

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, MARCH 20, 2017

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, Dwyer, Lown, Pearson, Spear, Cyr and Denton

### **III. INVOCATION**

### **IV. PLEDGE OF ALLEGIANCE**

Mayor Blalock led the Pledge of Allegiance.

### **PRESENTATION**

#### **1. Energize 360 Seacoast NH Campaign Kick-off**

Steve Workman of Seacoast Area Renewal Energy Initiative (SEAREI) gave a brief presentation regarding the Energize 360 Seacoast NH campaign kick-off. He explained that it is called "360" as the initiative takes full circle approach to go through the process and find solutions that are right for the homeowner. He concluded by asking the City to endorse the campaign.

### **V. ACCEPTANCE OF MINUTES – MARCH 6, 2017**

**Councilor Lown moved to accept and place on file the minutes of the March 6, 2017 City Council meeting, seconded by Councilor Perkins.**

Councilor Pearson made an amendment to page 10.

**Voted to accept and place on file as amended.**

### **VI. PUBLIC COMMENT SESSION**

Roy Helsel – commended the Police Chief for utilizing unmarked vehicles. He then suggested spending time on city employment contracts instead of the plastic bag ordinance.

Rebecca O'Brien – spoke in favor of the Plastic Bag ordinance.

Jim Lee – spoke opposed to the Plastic Bag ordinance.

Adrienne Harrison – spoke in favor of the Plastic Bag ordinance.

Mark Brighton – spoke opposed to the Plastic Bag ordinance. He distributed a petition of 500 signatures collected several years ago and stated this is a freedom of choice issue.

David Calkins – spoke opposed to releasing Woodworth Avenue stating it is a different situation from the Moffat/Woodworth because that area would never be improved. He stated that his property will be landlocked if this is approved.

Jim Nevins – stated there are other options for disposing of plastic bags and also suggested moving to incineration of the city’s trash instead of bringing to a landfill.

Larry Larriviere – stated he is opposed to the burying of the utilities on Islington Street stating that the taxpayers have nothing to gain from this expense.

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

- A. Acceptance of Fire Department Donations of disbursement checks in the amount of \$105,687.00 and \$81,813.00 from the Estate of Geraldine W. Webber

**Assistant Mayor Splaine moved to accept and approve the donations to the Fire Department, as presented, seconded by Councilor Cyr.**

Councilor Lown stated he would like to know what the Fire and Police Departments are going to do with the grant, even though the Council is not a part of that process.

City Manager Bohenko stated that Finance Director Belanger will be drafting a memo asking the Police and Fire Commissions to vote on what they will be purchasing and those minutes will then be attached to the Purchase orders.

Fire Commission Chair Gamester, from the audience, indicated the Fire Commission would be agreeable to that request.

**Motion voted.**

- B. Acceptance of Donation of disbursement check in the amount of \$81,813.00 from the Estate of Geraldine W. Webber

**Assistant Mayor Splaine moved to accept and approve the donation to the Police Department, as presented. Seconded by Councilor Lown and voted.**

## **VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. First reading of Proposed Ordinance amending Chapter 3, Article II, Section 3.208 - Regulation of Single Use Carryout Plastic Bags (*Tabled from the March 6, 2017 City Council meeting*)

**Councilor Denton moved to pass first reading and refer to a public hearing and second reading on April 3, 2017, seconded by Councilor Lown.**

Councilor Lown stated he would like to keep this alive instead of tabling indefinitely because he

would like to get input from the public. He continued that secondly, the effective date of the ordinance would be one year from passage so will give plenty of time for a legal challenge. He continued that there are conflicting legal opinions, one of which is that the city already has the power under RSA 149M to regulate at the source. He stated that the committee report from the legislature gave no legal basis and did not get an opinion from the Attorney General. He concluded that in his opinion, if there is a legal challenge, the litigation would be a simple issue with 1 – 1 ½ hours before a judge.

Councilor Denton stated he wants to vote this either up or down and not table it like it was 2 years ago. He stated he agrees that there are worse items out there, but feels that everyone goes grocery shopping and this is something that can address one aspect. He stated he has heard all of the arguments in favor of keeping the plastic bags, but feels this is an issue that needs to be decided. He stated he welcomes the legal challenge if there is one and reiterated that there is one year before the effective date.

Councilor Spear stated he has received a lot of e-mails and many from people who are not Portsmouth residents, which he feels shows that this is a State-wide issue and should have been enabling legislation. He urged people to contact their state legislators because we do not have the authority.

