

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, AUGUST 22, 2022 TIME: 5:30PM

Members of the public also have the option to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:

https://us06web.zoom.us/webinar/register/WN_uTrhmdmtRqOemlpXA7sHIA

5:30 PM – ANTICIPATED NON-PUBLIC SESSION:

1. FIRE CHIEF'S CONTRACT – RSA 91-A:3, II (a)
2. COLLECTIVE BARGAINING RE: CUSTODIAL SUPERVISORS' – RSA 91-A:3, II (a)
3. CITY MANAGER'S EVALUATION – RSA 91-A:3, II (a)
4. DEPARTMENT OF HOME LAND SECURITY (PDA) LAW ENFORCEMENT SECURITY AGREEMENT – RSA 91-A:3, II (i)
5. CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (l)

AGENDA

**Regular portion of City Council meeting to begin at 7:00 p.m.*

- I. WORK SESSION – THERE IS NO WORK SESSION THIS EVENING
- II. PUBLIC DIALOGUE SESSION [when applicable – every other regularly scheduled meeting] – **N/A**
- III. CALL TO ORDER [7:00 p.m. or thereafter]
- IV. ROLL CALL
- V. INVOCATION
- VI. PLEDGE OF ALLEGIANCE

- VII. ACCEPTANCE OF MINUTES – JUNE 21, 2022 AND JULY 11, 2022

- VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

- IX. PUBLIC COMMENT SESSION (*This session shall not exceed 45 minutes*) – (*participation may be in person or via Zoom*)

- X. PUBLIC HEARINGS AND VOTE ON ORDINANCE AND/OR RESOLUTION

Public Hearing/Second Reading of Ordinances and Resolutions:

- A. Public Hearing/Second reading of Ordinance amending Chapter 1, Article III - Boards (*Sample motion – move to pass second reading and hold third and final reading at the September 19, 2022 City Council meeting*)
 - PRESENTATION
 - CITY COUNCIL QUESTIONS
 - PUBLIC HEARING SPEAKERS
 - ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

- B. Public Hearing/Second reading of Ordinance amending Chapter 1, Article IV – Commissions and Authorities (***Sample motion – move to pass second reading and hold third and final reading at the September 19, 2022 City Council meeting***)
- **PRESENTATION**
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Public Hearing/Adoption of Resolution:

- C. Public Hearing/Adoption of Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or participation in the State Revolving Fund (SRF) Loan of up to One Million Two Hundred Thousand Dollars (\$1,200,000.00) for costs related to Sewer Service Connections related to the Sagamore Avenue Area Sewer Extension Project (***Sample motion – move to adopt the Resolution as presented***)
- **PRESENTATION**
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Third and Final Reading of Ordinance:

- D. Third and final reading of Ordinance amending Chapter 1, Article VIII – Code of Ethics (***Sample motion – move to pass third and final reading as presented***)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Approval of Deputy Fire Chief Contract
2. Approval of Welfare Guidelines
3. *Request to Schedule ARPA Work Session
4. Neighborhood Pilot Parking Program
5. Wayfinding Easement for City Property Located at 93 Pleasant Street
6. Renewal of Coalition Communities 2.0 Membership Agreement
7. Monitoring Well License Request for 60 Penhallow Street

XII. CONSENT AGENDA

(Proper Motion for Adoption of Consent Agenda - move to adopt the Consent Agenda)

- A. Letter from Marcia Leach, North Church, requesting permission to hold the Seacoast Area Crop Walk on Sunday, October 16, 2022 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Email Correspondence ***(Sample motion – move to accept and place on file)***
- B. Capital Improvement Plan FY2024-2029
- C. *Status Update on Seacoast Greenway/Railtrail Project
- D. Letter from Barbara McMillan, Chair and on behalf of the Conservation Commission requesting reconsideration by the Council before proceeding with the plan to rehabilitate the entire Peirce Island Pool and associated systems ***(Sample motion – move to accept and place the letter on file)***

XIV. MAYOR McEACHERN

1. *Appointment of Assistant Mayor Kelley as City Council Representative to the Trees and Public Greenery Committee
2. Appointments to be Considered:
 - Appointment of Luis Rodriguez to the Cable Television & Communications Commission
 - Appointment of Torey L. Brooks to the Sustainable Practices Blue Ribbon Committee
 - Reappointment of Patricia Bagley to the Trees and Public Greenery Committee
 - Appointment of Jeffrey Mattson as an Alternate to the Zoning Board of Adjustment
3. Resignations:
 - Henry Mellynchuk from the Conservation Commission
 - Andrea Ardito from the COVID Response Task Force Committee

