

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, NOVEMBER 16, 2015 TIME: 7:00PM

AGENDA

- I. CALL TO ORDER (7:00PM)
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

PRESENTATION

- 1. Wastewater Treatment Facility Schedule Update

- V. ACCEPTANCE OF MINUTES – OCTOBER 5, 2015 AND OCTOBER 19, 2015

- VI. PUBLIC COMMENT SESSION

- VII. APPROVAL OF GRANTS/DONATIONS

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading amending Zoning Ordinance so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB)
- B. First Reading amending Zoning Ordinance - Chapter 10, Section 10.1530 – Term of General Applicability, amend the definitions of “hotel” and “motels as follows – shall not include casino gambling, keno or other games of chance

- IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Donald Allison, Eastern States 20 Mile, requesting permission to hold the Eastern States 20 Mile Road Race on Sunday, March 26, 2016 (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Emily Christian, National Multiple Sclerosis, requesting permission to hold the 2016 Walk MS Portsmouth on Saturday, April 16, 2016 from 10:00 a.m. to 2:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)

- C. Letter from Matt Junkin, Seacoast Rotary, requesting permission to hold the Seacoast Rotary Turkey Trot 5k on Thursday, November 24, 2016 at 7:00 a.m. (**Anticipated action – move to refer to the City Manager with power**)
- D. Letter from St. Patrick School requesting to host its 3rd annual 5k Road Race on Saturday, March 12, 2016 at 10:30 a.m.; route from Peirce Island and end in front of Strawberry Banke on Marcy Street

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Michael Potori, Beara Irish Brewing Co., requesting permission to hold a 5k run and Brewfest at 2800 Lafayette Road on March 19, 2016 and provide 4 oz samples to paying attendees with a portion of proceeds will go to a local charity (**Sample motion – move to refer to the City Manager for report back**)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

- 1. Request Partial Waiver of Municipal Service Fee for 31-32 Rochester Avenue, Portsmouth
- 2. Letter from Attorney Bruton Re: Unmerge Lots at 75 Monroe Street Nathan Aviezri Revocable Trust
- 3. Report Back Re: Request for License for Trash Enclosure on City Property property at 319 Vaughan Street
- 4. Parking Agreement with Piscataqua Bank
- 5. Ratify Agreement Re: Gundalow Company

Informational items

- 1. Events Listing
- 2. Charter Committee
- 3. Haven School Playground Improvement Project

B. MAYOR LISTER

- 1. Appointments to be Considered:
 - Appointment of Jamie Baker to the Citizens Advisory Committee
- 2. Appointments to be Voted:
 - Appointment of Anne Poubeau to the Portsmouth Housing Endowment Fund Advisory Board
 - Appointment of Hannah K. Dahlgren to the Citizen Advisory Committee

C. ASSISTANT MAYOR SPLAINE

1. Possible Solution to UBER Application Process (***Sample motion – move to authorize the City Attorney to prepare an ordinance for first reading at the December 7, 2015 City Council meeting that includes the technical amendments to the Transportation Services ordinance that have been requested by UBER in its letter of October 19, 2015***)

D. COUNCILOR MORGAN

1. *Right-to-Know Law: City Council's Official Position

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

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

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. Notification that the minutes of the October 14, 2015; December 8, 2014; December 10, 2014; and January 14, 2015; and September 9, 2015 meeting of the Conservation Commission are now available on the City's website
2. Notification that the minutes of the July 15, 2015; September 2, 2015; October 7, 2015 and October 14, 2015 meetings of the Historic District Commission are now available on the City's website
3. Notification that the minutes of the September 17, 2015 and September 24, 2015 meetings of the Planning Board are now available on the City's website
4. Notification that the minutes of the September 29, 2015 meetings of the Site Review Technical Advisory Committee are now available on the City's website
5. Notification that the minutes of the September 15, 2015 and September 22, 2015 meetings of the Zoning Board of Adjustment are now available on the City's website


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 12, 2015

To: Honorable Mayor Robert J. Lister and City Council Members

From: John P. Bohenko, City Manager 

Re: City Manager's Comments on November 16, 2015 City Council Agenda

Presentation:

1. **Wastewater Treatment Facility Schedule Update.** Deputy City Attorney Suzanne Woodland and City Engineer Terry Desmarais will provide an update with regard to the Peirce Island Wastewater Treatment Facility upgrade. In June of 2013, the City entered into a dispute resolution process with the Environmental Protection Agency (EPA) to obtain an extension of the original schedule in the Consent Decree for completion of the Peirce Island Wastewater Treatment Facility upgrade. That process has followed an informal process and included discussions relative to not only the schedule for completion, but also more recently potential nitrogen removal and levels of treatment. The EPA has advised in writing that the process should move from informal dispute resolution, to formal dispute resolution. Staff will summarize the historical informal discussions, explain the formal process, and describe next steps.