City Attorney Sullivan stated that New Hampshire is not a "Home Rule" State and explained that a Home Rule State allows municipalities to pass local legislation as long as it is not expressly opposed to State law. He continued that New Hampshire is exactly the opposite and municipalities only have authority given by the State legislation via enabling legislation. He further discussed the differing legal opinions offered over the past 2 years including the City of Portsmouth Legal Department that the City does not have the authority. He stated that the City Council makes the policies and the Legal Department advises which they have done, but it is still up to the City Council.

Councilor Perkins stated she is inclined to keep listening on the issue and feels there is no harm in moving this to a public hearing.

Assistant Mayor Splaine stated this is not just an environmental problem but also has effect on wildlife and the oceans. He stated there are many plastic bags behind the supermarkets and urged the Managers to institute a policy for cleaning up the property. He stated that we are in a dilemma in that if we pass this and are challenged, we may have to pay court costs and damages. He continued that this should be solved on a regional basis and suggested contacting cities and towns within a 25 mile radius to form a coalition. He stated he will support the public hearing but will need to know more about possible legal challenges.

Councilor Dwyer stated that the legislative intent was very clear that the city does not have the authority to put this in place and if we decide to go forward with this, we may have a problem with credibility in the future regarding other legislation. Secondly, she agrees that we should find out what we can do to encourage cleanup around the stores and if we can regulate what is used during city events etc. She stated she is ok with going to a public hearing and second reading but not in its current format.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock stated he is conflicted with this issue as he sees this as a freedom of choice issue.

He stated he is concerned with the time and effort being taken on this issue when we don't have the authority and he would rather see measures taken to reduce use through incentives and education.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Cyr stated he is trying to rationalize this one way or the other and what the impact of defending this legally would be. He stated that we should have this dialogue in a different way and at a State-wide level. He stated he will support passing the first reading.

Discussion ensued.

**Motion to pass first reading and refer to a public hearing and second reading on April 3, 2017 passed on an 8-1 roll call vote. Mayor Blalock voted opposed.**

- B. First Reading of proposed Ordinance amending Chapter 7, Article VII, Section 7.704 and 7.705 to clarify the Prohibition of Truck Traffic on Banfield Road

**Assistant Mayor Splaine moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance at the April 3, 2017 City Council meeting, seconded by Councilor Lown.**

Councilor Denton stated that some residents are seeing the police on the road but they are not stopping trucks.

**Motion voted.**

## **IX. CONSENT AGENDA**

- A. Letter from Robert P. Valarese, Department of the Army, requesting permission to conduct Best Warrior Competition using Route 1A and 1B on April 9, 2017. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Jay Diener, Co-race Director, requesting permission to conduct the 12<sup>th</sup> annual Seacoast Half Marathon on Sunday, November 12, 2017. ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Richard Wagner, AIDS Response Seacoast requesting permission to conduct the 21<sup>st</sup> Annual Seacoast AIDS Walk and Dog Walk on Sunday, May 7, 2017 from 10:00 a.m. to 5:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***

**Councilor Lown moved to adopt the Consent Agenda as presented, seconded by Councilor Perkins.**

Councilor Dwyer stated she is concerned by the Best Warrior Competition event as there will be soldiers running with replica rifles which may cause some citizen concern. She stated she would like there to be publicity prior to the event.

City Manager Bohenko stated they will ensure that the public is informed.

**Motion voted.**

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Raymond and Maryrose Richer Re: Potential Release of City Interest in a portion of Woodworth Avenue

**Councilor Spear moved to refer to the Planning Board for report back, seconded by Councilor Perkins.**

Councilor Spear asked if the Planning Board holds public hearings for these types of requests.

Planning Director Taintor stated not typically on items referred by the City Council.

Councilor Spear stated he would like to have a policy that they hold public hearings on paper streets.

**Councilor Spear moved to amend motion to include that the Planning Board hold a public hearing, seconded by Councilor Dwyer.**

Councilor Dwyer stated this is a less usual situation and requested a memorandum explaining the underlying issues.

Mayor Blalock asked if this is the same issue that Mr. Calkins had spoken about at the last meeting.

Planning Director Taintor stated no, but this time it is directly conflicting with his project and neither applicant has a stronger claim than another and this would be a policy decision.

Councilor Dwyer asked if this will come back to the City Council.

Planning Director Taintor suggested putting this off until May or June as there is no application before them yet, although it has been before the Zoning Board of Adjustment.

Councilor Spear stated that there is no time certain in the motion.

