



CITY OF PORTSMOUTH

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Trevor P. McCourt
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Date: January 5, 2024

To: Karen S. Conard, City Manager

From: Trevor P. McCourt, Deputy City Attorney

Re: Proposed Zoning Ordinance Amendment - HDC Solar Energy Panel

At the December 18, 2023 City Council meeting, Councilor Josh Denton indicated his intention to call for first reading for a zoning ordinance amendment regarding solar energy panels in the Historic District. The purpose of this memorandum is to provide a legal opinion regarding the authority of the City Council to make this amendment and recommend a process.

The amendment as proposed by Councilors Denton and Blalock is to add the following language to Chapter 1, Article IV, Section 1.403, (C): "The review of solar energy panels is not within the purview of the Historic District Commissioner's powers and duties."

The City Council has broad authority to legislate the zoning of the City, including the historic district. This includes adding or removing items from the authority of the Historic District Commission. Therefore, the proposed amendment is legally permissible.

However, in the interest of clarity and consistency, the Legal Department recommends the amendment be relocated to Chapter 10, Article 6, Section 10.633.20, titled *Exemptions from Certificate of Approval*. This section identifies 27 items which are currently exempted from Historic District Commission review. I would recommend changing the proposed text to read as follows, to be contained within a new numbered paragraph (28): "Solar Energy Panels flush mounted to rooftops of existing structures which do not require other alterations to existing structures."

The City Council could consider further amending the above-proposed language to indicate whether the HDC should have input over accessory elements to solar energy panels. Other options can be developed by the Legal and Planning Departments at the City Council's request. The City Council could also refer this proposed ordinance change to the Historic District Commission for a report back.

Understanding that this amendment is of importance to the City Council and in anticipation of a vote regarding this Ordinance at the Council meeting on January 16, 2024, I have requested the Legal Department's recommended ordinance change be placed upon the January 18, 2024, Planning Board agenda for a recommendation as required by Chapter 10, Article 1, Section 10.152 of the City's Ordinances.

With input from the City Council on January 16th and the Planning Board on the 18th, the Legal Department could bring a proposed ordinance amendment to the City Council meeting on February 5, 2024, for consideration and scheduling of first reading.