NH Department of Highway Safety for Portsmouth DWI/DUI Patrols.
  2. A grant in the amount of \$12,168 from the NH Department of Highway Safety for Portsmouth Sobriety Checkpoints.
  3. A grant in the amount of \$7,436 from the NH Department of Highway Safety for Portsmouth Pedestrian Patrols.
  4. A grant in the amount of \$7,436 from the NH Department of Highway Safety for Portsmouth Red Light Running Patrols.
  5. A grant in the amount of \$7,436 from the NH Department of Highway Safety for Portsmouth Speed Enforcement Patrols.

The Police Commission is submitting this information pursuant to City Policy Memorandum #94-36 for City Council approval and acceptance.

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

### ***Consent Agenda:***

1. **Acceptance of Donations to Fire Department Re: Kearsarge Fund.** The Fire Department has received the following donation for the Kearsage Fund:

➤ Flynn & McGee, P.A.            \$50.00

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

2. **Request for License to install Projecting Sign.** Attached under Section IX of the Agenda is the following request for a License to install two identical projecting signs (see attached memorandum from Rick Taintor, Planning Director):

➤ Mark McNabb, owner of Bull Moose Music for property located at 82-86 Congress Street

*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 IX of the Agenda.*

3. **Acceptance of Donation to the Coalition Legal Fund.** The Coalition of New Hampshire Taxpayers has donated funds in the amount of \$100.00 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 donation, as listed, to be placed in the Coalition Legal Fund. Action on this matter should take place under Section IX of the Agenda.*

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

1. **Approval of Boarding House Permits.** As requested by the City Council, I am bringing back the Boarding House Permit for 21 Brewster Street for consideration and action by the City Council at Monday evening's meeting. Also, I am bringing back the Boarding House Permits for 350-352 Hanover Street and 278 Cabot Street.

- a) **21 Brewster Street.** Attached is a copy of a proposed Boarding House Permit for 21 Brewster Street. Please note that requirements 7 through 10 of the permit are derived from recommendations made by the Islington Creek Neighborhood Association by letter addressed to the Portsmouth City Council on February 13, 2013. In addition, the language of the Neighborhood Association has been modified by the Legal Department to meet municipal purposes.

Further it should be noted, the Neighborhood Association recommendation regarding eviction of tenants has not been included because state law regarding eviction pre-empts municipal authority.

- b) **350-352 Hanover Street.** Attached is a copy of a Boarding House Permit for 350-352 Hanover Street. This is for a one-year permit to expire on March 4, 2014.
- c) **278 Cabot Street.** Attached is a copy of a Boarding House Permit for 278 Cabot Street. This is for a one-year permit to expire on March 4, 2014.

*I would recommend the City Council move to approve the following Boarding House Permits, as presented:*

- a) *21 Brewster Street for a three-month extension to expire on June 4, 2013, with all conditions as listed on the permit.*
- b) *350-352 Hanover Street for a one-year permit to expire on March 4, 2014, with all conditions as listed on the permit.*
- c) *278 Cabot Street for a one-year permit to expire on March 4, 2014, with all conditions as listed on the permit.*

2. **Report Back Re: Letter from Jean and Gordon Willis requesting the Transfer of Ownership of Artwill Avenue to the City of Portsmouth.** As you will recall, at its December 3, 2012 meeting, the City Council voted to refer the attached request from Jean and Gordon Willis to the Planning Board for report back to the City Council.

Artwill Avenue is a private easement over a parcel at 437 Lafayette Road owned by the Harlon P. Willis Revocable Trust and the Jean P. Willis Revocable Trust. The easement provides access to two abutting properties owned by Robert Hopley (34 Artwill Avenue)

and Kevin Lilakis (36 Artwill Avenue). The owners of the property on which the easement is located have requested that the City accept Artwill Avenue as a City street.

**Attached is map** showing Artwill Avenue and abutting parcels on a 2010 orthophoto. The easement is 40 feet in width for most of its length, and stops about 50 feet short of the Willis' rear lot line abutting the Greek Church property. However, the paved area extends beyond the end of the easement, practically to the lot line at the Greek Church parcel.

Artwill Avenue was not designed or constructed to the City's current minimum standards for residential streets, and it has not been adequately maintained over the years. The easement is now in such a state of deterioration that it is damaging to City snow plowing equipment.

