

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, SEPTEMBER 19, 2016

PORTSMOUTH, NH
TIME: 7:00 PM

I. CALL TO ORDER (7:00PM)

Mayor Blalock opened the meeting at 7:00 p.m.

II. ROLL CALL

Members Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins (arrived at 7:10 p.m.), Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

Former City Councilor Harold Whitehouse led the Pledge of Allegiance.

PRESENTATION

1. Quarterly Update Re: Wastewater Treatment

City Engineer Terry Desmarais introduced staff members and representatives from AECOM and Methuen Construction present in the audience. He then gave a brief update on the upcoming Peirce Island Wastewater Treatment Facility upgrade construction schedule. He also discussed the construction costs stating that there is usually a 5% contingency set aside which would be approximately 3.8 million for this project but there is currently only 1.8 million so we will have to fund the rest in future capital budgets. He stated that Peirce Island will be closed to the public beginning September 26, 2016 including the off-leash dog area.

Peter Britz, Environmental Planner, gave a brief presentation on the proposed alternative off-leash dog area at the Park and Ride on Route 33. He stated that there are currently 5 acres of open space and 50 parking spaces and signs will be posted regarding access and waste pick-up requirements. He concluded that there will be a public meeting on the proposal on October 5, 2016 at 4:30 p.m. in Conference Room A.

Councilor Pearson asked where the flaggers will be posted during construction. Engineer Desmarais stated at State and Marcy Streets for the entire duration but they are modifying the entrance of Peirce Island so as not to have to have a flagger there. He continued that there will be an attendant at the gate of Peirce Island and 2 flaggers when the pool is in operation.

City Manager Bohenko stated a safety consultant was hired to review the plans as we are taking safety very seriously.

Councilor Denton asked on behalf of Councilor Cyr if signage will be posted at the Peirce Island site to direct people to the new area. City Manager Bohenko stated yes.

Councilor Denton then asked why the Jones Avenue site is not considered for the off-leash area. Councilor Spear stated that the Sagamore Creek Blue Ribbon Committee and the Conservation Commission were both concerned with the environmental impact.

Finally, Councilor Denton stated there is a fishing hole near the Park and Ride area and wondered if it could be made into a fishing area for kids as part of the future rail trail. City Manager Bohenko stated he will look into it through the Fish and Game Department.

Assistant Mayor Splaine asked if there were any closer off-leash areas to the downtown area such as North Mill pond and the Route 33 site is far away for those who walk from the downtown to Peirce Island. City Manager Bohenko stated he would take this suggestion under advisement.

V. ACCEPTANCE OF MINUTES – AUGUST 15, 2016

Councilor Spear moved to accept the Minutes of August 15, 2016 City Council meeting. Seconded by Councilor Cyr and voted.

VI. PUBLIC COMMENT SESSION

Due to the number of people signed up to speak, Mayor Blalock announced that each speaker would be limited to 2 minutes each.

Steve Dunfey – stated he has personally known Jim Splaine for many years and has served with him in the State Legislature and he tells the truth no matter the outcome. He stated he is a straight arrow kind of guy and wants transparency in the City of Portsmouth.

George Dempsey – stated the police got caught in regards to the Geraldine Webber case and thanked Asst. Mayor Splaine for standing up to them.

Dick Bagley – spoke regarding the importance of the public being informed on the Webber case information.

Pat Bagley – spoke regarding transparency in government and feels that there should not have been a non-meeting regarding the Aaron Goodwin settlement.

Jerry Zelin – spoke in support of Jim Splaine stating that he did not violate his Oath of Office as the meeting was illegal and was not a confidential attorney/client meeting.

Ruth Griffin – spoke in support of Jim Splaine stating that he would not knowingly do anything that was not for the good of the City.

Erik Anderson – stated he supports Jim Splaine and his efforts to bring transparency to City government and feels that this needs to be put behind us.

Rick Horowitz – spoke in support of Jim Splaine and his efforts to inform the public.

Clare Kittredge – stated the public should know who knew what when and that this is an effort to punish someone for trying to bring transparency to the government.

Nancy Elwell – spoke in support of Jim Splaine.

