

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, AUGUST 15, 2016 TIME: 7:00PM

## AGENDA

- 5:45PM – NON-PUBLIC SESSION RE: PEASE DEVELOPMENT AUTHORITY POLICE AGREEMENT – RSA 91-A:3, II (i) & ANTICIPATED “NON-MEETING” WITH COUNSEL RE: COLLECTIVE BARGAINING - POLICE AND FIRE CONTRACTS – RSA 91-A:2(a).

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PRESENTATION

- 1. Portsmouth Little League 9-10 State Champions

- V. ACCEPTANCE OF MINUTES *(There are no minutes on for acceptance this evening)*

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC INPUT SESSION

- A. ON THE CITY’S CONTINUED PURSUIT OF A PUBLIC-PRIVATE PARTNERSHIP FOR THE REDEVELOPMENT OF THE MCINTYRE FEDERAL PROPERTY (62 DANIEL STREET) AND CONSTRUCTION OF A NEW FEDERAL FACILITY ON THE BRIDGE STREET PARKING LOT OR ANOTHER CITY-OWNED PARCEL IN THE DOWNTOWN BUSINESS DISTRICT

- VIII. PUBLIC HEARINGS

- A. RESOLUTION APPROPRIATING THE SUM OF ONE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$1,850,000.00) FOR THE PURCHASE OF LAND FOR RECREATION FIELDS AND OTHER MUNICIPAL USES

- IX. APPROVAL OF GRANTS/DONATIONS

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

- X. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Third and final reading of Annual Omnibus Ordinance Change, Parking and Traffic
- B. Adoption of Resolution Appropriating the sum of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00) for the Purchase of Land for Recreation Fields and other Municipal Uses

## XI. CONSENT AGENDA

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

- A. Letter from Zhana Morris, The Music Hall requesting Parking Meter Permit for 2016-2017 Season (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Carolyn Ostrom & Ed Harvey, Susan G. Komen Foundation requesting permission to hold the Race for the Cure 5K on May 13, 2017 at Strawberry Banke at 9:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Mary-Jo Monusky, Arts in Reach requesting permission to hold the 4<sup>th</sup> Annual AIRWalk 5K Walk on Saturday, October 22, 2016 (***Anticipated action – move to refer to the City Manager with power***)
- D. Acceptance of Donation of an antique leather helmet donated by Joshua Beede (***Anticipated action – move to accept and approve the donation to the Portsmouth Fire Department***)

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

- A. Letter from Alfred Dolman regarding Proposed Redevelopment of the Bridge Street Parking Lot

## XIII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### **A. CITY MANAGER**

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

- 1. Deer Street Garage Property Acquisition
- 2. Request to Establish Hearing to Take a Portion of Property at 150 Greenleaf Avenue by Eminent Domain
- 3. Report Back Re: Partnership Proposal for Chestnut Street Improvements
- 4. License Request Completion of Work at 77 Hanover Street

#### **Informational items**

- 1. Events Listing
- 2. Inspection Department Annual Report for FY 2016
- 3. Report Back Re: North Façade
- 4. Report Back Re: Build Dio
- 5. Water Restrictions

## **B. COUNCILOR LOWN**

1. Parking & Traffic Safety Action Sheet and Minutes of the August 4, 2016 meeting (***Sample motion – move to approve and accept the action sheet and minutes of the August 4, 2016 Parking & Traffic Safety meeting***)

## **C. COUNCILOR SPEAR**

1. Extension and Amendments to City Manager's Employment Agreement (***Motion – move to execute the amendments to the City Manager's Employment Agreement dated August 10, 2016, as outlined in this memorandum, and further, that all other conditions of the City Manager's Employment Agreement dated October 23, 2012, remain in full force and effect***)

<http://www.cityofportsmouth.com/hr/contracts/Municipal/CityManagerexp6-2020.pdf>

## **D. COUNCILOR DENTON**

1. \*Water Country (***Sample motion – move that the City hold a public meeting in the fall to discuss any impact the Water Country traffic numbers collected this summer have on the original traffic study, other Water Country related traffic concerns, and next steps (if any)***)

