

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, OCTOBER 17, 2016 TIME: 7:00PM

AGENDA

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

PRESENTATION

- 1. Update Re: Various Parking Programs – Parking Manager Joey Giordano

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

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 3, ARTICLE II, SECTION 3.2 SOLID WASTE, YARD WASTE AND RECYCLING AND AN AMENDMENT TO CHAPTER 1, ARTICLE XIII, SECTION 1.13 – MUNICIPAL ENFORCEMENT PROCEDURES
- B. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF THREE HUNDRED AND FORTY-FIVE THOUSAND (\$345,000.00) DOLLARS FROM THE SEWER FUND UNRESTRICTED NET POSITION FOR LAND ACQUISITION THROUGH EMINENT DOMAIN RE: 150 GREENLEAF AVENUE

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures
- B. Adoption of Resolution Authorizing a Supplemental Appropriation in the amount of Three Hundred and Forty-Five Thousand (\$345,000.00) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue
- C. Third and final reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

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

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

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

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

1. Purchase & Sale Re: Elliott Property
2. City Hall Building North Facade Replacement Design
3. Report Back Re: 400th Anniversary Celebration
4. Request to Dispose of Surplus Vehicles and Equipment
5. Commerce Way
6. Request to Extend Existing License at 64 Market Street

Informational items

1. Events Listing
2. Report Back Re: Food Truck Vendors
3. Status Report Regarding Conversion of West Road (Service Road) into a City Street
4. Reminder Re: Household Hazardous Waste Day
<http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>.

B. MAYOR BLALOCK

1. Appointment to be Voted:
 - Appointment of Jody Record to the Planning Board as a Regular Member
 - Appointment of Jeffrey Kisiel to the Planning Board as an Alternate Member
 - Reappointment of Bruce Boley to the Board of Library Trustees
 - Reappointment of Jack Jamison to the Board of Library Trustees

C. COUNCILOR DWYER

1. *Prescott Park Master Plan Update

D. COUNCILOR LOWN

1. Parking and Traffic Safety Committee Meeting Action Sheet and Minutes of October 6, 2016 (***Sample motion – move to approve and accept the Action Sheet and Minutes of the October 6, 2016 Parking & Traffic Safety Committee meeting***)

E. COUNCILOR PEARSON

1. *Feasibility of Creating a Public Park at the current Bridge Street Parking Lot Location

F. COUNCILOR SPEAR

1. *Discontinue Free Holiday Parking
2. Article Entitled Against Transparency (*No Action Required*)

G. COUNCILOR DENTON

1. *Hodgson Brook Advisory Committee

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

KELLI L. BARNABY, MMC, CMC, CNHMC

CITY CLERK

**Indicates Verbal Report*


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

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: October 12, 2016

To: Honorable Mayor Jack Blalock and City Council Members

From: John P. Bohenko, City Manager 

Re: City Manager's Comments on October 17, 2016 City Council Agenda

Presentation:

1. **Update Re: Various Parking Programs.** On Monday evening, Joseph Giordano, Parking Manager, will make a presentation to update the City Council regarding various parking programs. [See attached PowerPoint presentation.](#)

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Ordinance Amendments.**
 - 1.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures.** As a result of the October 3rd City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling.](#)

In order to give the Department of Public Works authority to issue citations under the Solid Waste Ordinance, an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures is necessary ([see attached amendment](#)). The term “Environment Department” was replaced with “Department of Public Works.”

The Department of Public Works recommends updating the City's Solid Waste Ordinance to accommodate current waste material collection practices and future growth of the program, and requests a public hearing and second reading at the

October 17, 2016 City Council Meeting. The proposed updates to the City's Solid Waste Ordinance do not significantly alter the ordinance, but update the ordinance to reflect common practices already taking place. For example, under the current language trash containers cannot be larger than 45 gallons, thus residents are technically not allowed to be using the 64 or 95 gallon wheeled totes frequently purchased for curbside collection.