Paige Trace – spoke in favor of Jim Splaine and his efforts to bring transparency to the citizens who elected the City Council.

Esther Kennedy – asked the Council to stop holding non-meetings and stated she wished she had the same courage as Jim Splaine.

Zelita Morgan – thanked Jim Splaine for bringing forward what the public should have known all along and looks forward to the discussion as the public trust in the City and Police Department have been damaged.

Paul Mannle – stated he fully supports Jim Splaine and the Attorney General past and present.

David Noard – spoke in support of Jim Splaine and his looking out for the greater good of the City in regards to transparency in the Goodwin situation.

Tim Montminy – stated he does not agree with Jim Splaine's decision to release information as it short-circuited the process and it was not his right to do so and puts in jeopardy the attorney/client privilege.

Susan Denenberg – stated she supports Jim Splaine as this issue has been going on a long time and people do not want to see Mr. Goodwin rewarded.

Cliff Lazenby – stated that Assistant Mayor Splaine took an oath to serve the City of Portsmouth and therefore would follow the guidelines and rules of the City Council. He stated that changes in democracy require the input of many, not just one rogue individual.

Mark Brighton – stated this is not about Jim Splaine, but about meetings that are held that do not conform to the Attorney General guidelines.

Arthur Clough – stated that the non-meetings held do not meet the criteria for holding non-meetings and feels that the Mayor and City Manager inserted themselves onto the Police Commission. He concluded that there were people on the City Council who knew about the Webber issue as it was happening and did nothing about it.

VII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value

Councilor Spear moved to pass first reading and schedule a second reading and a public hearing of the proposed Ordinance at the October 3, 2016 City Council meeting, as presented, seconded by Councilor Pearson.

Councilor Dwyer asked for clarification regarding the definition including “removal of structure from present location” and if it is the appropriate place to include it.

Planning Director Taintor stated it is a fairly common provision in demolition ordinances and in many cases it is the building itself that may be important to the neighborhood.

Councilor Perkins stated that there are 2 separate concepts; older, historic buildings versus smaller, newer buildings and also to expand the existing 30 day comment period.

City Manager Bohenko stated that we have met with advocates 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.

Planning Director Taintor explained 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.

Councilor Perkins asked if there was any discussion of including an existing Board/Commission for the review as opposed to creating another committee.

Planning Director Taintor stated that due to the time limit imposed it would be difficult to schedule with an existing Board and also, they are looking to have a broader expertise of the issues involved.

Motion passed on an 8-1 vote, Councilor Perkins voted opposed.

VIII. CONSENT AGENDA

Councilor Lown moved to adopt the Consent Agenda as presented. Seconded by Councilor Perkins and voted,

- A. Letter from Nicole McShane, Big Brothers Big Sisters of New Hampshire requesting permission to close Pleasant Street on Saturday, June 17, 2017 from 3:00 p.m. – 6:00 p.m. for the Annual Stiletto Sprint (*rain date Sunday, June 18, 2017*) (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Amber Day, NH Film Festival requesting permission to close Chestnut Street on Friday, October 14, 2016 for the NH Film Festival red carpet opening night gala (***Anticipated action – move to refer to the City Manager with power***)
- C. Request for License to install Projecting Sign:
 - Dennis Luun owner of The Works Cafe, for property located at 9 Congress 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 the projecting sign, for any reason, shall be done at no cost 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***

IX. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Ella McGrail, Civic Teen requesting permission to set up a Civic Cider stand in front of the North Church in Market Square on October 2, 2016

Councilor Spear moved to recommend Vaughan Mall for the Cider Stand, seconded by Councilor Dwyer and voted.

- B. Memorandum from Police Chief David Mara regarding Downgrade of “Communications Manager” to Communications Supervisor

Councilor Lown moved to approve as outlined in the memorandum from the Police Department, seconded by Councilor Perkins.

Councilor Dwyer asked why this needs to be approved by the City Council.

City Manager Bohenko stated that any reclassification of positions are usually addressed during the budget process, but if not, it required Council approval.

