

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, JANUARY 9, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous roll call vote 9-0, Councilor Blalock moved to close the Non-Public Sessions and seal the minutes. Seconded by Assistant Mayor Kelley.**

### **III. CALL TO ORDER**

Mayor McEachern called the meeting to order at 7:15 p.m.

### **IV. ROLL CALL**

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor (via zoom), Denton, Moreau, Bagley, Lombardi, Blalock, and Cook

### **V. INVOCATION**

Mayor McEachern asked for a moment of silent prayer in memory Jeff Clark and Duane Foster who recently passed away.

### **VI. PLEDGE OF ALLEGINANCE**

Mayor McEachern led in the Pledge of Allegiance to the Flag.

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

### **VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

#### **1. Winners of 2022 Holiday Lights Contest**

Mayor McEachern presented the winners of the contest with prizes and recognized Al Bailey for his years of contribution to the Holiday Lights Contest with a Mayor's Award and a City of Portsmouth Door Stop. Mayor McEachern also recognized all the Honorable Mentions and provided prizes to those present.

- Best Traditional – John Chavez
- Most Creative – Matt & Nicole Beyer
- Kid's Choice – Ray Clauson

#### **2. Presentation by Rotary Past President, Ben Wheeler**

Mr. Wheeler said only once will the City of Portsmouth turn 400 at the same time as the Rotary Club turns 100. He announced that the Rotary Club will be donating funds in honor of Portsmouth's 400<sup>th</sup> for the planting of 100 trees with a plaque in the area of where the trees will be planted recognizing the years of dedication and service to the Rotary Club and the greater Portsmouth community on behalf of Basil and Louise Richardson. Also, Rotary will partner with the City for making updates to make playgrounds more inclusive throughout the City. He stated the gift to the City will be \$30,000.00.

Mayor McEachern thanked Ben for his comments and for working with the City of Portsmouth.

City Manager Conard said that she and Councilor Tabor are Rotarians.

3. Recognition of Dave Lovely selected as the 2022 EPA Regional Wastewater Treatment Plant Operator of the Year Award

Mayor McEachern and the City Council recognized Dave Lovely for being selected as the 2022 EPA Regional Wastewater Treatment Plant Operator of the Year and thanked him for his service to the City of Portsmouth.

4. Recognition of Timothy Metivier selected as 2022 New Hampshire Code Official of the Year Award

Mayor McEachern and the City Council recognized Timothy Metivier for being selected as 2022 New Hampshire Code Official of the Year and thanked him for his service to the City of Portsmouth.

## **IX. PUBLIC COMMENT SESSION**

Barry Heckler spoke opposed to a third license for 64 Vaughan Street project. He said none of the two previous requests mentioned the spaces in the alley way.

Francis Cormier says we are playing “Simon Says” in the political arena. He said we are a free society.

Paige Trace spoke regarding parking and how the Council needs to consider merchants as well. She said that Councilor Blalock has a conflict of interest when a vote is taken relative to restaurants.

Mark Brighton spoke regarding outdoor dining and asked Councilor Denton if he will recuse from the vote because a conflict exists with Mr. Fox.

Erik Anderson said that composting for outdoor dining is an administrative burden for staff. He said there should be appropriate recusal. He asked if a motion goes forward would there be a public hearing on the matter.

Kevin Dwyer, Dwyer’s Pub, spoke in support of outdoor dining and asked the City Council to consider pricing per square feet. He asked if the process was to generate revenue or outdoor dining space. He said an increase in rates will affect his ability to make improvements to his patio.

Petra Huda asked for clarification on the motion under Councilor Tabor’s name. She asked if he was requesting guidance on the guidelines for the budget.

Esther Kennedy spoke to dumping on property located on Banfield Road. She addressed the issue of outdoor dining and said the matter of cost should have gone to the Fee Committee.

Mark Brenner, Eliot, Maine said most residents don’t know about the transformation that will take place at Prescott Park. He said Phase I will start in the spring and there are no funds to fix up the Shaw building.

