

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MAY 6, 2024 TIME: 7:00PM

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_IkuVTJoEQzC_4oUdoavjSQ

AGENDA

- 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**

PROCLAMATION

1. **POET LAUREATE** (*Proclamation will be handed out to City Council on Monday evening*)

VII. **ACCEPTANCE OF MINUTES – APRIL 15, 2024**

VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

1. **Recognition of Renewable Solar Energy Proposals from Portsmouth Middle School 8th Graders:**
 - Wyatt Howard Baker & Benjamin Fischer
 - Jasmine Parker & Jessica Schickling
 - Sara Edwards & Abby Craig
 - Lorelei Foster & Elizabeth Tremblay
 - Brandon Ganev & Charlie Ruedig
 - Thea Hartley
 - Madison Whitaker & Lily O'Donoghue
 - Ella Wiseman & Lucille Rhinesmith
 - Hannah Williams & Anya Pettigrew

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

X. PUBLIC HEARING AND VOTE ON ORDINANCES AND/OR RESOLUTIONS

First Reading of Ordinance:

- A. First Reading of Ordinance amending Chapter 10, Article 6, Section 10.633.20 by adding a new numbered paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alterations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alterations to existing structures” (***Proposed Action Options – 1) move to pass first reading and schedule a public hearing and second reading regarding Solar Energy Panel amendments to Chapter 10, Article 6, Section 10.633.20, as presented, on June 3, 2024; or 2) move to postpone first reading to consider both the present solar panel amendment to Chapter 10, Article 6, Section 10.633.20 and the amendments that will be proposed by the HDC and Planning Board at the June 3, 2024 City Council meeting***)

Public Hearing/Second Reading of Ordinance:

- B. Public Hearing/Second Reading of Ordinance amending Chapter 10, Zoning Ordinance – Electric Vehicle Charging Stations, Article 4, Zoning District and Use Regulations, Section 10.440, Table of Uses, Sections 11.20, 11.21, 19.60 and 19.70, Article 8, Supplemental Use Standards, Section 10.810 and Section 10.843, Article 11, Site Development Standards, Sections 10.1112.20 and 10.1112.32 and Article 15, Definitions, Section 10.1530, Terms of General Applicability
- **PRESENTATION**
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

(Sample motion – move to pass second reading and schedule a third and final reading at the May 20, 2024 City Council meeting)

XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Planning Board Recommendation on Home Occupation Amendments
2. *Second Report Back on Request for Water Taxi
3. *Request to Schedule Community Policing Facility Work Session

XII. CONSENT AGENDA

- A. Request from Jordan Cashman, Sage, to install a Projecting Sign at 33 Deer Street Unit 3A (***Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning & Sustainability 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***
- B. Letter from Nancy Cassidy, Piscataqua Maritime Commission, requesting permission to hold the Sail Portsmouth Tall Ship Event, Friday July 26th through Sunday, July 28th ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Letter from Alan Ammann, St. John's Lodge, requesting permission to hold the annual St. John's Parade, on Sunday, June 23, 2024 at 8:50 a.m. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- D. Letter from Jonathan Day, Portsmouth Halloween Parade, requesting permission to hold the 29th Portsmouth Halloween Parade on Thursday, October 31, 2024 ***(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. Letter from Katie Ross, Pure Barre Portsmouth, requesting permission to hold a Silent Yoga Class at Prescott Park on Friday, June 21, 2024 at 6:00 a.m. ***(Sample motion – move to refer to the City Manager with Authority to Act)***
- C. Letter from Jean Eno, Bucovina Cuisines, requesting the waiving of fees and grant Chef Oksana Karcha permission to sell food on Pleasant Street to raise funds for Ukraine on the four dates: May 19th, June 16th, July 14th, and August 25th from 3:00 p.m. – 6:00 p.m. ***(Sample motion – move to refer to the City Manager with Authority to Act)***
- D. Letter from Herbert & Jeannette Lloyd requesting a Landscape License Agreement for the maintenance of city-owned property located at 5 Ruth Street ***(Sample motion – move to refer to the City Manager with Authority to Act)***
- E. Letter from Elizabeth Bratter regarding Gateway Zoning ***(Sample motion – move to accept and place on file)***