Councilor Dwyer stated that if she were a developer she would want to know if they have the access before going through all of the hurdles.

Councilor Perkins stated it seems they are implying that they have an easement so we may want to get a legal opinion first.

**Voted to refer to the Planning Board to conduct a public hearing and report back to City Council at a time convenient.**

## **XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Proposed Amendment to exempt signs and other elements related to public parking in private parking lots from specific zoning standards when authorized under a permit from the Department of Public Works

**Councilor Lown moved to refer this matter to the Planning Board for report back to City Council. Seconded by Councilor Perkins and voted.**

2. Appointments to Rockingham Metropolitan Organization (MPO) Technical Advisory Committee

**Councilor Lown moved to approve the aforementioned appointments to the Rockingham Metropolitan Organization Technical Advisory, as presented. Seconded by Councilor Dwyer and voted.**

3. Request a Work Session March 27, 2017 Re:
  - A. An Update and Review of the Master Plan
  - B. Review the Process for Identifying Reuses and/or Improvements for the Bridge Street, Vaughan Mall, and Worth Lot

City Manager Bohenko explained that he and the Mayor both feel that trying to do this prior to a regular meeting would not allow enough time for discussion. He stated that the second item would only be a discussion of a process.

Assistant Mayor Splaine asked if we can add the Borthwick Forest to this discussion.

City Manager Bohenko stated that this property is owned by a company or an individual, but the wetlands portion could be discussed.

Councilor Lown stated that he is opposed to discussing privately owned property and the property owner isn't aware that this is even being discussed at all.

City Manager Bohenko stated that he can contact the property owner and get his thoughts.

**Councilor Spear moved to establish a Work Session for Monday, March 27, 2017 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers, on the 2 issues presented, seconded by Councilor Lown.**

Councilor Dwyer agrees that this should not be added to the discussion as this had been brought before a previous Council for development but the public came out against it.

Councilor Pearson requested that the Chairs of the Land Use Boards, Zoning Board of Adjustment, Planning Board and Historic District Commission be invited to attend the Work Session.

**Motion passed.**

4. Request to Establish a Public Hearing Re: Proposed Bonding of up to Five Million (\$5,000,000.00) Dollars for Phase I Dondero School Improvements

**Councilor Dwyer moved to establish a Public Hearing on Monday, April 3, 2017 for bonding of up to Five Million (\$5,000,000) Dollars for Phase I of the Dondero School Improvements, seconded by Councilor Lown.**

Councilor Pearson requested a tour of the Dondero School prior to the construction.

**Motion passed.**

5. Report Back Re: Islington Street Project Burying Underground Utilities

Public Works Director Rice gave a brief background and update regarding the request to report back on burying underground utilities as part of the Islington Street Project.

Assistant Mayor Splaine asked if the neighbors had been updated.

Public Works Director Rice explained that there was a Ward 2 neighborhood meeting held and there were mixed opinions.

Discussion ensued regarding various options and costs associated and determining what the public is willing to invest.

No action was taken pending further review.

**Informational items**

1. Events Listing
2. Electronic Communication by City Councilors during Council Meetings
3. Cooperative Alliance for Seacoast Transportation (COAST) Bus Stops
4. Household Hazardous Waste Collection Day
5. Proposed Ordinance Re: Financial Disclosure

Assistant Mayor Splaine asked City Attorney Sullivan to read his memorandum regarding City Manager Item #2 - Electronic Communications by City Councilors during Council Meetings.

Discussion ensued with City Manager Bohenko concluding that there are pros and cons regarding use of electronic communication and suggested it be discussed at a City Council retreat.

**B. MAYOR BLALOCK**

1. Appointments to be Voted:
  - Reappointment of Dana Levenson to the Trustee of the Trust Funds – term to expire January 1, 2020
  - Appointment of Jeffrey Kisiel as regular member to the Planning Board – term to expire 12/31/2017 (filling unexpired term of John Ricci)

- Appointment of Corey Clark as an Alternate member of the Planning Board – term to expire 12/31/2018 (filling unexpired term of Jeffrey Kisiel)
- Appointment of Marie Cowgill to the Citizens Advisory Committee

**Councilor Spear moved to approve the appointments as presented. Seconded by Councilor Cyr and voted.**

**Councilor Lown moved to suspend the rules to bring forward Item E.1. of the Agenda for consideration. Seconded by Assistant Mayor Splaine and voted.**

### **E. COUNCILOR DENTON**

1. Resolution Re: Energize 360 Seacoast NH Campaign Kick-off

Councilor Denton explained that this was brought before the Sustainability Blue Ribbon Committee first and he is asking that the Resolution be brought to the April 3, 2017 Council agenda. He stated that the presentation given this evening will also be a part of the agenda packet.