**Councilor Denton moved to suspend the rules to bring forward Item X. C. - Public Hearing/Adoption of Resolution Authorizing a Supplemental Appropriation from the Unassigned Fund Balance for the Design and Engineering of Alternate Plans for the Redevelopment of McIntyre Federal Building and Surrounding Property. The City Council has determined that the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars is to be appropriated from Unassigned Fund Balance to defray the expenditures for the design and engineering of alternate plans for the redevelopment of McIntyre Federal Building and surrounding property for the Fiscal Year ending in June 30, 2023. Seconded by Councilor Blalock.**

**On a unanimous roll call 9-0, motion passed.**

**X. PUBLIC HEARINGS AND VOTE ON ORDINANCE AND/OR RESOLUTIONS:**

- C. Public Hearing/Adoption of Resolution Authorizing a Supplemental Appropriation from the Unassigned Fund Balance for the Design and Engineering of Alternate Plans for the Redevelopment of McIntyre Federal Building and Surrounding Property. The City Council has determined that the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars is to be appropriated from Unassigned Fund Balance to defray the expenditures for the design and engineering of alternate plans for the redevelopment of McIntyre Federal Building and surrounding property for the Fiscal Year ending in June 30, 2023

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

City Manager Conard reviewed the remarks contained in her memorandum regarding this matter. She advised the City Council that the preliminary cost estimates for construction of the Community Plan vary widely. She stated as discussed at the December 5<sup>th</sup> City Council meeting, the City requested and was granted an extension of the License with (GSA) for the McIntyre building, and for the submission of its application to the National Park Service (NPS) for an additional ninety days. She reported over the next three months, the City will engage in discussions and negotiations with SoBow regarding the design, the division of capital contributions for the project. She advised the Council that expected expenses are estimated to be up to \$50,000.00 per party per month. City Manager Conard said a copy of the supplemental appropriation for \$150,000.00 is attached in the packet and is recommended to pay for these costs.

City Attorney Morrell stated that operating under the Settlement Agreement is part of a litigation risk to the City, which is why the City Council can't speak to that.

Mayor McEachern read the legal notice, declared the public hearing open and called for speakers.

Gerald Duffy said he will speaking during second time for 5 minutes.

Christina Luskey said when considering appropriating \$150,000.00 she would not spend one penny. She said the City needs to make the residents aware of finances regarding this matter. She urged the Council not to negotiation out of desperation. She also said reducing the size of the project and simplifying it could lower the costs.

Sue Polidura said she feels that the McIntyre is a lemon. She stated the costs are going to double and asked when the expenses will stop. She said when the contract was terminated by the last City Council it was the right thing to do. Ms. Polidura said Michael Kane is not a good partner and the land should be used for a park.

Mitch Shuldman said the McIntyre is about a real estate developer looking to make money. He said this City Council has had good sense to settle the issue and you did the right thing. He stated the City Council couldn't have done any better and the Council needs to let the project go.

Erik Anderson said it is time for some transparency in regards to the McIntyre. He expressed concern hearing the City still has litigation issues on this matter. He asked what is under the table that the residents don't know about.

Jim Lee said the McIntyre project is a boondoggle.

Susan Denenberg said there is no such thing as a free lunch, there is no such thing of getting a building for \$1.00. She spoke to the litigation issues and costs surrounding the project. She said that this is not a good project for the City. She said we have irreconcilable differences and there is no benefit to the City.

Peter Somssich spoke opposed to approving the resolution. He said that financials and the design need to be known. He stated Michael Kane has said that the community plan is unbuildable. He urged the City to provide more details to the residents surrounding the project.

Roy Helse said we have already paid \$2 million and they continue to demand more as it relates to McIntyre. He said we should use Mr. Binnie for the development of the project.

Steve Barndollar said he has supported the McIntyre project. He stated that Michael Kane has been mean spirited and collected \$2 million by blackmailing the City. He urged the City Council to not approve the resolution.

Bill Hamilton, Eliot, Maine said the McIntyre project is a boondoggle and a waste of time and money.

Marie Bodi, via zoom, commended the previous speaker and she spoke to guaranteed revenues. She said we don't have a trusted partner.

Sheridan Lloyd, via zoom, said this has been difficult to understand. She spoke to the large figures discussed for this project and that the McIntyre is a legacy project. She stated Redgate Kane is not interested in benefits for the public.

Paige Trace asked to speak at 5 minutes not 3 minutes.

Bill Downey said many people are misinformed. He said this has been corrupted from day one. He said we have very little participation, and you say you can't share information because of litigation. Mr. Downey said Bill Binnie is still out there wanting to do the project. He spoke opposed the resolution.

Mark Brighton said the prior Council got flipped because of the McIntyre and spoke opposed to the resolution.