The changes to this Ordinance include the following:

- Update the maximum weight and volume of acceptable curbside containers from 45 gallons to include up to 100 gallons; so long as any container larger than 45 gallons has a stop bar compatible with the hydraulic tipper and has working wheels.
- Update Business District curbside collection hours (currently listed as 4:30pm-6:00pm) to allow DPW to add a morning pick up for residents and provide future adaptability to alter routes as needed for operational efficiency. The days and hours of collection will be published by the Department of Public Works.
- Update penalties and remedies to better enforce ordinance violations.
- Modernize the definitions classifying waste and how they are handled.

I recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance at the November 21, 2016 City Council meeting, as presented. Action on this matter should take place under Section VIII of the Agenda.

2. **Public Hearing and Adoption of Resolution.**

- 2.1 **Public Hearing and Adoption of Resolution Authorizing a Supplemental Appropriation in the amount of Three Hundred and Forty-Five Thousand (\$345,000) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue.** As a result of the October 3rd City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and adoption the [attached Resolution authorizing a supplement appropriation in the amount of Three Hundred and Forty-Five Thousand \(\\$345,000\) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue.](#)

[Also, attached is a copy of the City Manager's Comments from the September 6, 2016 meeting regarding the legal acquisition by eminent domain of approximately 4.8 acres through which a municipal sewer line, installed within a berm, was constructed by the City in 1967 and 1968.](#)

Therefore, I recommend the City Council move to adopt a Resolution to raise and appropriate \$345,000 from the Sewer Fund net position for land acquisition through eminent domain regarding 150 Greenleaf Avenue. Action on this matter should take place under Section VIII of the Agenda.

3. **Third and Final Reading of Proposed Ordinance Amendments.**

- 3.1 **Third and Final Reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value.** As a result of the October 3rd City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed demolition ordinance](#) (City Ordinances, Chapter 14 – Housing Code, Article II – Demolition). This revision has been prepared in response to a referral by the City Council at its meeting on February 1, 2016.

The draft revised ordinance provides for additional review, including a public hearing, whenever demolition is proposed for a building that is more than 50 years old. The purpose of this additional review is to allow for a determination as to whether the building has historic, architectural or community value, and for identification of alternatives to demolition. Where no such alternatives are identified or acceptable to the owner, if the applicant agrees, the draft ordinance requires documentation in the form of photographs and measured drawings, and encourages salvage of historic building elements. Please note the change in the proposed Ordinance that allows the applicant to refuse that the house be photographed. A draft of the revised ordinance was provided to Portsmouth Advocates for review, and the current document incorporates several changes suggested by the Advocates, including posting of notices on the City’s website in addition to the newspaper.

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

City Manager’s Items Which Require Action:

1. **Purchase & Sale Re: Elliott Property.** The City has been in discussions with George Elliott and his attorney, Richard Foley, with regard to settling a dispute related to drainage impacts to the property at 850 Banfield Road ([see attached](#)). The property is located at a low point in a series of drainages originating along Route 1 through the Portsmouth Industrial Parks on Constitution Avenue and Heritage Avenue which outlet through a railroad culvert into the Great Bog. Due to changing development patterns and lack of maintenance by the railroad, the property at 850 Banfield Road has experienced a history of storm-water inundation impacting Mr Elliott’s property. In addition to the storm-water inundation, Mr. Elliott believes his drinking water well was impacted by the change in ground water hydrology.

The lengthy negotiations have included a number of potential solutions including securing a drainage easement, purchasing a portion of the property and purchasing all of the property. The property owner has indicated that he prefers that the City purchase the entire parcel.

In an effort to avoid potential litigation the City has negotiated an agreement with Mr. Elliott to purchase the entire parcel, approximately 7.1 acres, for \$550,000. Please note that 3.3 acres in wetlands will be used to help stormwater management. The remaining 3.8 acres are in uplands and can be subdivided to be sold as possibly two building lots whereby the City could recover a majority of the cost of purchasing this land. It is recommended that \$150,000 come from the Conservation Fund and the remaining \$400,000 come from Fund Balance. This property abuts conservation land the City already owns. The purchase of this property would provide better stormwater management options over the long term and supports conservation efforts.