Items Which Require Action Under Other Sections of the Agenda:

1. **Request for First Reading of Proposed Resolutions and Ordinances.**
 - 1.1 **First Reading Amending Zoning Ordinance so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB).** At its meeting on August 3, 2015, the City Council considered the [attached letter from Peter G. Weeks, PGW Real Estate Consulting, on behalf of 955 Sagamore Realty Trust](#), requesting that 22,500 sq. ft. of the lot at 955 Sagamore Avenue be rezoned from Waterfront Business to Single Residence B, and voted to refer the letter to the Planning Board for a report back.

Concurrently with its consideration of the rezoning request, the Planning Board has reviewed an application for subdivision approval to create a new lot corresponding to the area proposed for SRB zoning. After the initial plan was submitted to the Planning Board, the applicant revised the subdivision plan by increasing the proposed lot area to 24,000 sq. ft. as a result of a separate review process by the New Hampshire Division of Environmental Services. At its meeting on October 15, 2015, the Board granted preliminary subdivision approval, and referred the application to the Technical Advisory Committee for review of utility issues, easements and related matters.

Also at the October 15th meeting, the Planning Board voted to recommend as follows:

“Vote to recommend that the City Council amend the Zoning Map by rezoning from Waterfront Business (WB) to Single Residence B (SRB) the land shown as Lot 2 on a plan titled “Subdivision Plan – Tax Map 201 – Lot 1 – Applicant: William L. Pingree – Owner: 955 Sagamore Realty Trust – 955 Sagamore Avenue, City of Portsmouth, County of Rockingham, State of New Hampshire,” revised 10/9/15, containing 24,000 s.f.; provided that the rezoning shall take effect no earlier than the date on which the subdivision plat approved by the Planning Board is recorded at the Registry of Deeds.”

On November 5, 2015, TAC voted to recommend final subdivision approval subject to certain stipulations, and the matter will be considered again by the Planning Board at its meeting on November 19, 2015.

[Attached under Section VIII of the agenda is a proposed Ordinance for first reading](#) amending the Zoning Ordinance so that certain described property on Sagamore Grove Road be rezoned from Waterfront Business (WB) to Single Residence B (SRB), as recommended by the Planning Board at their October 15, 2015 meeting.

I 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 7, 2015 City Council meeting. Action on this matter should take place under Section VIII of the Agenda.

- 1.2 **First Reading of proposed Ordinance Amending Chapter 10 – Zoning Ordinance, Section 10.1530, Terms of General Applicability, Definitions of Hotel and Motel.** At its meeting on September 8, 2015, the City Council considered the [attached letter from Gerald Zelin](#) proposing to amend the Zoning Ordinance to prohibit gambling at hotels and motels, and voted to refer the proposal to the Planning Board for a report back.

The Planning Board considered this matter at its meeting on October 15, 2015, and voted to recommend that the City Council amend the definitions of “hotel” and “motel” in Section 10.1530 of the Zoning Ordinance by inserting the phrase “but

shall not include casino gambling, keno or other games of chance” in each definition following the words “recreational facilities,” so that the sentence reads as follows:

Such activities may include, where allowed, such accessory uses as restaurants, bars, taverns, nightclubs, function rooms, places of public assembly or recreational facilities, but shall not include casino gambling, keno or other games of chance.

[Attached under Section VIII of the Agenda is a proposed Ordinance](#) for first reading amending Chapter 10 – Zoning Ordinance, Section 10.1530, Terms of General Applicability, Definitions of Hotel and Motel.

I recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Zoning Ordinance amendment, as presented, at the December 7, 2015 City Council meeting. Action on this matter should take place under Section VIII of the Agenda.

City Manager’s Items Which Require Action:

1. **Request Partial Waiver of Municipal Service Fee for 31-32 Rochester Avenue, Portsmouth.** [Attached is a letter from David R. Mullen, Executive Director of the Pease Development Authority \(PDA\)](#) in which he requests a partial waiver of the Municipal Service Fee (MSF) on the property occupied by the General Services Administration (GSA). As you can see from the letter, the PDA has been negotiating with the GSA regarding an extension of their lease. I would draw your attention to the following paragraph in his letter which states:

“At this time, PDA is requesting a partial waiver of the MSF and to pay City of Portsmouth an MSF of \$0.75 per square foot (\$87,678) annually for the MSF in years one through ten of the lease. Thereafter, PDA proposes to continue to pay the MSF at the same rate but will also include the additional market rate adjustment of \$.05 per square foot to which U.S. Department of State has agreed for each option period.”

Presently, the City of Portsmouth is receiving \$124,429 under the existing service fee. As you can see from the above paragraph, the PDA is requesting that they pay under the MSF \$.75 per square foot or \$87,678 annually in the years one through ten.

Given the circumstances of the letter and the involvement of the federal agency, I recommend that the City Council authorize this waiver and allow for payment of the MSF in the amount described for 31-32 Rochester Avenue. This would mean the City would be waiving approximately \$36,751 in fees on an annual basis for the next ten years. It should be noted that the City will be collecting \$87,678 from the PDA/GSA, which is a federal agency.