Patricia Bagley said she was expecting a presentation, and the City Council to ask questions. She asked the Council not to approve the resolution. She said the costs for this project will be passed down to the residents.

Peter Harris said the voices of residents have not been heard. He stated residents are not being updated on matters.

Nancy Brown said as residents we need to be listened to. She said it is time for everyone to work together.

Dick Bagley said we are in a legal situation that is unreasonable, and even though we paid \$2 million we have to conduct ourselves in private. He said we are right back where we started. He said the prior Council did make the right decision and we should start talking about the boondoggle 9.

Petra Huda said she would like to speak during the 5 minute period.

Esther Kennedy asked that we get the project done and have common sense. She said the citizen's plan is not the community plan any longer. She stated the bottom line is we asked for open space for citizens, a place to meet. She asked that a budget be created so residents can know what the project will be.

Zelita Morgan via zoom, would like to speak at the 5 minute period for comments.

Peter Whelan via zoom, said he made the motion to fire the developer and read the motion that was passed to terminate the agreement. He said this City Council decided to keep this developer. Mr. Whelan said this project belongs to the residents and urged the City Council to not vote for the resolution.

#### *Second Time Speakers – 5 Minute Time Period*

Paige Trace said the vote requires a public hearing and you have not shared information for anyone to make a decision. She said there is no Development Agreement, no Pro-forma and you have outsourced the project to the City Manager, but you should shoulder the responsibility. She asked how much the City will need to pay for improvements. Ms. Trace asked when the residents will realize the plan is in name only. She said that the plan has greater mass, less green space and lots of concrete.

Erik Anderson said the Council is at a defining junction for the future of the City.

Petra Huda said she wanted some kind of presentation this evening. She stated she found on the website the original picture had green space and the new one does not. In addition, she stated that the building has gone up another story and there is no post office. Ms. Huda said if you take this to the National Park Service, it is hard to see any significant public benefit.

Gerald Duffy said he has questions on the motion to appropriate another \$150,000.00 and feels we need more information before more funds are committed. He requested that a financial pro-forma be done and then he would support the resolution. He said having a financial pro-forma will put the money to good use. Mr. Duffy said it is important to respect the history of the project and get things right.

Esther Kennedy said if Mr. Duffy is accurate she would like City Management to reply. She said he makes a great point, the citizens don't know what is going on and there is no pro-forma. She asked what has changed and where is the information and budget that the residents are asking for.

Zelita Morgan via zoom, said she agrees with most residents to not approve the resolution. She said we need to protect the public benefit, which has never been done. She stated you have already spent \$2 million and you're asking for \$150,000.00 more. She said the developer continues to threaten the city and we need to let him go.

Paige Trace said she spent two years working with Mayor McEachern, Councilor Tabor and former Councilor Whelan on this project. She said that this is a bad project.

With no further speakers, Mayor McEachern closed the public hearing.

Mayor McEachern said this is a difficult process. He stated the settlement agreement was to settle the agreement of the prior City Council, and he stands by settling that agreement and spending the \$2 million. He said we settled the case to move on with a settlement agreement and we need to move forward to support a National Park Service Agreement. Mayor McEachern said we need to agree on a pro-forma. He stated the decision as a Council was made that our City Manager and City Attorney could negotiate and find a way to support an application to the National Park Service. Mayor McEachern said we do not have a guarantee that we are going to get an application but we will do our best effort to do so. He said we have a responsibility to submit an application and this gets us a little closer. He stated he is frustrated that we don't have an application before us this evening.

Councilor Bagley spoke to the long history of the project. He stated we are here because the former City Council, with only three weeks into the start of their term, decided to take action without hearing legal advice by the City Attorney. He said he will support the resolution before the City Council this evening.

Councilor Tabor said he was a part of the process and difficult vote. He said there is no easy answer here but our goal is to get an application to the National Park Service. He addressed the community plan and how it has come in financially on the high side. He said the \$150,000.00 will help to come up with a financial pro-forma.

Councilor Bagley said when we make a mistake and cost the City money it comes from taxpayer's funds.

Mayor McEachern said there is only one City Council and it is this City Council. He stated we hope to make the best decisions for Portsmouth. He said that he is committed to put Portsmouth in the best position and would not support a project that does not have a public benefit. He stated we need the \$150,000.00 to do this and it is the next best option for the City of Portsmouth. Mayor McEachern said he is bound by what is in the best interest of the City of Portsmouth.