XIV. MAYOR McEACHERN

1. Letter to SAU 52 Communities regarding workforce housing

2. Appointments to be Considered:
 - Reappointment of Luis Rodriguez to the Cable and Broadband Internet Commission
 - Reappointment of Stewart Sheppard to the Conservation Commission
 - Reappointment of Daniel Brown to the Historic District Commission
 - Reappointment of Michael Griffin to the Trees & Public Greenery
 - Reappointment of Dennis Souto to the Trees & Public Greenery
3. Blue Ribbon Committee Appointments to be Voted:
 - Christian Berling to the Citywide Neighborhood Committee
 - William Gatchell to the Citywide Neighborhood Committee
 - Kenneth Hale to the Citywide Neighborhood Committee
 - Colleen Ovecka to the Citywide Neighborhood Committee
 - Chuck Raye to the Citywide Neighborhood Committee
 - Peter Somssich to the Citywide Neighborhood Committee
 - Ben VanCamp to the Sister Cities Blue Ribbon Committee
4. *Appointment to be Voted:
 - Anthony Coviello as a Regular member of the Planning Board
5. Acceptance of Resignation
 - Aubrey Gewehr from the Sustainability Committee

XV. CITY COUNCIL MEMBERS

A. COUNCILOR TABOR

1. Energy Advisory Committee Update

B. COUNCILOR DENTON

1. Mojalaki Holdings v. City of Franklin

C. COUNCILOR BLALOCK

1. *Amendments relative to Solar Energy Panels in the HDC will be offered to require administrative approval for slate and cedar shingle roofs

D. COUNCILOR MOREAU

1. Update from Planning Board regarding Revised Solar Amendments

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from the Portsmouth Garden Club to the Senior Activity Center for a Memorial Garden - \$800.00 (***Sample motion – move to approve and accept the donation as presented***)

- B. Acceptance of Memorial Bench in Honor of James Marchese (***Sample motion – move to accept the donation of a memorial bench in honor of James Marchese to be placed on Peirce Island***)
- C. Acceptance of Memorial Plaque in Honor of Joan Christy (***Sample motion – move to accept the donation of a memorial plaque in honor of former City Librarian Joan Christy to be placed at the base of an existing tree at the library***)
- D. Acceptance of Donation from the National Society of the Colonial Dames of America - \$2,500.00 (***Sample motion – move to approve and accept the donation as presented***)

XVII. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. *Update on Community Policing Facility
- 2. *Sherburne Property Disposition
- 3. *Report Back on Historic Grants
- 4. Update on Tax Deeded Properties from the Legal Department
- 5. *PDA Board Meeting Update

X VIII. 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: May 2, 2024

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 May 6, 2024

X. Public Hearing and Vote on Ordinances and/or Resolutions:

A. **First Reading of Ordinance Amending Chapter 10, Article 6, Section 10.633.20 by Adding a Newly Numbered Paragraph 28 “Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alterations to existing structures” and by adding a new numbered paragraph 29 “Accessory Elements to Solar Energy Panels which do not require other alterations to existing structures”:**

On January 16, 2024, the City Council voted to amend Chapter 10, Article 6, Section 10.633.20 and to refer that amendment to the Planning Board for a Work Session with the Historic District Commission (HDC) for a report back with recommendations to the City Council. The proposed amendments scheduled for first reading tonight are the original amendments sent to the Planning Board on January 16, 2024. These amendments add two new paragraphs (28 and 29) to the City's Zoning Ordinance (Chapter 10, Article 6, Section 10.633.20) which would exempt certain solar panels and their accessory elements from HDC approval.

The HDC and Planning Board held a joint work session on February 21, 2024 to discuss how to respond to the City Council's request. At the March 4, 2024 City Council meeting, Chairs Ruedig and Chellman gave a brief update to the Council, explaining that the HDC and the Planning Board would work together over the next several months to bring forward amendments to the Zoning Ordinance regarding solar panels for first reading at the May 6, 2024 City Council meeting.

The HDC held three work sessions (March 13, 2024, April 10, 2024 and April 17, 2024) and drafted new proposed solar panel amendments which were reviewed by the Planning Board at their April 25, 2024 meeting. The Planning Board approved the HDC's amendments (with one minor edit) and has scheduled a public hearing on these amendments at their next meeting on May 16, 2024.

The new solar panel amendments from the HDC and Planning Board are not scheduled for first reading tonight but [are included in your packet as an Agenda item under Councilor Moreau's name](#). Councilor Moreau will provide a report back on these amendments and Chairs Ruedig and Chellman will be present to answer questions about those amendments.