## **XIV. MISCELLANEOUS/UNFINISHED BUSINESS**

## **XV. ADJOURNMENT**

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

*\*Indicates Verbal Report*


## **INFORMATIONAL ITEMS**

1. Notification that the minutes of the June 16, 2016 meeting of the Planning Board are now available on the City's website
2. Notification that the minutes of the July 12, 2016 meeting of the Site Review Technical Advisory Committee 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:** August 11, 2016  
**To:** Honorable Mayor Jack Blalock and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on August 15, 2016 City Council Agenda

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**5:45 p.m. - Non-public session in accordance with 91-A:3 II (i) regarding Pease Development Authority Police Agreement.**

**Non-meeting with counsel in accordance with RSA 91-A:2 (a) regarding Police and Fire Contracts.**

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

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***Public Input Session:***

1. **Federal McIntyre Property.** On Monday evening, City staff will make a brief presentation and City Council will receive public input regarding the proposed development partnership concept for the Federal McIntyre property. [See attached PowerPoint.](#)

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

1. **Public Hearing and Adoption of Resolution:**
  - 1.1 **Public Hearing and Adoption of \$1,850,000 Supplemental Appropriation from Bond Premium Re: Proposed Acquisition of Land from Foundation for Seacoast Health.** As a result of the August 1, 2016 City Council meeting, I am bringing back for public hearing and adoption the [attached Supplemental Appropriation](#) for the acquisition of the land owned by the Foundation for Seacoast Health ([see attached map](#)).

Also, as you will recall, at the August 1<sup>st</sup> City Council meeting, the Council voted to authorize the following:

- 1) Execute a Purchase and Sale Agreement;
- 2) Establish a public hearing for a Supplemental Appropriation on August 15, 2016 to fund the purchase of land from bond premiums; and,
- 3) Refer this matter to the Planning Board for a report back.

At this time the purchase price to be included in the Agreement is \$1,850,000 for the approximately 50 acres of land. I propose 100% of the cost of this land purchase be covered from premiums the City received from previously issued general obligation bonds. By using the bond premiums, there will be no impact on the City's tax rate. The acquisition of the property is the first step in realizing the City's long held goals of expanding the Recycling Center (site 3); creating a multi-field complex for outdoor recreation (sites 1 and 2); and ensuring protection of valuable wetland and open space (site 4).

The Purchase and Sale Agreement (Agreement) will establish a purchase price and other terms. The Foundation was obligated by the Attorney General's Office Division of Charitable Trust to receive two appraisals on this property to insure a fair market value. The purchase price of \$1,850,000 is approximately the average of the two appraisals. For example, included in the terms will be all environmental and geotechnical assessments and other due diligence work customarily performed for a large land purchase. In addition, the parcel needs to be subdivided either by the City or Foundation, which will be addressed in the Agreement.

*I recommend the City Council move to adopt the Supplemental Appropriation for \$1,850,000 using bond premium to purchase the land owned by the Foundation for Seacoast Health, as presented. Action on this matter should take place under Section X of the Agenda.*

## 2. **Third and Final Reading of Proposed Ordinance Amendments.**

- 2.1 **Third and Final Reading Annual Omnibus Ordinance Change, Parking and Traffic.** As a result of the August 1<sup>st</sup> City Council meeting, under Section X of the Agenda, I am bringing back for third and final reading the [annual omnibus set of ordinances](#) by the Parking and Traffic Safety Committee. This year's omnibus changes are detailed on the [attached sheets](#), and address changes to on-street parking spaces and update wording to reflect current conditions.

By way of background, On March 29, 2000, the City Council adopted Ordinance #4-2000 under Chapter 7, Article 1, Section 7.103 of the Vehicles, Traffic and Parking Ordinance. This ordinance was adopted in order to be more responsive to the changing parking needs of the downtown. Before its adoption, it often took three readings of the City Council to simply change a parking space from a two-hour time restriction to a 15-minute one. This process would often take four to six months to complete.

The current ordinance authorizes the Parking Traffic and Safety Committee to recommend temporary parking and traffic regulations to the City Council for its approval in the form of its monthly meeting minutes. Once the Council approves these minutes, the temporary regulations are in effect for a period not to exceed one year. During that year the Council and the public have the benefit of seeing how a temporary regulation works before adopting it as a permanent change to the parking ordinance. These temporary regulations are presented at one time to the Council for its consideration.