The City Attorney has reviewed this request and the City Council has the authority to approve the waiver for this amount under Section 2.9 of the Municipal Services Agreement between the City and the PDA.

I recommend the City Council move to authorize the partial waiver under Section 2.9 of the Municipal Services Agreement between the City and the PDA and allow for payment of the Municipal Service Fee in the amount described for 31-32 Rochester Avenue.

2. **Letter from Attorney Bruton Re: Unmerge Lots at 75 Monroe Street Natan Aviezri Revocable Trust.** As you will recall at the September 8, 2015 City Council meeting, the Council considered [the attached letter from Attorney Francis X. Bruton, III of Bruton & Berube, PLLC](#), on behalf of the Natan Aviezri Revocable Trust requesting that the lot at 75 Monroe Street be restored to its premerger status. Also, [attached is a memorandum from Rick Taintor, Planning Director](#), regarding the lots at 75 Monroe Street (see [attached orthophoto and 1898 plan of land](#)).

The Planning Board considered this matter at its meeting on October 15, 2015, and voted to report to City Council that the lots be “unmerged” (i.e., restored to their premerger status as five lots) on the condition that the two vacant lots be merged into one lot and the three lots on the Monroe Street side be merged together, and that the two resulting lots not be allowed to be unmerged again in the future.

If this action is taken, it appears that the result will be to create a vacant lot containing approximately 5,900 sq. ft., leaving about 16,500 sq. ft. of lot area for the existing apartment building. In order to construct a dwelling, the vacant lot will require variances for lot area and frontage.

I recommend the City Council move to accept the Planning Board’s aforementioned recommendation.

3. **Report Back Re: Request for License for Trash Enclosure on City Property at 319 Vaughan Street.** At its meeting on October 19, 2015, the City Council considered the [attached letter from John R. Chagnon, Ambit Engineering, Inc.](#), requesting a license for property located at 319 Vaughan Street, and voted to refer the request to the City Manager for report back. [Attached is a memorandum from Rick Taintor, Planning Director, regarding this matter.](#) The applicant, 319 Vaughan Street LLC applied to the HDC for amended approval for the enclosure structure, and the HDC granted that approval on September 2, 2015. The owner also applied to the Planning Board for approval of an amended site plan, including the enclosure, and on September 17, 2015, the Planning Board voted to grant amended site plan approval subject to several stipulations. As a result of these two approval processes by City land use boards, the proposed trash enclosure has been reviewed by City staff, who have determined that health and safety issues have been adequately addressed.

[Attached for your reference are:](#)

- [Two photographs of the trash enclosure;](#)

- A plan of the trash enclosure as approved by the HDC on 9/2/15;
- The amended site plan approved by the Planning Board on 9/17/15, showing the relationship of the trash enclosure to the lot line and City property.

I recommend the City Council move to approve a License for the trash enclosure based upon the two approval processes by City lands use boards and City staff determination that the health and safety issues have been adequately addressed, and further, to enter into a License Agreement as drafted by the Legal Department.

4. **Parking Agreement with Piscataqua Bank.** As part of the City's continuing effort to increase the number of parking spaces, the City and Piscataqua Bank began discussions regarding the public's use of 19 parking spaces in Piscataqua Bank's parking lot after hours and on weekends and holidays. The [attached License Agreement](#) formalizes the terms of the agreement. Piscataqua Bank grants the City a license to use 19 parking spaces and the City will provide parking enforcement services ([see attached aerial map](#)). The City is grateful to Piscataqua Bank for recognizing the City's need for parking and its willingness to work cooperatively with the City on this Agreement.

I recommend the City Council move to authorize the City Manager to negotiate and enter into an Agreement with Piscataqua Bank for the public's use of 19 parking spaces for which the City will provide parking enforcement services.

5. **Agreement Re: Gundalow Company.** [Attached for City Council ratification is the one \(1\) year Agreement entered into between the Trustees of Trust Funds and the Gundalow Company.](#) This Agreement would allow the Gundalow to remain at Prescott Park until November 1, 2016, although there are provisions in the Agreement contemplating extensions thereafter. Copies of this memorandum and its attachment are being provided to the Trustees and to Molly Bolster, Executive Director of the Gundalow Company.

I recommend the City Council move to ratify the one (1) year Agreement entered into between the Trustees of Trust Funds and the Gundalow Company.

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 19, 2015. In addition, this can be found on the City's website.
2. **Charter Committee.** As requested by Councilor Esther Kennedy, [attached is a memorandum from Robert P. Sullivan, City Attorney,](#) regarding the establishment of a Charter Committee.
3. **Haven School Playground Improvement Project.** For your information, the [attached letter](#) will be sent to the distribution list for the Haven School Playground Improvement Project to update residents regarding the next steps planned for the completion of the project.