Proposed Action Options:

- *Vote to pass first reading and schedule a public hearing and second reading regarding Solar Energy Panel amendments to Chapter 10, Article 6, Section 10.633.20, as presented, on June 3, 2024; or*
- *Vote to postpone first reading to consider both the present solar panel amendments to Chapter 10, Article 6, Section 10.633.20 and the amendments proposed by the HDC and Planning Board at the June 3, 2024 City Council Meeting.*

B. Public Hearing/Second Reading of Ordinance amending Chapter 10, Zoning Ordinance – Electric Vehicle Charging Stations, Article 4, Zoning District and Use Regulations, Section 10.440, Table of Uses, Sections 11.20, 11.21, 19.60 and 19.70, Article 8, Supplemental Use Standards, Section 10.810 and Section 10.843, Article 11, Site Development Standards, Sections 10.1112.20 and 10.1112.32 and Article 15, Definitions, Section 10.1530, Terms of General Applicability:

At its May 2, 2022 meeting, the City Council referred draft zoning ordinance amendments submitted by Councilor Denton relative to electric vehicle (EV) charging stations to the Planning Board for review and recommendation. Currently, an EV charging station, as a principal use, is allowed by special exception in the GB, G1, B, CD4-W and I zones under the motor vehicle service station classification. An EV charging station is currently allowed as an accessory use to any permitted principal use on any Citywide lot.

The Planning Board began discussion of these amendments in November 2023 and has been working on revisions since then. The original referral included adding specific charging levels (1, 2 & 3) to the use tables in the Ordinance. With the speed of change in the industry, having broad definitions that will not become obsolete is the best approach. For example, when the Board began discussion of this topic there were Level 1, 2 and 3 chargers and now there are level 4 chargers, fully automated battery exchange stations and soon there may be wireless charging for EVs. The Planning Board took a broad approach during the course of its work on these amendments so the Ordinance would not be quickly outdated once adopted. The proposed amendments capture EV charging and infrastructure that should remain relevant with the future technology anticipated.

At its February 29, 2024 meeting, the Planning Board voted to schedule a public hearing on the amendments after legal review. Legal reviewed the draft with staff and the Chair and made edits to simplify and condense the attached amendments. The Planning Board held a public hearing at their March 21, 2024 meeting on the amendments and recommend that the City Council hold first reading on these zoning amendments.

The City Council held first reading on April 15, 2024 and amended the ordinance as follows: added Section 10.1112.23 regarding the “Calculation of Number of Required Spaces” that provides parking spaces occupied by EV chargers and support equipment may count towards minimum parking requirements; deleted the phrase “including but not limited to, generators and transformers” from Section 10.843.34; and added in the Table of Uses Level B Chargers in the Office Research Zone by Conditional Use Permit. [These amendments have been incorporated into the ordinance for Council’s consideration for second reading tonight.](#)

I recommend that the City Council move to pass second reading and schedule a third and final reading at the May 20, 2024 City Council meeting.

XI. City Manager’s Items Which Require Action:

1. Planning Board Recommendation on Home Occupation Amendments:

At the April 25, 2024 meeting, the Planning Board held a public hearing on zoning amendments related to home occupation after a referral from the City Council on February 20, 2024.

The Master Plan speaks to expanding the opportunities for home-based businesses. This trend was realized in the Master Plan and became more prevalent during the pandemic. Goal 3.1.3 below appears in several sections of the Master Plan with the goal of enhancing economic development, enriching the urban and suburban neighborhoods, and encouraging the creative use of existing housing stock.

The initial amendment allowed up to two (2) clients at one time for a home occupation, 1 or 2 category. This would allow, for example, someone to teach art or give music lessons as a home occupation and have clients come to their house.

The Planning Board held a public hearing and heard from several members of the public in favor of any changes that would allow client visitation for a home occupation. The Planning Board added language to allow up to 6 clients to a home occupation 2 and to change the use tables where a Special Exception is currently required, to a Conditional Use Permit.

The Planning Board voted to recommend to City Council to hold first reading on the zoning [amendments for home occupation as presented.](#)

I recommend that the City Council move to schedule first reading of the proposed zoning amendments regarding home occupation at the May 20, 2024 City Council meeting.

2. Second Report Back on Request for Water Taxi:

The City Council, at its January 16, 2024 meeting, requested a report back on a request from a private water taxi owner to use the docks at Prescott Park for a commercial water taxi business and to post signs on a fence and at the docks at Prescott Park to advertise this business.

Senior Assistant City Attorney Jane Ferrini provided a report back on February 5, 2024, advising that signage and commercial crafts are prohibited from using the piers, floats and docks at Prescott Park by City Ordinance (Chapter 8, Article II, Parks, Section 8.202, E, 1). In addition, she relayed that charitable deed restrictions limit the use of Prescott Park property to park and recreational purposes, and that these restrictions are enforced by the New Hampshire Charitable Trust Unit of the Attorney General’s Office. The City Council requested a second report back after staff discussed the water taxi owner’s request with the Charitable Trust Unit.