The [attached amendments](#) to Chapter 7, Vehicles, Traffic and Parking for the Council's consideration summarize the temporary parking regulations implemented by the Parking and Traffic Safety Committee between June 12, 2015 and June 2, 2016, as well as updates to reflect current conditions.

*I recommend the City Council move to pass third and final reading on the proposed Ordinance, as presented. Action on this matter should take place under Section X of the Agenda.*

### **Consent Agenda:**

1. **Acceptance of Fire Department Donation.** Attached is a memorandum from Fire Chief Steve Achilles requesting that the City Council accept a donation of an antique leather fire helmet.

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

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

1. **Deer Street Garage Property Acquisition.** The most recent action at the City Council level on the Deer Street garage property acquisition occurred on July 11, 2016. That evening the City Council voted as follows:

“Voted that the City Council ratify its action of April 18, 2016 and reiterate the authority of the City Manager to negotiate and execute the Purchase & Sale Agreement, Post Closing Obligation Agreement and all related agreements and documents with Deer Street Association necessary to bring about the acquisition of the municipal parking garage site on Deer Street by August 15, 2016, subject to the City receiving marketable title in the City's judgment, to that property free and clear of all restrictions, easements and covenants of any kind, in particular those held by the railroad.”  
(emphasis added)

Since the date of that City Council vote, City staff and DSA have continued negotiations in an effort to satisfy the condition established by the City Council that prior to the City acquiring the Deer Street property that it be “free and clear of all restrictions, easements and covenants of any kind”. Although that specific goal has not been reached, significant progress appears to have been achieved in that direction.

Attached you will find a copy of a letter addressed to Mayor Blalock dated August 5, 2016 from Kim Rogers, President of G.L. Rogers & Company and Manager of Deer Street Associate. In his letter, Mr. Rogers provides a summary of covenant, restriction and easement issues. He indicates that in conversations with the railroad that “DSA anticipates that, for a price and other consideration, the railroad will agree to remove almost all of the covenants that impact the City’s parcel.” He states further, “The three title covenants that will remain will not interfere with development. They are the environmental release, the agency office, and the modified underground utilities / facilities covenant.” As of the drafting of this memorandum, supporting documentation signed by the railroad which would allow confirmation of those observations does not exist. However, unsigned copies of proposed documents were received shortly before this memo was written. Slight modifications to those documents are being negotiated and signed originals of the final product will need to be obtained. Additionally, the “other agreement” mentioned in Mr. Rogers’ letter will need to be negotiated and executed.

The August 5, 2016 letter from Mr. Rogers has been discussed among City staff and by e-mail, telephone and in-person with the members of the City Council Working Group who have been providing guidance with respect to the Deer Street property acquisition. The members of the Working Group are Councilors Rebecca Perkins, Brad Lown and Eric Spear. Based upon communication with the Council Working Group and the considerations cited above, we feel that the proposed property acquisition is ready for a final vote of the City Council. Relying on the analysis provided by the Council Working Group, we feel that an appropriate motion to be presented to the City Council when the issue arises during the Council meeting of August 15, 2016 would be as follows:

***MOVED:*** *That the City Council ratify its action of April 18, 2016 and reiterate the authority of the City Manager to negotiate and execute the Purchase & Sale Agreement, Post Closing Obligation Agreement and all related Agreements and documents with Deer Street Associates necessary to bring about the acquisition of the municipal parking garage site on Deer Street subject only to a determination by the Council Working Group of Councilors Rebecca Perkins, Brad Lown and Eric Spear that documentation has been received by the City adequately supporting the conclusions and representations made by Kim Rogers to Mayor Jack Blalock and City Manager John P. Bohenko by letter dated August 5, 2016.*

*If the foregoing Motion is passed by the City Council on August 15, 2016, then it is anticipated that no further vote of the City Council would be required prior to the acquisition of the proposed Deer Street garage site by the City.*

2. **Request to Establish Public Hearing to Take a Portion of Property at 150 Greenleaf Avenue by Eminent Domain.** In order to resolve alleged defects in rights for the City to maintain a public sewer line and to manage stormwater flows on and through a historically swampy area, it has been recommended by legal counsel that the City Council exercise eminent domain over a portion of the parcel located at 150 Greenleaf. The area under consideration for eminent domain is shown on the [attached](#) plan.