XV. CITY COUNCIL MEMBERS

A. COUNCILOR DENTON

1. InvestNH Grant Program ***(Sample motion – move for a report back on how entities that want to address our housing shortage can apply to partner with the City of Portsmouth for funding through the NH Department of Business and Economic Affairs' InvestNH Grant Program)***

B. COUNCILOR MOREAU

1. Land Use Committee Update | Regulatory Amendments Pending Attached is a Memorandum updating the City Council on the work of the Land Use Committee and the progress of the various zoning ordinance amendments under consideration. In summary, the Planning Board is anticipated to act on August 18, 2022 on the Phase 1 amendments and the Land Use Committee is expected to finish its consideration of proposed Phase 2 amendments concerning Accessory Dwelling Units (ADUs) by early September. In anticipation of action by the Planning Board on August 18, 2022 to complete its review of the Phase 1 amendments

<T:\2022 City Council Digital Packets\August 22, 2022\Moreau -Land Use Committee.pdf>

<T:\2022 City Council Digital Packets\August 22, 2022\Moreau - Phase I Amendments.pdf>

(Sample motion – move to bring forward to first reading on September 19, 2022 the Phase I Zoning Amendments)

C. COUNCILOR BAGLEY

1. Parking and Traffic Safety Committee Action Sheet and Minutes of August 4, 2022
(Sample motion – move to accept and approve the action sheet and minutes of the August 4, 2022 Parking and Traffic Safety Committee meeting)

Action Item Needing Approval by City Council:

- Request for 15-minute spaces at 22 Daniel Street by owner ***(Sample motions – (1) move to approve two 15-minute spaces in front of 22 Daniel Street. (2) move to change three existing 15-minute spaces on south side of Daniel Street to regular Zone A spaces)***

D. COUNCILOR COOK

1. *Arts & Nonprofits Cultural Plan Subcommittee – Request for Volunteers

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant to the Public Works Department from the Department of Environmental Services – Household Hazardous Waste of up to \$4,238.00 ***(Sample motion – move to accept and expend a \$4,238 DES grant for the purpose of Household Hazardous Waste Collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract)***
- B. Acceptance of Various Police Department Grants:
 - Department of Justice through the ARPA for the NH Internet Crimes Against Children Task Force - \$700,000.00
 - USPCA AKC Reunite K9 Organization - \$7,500.00***(Sample motion – move to accept and approve the Grants to the Police Department as presented)***

XVII. CITY MANAGER’S INFORMATIONAL ITEMS

1. Prescott Park Public Forum Area

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XIX. ADJOURNMENT [at 10:30 p.m. or earlier]

**Indicates verbal report*

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



CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
kconard@cityofportsmouth.com
(603) 610-7201

Karen S. Conard
City Manager

Date: August 18, 2022

To: Honorable Mayor McEachern and City Council Members

From: Karen S. Conard, City Manager *KSC*

Re: City Manager's Comments on City Council Agenda of August 22, 2022

X. Public Hearings and Votes on Ordinances and/or Resolutions:

A. Public Hearing and Second Reading of Ordinance Amending Chapter 1, Article III – Boards:

Attached please find a [proposed ordinance amending Chapter 1, Article III – Boards](#).

I recommend that the City Council move to pass second reading, and hold a third and final reading at the September 19, 2022 City Council meeting.

B. Public Hearing and Second Reading of Ordinance Amending Chapter 1, Article IV – Commissions and Authorities:

Attached please find a [proposed ordinance amending Chapter 1, Article IV – Commissions and Authorities](#).

I recommend that the City Council move to pass second reading, and hold a third and final reading at the September 19, 2022 City Council meeting.

C. Public Hearing and Adoption of Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of Up To One Million Two Hundred Thousand Dollars (\$1,200,000) for Costs Related to Sewer Service Connections Related to the Sagamore Avenue Area Sewer Extension Project:

Staff recommends that a [Bond Resolution in the amount of \\$1.2 million](#) be adopted at this evening's meeting in order to maximize the number of connections to the new sewer line under the current contract with Severino. [A memorandum from the Department of Public Works staff supporting the recommendation was provided at the August 1, 2022 City Council meeting.](#)

The City's Assistant City Engineer, Zachary Cronin, will be providing a brief presentation on this project at this evening's meeting.