**Councilor Lombardi moved to adopt the resolution as presented. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

At 9:43 p.m., Mayor McEachern called for a brief recess. At 9:55 p.m., Mayor McEachern called the meeting back to order.

## **X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

### **First Reading of Ordinance:**

- A. First reading of Ordinance amending Chapter 7, Article IVA, Section 7A.408 – Taxi Stands Designated

**Assistant Mayor Kelley moved to pass first reading and schedule a second reading and public hearing at the January 23, 2023 City Council meeting. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

### **Public Hearings of Ordinance and Adoption of Resolution:**

- B. Public Hearing/Second reading of Ordinance amending Chapter 1, Article IV, Section 1.408 – Cable Television and Communications Commissions to be named Cable and Broadband Internet Commission
- **PRESENTATION**
  - **CITY COUNCIL QUESTIONS**
  - **PUBLIC HEARING SPEAKERS**
  - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Mayor McEachern read the legal notice, declared the public hearing open and called for speakers.

Deputy City Manager/Deputy City Attorney Woodland said if you prefer to hear from the Cable Commission she would table this matter until the next meeting because they have left due to the late hour.

Councilor Lombardi stated that having reviewed the ordinance and discussed it with the representatives from the Cable Commission and Governance Committee the changes are simple and straight forward.

**Councilor Lombard moved to pass second reading and schedule a third and final reading at the January 23, 2023 City Council meeting. Seconded by Councilor Denton.**

Councilor Moreau said the first line of the ordinance needs to have the name changed to reflect the new ordinance.

With no speakers, Mayor McEachern declared the public hearing closed.

Mayor McEachern spoke in support of the ordinance.

**On a unanimous roll call vote 9-0, motion passed.**

**XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION**

**A. CITY MANAGER CONARD**

1. Amendment to Public Art Funds Ordinance

City Manager Conard said with the first project to take advantage of funds remaining in the trust it did not contemplate funds remaining. She said we are asking for an amendment to this ordinance that was recently passed in order to move funds to the Bohenko Sculpture Park. She said that we will bring back the ordinance for first reading at the next City Council meeting.

**Councilor Cook moved to place the Funding of Public Art Ordinance, Chapter 1, Article XVII, Section 1.1705, on the City Council's January 23, 2023 Agenda for first reading. Seconded by Councilor Lombardi.**

**On a unanimous roll call vote 9-0, motion passed.**

2. Temporary Construction License for 64 Vaughan Street

City Manager Conard said that this would be the third license request. She spoke to the request and said due to delays the applicant would like to encumber 6 parking spaces in the Worth Lot and 4 parking spaces along the alley that connects to Hanover Street for a safety buffer. She reported that total License Fee for the ten (10) parking spaces is \$28,700.00 (\$35.00 per space x 10 = \$350.00 a day x 82 days).

The contractor advised the Council that there will be no parking for a safety buffer.

Councilor Tabor asked how we will hold them accountable. City Manager Conard said Code Enforcement Officer Jason Page will enforce the agreement.

Councilor Cook asked the contractor if he envisions this as the last request for a license extension. The contractor said he feels they will not come back for another agreement.

**Councilor Moreau moved to authorize the City Manager to execute and accept the temporary construction license to encumber the use of ten (10) parking spaces in the Worth Lot for a term of 82 days as requested. Seconded by Assistant Mayor Kelley.**

**On a unanimous roll call vote 9-0, motion passed.**

3. Easements for Hope for Tomorrow Foundation

City Manager Conard spoke to the easement for the former St. Patrick's School. She explained that there may be minor amendments or edits to these documents prior to recording them.



Assistant Mayor Kelley moved to grant the City Manager the authority to both finalize and execute a sewer easement from the City to the Hope for Tomorrow Foundation, and to accept on behalf of the City the Access Easement for Water Service as presented. Seconded by Councilor Blalock.

On a unanimous roll call vote 9-0, motion passed.