Legal counsel recommends that the City Council authorize the City Manager to (1) establish a meeting place and time for the City Council to view the proposed area of taking and (2) establish a public hearing for September 6, 2016 to determine the public necessity, use and benefit of taking a portion of property located at 150 Greenleaf Avenue. A presentation by legal counsel will be made at the public hearing.

The property owner, James Boyle, Trustee of the 150 Greenleaf Avenue, has been notified of this anticipated action. He will be provided with an appraisal of the value of the property to be taken and have other statutory rights to accept and to challenge the amount offered for the property should the City Council proceed with eminent domain. Eminent domain has been suggested as a resolution to the title defects by the Superior Court which has been adjudicating issues relative to the sewer line, stormwater flows and wetlands on the property for the last several years.

*Move to authorize the City Manager to (1) establish a meeting place and time to view the property to be taken and (2) establish a public hearing for September 6, 2016 to determine the public necessity, use and benefit of taking a portion of property located at 150 Greenleaf Avenue.*

3. **Report Back Re: Partnership Proposal for Chestnut Street Improvements.** As you may recall, at its meeting on March 21<sup>st</sup>, representatives from The Music Hall made a presentation about a proposed public-private partnership between the City and The Music Hall for streetscape improvements on Chestnut Street. At that time, the City Council authorized The Music Hall to move forward with project reviews by the Historic District Commission, Trees & Greenery Committee, and Parking & Traffic Safety Committee. In addition, the proposal was forwarded to Art-Speak per City Council policy. The Council action also requested this report back following the project reviews.

Since that time, The Music Hall held a kick-off for the project reviews with a “Let’s Talk” event at the Music Hall Loft in early May and subsequently met with each of the identified boards and commissions, including Art-Speak. This report back includes a summary of the proposal and other project information, including a summary of the project reviews and possible next steps for the City Council moving forward. The summary of the project reviews can be found in the [following attachments](#):

- [Attachment 1: Summary of Project Reviews \(The Music Hall Let’s Talk Event; Parking & Traffic Safety; and Trees & Greenery\).](#)
- [Attachment 2: Art Speak Report Back on City Council Referral.](#)
- [Attachment 3: Communication from Historic District Commission’s Project Review](#)



- [Attachment 4: Proposed Partnership Description and Images](#)

The Proposal calls for a 50-50 partnership with the City to implement a series of improvements to the Chestnut Street streetscape between Porter and Congress Streets. The proposal has several goals including making pedestrian safety improvements on this City block; improving circulation for large vehicles including emergency response and school buses; improving the visibility of The Music Hall from Congress Street; and contributing toward the establishment of the Chestnut/Vaughn Mall corridor as an obvious and welcoming pedestrian passageway connecting the African Burying Ground and the Northern Tier where one currently one does not exist. Patricia Lynch, The Music Hall's Executive Director, and Ben Auger, Member of the Music Hall Board of Trustees, provided an overview and description of the project proposal on March 21, 2016. That presentation can be viewed on the City's YouTube channel.

The project includes the:

1. removal of the utility pole at Porter and Chestnut Streets (with potential undergrounding of overhead utilities servicing The Music Hall);
2. extension of the pavement program into Congress Street to include the potential creation of a raised pedestrian crossing, which will provide for traffic calming as well as enhancements to pedestrian safety;
3. installation of decorative pavers as well as sidewalk and drainage system upgrades;
4. installation of granite seat walls and planters;
5. installation of tree plantings and other greenery; and
6. erection of a Wayfinding Arch at the opening of Chestnut Street at Congress Street.

All of the project elements above are proposed to be funded under the 50-50 partnership with the City with the exception of the Wayfinding Arch, which would be a piece of public art donated by the Music Hall. The Music Hall has proposed funding 100% of the fabrication and installation of the Arch.

An important aspect of evaluating the proposed project is the constructability of the project in keeping with roadway design, pedestrian safety, and other standards for public construction. The concept proposed, while not advanced to final design, will be able to meet these standards. It should be noted that the Wayfinding Arch does require substantial foundational components below the surface of the street. Initial investigations of the foundation locations indicate the potential need for moving or rerouting utilities in the vicinity.