I recommend that the City Council move to adopt the Resolution as presented.

D. Third and Final Reading of Ordinance Amending Chapter 1, Article VIII – Code of Ethics:

Attached please find a [proposed ordinance amending Chapter 1, Article VIII – Code of Ethics](#).

I recommend that the City Council move to pass the third and final reading of the ordinance as presented.

XI. City Manager's Items Which Require Action:

1. Approval of Deputy Fire Chief Contract:

Attached for your consideration is a proposed four (4) year Employment Agreement between the Portsmouth Fire Commission and Deputy Fire Chief Patrick R. Howe. This Employment Agreement provides for an initial annual salary of one hundred fifteen thousand seven hundred and ten dollars and forty-four cents (\$115,710.44). Effective July 1, 2022, this initial annual salary will receive the same COLA as is negotiated between the City and the Portsmouth Professional Management Alliance ("PMA"). Thereafter, the annual salary will be adjusted according to the City's usual rolling 10-year average CPI-U. Unless otherwise specified in the Employment Agreement, all other benefits will follow the PMA contract. One notable exception is an additional annual payment of one thousand six hundred sixty-six dollars and ninety-five cents (\$1,666.95) to recognize the Deputy's attainment of the prestigious Executive Fire Officer Certification from the National Fire Academy.

The other provisions and format of this Employment Agreement are consistent with the template that the City uses for positions at this level.

The Fire Commission has approved this Employment Agreement.

I recommend that the City Council move to approve the agreement with Deputy Fire Chief Patrick R. Howe as presented.

2. Approval of Welfare Guidelines:

Per RSA 165:1, "The local governing body, as defined in RSA 672:6, of every town and city in the state shall adopt written guidelines relative to general assistance."

The City of Portsmouth Welfare Guidelines were most recently updated in 2015. The NH Local Welfare Administrators Board of Directors, in late 2021, worked with attorneys from the NH Municipal Association, to update the NHLWAA Model Guidelines. These Model Guidelines are provided to cities and towns to use as their own or to modify them as they see fit.

Working in conjunction with City Attorney Sullivan, the City has recently revised [the Welfare Guidelines, which are attached for your consideration](#). The changes are primarily additional definitions and other language that clarify the City's policies with the intention of making the document more user friendly for clients and their advocates.

I recommend that the City Council move to adopt the Welfare Guidelines as presented.

3. **Request to Schedule ARPA Work Session:**

At the July 11, 2022 City Council meeting, the Council vote to schedule a Work Session on current requests from staff and city committees regarding the allocation of ARPA funds.

I recommend that the City Council move to schedule an ARPA Work Session on September 12, 2022 at 6:00 p.m. in Council Chambers.

4. **Neighborhood Pilot Parking Program:**

At the May 16, 2022 City Council meeting, the Parking and Traffic Safety Committee referred the Neighborhood Parking Program ("NPP") data to the City Council for its consideration. Parking Director Ben Fletcher presented statistics and a cost analysis of the NPP to the Council. After reviewing the presentation, the Council supported collecting data on the program through the summer months and voted to continue the NPP as currently configured through Labor Day weekend. [Parking Director Fletcher has updated his prior presentation in the Council packet](#) to include data from the summer months and is available to answer questions about the program. The program expires on September 6, 2022 unless the NPP is extended by vote of the City Council.

If the City Council is interested in extending the NPP, *I recommend that a motion be made to maintain the NPP program for 90 days during which time the City staff will bring to the Fee Committee a recommendation regarding the fees that should be adopted to sustain the program.*

5. **Wayfinding Easement for City Property Located at 93 Pleasant Street:**

Dagny Taggart LLC owns an existing building and parking lot located at 93 Pleasant Street, and has proposed redevelopment of that property into 53 living units. This project has received all requisite land use approvals, including from the Planning Board, Historic District Commission, and the Zoning Board of Adjustment.

At its regularly scheduled meeting on December 30, 2021, the Planning Board granted site plan approval for this project. As a part of the project, the property owner has agreed to relocate a City wayfinding sign currently in the right of way onto private property at 93 Pleasant Street. The Planning Board recommended the City accept an easement to access, maintain, replace and repair the relocated sign.

The attached easement has been reviewed for form and substance by the Legal and Planning Department, and City staff recommend the City accept an easement in substantially similar form to the attached easement.