I recommend the City Council move the following motions:

- 1) *Move to authorize the expenditure of \$150,000 Conservation Fund contingent upon Conservation Commission approval;*
- 2) *Establish a public hearing for November 21, 2016 appropriating \$400,000 from Unassigned Fund Balance for the purchase of land;*
- 3) *Move to refer this matter to the Planning Board for report back to the City Council; and,*
- 4) *Further, authorize the City Manager to enter into a Purchase and Sale Agreement subject to funding.*

2. **City Hall Building North Façade Replacement Design.** In 2014, the City addressed structural concerns on the North Wall of City Hall, in addition to having Lavallee Brensinger Architects conduct a Municipal Complex Programmatic Needs study to commence long-term planning for improvements to the entire City Hall facility. 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 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.

Following this work, Lavallee Brensinger Architects developed conceptual designs for a new North Wall Façade. Three conceptual plans were developed and presented to the City Council on August 15, 2016, and the Historic District Commission on September 7, 2016. In addition, the alternatives were a topic of discussion at the October 1, 2016 City Council retreat. The consensus of these discussions was the selection of Alternative B, Curtain Wall and Masonry façade (see [attached](#) figure).

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. Final selection of Alternative B will allow for the design to be completed and the project to be bid by the

spring of 2017. The estimated project cost of \$3.2M will be funded from previously-approved bond premiums and 2016 Facilities Capital moneys.

I recommend the City Council move to approve selection of Alternative B, Curtain Wall and Masonry façade for the replacement of the Municipal Complex's 1962 Building facade.

3. **Report Back Re: 400th Anniversary Celebration.** On Saturday, October 1, 2016 the Portsmouth Historical Society/Discover Portsmouth Center (PHS/DPC) made a presentation to the City Council outlining key goals in creating an ongoing celebration for Portsmouth's 400th anniversary.

As Portsmouth approaches its 400th anniversary in 2023, PHS/DPC will be the conveners of this celebration, one that will not only encompass a momentous event in 2023 but serve as a layered program throughout each year up to and beyond this milestone.

I am requesting that the City Council move forward to support the development of a trust to endorse the formation of this program and partnership between the City and PHS/DPC. With an established trust, a formal connection can be clarified and PHS/DPC can begin their planning in earnest and develop a steering committee to oversee all anniversary activities.

Annual funding will provide needed support in creating a varied, organized and informed curriculum in which the community can engage in and have a sense of pride for both our past and our future.

I recommend the City Council move to authorize the development of a trust for the 400th Anniversary Celebration, and further, authorize the City Manager to enter into a partnership agreement with the Portsmouth Historical Society/Discover Portsmouth Center to provide an annual contribution from the City of Portsmouth to the PHS/DPC which will provide a base level of support to create a varied, organized and informed set of activities in which the community can engage to develop a sense of pride for Portsmouth's past and future.

4. **Request to Dispose of Surplus Vehicles and Equipment.** The City currently has surplus inventory comprising of vehicles and equipment ready for disposal (see [attached](#) lists). As in the past, we have disposed of surplus inventory through a sealed bid process in which the item is sold to the highest bidder. According to City Ordinance Section 1.505, property valued at \$500.00 or more must receive approval from the City Council prior to bidding.

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

5. **Commerce Way.** The City Council voted on September 17, 2012 to proceed with a Conditional Road Layout and Betterment Assessment of Commerce Way. A bond resolution for \$1,600,000 was passed to pay for the reconstruction of the roadway. The bond resolution provided that no amount could be borrowed or expended unless all right, title and interest in Commerce Way was conveyed by its current owners to the City.

The City was conveyed the land for the roadway in three separate deeds. See attached deeds and Plan D-38901 entitled “Right of Way & Easement Plan Affecting Lands of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center at Portsmouth Situated on Commerce Way Portsmouth, New Hampshire, dated June 23, 2015. Hereinafter “Plan” attached. Each conveyance has been highlighted in a different color on the Plan.