Police Chief Mara explained that the individual previously in the position handled a lot of the IT aspect, but now, he is looking to keep that separate and have this be a communications person, not IT.

Motion passed.

X. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request for First Reading Re: Solid Waste Ordinance

Solid Waste Coordinator Jacob Levenson gave a brief presentation of the proposed ordinance changes. These changes include; 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. Also, 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. Third, update penalties and remedies to better enforce ordinance violations and finally, modernize the definitions classifying waste and how they are handled.

Councilor Cyr stated it is surprising to see how many places do not recycle.

City Manager Bohenko stated that the public space recycling initiative which artists and students designed bins was successful, but that the bins themselves did not hold up well and

will be reconstructed. He stated that the artwork done will be repurposed to help inform the public.

Councilor Dwyer asked if the new ordinance will include home composting, in regards to collection. Mr. Levenson explained that there is nothing included in the ordinance but that there is the option of bringing it to the Dept. of Public Works currently or using the "Mr. Fox" pickup service. He stated we are gauging the public interest currently.

City Manager Bohenko stated it does not have to be a part of the ordinance and explained that when the City obtains the land from the foundation, we will be able to expand the operations.

Councilor Cyr asked why the collection needs to be specified as "business" or "residential" in terms of when they put their trash out as long as it isn't sitting on the street for an extended amount of time.

Mr. Levenson explained that the restaurants want afternoon collection and the volume of residential is smaller so it takes less time to collect it for a morning pickup.

Councilor Lown moved to authorize the City Manager to bring back for first reading the proposed Ordinance at the October 3, 2016 City Council meeting. Seconded by Councilor Pearson and voted.

2. 2017 Schedule of City Council Meetings and Work Sessions

Councilor Spear moved to approve the proposed schedule for City Council Meetings and Work Session for calendar year 2017. Seconded by Councilor Lown and voted.

3. License Request Completion of Work at 172 Hanover Street

Councilor Spear moved to authorize the City Manager to negotiate and enter into a license with Carey Riley to facilitate completion of construction activities at 172 Hanover Street. Seconded by Councilor Lown and voted.

Informational items

1. Events Listing
2. Portsmouth Library Building Anniversary

City Manager Bohenko stated that the Portsmouth Library 10th Anniversary was celebrated on Saturday with a Proclamation read by Mayor Blalock. He stated celebrations will be ongoing.

Mayor Blalock called for a recess and 8:45 p.m. Meeting reconvened at 8:53 p.m.

B. MAYOR BLALOCK

1. Appointment of City Council members to Joint Budget Committee – Councilors Spear and Cyr

Mayor Blalock appointed Councilors Spear and Cyr to the Joint Budget Committee.

2. Council Members Responsibility Re: Non-Meetings & Non Public Sessions

Mayor Blalock asked City Attorney Sullivan to remind everyone of the difference between a non-public meeting versus a non-meeting.

City Attorney Sullivan explained that to go into a non-public meeting a vote is taken specific to statute and if the motion passes, they will hold the non-public meeting and keep the discussion limited to the specific topic. He stated minutes are kept and made public unless a vote is taken to seal the minutes. He stated that votes can be taken in non-public meetings and are reflected in the minutes. He stated that City Councilors are expected to maintain confidentiality. Next, regarding non-meetings, these are specific to statute as well and are for discussion of strategy and negotiations in collective bargaining as well as land acquisition. He stated a non-meeting is called that because it doesn't meet the definition of a meeting because it is not a meeting that an action can be taken. He continued that the City Council is considered a client of the lawyer and therefore, the whole Council needs to make the decision of what might be said outside of the meeting. He stated that the concept would fail if the lawyer has a confidential discussion with 9 Councilors but one breaches the confidence.

Councilor Denton moved to petition the Superior Court for the removal of Assistant Mayor Splaine pursuant to RSA 421:1-A, seconded by Councilor Pearson.

Councilor Denton stated it is with a heavy heart that he makes the motion but the attorney/client privilege is the bedrock of democracy. He continued that the judge should make the decision regarding this and not the City Council.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock stated he will not support the motion as he doesn't feel the motive was to betray the citizens of Portsmouth and doesn't rise to the level of removal and hopes that the Assistant Mayor doesn't resign. He stated he feels that this is a good reminder of the responsibilities of the City Council and appreciates the clarification from City Attorney Sullivan.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Lown stated he agrees with Mayor Blalock and also will not support the motion. He stated this is not a debate about the Goodwin case but a request for following the process, rules and Oath of Office taken by the City Council.

Councilor Dwyer stated she agrees with the previous speakers, but also feels that damage has been done to the public when someone insinuates what happens in a meeting and feels that putting something on social media is not transparency and is not the same as honestly talking about it in the public forum. Secondly, she stated there are gray areas in the State law regarding non-meetings and it is easy to make fun of the term non-meeting, but we have to address it that way by the law. Thirdly, she stated we can't go outside of the principles of the law and must respect and understand the law and be careful about procedural rules. She further stated that in the meeting, Attorney Closson was advising and informing the City Council and questions can be asked and answered, but no decisions were being made. She stated that it was insinuated that Councilors were agreeing to something, but they were not and that is where the trust broke down. She stated in her past she taught troubled boys and when they broke the rules, they did not

remove them because of it and didn't go outside of the group to restore trust within the group. She stated we need to restore the trust of the general public and if people who advise and inform the City can't trust the confidentiality of the Council, then no one will work with us.

Assistant Mayor Splaine stated the issue is about the non-meeting process. He then read the Attorney General guidelines. He reiterated the section "everybody except the Council should be excluded from the room and that deliberations may not occur" He stated if we need to consult with Counsel, then just the City Council should be doing so and should ask what they need to know and then go into non-public session. He stated there have been times when the Council meets with the City Attorney and there are no questions to the City Attorney at all and only a back and forth discussion. He stated he would support a motion to invite the Attorney General to advise the City Council on the proper use of non-meetings as he will not continue to condone the misuse of the process. He stated there have been 33 non-meetings since 2014 and some have been legitimately for negotiations, but many were held with legal Counsel but the Attorney didn't speak at all. He stated we need to start following the standards of the Attorney General. He concluded that he didn't do anything wrong and only said the conditions of the agreement of \$150,000 and the resignation acceptance and not what was discussed.

Motion failed on a 2-6 roll call vote. Councilors Pearson and Denton voted in favor. Councilors Perkins, Dwyer, Lown, Spear, Cyr and Mayor Blalock voted opposed. Assistant Mayor Splaine abstained.

Assistant Mayor Splaine moved to have the City Council formally invite the New Hampshire Attorney General Office to meet with the City Council in open session and discuss the proper use of non-meeting and non-public sessions, seconded by Councilor Cyr.

Councilor Dwyer moved to amend the motion to include that the City send to the Attorney General the letter disclosure in question that was written by Assistant Mayor Splaine and to also rule on whether it is proper to disclose that information, seconded by Assistant Mayor Splaine. Motion to amend passed on a 5-4 roll call vote. Councilors Dwyer, Lown, Pearson, Cyr and Denton voted in favor. Assistant Mayor Splaine, Councilors Perkins and Spear and Mayor Blalock voted opposed. Main motion as amended passed on a 5-4 roll call vote. Assistant Mayor Splaine, Councilors Dwyer, Cyr, Denton and Mayor Blalock voted in favor. Councilors Perkins Lown, Pearson and Spear voted opposed.

Councilor Spear moved to censure Assistant Mayor Splaine for breaking the confidentiality of a previous non-meeting of the City Council, seconded by Councilor Denton.

Councilor Spear stated that the City Council only has impact when it votes, otherwise it is just speeches. He stated we need to make a statement that the actions were unacceptable to us and future councils and a stern memo is not enough. He stated we need closure and shouldn't drag it out, but weigh in officially with a vote.

Discussion ensued regarding censure.

Councilor Spear amended his motion to read “to censure the actions of Assistant Mayor Splaine for breaking the confidentiality of a previous non-meeting of the City Council, the seconder, Councilor Cyr agreed. Motion passed on an 8-0 roll call vote. Assistant Mayor Splaine abstained.

3. Resignation – William F. Gladhill from the Planning Board

Mayor Blalock stated he is sad to have to accept the resignation of Mr. Gladhill but wishes him well in his future endeavors. He encouraged everyone to read his thoughtful letter.

Councilor Cyr moved to accept the resignation of William F. Gladhill from the Planning Board and as Planning Board representative to the Historic District Commission with thanks and appreciation for his service to the City of Portsmouth. Seconded by Councilor Perkins and voted.

C. COUNCILOR PERKINS

1. Proposed amendment to the Outdoor License Program for Sidewalk Cafes Policy #2012-02
Approved Locations:
 - *State Street Saloon*
 - *Popovers on the Square*
 - *Ri Ra*
 - *The District*
 - *Birdseye Lounge, LLC*
2. Recruiting Food Trucks (*See ordinance attached*)

Councilor Perkins stated she has no formal request, but has been asked by people about having more outdoor eating locations and food trucks.

She stated that she is looking for direction as to how to bring these forward or to refer to a Board or Commission for a report back.

Mayor Blalock stated that part of the issue with the food trucks was that they were parking in front of businesses that were paying for the real estate they occupied and taking away customers. He stated that regarding the outdoor eating locations, the policy allows for 7 and there are currently only 4, so there are still 3 more licenses available.

City Manager Bohenko stated that these are at the initiation of the restaurant if they want to have the outdoor seating on city sidewalks. He stated regarding food truck locations, the Parking and Traffic Safety Committee would be the appropriate group to refer it to for further discussion.

Councilor Dwyer stated that it is artificial to have a limit on the outdoor seating because the Council approves them anyway. Secondly, regarding food trucks, in other cities there are often locations that the food trucks will congregate which is better for them and the customers.

Councilor Pearson agrees, stating that in Boulder, Colorado they have a food truck park which has seating, activities and music and doesn't compete with downtown businesses.

Councilor Spear suggested planning a special event for a city location and see what the response is. City Manager Bohenko stated that the Red Hook Brewery already does such an event every year.

Councilor Cyr stated that Vaughan Mall currently has 2 - 15 minutes spaces which could be converted to food truck spaces. He feels that the spaces need to be consistent so that the food trucks can make money and establish the business. He also feels that the number of food trucks should not be limited either.

Councilor Perkins suggested food trucks could operate after restaurant kitchens are closed.

City Manager Bohenko stated that the Vendor Committee did a lot of work on our current ordinance so he will have staff review what was done and would also like to include the Chamber of Commerce and businesses in the discussion.

D. COUNCILOR DWYER

1. Subcommittee Approval for Floor Policy Regarding Short Term Rentals Recommended by the Legislative Subcommittee for City Council Approval for Submission as NHMA Legislative Policies for 2017-2018 Legislative Session

Councilor Dwyer stated that a short time ago the City Council voted to submit 4 policies to the NHMA for the 2017-2018 Legislative Session with one regarding short-term rentals. She further explained that Attorney Ferrini was contacted regarding the short-term rental policy and that it would have a better chance if it excluded "home businesses".

Councilor Dwyer moved to approve the floor policy on short term rentals and submit same to become a NHMA Legislative Policy for the 2017-2018 Legislative Session by vote of its membership at the NHMA Legislative Policy Conference. Seconded by Councilor Spear and voted.

E. COUNCILOR DENTON

1. Veteran's Property Tax Credit

Councilor Denton moved the City Manager to report back on the Assessor's Office implementing the additional veterans' property tax credit authorized under RSA 72:28b, which went into effect on August 8, 2016, extending the current tax credit amount to all honorably discharged veterans that are not eligible for the current veterans' tax credit or the tax credits for service connected total disability, seconded by Councilor Spear.

Councilor Denton explained the new law and would like the Assessor to report back.

Councilor Dwyer stated it will be challenging to figure out the impact on the city because of the number of people it may include and nothing is free.

Motion passed.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

Councilor Lown moved to adjourn at 10:00 p.m. Seconded by Councilor Spear and passed unanimously.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'V. French', written in a cursive style.

Valerie A. French
Deputy City Clerk