A plan for a 10-lot subdivision of the three lots on Artwill Avenue was recorded at the Registry in 1958 (the plan was originally drawn in 1940 and was revised in 1946 and 1957). At that time, the three houses were already in existence and the plan showed Artwill Avenue as a street extending to the Greek Church property line to create frontage for the additional proposed lots. However, the plan was signed by the Planning Board Chair in 1958 with the notation "No Jurisdiction." A letter from the owners' attorney stated, "There is no present plan at all to develop the area, and the purpose of having [the plan] on file is simply in the event the children, whose homes abut that of Mr. Hopley, decide at some time along the way to dispose of the property."

In 1972 the owners requested that the City accept Artwill Avenue as a City street, but that request was denied by the City Council. However, according to a 2011 email from the City Attorney,

It seems that in 1972 the City Council took two flatly contradictory actions. On May 1<sup>st</sup> the Council voted to "pick up rubbish and provide snow plowing for Sylvester Street and Artwill Avenue" but on June 29<sup>th</sup> the Council voted "not to accept Artwill Avenue since it does not comply with street standards."

The City Attorney described the 1972 actions as contradictory because they are not allowable under State statute. RSA 674:40 provides that a municipality which has conferred subdivision approval authority on the Planning Board,

... shall not "accept, lay out, open, improve, grade, pave, or light any street ... unless such street:

(a) Has been accepted or opened as, or has otherwise received the legal status of, a public street prior to the conferring of platting jurisdiction upon the planning board; or

(b) Corresponds in its location and lines with a street shown on the official map, or with a street shown on a subdivision plat approved by



the planning board, or with a street on a street plat made by and adopted by the board.

Artwill Avenue does not appear to meet either of the above standards. No evidence of subdivision approval for the existing three lots has been found in the City's files or at the Rockingham County Registry of Deeds, and the City Council vote in May 1972 clearly indicates that Artwill Avenue was not considered a public street.

The cost of improving the road to City standards is estimated to be \$125,800, including a 32-foot travel way, curbing on both sides, a sidewalk on one side, a turnaround at the end of the street, and required drainage. The cost is broken down as follows:

Reclaiming and grading	11,200 sf	\$ 4,000.00
Paving	250 tons	\$ 22,000.00
Driveway work (to match to street grade)	30 tons	\$ 3,300.00
Fill / loam & seed		\$ 8,500.00
Curbing	800 ft	\$ 16,000.00
Catch basins	2	\$ 4,000.00
Drain pipe	100 ft	\$ 2,000.00
Detention pond or underground storage	Allowance	\$ 20,000.00
Concrete sidewalk	350 ft	\$ 10,000.00
Construct cul-de-sac		\$ 15,000.00
Subtotal		\$104,800.00
Overhead, profit, bonding and insurance		\$ 20,960.00
Total		\$125,760.00

In addition to the cost of improving the existing driveway to City street standards, land must be provided at the end of the street for a turnaround, so that trucks do not have to back down the street and out onto Lafayette Road. City standards require a cul-de-sac with a radius for the outside curb of at least 50 feet and a radius for the property line of at least 60 feet. However, given that only three lots would be served by the proposed street, an alternate design (such as a hammerhead) might be acceptable. In any case, some additional right of way would need to be included in addition to the existing easement area, which would impact one or both of the parcels at the end of the proposed street.

Clearly, the cost of improving the driveway to City standards is significant, particularly in relationship to the limited benefit that it would provide. It is likely more cost-effective for the three property owners to pay to upgrade the existing driveway and pay for private plowing, rather than to make this sizable investment.

At its meeting on February 21, 2013, the Planning Board voted 6-1 to recommend that the City Council accept Artwill Avenue as a public street only subject to the following conditions:

1. The full cost of upgrading Artwill Avenue to City standards (estimated to be \$125,000) shall be borne by the private property owners abutting the street.

2. An area sufficient to construct a cul-de-sac (or alternative turnaround acceptable to the DPW) shall be conveyed to the City along with the existing easement area.

*I would recommend the City Council move to accept the Planning Board's recommendation to accept Artwill Avenue as a public street only subject to the aforementioned conditions.*

3. **Report Back and Request for Easement Re: 32 Livermore Street.** As you will recall, the owner of property located at 32 Livermore Street seeks an easement from the City to construct a new underground service for utilities as shown on the **attached plan**. The relocated utility service is proposed to run from an existing pole to the other side of Livermore Street under the public street and sidewalk to the dwelling unit at 32 Livermore Street.