- Deed 1 Land for the roadway from the original Commerce Way layout (Depicted as yellow on Plan)
Recorded at Rockingham County Registry of Deeds at Book 5631, Page 1041.
- Deed 2 Land for small parcel ((672 sq feet) on inside curve to accommodate a radius conforming to City standards. See Area 1 on Plan. (Depicted in pink on Plan)
Recorded at Rockingham County Registry of Deeds at Book 5631 Page 1051.
- Deed 3 Land to correct title for small parcel connecting Woodbury Ave with Commerce Way. See Note 7 on attached Plan. (Depicted as blue on Plan)
Recorded at Rockingham County Registry of Deeds at Book 5722, Page 0322.

Two Drainage Easements Deeds were also transferred to the City because they were necessary to meet City construction standards. See Easements attached and Recorded at the Rockingham County Registry of Deeds at Book 5631, Page 1057 and Book 5631, Page 1054.

The newly design roadway modifies a curve in the road. That modification leaves a small parcel conveyed to the City that is not part of the new roadway. The original proposal approved by the Council in 2012 indicated that this parcel was to be conveyed to the owner of 135 Commerce Way after construction was complete and the road was accepted by the City. The attached deed reflects this conveyance and requires City Council approval.

- Deed 4 Land to be conveyed by City to 135 Commerce Way to reflect as built roadway. See Area 2 on Plan. (Depicted in green).

The second condition imposed by the Council was that the City Attorney draft a letter to the City Manager confirming the layout process complied with State statute. This letter was completed and sent on May 26, 2016.

The roadway has been built and has been inspected by the Department of Public Works and is built to City standards and specifications. Because the conditions of the layout approved by the Council in 2012 have been met, Commerce Way is now a public right of

way. The City is ready to issue the betterment assessment to those abutters who are served by the road.

I recommend the City Council move the following motions.

- 1) *Move to accept transfer of land and drainage easements to the City necessary for the layout and construction of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said land and easements are recorded at the Rockingham County Registry of Deeds at Book 5631, Page 1041; Book 5631, Page 1051; and Book 5722, Page 0322; and are shown on the Plan D-38901 and drainage easements are recorded at Book 5631, Page 1057 and Book 5631, Page 1054.*
 - 2) *Move to convey .228 acres of land to 135 Commerce Way, LLC as contemplated in the original roadway design to reflect as built roadway conditions of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said conveyance is shown on Plan D-38901; and,*
 - 3) *Move to refer this matter to the Planning Board for report or waiver.*
6. **Request to Extend Existing License at 64 Market Street.** Careno Construction Company received a license by vote of the City Council on May 18, 2016 to encumber a certain portion of the public parking lot and alley adjacent to 64 Market Street (the Gaslight Restaurant) to facilitate the reconstruction and repair of the fire-damaged restaurant. [See attached picture of licensed area.](#) Careno has requested that the license be extended to November 18, 2016 so that punch list items can be completed and to facilitate the delivery and installation of new kitchen equipment. All the terms and conditions of the existing encumbrance permit will be maintained. Staff has no objection to the extension.

I recommend the City Council move to authorize the City Manager to extend the license with Careno Construction to finalize reconstruction activities of the Gaslight Restaurant.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on October 3, 2016. In addition, this can be found on the City's website.
2. **Report Back Re: Food Truck Vendors.** As requested by Councilor Rebecca Perkins, [attached is a memorandum from Deputy City Manager Nancy Colbert Puff](#) regarding food truck vendors.

3. **Status Report Regarding Conversion of West Road (Service Road) into a City Street.** For your information, [attached is a memorandum from City Attorney Robert Sullivan](#) regarding a status report about the conversion of West Road (Service Road) into a City street.

4. **Reminder Re: Household Hazardous Waste Day.** This is a reminder that Household Hazardous Waste Day is scheduled for Saturday, October 22, 2016 from 8:00 a.m. to Noon at the Department of Public Works, 680 Peverly Hill Road. Residents must show proof of residency. More information regarding Household Hazardous Waste Day can be found on the City's Website at <http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>.