## XII. CONSENT AGENDA

- A. Letter from Maria Stephanou, NH Walk Manager, requesting permission to hold the annual Seacoast Walk to End Alzheimer's on Sunday, October 1, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- B. Letter from Debra Smith, Friends of the South End, requesting permission to hold the annual Fairy House Tour on Saturday, September 23, 2023 and Sunday, September 24, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- C. Letter from Evan Dolecki, New England Ventures Endurance, requesting permission to hold the 2023 Margarita Half Marathon & 5k on Sunday, April 30, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- D. Request from Mark McNabb, Hearth Food Garden, LLC, to install a Projecting Sign at 60 Penhallow Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

### **Planning Director's Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
  - ***Any removal or relocation of projecting sign, for any reason, shall be done at to the City; and***
  - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- E. Request from Mark McNabb, River Wharf Hospitality, to install a Projecting Sign at 60 Penhallow Street (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

**Planning Director's Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

**Assistant Mayor Kelley moved to adopt the Consent Agenda. Seconded by Councilor Bagley.**

**On a unanimous roll call 8-0, motion passed. Councilor Cook abstained from voting.**

**XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

**A. Email Correspondence**

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor Denton moved to suspend the rules in order to bring forward Item XVI. D. – Approval and Acceptance of NH Department of Safety, Division of Homeland Security and Emergency Management – Emergency Management Performance Grant (EMPG) - \$5,000.00. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

**B. Letter from Perry Silverstein requesting the City not favor one industry over others**

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

**XIV. MAYOR McEACHERN**

**Mayor McEachern thanked the Police Department for keeping our community safe and announced that it is National Law Enforcement Appreciation Day.**

1. Appointments to be Voted:
  - Reappointment of Dana Levenson to the Trustee of the Trust Funds
  - Reappointment of Phyllis Eldridge to the Zoning Board of Adjustment
  - Appointment of Alan Cohen to the Task Force to Study Private/Public Historical Archives Committee
  - Appointment of Jeff Keefe to the Task Force to Study Private/Public Historical Archives Committee

**Councilor Bagley moved the reappointment of Dana Levenson to the Trustee of the Trust Funds until January 1, 2026; reappointment of Phyllis Eldridge to the Zoning Board of Adjustment until December 1, 2027; and the appointment of Alan Cohen and Jeff Keefe to the Task Force to Study Private/Public Historical Archives Committee. Seconded by Assistant Mayor Kelley.**

**On a unanimous roll call vote 9-0, motion passed.**

## **XV. CITY COUNCIL MEMBERS**

### **A. COUNCILOR TABOR**

1. January 25<sup>th</sup> Budget Kickoff

**Councilor Tabor moved for a report back on preliminary FY24 trends, major budget drivers, potential tax impacts and city manager guidelines at January 25, 2023 council budget kickoff work session. Seconded by Councilor Cook.**

Councilor Tabor spoke to the budget and his request. He said he would like to see the trends up front and direct where things are going and work together on challenging trends. He said he would like to revisit spending guidelines.

Councilor Bagley said this is a great idea. He asked if there is enough time to do this by January 25, 2023. City Manager Conard said she would provide as much information as we could and share trends with the Council.

Mayor McEachern said we would discuss City Council guidelines and set goals as guidelines for city departments.

Councilor Tabor said we would have a discussion regarding if there would be a guideline and direction for the City Council to go by.

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor Bagley moved to suspend the rules in order to continue the meeting beyond 10:30 p.m., Seconded by Councilor Cook.**

**On a unanimous roll call vote 9-0, motion passed.**

2. Selection of an Auditor

**Councilor Tabor moved to unseal that portion of the City Council's non-public session meeting minutes dated December 14, 2022 relative to the selection of an auditor only. Seconded by Councilor Denton.**

Councilor Tabor said that the Audit Committee will also be unsealing their non-public session minutes.

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor Tabor moved to select CLA for a three year contract to perform audit services conditional upon satisfactory contract negotiations. Seconded by Councilor Denton.**

Councilor Cook said we want to give another firm the chance to work with us.

Councilor Denton said he is looking forward to CLA working with the city.

**On a unanimous roll call vote 9-0, motion passed.**

**B. COUNCILOR DENTON**

1. Outdoor Dining

**Councilor Denton moved to suspend the rules in order to bring forward Item XV. C.1. – 2023 Outdoor Dining Season. Seconded by Councilor Bagley.**

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor Cook moved to adopt an outdoor dining policy in Portsmouth with the following parameters:**

- a) **Outdoor dining will commence for parking/loading zone encumbered dining starting on May 1 and ending on Indigenous Peoples' Day. The City of Portsmouth will do everything possible to place and remove barriers within 10 working days following the beginning and end of the parking/loading zone dining season. Sidewalk dining will be allowed as the weather permits, but sidewalk encumbrances should be removed so as not to interfere with sidewalk snow removal, with penalty of fine should removal not take place prior to a snowstorm. Yearly permitting for sidewalk dining will take place in March. Applications for all outdoor dining will be accepted starting February 15, with a deadline of April 1.**
- b) **Outdoor dining shall not encumber street flow of traffic in the high traffic zones of the downtown area. Exceptions shall only be permitted by appeal to the City Manager, with evidence of traffic flow below 1000 cars per day.**