At its February 19th meeting, the City Council referred this request to the Planning Board for report back to the City Council. The Planning Board took action on this item on February 21, 2013, recommending the grant of an easement.

As previously represented, the owner is prepared to reconstruct the brick sidewalk and repair the road to City specifications after installation of the new service. Public Works has no objection to this relocation of a utility service underground subject to the obligation to reconstruct to the City specifications and subject to the owner relocating the conduit at its own expense as might be necessary for future municipal projects. If approved, the Legal Department would prepare the necessary agreement and easement.

*I would recommend the City Council move to authorize the City Manager to negotiate and execute an easement for an underground utility conduit on Livermore Street.*

4. **Request for First Reading of Proposed Zoning Ordinance Amendments - Neighborhood Commercial Use.** At the request of the Planning Board, the Planning Department prepared the **attached proposed amendment** to the Zoning Ordinance to allow Neighborhood Commercial Uses in residential districts by conditional use permit. As stated in the proposed ordinance, the purpose of this amendment is to allow limited retail uses that are convenient to residential neighborhoods and consistent with the character of the surrounding residential area. The concept would be similar to uses such as the Middle Street Market and the former Red Ginger on South Street, as well as other neighborhood markets that have existed in the City in the past.

The proposed ordinance includes standards for lot dimensions, building and site design, off-street parking, signs and hours of operation. The standards are intended to ensure that any retail use approved under the ordinance would have a neighborhood focus rather than attracting a major portion of its business from other areas. For example, the maximum allowed floor area is 2,000 sq. ft. For comparison, the former Red Ginger store has 1,264 sq. ft. of floor area, while the Middle Street Market has 3,715 sq. ft. of ground floor area.

In contrast, a typical new convenience store located in a typical commercial district would have a floor area of 4,000 to 5,000 sq. ft.

The proposed zoning ordinance limits neighborhood commercial uses to intersections on arterial or collector streets as shown in the Master Plan. Arterials that pass through residentially-zoned areas include Lafayette Road, Market Street, Islington Street, Middle Road, Middle Street, South Street, New Castle Avenue, Sagamore Avenue and Banfield Road. Collectors include roads such as Maplewood Avenue, Miller Avenue, Elwyn Road, Pevery Hill Road and Ocean Road.

The conditional use permit allows for discretionary review by the Planning Board and requires findings that the proposed use would not create adverse impacts on the neighborhood.

Draft zoning language was originally presented to the Board at its meeting on February 16, 2012, and was subsequently discussed in a joint work session with the Planning Board and the Historic District Commission on April 24, 2012. The Planning Board reviewed the proposed amendment at its meeting on January 24, 2013, and discussed a revised draft at its meeting on February 21, 2013.

At its meeting on February 21, 2013, the Planning Board voted 6-1 to recommend that the Zoning Ordinance be amended by inserting a new Section 10.750 – Neighborhood Commercial Uses, as set forth in the [attached proposed ordinance](#).

*I would recommend the City Council move to authorize the City Manager to bring back for first reading the proposed zoning ordinance amendment at the March 18th City Council meeting.*

5. **Request for First Reading of Proposed Zoning Ordinance Amendments - Signs.** Attached are [several proposed amendments](#) to the Zoning Ordinance relating to sign regulations.

The existing Zoning Ordinance divides the City into six sign districts. Each of the City's zoning districts fall into one of these six sign districts. Presently, Sign District 3 includes the Business, Central Business A and Central Business B Zoning Districts. The scale of development in the Business District is significantly different from the Central Business Districts. For this reason, the recommended amendment would move the Business Zoning District to Sign District 4, grouping it with the Office Research Zoning District.

The next proposed amendment modifies the standards for wall signs and parapet signs to allow expansion of their use in more situations than at present. The existing Ordinance restricts wall or parapet signs to ground-floor uses and single-use buildings. The amendment would allow one such sign above the first floor as long as it is related to the use.

The existing Ordinance sets standards for maximum aggregate sign area based on both lot frontage and building frontage. The proposed amendment deletes the standard for maximum aggregate sign area based on lot frontage and also excludes permitted freestanding signs from the computation of aggregate sign area.