Discussion ensued regarding clarification of the language of the resolution.

Councilor Cyr asked if the City Council approves this resolution but a Councilor wants to participate in the program, would that be an issue.

City Attorney Sullivan stated it would not because it could be a benefit for all residents.

### **C. ASSISTANT MAYOR SPLAINE**

1. Question: How Can We Best Preserve Borthwick Forest Off Islington Street?

Assistant Mayor Splaine explained the history of the Borthwick Forest area and stated he is wondering what the vision is for the area as part of the big picture.

City Manager Bohenko stated he can compile a history of the development proposals and will work with the Planning Department.

Councilor Spear stated that this is a different discussion from what the agenda item asked, but is fine with getting a history of the area.

Councilor Lown again voiced his opposition to discussing private property.

### **D. COUNCILOR PEARSON**

1. Public Art Update

Councilor Pearson gave a brief update of the Committee activities to date including a public input meeting at the Library recently. She continued that after receiving input and feedback, they will craft an RFP and conduct a site walk of the area sometime in the Fall. She stated that there will be no selection made until 2018.



Councilor Dwyer questioned the wisdom of having a new City Council making that decision early on in their term.

Councilor Pearson stated that the committee has dove-tailed their timeline with the project itself, but will discuss this further with the committee.

## **XII. MISCELLANEOUS/UNFINISHED BUSINESS**

1. Legislative Subcommittee Report
  - Legislative Subcommittee Report
  - Update on Testimony Re: HB 144
  - Principles for Legislative Positions
  - Summary of recent House and Senate votes and Committee Reports

**Assistant Mayor Splaine moved to adopt the revised Principles for Legislative Positions, seconded by Councilor Dwyer.**

Councilor Perkins commended Assistant City Attorney Ferrini on her work on the Legislative Subcommittee and would like to see more regular updates to the Council. Secondly, she stated she would like to see the word “local” be added before “Zoning” in #13.

Councilor Dwyer explained that the first 10 principles adopted by the City Council did not cover all of the issues that came up in the legislature and regarding #16 specifically, it was in response to a bill regarding semi-trailer registration for out-of-state vehicles which would have resulted in a loss of revenue.

Councilor Spear stated he is concerned that Item #16 could be used against us when dealing with issues such as affordable housing.

City Manager Bohenko explained that regional issues come through Regional Planning agencies and we only get involved in what affects us directly.

Councilor Spear asked that Item #16 be removed from the listing.

Assistant Mayor Splaine stated that the principles are interpreted by the staff but if they have any questions, they would come back to the Council. He feels they have done a great job so far.

Mayor Blalock stated that Assistant City Attorney Ferrini has done a great job on keeping on top of all of the legislation and feels that the principles have helped her and staff to be able to act quickly when needed.

**Voted to pass the revised principles with the amendment to #13 and deleting #16.**

Councilor Spear stated that Councilor Perkins had mentioned receiving voluminous amounts of e-mails regarding the Islington Street issue but he had only gotten a couple and feels that is because she is the Ward 2 Liaison. He stated that this is a downside of having the liaisons and would like to revisit the concept at the next Council Retreat.

Assistant Mayor Splaine stated that this was initiated by the Neighborhood Steering Committee so he would like input from the Chairman of the committee.

Councilor Denton announced he would be raising funds for a local girl battling cancer by shaving his head at an upcoming fundraising event.

Councilor Lown stated that the City should be proud of the PHS Boys Basketball Team who won the Division I State Championship this year after winning the Division II Championship last year.

Mayor Blalock agreed stating that Saturday was a great day for the City which also had a choral symphony performance of Beethoven's 9<sup>th</sup> Symphony and was very moved by the performance.

Assistant Mayor Splaine stated he would like to reopen the discussion regarding the Arts Committee and is concerned that there be no pressure to act before the current Council ends. He asked how people can give input.

Councilor Pearson explained that there is a input form on the website.

Councilor Dwyer clarified that she is standing up for the arts but has concerns that the public has not been supportive in the past.

## **V. ADJOURNMENT**

**Councilor Cyr moved to adjourn at 9:50 p.m. Seconded by Councilor Lown and passed unanimously.**

Respectfully submitted,



Valerie A. French  
Deputy City Clerk