I recommend that the City Council move to authorize the City Manager to accept and record a Sign Easement over 93 Pleasant Street in substantially similar form to the easement deed from Dagny Taggart, LLC contained in the agenda packet.

6. Renewal of Coalition Communities 2.0 Membership Agreement:

On January 25, 2021, the City Council authorized the City to participate in the Coalition Communities, 2.0 and to enter into a Memorandum of Understanding (“MOU”) for Professional Services Between Coalition Communities 2.0 (“CC2”). The MOU expires on December 31, 2022 and may be renewed for another two year term by vote of the majority of its Members after they have received authorization from their Board of Selectman or City Council. The Annual Meeting of the CC2 is scheduled for September 22, 2022 and I am seeking authorization to renew the City of Portsmouth’s participation in the MOU prior to the annual meeting.

By way of background, the State passed legislation to fund education through a formula that created what was commonly known of as “donor” and “receiver” towns. Under this education funding formula, a community was characterized as a donor community if it raised more in Statewide Education Property Tax (“SWEPT”) than the State’s calculation of that community’s total cost of an adequate education for its students. This “excess” SWEPT was then to be distributed by the State to communities whose cost of an adequate education exceeded the amount raised in SWEPT (known as “receiver” communities). Portsmouth, along with other donor towns, worked together to challenge the donor/receiver education funding formula through the formation of a group known as the “Coalition Communities.” In part, due to the advocacy of the Coalition Communities through lobbying efforts and litigation, the Legislature abolished the donor/receiver education funding formula and currently former donor towns are able to retain the “excess” SWEPT they collect.

A Commission to Study School Funding (“Commission”) was created by the Legislature in 2019 to “review the education funding formula and make recommendations to ensure a uniform and equitable design for financing the cost of an adequate education for all public-school students.” On December 1, 2020, the Commission issued its final report which recommends, in part, the return of a donor/receiver education funding model that would increase SWEPT and have communities remit the “excess” SWEPT to the State for redistribution to towns whose cost of an adequate education is more than the SWEPT the town generates.

After the Commission issued its final report, CC2 was formed to advocate and lobby in opposition to a donor town funding formula. Education funding is a complex issue and it would be unduly burdensome and costly for each town to separately track, advocate and lobby in opposition to education funding legislation that supports a donor/receiver model.

CC2 formalized an agreement with each other to pool resources to hire a lobbyist to assist in advocacy and communication services and other professional services if needed and entered into the attached MOU. CC2 conducted a procurement process and retained the firm of Bernstein Shur for lobbying services.

Over the last two years, Bernstein Shur has helped CC2 create a website, track legislation, create education funding bill list summaries, hold public meetings of its Joint Board and recently generate surveys on the education funding issue for those running for election. Bernstein Shur is unable to continue its lobbying efforts for CC2 during the next legislative session and by renewing this MOU for another two years, CC2 through its Joint Board, will be able to issue a new RFP for lobbying and other professional services.

These services will be necessary as education funding will be an issue next session. HB 1680 is a bill that is in interim study which codifies the Commission’s recommendations discussed above and is due out of interim study in October. In addition, there are two pending lawsuits that are directly challenging the education funding formula, specifically the retention of excess SWEPT by donor communities (Contoocook Valley School District, et. al. v. State of New Hampshire (213 2019 CV 00069)) which is set for trial in April, and a new lawsuit filed in June, 2022 by Attorneys Andru Volinsky and John Tobin on behalf of taxpayers challenging the education funding formula and the retention of SWEPT by donor communities. The City’s participation in CC2 and extending this MOU supports the City Council’s Legislative Principle #20 which states that the City will support legislation that provides education funding based on an equitable and sustainable framework and oppose the return of the donor town concept.

I recommend that the City Council move to authorize the City to continue to participate in the Coalition Communities 2.0 and authorize the City Manager to negotiate and execute a two year renewal of a MOU with the Coalition Communities 2.0 on behalf of the City in a form similar to the attached.