The existing Ordinance controls the size of projecting signs through a combination of a maximum allowed sign area and allowed projection from the building over the sidewalk. The proposed 12 sq. ft. maximum sign area for projecting signs is larger than all but a few signs in the Central Business Districts, while the maximum allowed projection can be overly restrictive on certain streets with narrow sidewalks. By reducing the maximum sign area to a level consistent with the character of the downtown and relaxing the maximum allowed projection, the Ordinance can provide more flexibility for businesses to design signs that meet the City's objective of maintaining appropriately scaled signs while being appropriate to their specific location.

Finally, the proposed amendment adds language to clarify how to determine the maximum area allowed for wall signs located on buildings with more than one façade.

At its meeting on January 24, 2013, the Planning Board voted unanimously to recommend that the Zoning Ordinance be amended as presented.

*I would recommend the City Council move to authorize the City Manager to bring back for first reading the proposed zoning ordinance amendment at the March 18th City Council meeting.*

6. **Request for First Reading of Proposed Zoning Ordinance Amendments - Dimensional Standards.** Attached are proposed amendments to the Zoning Ordinance, Article 5 – Dimensional and Intensity Standards.

The first change is related to building coverage and yards. The amendment would exempt small ground-mounted mechanical equipment from calculations of building coverage and yards. Many dwellings throughout the City are already out of compliance with current building coverage limits. The proposed amendment would exempt owners of such properties from having to obtain variances for the installation of a ground-mounted HVAC unit or generator in a side or rear yard and would relieve all property owners of the burden of computing existing building coverage whenever such equipment is proposed.

The second change is related to projections into required yards. The amendment would add a new section allowing specified building elements (balconies, bay windows, decks, steps, roof eaves, fire escapes, etc.) to project into required yards. This change is proposed to promote architectural variety by accommodating limited projections of some building elements into yards where the main walls of a building comply with the yard requirements of the zoning district.

At its meeting on January 24, 2013, the Planning Board voted unanimously to recommend that the Zoning Ordinance be amended as presented.

*I would recommend the City Council move to authorize the City Manager to bring back for first reading the proposed zoning ordinance amendment at the March 18th City Council meeting.*

7. **Request for First Reading of Proposed Zoning Ordinance Amendments – Historic District Commission Work Sessions.** Attached is a proposed amendment to the Zoning Ordinance relating to the requirements for a work session with the Historic District Commission.

Currently, there is no requirement for an applicant to provide the Planning Department and Historic District Commission with any conceptual planning or design prior to a requested work session. The proposed zoning amendment would specify that a conceptual site plan and design information must be submitted with a request for a work session with the HDC. This proposed change is intended to give Commissioners and staff an opportunity to review concept plans in preparation for work sessions.

At its meeting on January 24, 2013, the Planning Board voted unanimously to recommend that the Zoning Ordinance be amended as set forth.

*I would recommend the City Council move to authorize the City Manager to bring back for first reading the proposed zoning ordinance amendment at the March 18th City Council meeting.*

8. **Request for License Re: Container on Mechanic Street.** David Adams of 210 Gates Street has requested a license to place a 20' storage container on the north side of Mechanic Street (between Peirce Island Road and Gates Street) for a period of five months. See attached letter request. This container will facilitate the reconstruction of Mr. Adams' home which was damaged by fire last year. On-street parking, normally accommodating four to five cars, would be impacted by the use of this stretch of Mechanic Street. See attached map. City staff has reviewed the proposed request and recommends it subject to the following conditions:

- Doors to the container must face the back of 145 Mechanic Street, with a minimum of 5' between the container and the back of the property at 145 Mechanic Street;
- Owner must place reflectors or reflective tape on the two corners of the container that face out into Mechanic Street;
- Owner must provide the Division Director of Parking with advance notice of the delivery and removal date of the container so that the delivery truck for the container can be coordinated; and

- If owner still requires the container after July 1, owner will be required to remove temporarily the container when requested by the Department of Public Works to facilitate paving and take steps as may be directed by the Department of Public Works to protect the new pavement when it is returned to the licensed location.

If approved by the City Council, the Legal Department will prepare a license agreement; such license will include usual and additional provisions relating to insurance, maintenance of the area, restoration of any damage to municipal property and like terms.