Michael Haley, Acting Director of the Charitable Trust Unit, advised the City that for-profit commercial use of Prescott Park was not contemplated by the terms of the Prescott will. He further advised that permitting commercial use of Prescott Park would be a change in the terms of the gift restrictions contained in the Prescott Park deeds, and would only be permitted if the court granted the City a Petition for Cy Pres, which is a request that a court find that the existing terms of the gift are impossible or impracticable to comply with. Haley further cautioned that the Attorney General’s Office would need to be part of that proceeding and decide whether to support it.

After receiving this information, Legal Department staff reached out to water taxi owner Mike Comeau to explain the Attorney General’s opinion. After several discussions, Legal staff recommended, and Mr. Comeau agreed, to revise his request to the Council to permit water taxi drop off and pick up at the Robert P. Sullivan Boat Launch at Peirce Island.

I recommend that the City Council vote to permit Mr. Comeau’s water taxi service to drop off and pick up passengers only at the Robert P. Sullivan Boat Launch at Peirce Island, and to grant the City Manager authority to negotiate a License Agreement for this request.

3. Request to Schedule Community Policing Facility Work Session:

I would like to request a work session regarding the Community Policing Facility on May 20th at 6:00 p.m. to review plans and progress updates for the project.

I recommend that the City Council move to schedule the work session as presented.

XII. Consent Agenda:

A. Projecting Sign License – 33 Deer Street Unit 3A:

Permission is being sought to install a projecting sign at [33 Deer Street Unit 3A](#) that extends over the public right of way, as follows:

Sign dimensions: 20” x 20”

Sign area: 2.18 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1) *The license shall be approved by the Legal Department as to content and form;*
- 2) *Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3) *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, 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.*

XVI. Approval of Grants/Donations:

A. Acceptance of Donation from the Portsmouth Garden Club to the Senior Activity Center for Memorial Garden - \$800:

Attached please find [the donation form from the Portsmouth Garden Club](#) for the Senior Activity Center in the amount of \$800.

I recommend that the City Council move to approve and accept the donation as presented.

B. Acceptance of Memorial Bench in Honor of James Marchese:

Attached please find [a memorandum from the Public Works Department](#) recommending acceptance of a memorial bench from Marcia Marchese in honor of James Marchese.

I recommend that the City Council move to accept the donation of a memorial bench in honor of James Marchese to be placed on Peirce Island.

C. Acceptance of Memorial Plaque in Honor of Joan Christy:

Attached please find [a memorandum from the Public Works Department](#) recommending acceptance of a memorial plaque from Stephanie Campbell in honor of Joan Christy.

I recommend that the City Council move to accept the donation of a memorial plaque in honor of former City Librarian Joan Christy to be placed at the base of an existing tree at the Library.

D. Acceptance of Donation from the State of NH National Society of the Colonial Dames of America - \$2,500:

By way of background regarding [the \\$2,500 donation from the Colonial Dames](#), the family of Dinah Chase Whipple and Valerie Cunningham of the Black Heritage Trail of New Hampshire first contacted Susan Sterry, Co-Chair of the Cemetery Committee in November 2023. They inquired about the possible placement of a headstone for Dinah Chase Whipple next to Prince Whipple, her husband in North Cemetery. See [attached communication from the family](#).

The Cemetery Committee considered the inquiry and supports the installation of an appropriate marker. Dinah Chase Whipple founded one the first schools for Black children in the United States. The school was open from 1806-1832 on High Street in Portsmouth. Members of the Cemetery Committee are working with the family and other local organizations to raise funds. The goal is to install a headstone and hold a ceremony before the end of the year.

The Department of Public Works has no objection to the addition of this headstone and will help to coordinate installation.

I recommend that the City Council move to approve and accept the donation as presented.

XVII. City Manager's Informational Items:

1. Update on Community Policing Facility:

City staff will provide a verbal update regarding progress updates for the proposed Community Policing Facility.

2. Sherburne Property Disposition:

To advance the City Council's Action from the April 14, 2024 City Council meeting where the City Council voted to approve the following: "to recommend that the City Council work towards the official disposition and land lease of the Sherburne School property for the creation of permanent, below market rate housing," the following action will be taken.

The City Manager will direct staff to draft a Request for Qualifications (RFQ) to solicit from qualified parties their credentials for the development of permanent below market rate housing specific to the Sherburne School property (Map 259 Lot 10). The RFQ will include additional language that considers inclusion of other uses which would provide a demonstrated community benefit.

3. Report Back on Historic Grants:

City staff will provide a verbal update relative to Councilor Cook's inquiry from the March 18th City Council meeting.

4. Update on Tax Deeded Properties from the Legal Department:

[Attached please find an update from the Legal Department](#) on the three tax deeded properties.

5. PDA Board Meeting Update:

Following the most recent PDA Board Meeting on April 18th, I will provide a verbal update on the topics discussed.