7. Monitoring Well License Request for 60 Penhallow Street:

McNabb Properties (Dagny Taggart, LLC, “Owner”) is the owner of Tax Map 107, Lot 27, the Brick Market project located at 60 Penhallow Street. Site plan approval for the project includes grading and drainage plans. The City’s Department of Public Works, along with NH Department of Environmental Services and the Owner recently met to review the grading and drainage plan and recommend a revision to the existing drainage plan regarding the location of monitoring wells surround the site. NHDES is requiring the Owner to install four (4) monitoring wells to provide a means to monitor and assess the water quality surrounding the site after completion of construction. The recommended location of the four (4) monitoring wells is depicted in the [attached Exhibit A](#) and shows two (2) monitoring wells located on private property abutting 60 Penhallow (also owned by McNabb Properties) and two (2) monitoring wells located beneath the sidewalk on Penhallow Street adjacent to the Brick Market building. Because these two (2) wells will be located under a City sidewalk, a license from the City is required for the Owner to maintain and access the wells for sampling.

The Owner will submit a revised Grading and Drainage Plan to show the exact location of the monitoring wells after consultation with Dig Safe and the Department of Public Works. The Owner agrees to comply with specifications from the Department of Public Works and the State of New Hampshire, including but not limited to requirements regarding size, location and timing of the installation of wells and repair to sidewalk and hardscape after installation. An amended Grading and Drainage Plan showing the exact location of the monitoring wells will be recorded with the final license.

I recommend that the City Council authorize the City Manager to negotiate and execute a license with Dagny Taggart, LLC to locate NHDES required monitoring wells under the City sidewalk along Penhallow adjacent to the Brick Market Building.

XIII. Presentations and Consideration of Written Communications and Petitions:

B. Capital Improvement Plan FY2024- 2029:

Attached please find a memorandum from the City’s Planning Director, Beverly Mesa-Zendt, regarding the Capital Improvement Plan (CIP) for FY2024 through FY2029.

Director Mesa-Zendt will be prepared to share a presentation with the Council and the public at this evening’s meeting.

C. Status Update on Seacoast Greenway/Railtrail Project:

New Hampshire Seacoast Greenway Alliance (NHSGA) is a recently incorporated 501(c)(3) with the mission of providing on-going stewardship of the Greenway, commonly referred to as the “Railtrail,” as a regional recreation facility to the benefit of the citizens of the seven corridor communities of Seabrook, Hampton Falls, Hampton, North Hampton, Rye, Greenland and Portsmouth as well as the surrounding Seacoast region.

Several members of the Alliance will give the City Council an update at this evening’s meeting on the status of the project to transform the former Boston and Maine rail line into a robust recreational opportunity. The State of New Hampshire, Department of Transportation is currently overseeing the design of the improvements to the Greenway. In addition the City Council will receive an update on a Community Input session that will be taking place in Portsmouth on Thursday, September 22, 2022 and Friday, September 24, 2022. The purpose of the sessions is to elicit public input on trailhead, or public access points to the Greenway.

XVI. Approval of Grants/Donations:

A. Acceptance of Grant to the Public Works Department from the Department of Environmental Services – \$4,238:

A grant in the amount of \$4,238 from the Department of Environmental Services (DES) has been applied for and is available to the City to assist in managing Household Hazardous Waste Collection events. This grant would supplement the \$30,000 that has been committed from the Water & Sewer Enterprise Fund for two Household Hazardous Waste Collection events in the FY23 budget.

Household Hazardous Waste Collection events help protect the City’s water supply and reduce the potential of hazardous waste being dumped or inappropriately disposed of. In the interest of protecting public health and ensuring household hazardous waste and unwanted household hazardous products are disposed of in an environmentally sound manner, the City has been hosting the collection event for more than twenty years. Over 200,000 gallons of hazardous waste have been properly disposed of during this time. An average of almost 600 families take advantage of the collection events every year.

In the spirit of being a good neighbor, the City also offers the services to residents of Newington and Greenland. The expenses are shared between the communities on a prorated basis - per vehicle, per community.

I recommend that the City Council move to accept and expend a \$4,238 DES grant for the purpose of Household Hazardous Waste Collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract.

B. Acceptance of Various Police Department Grants:

At its July 28, 2022 meeting, the Board of Police Commissioners approved and accepted the following grants:

- Department of Justice through the ARPA for the NH Internet Crimes Against Children Task Force - \$700,000; and
- USPCA AKC Reunite K9 Organization - \$7,500

I recommend that the City Council move to accept and approve that grants to the Police Department as presented.

XVII. City Manager’s Informational Items:

1. Prescott Park Public Forum Area:

Attached please find a memorandum from City Attorney Sullivan regarding the Prescott Park Public Forum Area.