- c) Outdoor dining in parking/loading zones shall follow a uniform appearance with City-placed concrete barriers and planter boxes as described in the December 22 City Report, and wooden platforms to allow for uniform accessibility. Restaurants with existing platforms and surrounds designed for prior seasons shall be grandfathered-in with permission of the City Manager. All outdoor dining spaces shall have tables and separate chairs to allow for uniform accessibility. When requiring a divider from sidewalk flow, sidewalk dining shall require either a metal or metal-looking barrier, or a rope-like barrier for separation.**
- d) Parking/Loading zone outdoor dining shall have a permit fee of \$1500/space or \$10/square foot, whichever is a lesser expense. Any restaurant taking up a parking space must pay for the full square footage of the parking space, or the standard space fee. Sidewalk encumbrance shall have a flat fee of \$500/season with sidewalk encumbrance (space) limitations determined by the City Manager.**
- e) Restaurants requesting a parking/loading zone encumbrance can receive up to a \$500 reduction in fees if they compost food waste. For sidewalk spaces, restaurants may receive up to a \$200 reduction in fees if they compost food waste.**
- f) The City Manager has the authority to act with notification of the Council if any unforeseen circumstances occur or unexpected adjustments are needed.**

**Seconded by Councilor Bagley.**

**Councilor Bagley moved to correct letter d for the fee to be \$5.00/square foot, as it was provided incorrectly. Seconded Councilor Lombardi.**

Councilor Bagley spoke to the revenue that would be received based on the fees.

Mayor McEachern said it may make sense to send this matter to the Fee Committee for review and on how the fee is applied. He said the Fee Committee would meet with staff and have a discussion at the next Council meeting.

City Manager Conard explained that this would be a policy, not an ordinance change.

Mayor McEachern cautioned the Council that it is late in the evening to be having this discussion and making any decision on this matter.

Councilor Moreau suggested sending abutter notices out now and in the future.

Councilor Cook said the recommendation from former Planning Director Zendt could eliminate outdoor dining in locations downtown.

City Manager Conard said the consideration is staff recommends notifying abutters and abutting residents. Councilor Cook said we need to be specific at each location what qualifies as an abutter.

Councilor Blalock suggested tabling this matter due to the late hour.

Assistant Mayor Kelley said that we need public input on this matter. She also expressed the importance of having the changes clearly written out for the Council's review.

Discussion followed regarding this matter.

Councilor Cook withdrew the main motion and Councilor Bagley the second to the motion.

Councilor Bagley withdrew his amendment and Councilor Lombardi the second to the motion.

**Councilor Bagley moved to refer this matter to the Fee Committee with the invitation of Councilor Bagley and Councilor Cook to attend the meeting of the Fee Committee and a report back at the January 23, 2023 City Council meeting. Seconded by Councilor Cook.**

**On a unanimous roll call vote 9-0, motion passed.**

2. E-mail Addresses

**Councilor Denton moved for all members of the City Council to be given municipal e-mail addresses for official business. Seconded by Assistant Mayor Kelley.**

**On a unanimous roll call vote 9-0, motion passed.**

## **XVI. APPROVAL OF GRANTS/DONATIONS**

The City Council agreed to take up all three donations at this time.

- A. Acceptance of Donation to the Tree Fund from Judith A. Sabin - \$25.00
- B. Acceptance of Donation to the Fire Department from Paul Gormley & Kimi Iguchi for the Discretion of the Fire Department - \$2,500.00
- C. Acceptance of Donation to the Senior Activity Center from Anne Aoki for Senior Luncheon Funds - \$5,000.00

**Assistant Mayor Kelley moved to approve and accept the donations as presented. Seconded by Councilor Moreau.**

**On a unanimous roll call vote 9-0, motion passed.**

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

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

## **XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

Councilor Lombardi requested a status update on the water line crossing in Durham at the January 23, 2023 City Council meeting.

Councilor Tabor left the meeting.

**XIX. ADJOURNMENT**

**At 11:20 p.m., Councilor Denton moved to adjourn. Seconded by Councilor Moreau and voted.**

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK