

**NON-PUBLIC SESSION RE: BOYLE LITIGATION PER RSA 91-A:3,II (e)**

MUNICIPAL COMPLEX  
DATE: TUESDAY, FEBRUARY 21, 2017

CONFERENCE ROOM A  
TIME: 6:00PM

A roll call for attendance of City Council members present for the meeting was taken.

**COUNCIL PRESENT:** Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins (6:13 p.m.), Dwyer, Lown (6:03 p.m.), Pearson, Spear (6:05 p.m.); Cyr and Denton (6:10 p.m.)

**STAFF PRESENT:** Nancy Colbert Puff, Acting City Manager, Robert Sullivan, City Attorney, Suzanne Woodland, Deputy City Attorney and Kelli L. Barnaby, City Clerk

**OTHERS PRESENT:** Attorney Charles Bauer and Attorney Robert Dietel

**Councilor Dwyer moved to enter into Non-Public Session regarding Boyle Litigation Per RSA 91-A:3,II (e). Seconded by Councilor Cyr and voted.**

Discussion was held regarding the Boyle Litigation.

At 6:55p.m., Mayor Blalock closed the Non-Public Session.

---

**CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: TUESDAY, FEBRUARY 21, 2017

PORTSMOUTH, NH  
TIME: 7:00PM

**I. CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:05 p.m.

**II. ROLL CALL**

**Present:** Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

**III. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silent prayer.

**IV. PLEDGE OF ALLEGIANCE**

Councilor Denton led in the Pledge of Allegiance to the Flag.

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

## **VI. PUBLIC COMMENT SESSION**

Esther Kennedy spoke to the recent wastewater incident at Peirce Island. She questioned why the water was pumped to the Mechanic Street pumping station. She stated we need to review all issues relating to the incident and find a way to ensure this doesn't happen again.

Erik Anderson feels the Veterans Tax Credit deserved more discussion. He said the City Assessor feels the liability to the City is in upwards of \$400,000.00. He said he feels that the Resolution should be examined thoroughly. Mr. Anderson further stated fiscal issues are the primary items of decision for the City Council.

Zelita Morgan spoke opposed to the reconsideration of the Veterans Tax Credit. She said it is the City's duty to provide a reduction in taxes for the veterans. She also spoke in support of Assistant Mayor Splaine's item for a full report regarding the accident that resulted in up to 50,000 gallons of raw sewage being released into the Piscataqua River during the construction of the Peirce Island Waste Water Treatment Plant. She said it is important for the public to hear everything related to the incident.

Chris Nevins, Hampton, NH, spoke regarding the Veterans Tax Credit and requested that the City Council keep the Resolution as adopted without any changes.

Berkley Bennett, Hampton, NH, said the Veterans Tax Credit should be supported and not reconsidered. He said this tax credit gives a little more assistance to the veterans.

Harold Whitehouse spoke in support of the Veterans Tax Credit of \$500.00. He said all veterans take an oath to serve and do not know where they will be serving and they are all important. He recommended an explanation be placed in with the May bills for individuals under the tax credit. Mr. Whitehouse also spoke to the establishment of a Veterans Trust Fund with funding to come from fund balance. He said it would be 10 cents on the dollar for homeowners that wish to donate.

Paige Trace thanked Assistant Mayor Splaine for bringing the wastewater issue forward this evening. She said it is not about trying to embarrass the City or an employee. She said it is about people that care a great deal for their City and want all issues that arise be handled appropriately.

Jane Zill said a City employee has disparaged residents and should not be making such remarks. She spoke to a CSO event and the requirement to notify the residents. She also spoke to where the release was made.

## **VII. PUBLIC HEARINGS**

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE I, SECTION 7.115 – SIGN PERMIT REQUIRED FOR PRIVATE PARKING LOT

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

Acting City Manager Colbert Puff briefly explained the ordinance. She said that the ordinance is to require proper signage which will advise the public that the management, fee structure and parking enforcement for these private lots are the sole responsibility of the owner/operator, not the City.

Esther Kennedy said she agrees with the ordinance. She said that some people are being price gauged by the private lots during the times when the demand for parking is high. She said there should be guidelines for the pricing of these lots.

With no further speakers, Mayor Blalock declared the public hearing closed.

A. PROPOSED CAPITAL IMPROVEMENT PLAN (CIP) FY2018-2023

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

Acting City Manager Colbert Puff described the CIP process and said the document is on line for review in greater detail. She stated the City Council will vote on the plan at the next City Council meeting. She reported that the process started in the fall. She said a form was placed on line for residents to request various projects to be made part of the plan. She also addressed the Ward Map that shows where each of the projects are taking place within the City.

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

**VIII. APPROVAL OF GRANTS/DONATIONS**

A. Acceptance of 2016 Homeland Security Grant Program Award - \$6,000.00

**Councilor Lown moved to accept and approve the 2016 Homeland Security Grant Program Award, as presented, and further, authorize the Acting City Manager to execute the Agreement. Seconded by Councilor Spear and voted.**

**IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

A. Second reading of proposed Ordinance amending Chapter 7, Article I, Section 7.115 – Sign Permit Required for Private Parking Lot

**Councilor Lown moved to pass second reading and schedule third and final reading of the proposed ordinance at the March 6, 2017 City Council meeting. Seconded by Councilor Perkins.**

Councilor Dwyer asked if we would have jurisdiction over rates in private lots.

City Attorney Sullivan said the City believes we have the ability to regulate rates.

Councilor Dwyer asked if we would need to make additional regulations and come back with further amendments.

Acting City Manager Colbert Puff said we do expect to have to come back at some point with additional changes to the ordinance.

Councilor Cyr said the ordinance shows singular sign and does not know if all the information can all be placed on 1 sign. City Attorney Sullivan said that at this stage we want to make people aware that the sign refers to this being a private lot not controlled by the City.

**Motion passed.**

- B. Third and final reading of proposed Ordinance amending Chapter 7, Article I, Section 7.101 – Parking Meters – Definition

**Councilor Lown moved to pass third and final reading of the proposed Ordinance amendment to Chapter 7, Article I, Section 7.101 – PARKING METERS – DEFINITIONS. Seconded by Councilor Cyr and voted. Assistant Mayor Splaine opposed.**

- B. Third and final reading of proposed Ordinance amending Chapter 7, Article I, Section 7.102 – Parking Meter Zones – Downtown High Occupancy Zone

**Councilor Lown moved to pass third and final reading of the proposed Ordinance amendment to Chapter 7, Article I, Section 7.102 – PARKING METER ZONES. Seconded by Councilor Pearson.**

Assistant Mayor Splaine said he is opposed to this ordinance and the next three. He said we should have had a discussion and decision on residential parking before making these changes. He said we need to make a decision on residential parking. He understands the logic for the ordinances. He said people are hurting and we need to be careful where we are going in making changes to the fees.

Councilor Spear said the City Council voted unanimously to building a garage and now we are looking for fees and ways to pay for it.

Councilor Pearson said she would support this ordinance because if you are a resident and have the device or the application you would not receive the increase for residents and in addition we have 6 free parking lots.

Councilor Dwyer said she would like to know if the free lots are getting a great deal of use.

Acting City Manager Colbert Puff said that we would come back for a parking system in the summer.

**On a roll call 8-1, motion passed. Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton and Mayor Blalock voted in favor. Assistant Mayor Splaine voted opposed.**

- C. Third reading of proposed Ordinance amending Chapter 7, Article I, Section 7.105 – Parking to include mobile phone applications and Parking Meter Fees shall be enforceable Monday through Saturday, from 9:00 a.m. to 8:00 p.m.

**Councilor Spear moved to pass third and final reading of the proposed Ordinance amendment to Chapter 7, Article I, Section 7.105 – PARKING. Seconded by Councilor Lown.**

Councilor Pearson said she will not support a raise in fees and the extra hours of enforcement. She said the extra hours of enforcement affects quality of life of residents in the downtown.

Councilor Dwyer said residents are parking on the street instead of the garage.

**On a roll call 6-3, motion passed. Councilor Perkins, Dwyer, Lown, Spear, Denton and Mayor Blalock voted in favor. Assistant Mayor Splaine, Councilors Pearson and Cyr voted opposed.**

- D. Third and final reading of proposed Ordinance amending Chapter 7, Article III, Section 7.324 – Limited Parking One hour, Section 7.325 – Limited Parking Thirty Minutes, Section 7.326 – Limited Parking Fifteen Minutes, Section 7.327 – Limited Parking Two Hours, Section 7.328 – Limited Parking Three Hours, Section 7.328-1 – Utilization of Multiple Parking Spaces and Section 7.329 – Limited Parking Four Hours between the hours of 9:00 a.m. and 8:00 p.m. Monday – Saturday and between 12:00 p.m. and 8:00 p.m. Sunday, Holiday Excluded

**Councilor Lown moved to pass third and final reading of the proposed Ordinance amendment to Chapter 7, Article III, Section 7.324 – Limited Parking One Hour, Section 7.325 – Limited Parking Thirty Minutes, Section 7.326 – Limited Parking Fifteen Minutes, Section 7.327 – Limited Parking Two Hours, Section 7.328 – Limited Parking Three Hours, Section 7.328-1 – Utilization of Multiple Parking Spaces; and Section 7.329 – Limited Parking Four Hours. Seconded by Councilor Perkins and voted. Assistant Mayor Splaine and Councilor Pearson voted opposed.**

- E. Third and final reading of proposed Ordinance amending Chapter 7, Article IV, Section 7.406 (A) & (B) Parking in Meter Space to be deleted in their entirety

**Councilor Lown moved to pass third and final reading of the proposed Ordinance amendment to Chapter 7, Article IV, Section 7.406 – PARKING IN METER SPACES. Seconded by Councilor Spear and voted. Assistant Mayor Splaine voted opposed.**

#### **X. CONSENT AGENDA**

*(There are no Consent Agenda items on for consideration this evening)*

#### **XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

*(There are no Written Communications and Petitions on for consideration this evening)*

## **XII. REPORT AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. ACTING CITY MANAGER**

1. City Council Policy Regarding use of City Property for Sidewalk Cafes Providing Alcohol Service

Acting City Manager Colbert Puff said that the Cafés were piloted and allowed up to 6 cafes in the downtown as a maximum. She reported we had 6 in place for 2014 and 2015 and even though we only had 4 last year we feel we could lift that restriction from the policy.

Councilor Denton asked if we could make the time until 10:30 p.m. for 7 days per week. City Attorney Sullivan said that this is a City Council policy and can be amended by a vote of the Council.

Mayor Blalock said in order to get a liquor license you are required to serve substantial food items.

Councilor Perkins spoke in support of the motion and would like to see this passed as it is good for businesses.

**Councilor Perkins moved to amend City Council Policy 2012-02, Policy Regarding Use of City Proposed for Sidewalk Cafes Providing Alcohol Service, by deleting the last sentence of numbered paragraph 1, relating to the maximum allowed number of sidewalk cafes, as recommended by Acting City Manager Colbert Puff. Seconded by Councilor Lown.**

**Councilor Denton moved to amend City Council Policy 2012-02, Policy Regarding Use of City Proposed for Sidewalk Cafes Providing Alcohol Service, by amending item 11, that the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m., 7 days a week. Seconded by Councilor Lown and voted.**

**Main motion passed, as amended.**

### **Acting City Manager Informational Item Re: Sanctuary Cities**

City Attorney Sullivan reviewed his memorandum with the City Council. He reported that he met with police officers and asked what the practice is when stopping a vehicle and confirmed that there is not a primary objective of discovering the immigration status of a person or stopping, detaining, or arresting a person solely to investigate immigration status, in the absence of a legally justified investigation into a violation of law. He further stated that the Police Commission is in the process of adopting Standard Operating Procedure which provides detailed instruction to Portsmouth Police officers on this matter. He stated the Portsmouth Police Department would consider placing an immigration hold on an individual who is a person actively wanted by ICE for violating immigration law or is a previously deported illegal alien.

Assistant Mayor Splaine said that this memorandum is excellent work and shows how much of an open City Portsmouth is.

Councilor Lown commended the Police Chief and Police Commission for coming up with a Standard Operating Practice for this matter.

Councilor Dwyer requested staff look at information and resources we have for people available through referral services to prepare ourselves better by thinking more broadly about the possible designation of a Welcoming City.

Councilor Denton said he agrees with comments made by Councilor Dwyer.

## **B. MAYOR BLALOCK**

1. Naming of Prescott Park Policy Advisory Blue Ribbon Committee

Mayor Blalock appointed the following individuals to the Blue Ribbon Committee:

- Tom Watson, Chair
- Chris Dwyer, City Council Representative
- Robin Lurie-Meyerkopf
- Alan Gordon
- Genevieve Aichele

## **C. ASSISTANT MAYOR SPLAINE**

1. Request for full report and any fine imposed for the accident that resulted in up to 50,000 gallons of raw sewage being released into the Piscataqua River during construction of the Peirce Island Waste Water Treatment Plant, and plans for prevention of future accidents

Assistant Mayor Splaine said that we are concerned that the work be done effectively and efficiently. He said he voted against doing the expansion of the Waste Water Treatment Plant at Peirce Island. He stated we need to keep the project on schedule and generationally we should start discussing getting off Peirce Island and moving towards something regionally. He said we need to make sure there is no further spillage at Peirce Island.

Public Works Director Rice provided a timeline of the incident resulting from a sewer force main break on Peirce Island on February 3, 2017 at 9:30 a.m. He stated because the pumps at Mechanic Street were shut off to repair the break, sewerage backed up in the collection system, which resulted in discharge from CSO 10A into the South Mill Pond at Parrott Avenue. He informed the City Council that DES and EPA were both notified at 9:45 a.m. He stated that the City conducted the Dig Safe but in construction things happen and there was a jag in the pipe that was not known which caused the break which was not known during the Dig Safe process. He said what was important is to resolved the issue at the time and after that you step back and look at how you can do things better. He said at 3:15 p.m. the fix was completed and everything was back on line by 3:30 p.m.



Assistant Mayor Splaine asked if there is a fine and who will pay. Public Works Director Rice said we will incur the cost because we did not find that the pipe had a jag in it. He also noted that unforeseen matters are not payable by Methuen Company.

Councilor Lown said there was a report in the newspaper that there is one or more out flow pipes that flow into the river. Public Works Director Rice said there are 3 licensed CSO's in the City. He said a study was done with the DES and staff did a walk and they did not detect any further CSO's.

Assistant Mayor Splaine said if someone has concerns or notice something that requires attention what is the process to follow. Public Works Director Rice explained the process and indicated individuals to contact the Public Works Department directly by calling 427-1530 and ask for the Water Sewer Foreman or the City Engineer. Assistant Mayor Splaine asked if staff is working with Methuen Company daily. Public Works Director Rice said that we are working daily with Methuen Company and there is an inspector out at the site, in addition to meetings being held. Assistant Mayor Splaine said he would expect that more information will come out on this and ways to prevent such an incident from occurring again. He spoke to citizen watch dogs and said employees should be courteous and work with all of us on these matters.

#### **D. COUNCILOR SPEAR**

##### **1. Motion to Reconsider Veterans Tax Credit Vote**

Councilor Spear said the challenge with the Veterans Tax Credit is the word fairness. The City Council by a majority tried to rectify the inequity with the calendar. He said it is impossible to fix a perceived unfairness. He feels we need to prioritize the hardship. He said the motion will be to do something in place of the reconsideration of the motion. He said he would like to speak to reducing the amount maybe. Councilor Spear said there is proposed legislation for different rates for these credits. He spoke to making the credit \$50.00 in order to gather better data.

Acting City Manager Colbert Puff said the Council could decide to postpone action until after the State Legislature takes a vote on the item.

City Attorney Sullivan explained the difference between rescind and reconsideration. He believes what Councilor Spear is looking to do would be to rescind the vote.

Councilor Denton asked what is the last date the Council could adopt the Veterans Tax Credit. City Attorney Sullivan said April 1<sup>st</sup>.

**Councilor Spear moved to rescind the Veterans Tax Credit. Seconded by Councilor Lown.**

Councilor Perkins said she moves to rescind with regret and would like to see the data driven information.

Councilor Dwyer said she supports rescinding but there is nothing wrong with sending an application for the credit with the tax bill in order to receive more data.



Councilor Denton thanked Councilor Spear for doing a motion to rescind versus reconsider but he will vote against this because he feels that all veterans should receive the amount allowed by the State. He said it is tough to make a decision without all the facts.

Acting City Manager Colbert Puff said this fiscal year we are experiencing a biannual rates in regards to retirement which is hurtful to the budget and next year is the time we would see less of an impact on the amount.

Councilor Dwyer said we need more public comment on this matter from our residents. She said until we have the amount of money we are spending we won't get public input on this matter. She said we need more facts and stated this has a bigger impact on other taxpayers.

Assistant Mayor Splaine said the vote was 5-4 and does not feel we made a mistake on that vote. He said you do this vote with a certain amount of heart. He said all veterans are important.

Councilor Lown said he would support the motion because it will give the public a chance to figure out what this means to them in the future.

**On a roll call vote 5-4, motion *failed* to pass. Councilor Perkins, Dwyer, Lown, Spear and Mayor Blalock voted in favor. Assistant Mayor Splaine, Councilors Pearson, Cyr and Denton voted opposed. (Six votes are required to rescind a vote).**

**Councilor Lown moved to suspend the rules in order to reconsider the Veterans Tax Credit Vote. Seconded by Councilor Spear.**

Assistant Mayor Splaine asked if the City Council at another time could set up a different way of adopting the exemptions. City Attorney Sullivan said yes.

**On a roll call vote 5-4, motion *failed* to pass. Councilors Perkins, Dwyer, Lown, Spear and Mayor Blalock voted in favor. Assistant Mayor Splaine, Councilors Pearson, Cyr and Denton voted opposed. (Six votes are required for a suspension of the rules vote).**

### **XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

### **XIV. ADJOURNMENT**

**At 9:05 p.m., Councilor Lown moved to adjourn. Seconded by Assistant Mayor Splaine and voted.**



KELLI L. BARNABY, MMC, CMC, CNHMC  
CITY CLERK