No impacts are proposed to existing on street parking along Congress Street and there is no elimination of the unloading zones on either Chestnut or Congress Streets.

According to cost estimates provided by The Music Hall, the project is anticipated to cost approximately \$800,000 (this total does not include The Music Hall Arch). As part of the 50-50 partnership, the City would be responsible for \$400,000. The FY 2017-2022 Capital Improvement Program includes an element sheet for this partnership showing the

City's contribution divided evenly between the Urban Development Action Grant funds and bond funding. A fundraising campaign is planned by The Music Hall for their portion of the project costs, including the Wayfinding Arch.

*At this time, if the City Council would like to move forward in partnership with The Music Hall, I would recommend the City Council refer this matter to the Legal Department for the development of a Partnership Agreement with The Music Hall.*

4. **License Request Completion of Work at 77 Hanover Street.** Bay Contracting Inc is currently conducting work at 77 Hanover Street. Bay Contracting applied for and received from the City an encumbrance permit for the erection of sidewalk scaffolding and to use three parking spaces. [See attached sketch of area encumbered.](#)

During Bay Contracting's reconstruction work at 77 Hanover Street it uncovered unexpected deteriorated conditions with the exterior wall and windows. The repair of these unforeseen conditions has delayed the completion of the façade work by approximately 3 weeks. The company contacted the Legal Department today and is requesting additional time to encumber the sidewalk until Friday September 2. A license is required for that additional time.

City staff has no objection to the grant of a license provided that it includes terms and conditions similar to those already contained in the encumbrance permit which includes protection of pedestrians, clean up of debris, and related conditions.

*I recommend the City Council move to authorize the City Manager to negotiate and enter into a license with Bay Contracting Inc to facilitate completion of construction activities at 77 Hanover Street.*

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

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on August 1, 2016. In addition, this can be found on the City's website.
2. **Inspection Department Annual Report for FY 2016.** For your information, [attached is the Inspection Department Annual Report for FY 2016](#) (Period July 1, 2015 to June 30, 2016) from Robert Marsilia, Chief Building Inspector. This report also includes a comparison to the previous Fiscal Year.
3. **Report Back Re: North Façade.** In 2014, the North Wall of City Hall facing the South Mill Pond was inspected by structural engineers after showing stress cracks in the brick veneer. The result of that structural evaluation showed the brick façade was at risk of complete failure and immediate temporary repairs were made to secure the façade. These repairs were a temporary fix intended to allow the City time to design a permanent facade replacement.

As part of 2014 Municipal Complex Programmatic Needs study, Lavallee Brensinger Architects was tasked with developing conceptual designs for a new North Wall Façade. [Attached are two conceptual plans](#) developed by Lavallee Brensinger Architects which will be taken to the City’s Historic District Commission for review and input in September prior to bringing them to the City Council for final selection.

Once a plan is agreed upon, Lavallee Brensinger Architects will begin final design development of the chosen scheme. Although the façade has had temporary repairs, it is critical that the façade replacement move forward to avoid the potential consequence of a complete failure. The final design completion and bidding is scheduled for this winter, with construction scheduled for the Spring of 2017.

4. **Report Back Re: Build Dio.** As you will recall, at the June 6, 2016 City Council meeting, the Build Dio project was referred to Art-Speak for a report back to City Council. For your information, [attached is a report back from Art-Speak](#).
5. **Water Restrictions.** For your information, beginning Tuesday, August 16<sup>th</sup>, the Department of Public Works – Water Division will be implementing odd/even irrigation restrictions on its water customers. The Water Division will be requesting customers to refrain from outdoor watering on even-numbered days, and to only water lawns and gardens on odd-numbered days from midnight to 10:00 a.m. According to data tracked by the City’s water operations staff, river levels are at historic low levels for this time of year and our reservoir is also lower than normal. City staff will continue to monitor these levels and update the community on the water supply status and any changes in water use advisories.

Customers can read the full Water Supply Status Report and details behind the current supply status at [www.Cityofportsmouth.com/publicworks](http://www.Cityofportsmouth.com/publicworks) (click on “water”), and view current State conditions at <http://tinyurl.com/nhwaterbans>.