*I would recommend the City Council move to authorize the City Manager to negotiate and execute a license agreement in accord with the conditions described for the placement of a container on Mechanic Street.*

9. **Request to Establish a Work Session Re: Doble Center.** As you will recall, at the February 19<sup>th</sup> City Council meeting, Community Development Director David Moore gave a presentation concerning the Base Realignment and Closure Act regarding the Paul A. Doble Army Reserve Center on Cottage Street. The City Council requested that a work session be scheduled regarding this matter at a future date. I am recommending the City Council establish this work session on Monday, April 22, 2013 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers, regarding the Doble Center.

*Move to establish a work session on Monday, April 22, 2013 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers, regarding the Doble Center.*

10. **Establish Time for April 6<sup>th</sup> FY14 Budget Presentations.** As you will recall, at the October 27, 2012 City Council Retreat, it was determined that department head presentations for the FY14 Budget would all take place on Saturday, April 6, 2013 at City Hall. I am requesting that the City Council commence the budget presentations at 9:00 a.m. and to conclude by 3:00 p.m.

*May I have your approval of this recommendation.*

On another note, just a reminder that the public input session for the Water and Sewer Budget and Rate Study will be on Wednesday, March 13, 2013 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers.

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

1. **Events Listing.** For your information, **attached is a copy of the Events Listing** updated after the last City Council meeting on February 19, 2013. In addition, this now can be found on the City's website.
2. **Update on Changes to Site Plan Review Process for Earlier Vesting of Developments from Zoning Changes (with flowchart).** Representatives of the development community have raised concerns about the application of zoning amendments to

proposed projects that are underway but have not yet reached formal consideration by the Planning Board. As a result, the Planning Department has considered a change to the Site Plan Review Regulations that would allow applicants to have a public hearing before the Planning Board earlier in the design development process.

Under State law, a proposed amendment to the Zoning Ordinance applies to development projects unless they have been the subject of notice of a public hearing before the Planning Board prior to the legal notice of the City Council's public hearing on the proposed amendment (RSA 676:12, VI). Under the City's permitting procedures, a proposed site plan does not become the subject of a public hearing before the Planning Board until the Site Plan Review Technical Advisory Committee (TAC) has completed its review and has made a recommendation to the Planning Board.

The development community requested that the Planning Board revise its Site Plan Review Regulations to allow applicants to lock in the zoning standards for a property earlier in the development process. Many complex development projects involve extensive review by the City's land use boards (the Zoning Board of Adjustment and Historic District Commission) as well as the Technical Advisory Committee. As a consequence, much design work often takes place prior to submission of a full application for Site Plan Review to the Planning Board. The applicant is at risk if the Zoning Ordinance is amended during these processes.

RSA 676:4, II authorizes the Planning Board to provide for preliminary review of site plan review applications and/or subdivision plans by adopting specific regulations. In addition, the Planning Board is authorized by RSA 673:44, II(j) to require such preliminary review for site plans, and by RSA 674:35, I for subdivisions. Currently, the Portsmouth Planning Board allows (but does not require) preliminary review of subdivision plans, but does not provide for preliminary review of site plans.

RSA 676:4, II defines two types of preliminary review for site plans: "preliminary conceptual consultation phase" and "design review phase." The design review phase involves discussion of specific design and engineering details and requires notice to abutters and the general public. Because of this requirement for formal public notice, a development proposal that participates in the design review phase would be exempt from a zoning amendment if (a) the proposal was submitted to the Board for design review prior to the legal notice of the City Council hearing on the zoning amendment, and (b) a formal application is subsequently submitted to the Board within 12 months after the end of the design review phase (RSA 676:12, VI). This would enable applicants to vest their projects from zoning changes without first having to complete the TAC review of a final application.

It is important to note that "design review" in this context does not refer to building design, but rather to a review of preliminary site design and engineering. Discussions in the design review phase are not binding on the applicant or the Board; and "statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken."

At its meeting on February 21, 2013, the Planning Board voted to schedule a public hearing at its March meeting on an amendment to its Site Plan Review Regulations that would provide the option for a design review step as authorized by State law. The Planning Department will draft specific amendments to the Site Plan Review Regulations prior to the March meeting. This amendment to the Regulations requires action only by the Planning Board.

**Attached is a flowchart** illustrating the change that is being considered by the Planning Board. As shown, the proposed amendment would add an optional review by the Planning Board prior to the formal application for Site Plan Review. This would not affect any other aspect of the review processes currently carried out by the City's land use boards, but would simply provide an applicant with an opportunity to have a public hearing for its proposed development earlier in the review process.