

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, SEPTEMBER 5, 2017 TIME: 5:30 PM

AGENDA

- 5:30pm – Work Session Re: Review of Parking Principles and Initiatives

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. ACCEPTANCE OF MINUTES – AUGUST 21, 2017

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS

A. PUBLIC HEARING/SECOND READING OF ORDINANCE AMENDMENTS TO CHAPTER 4 PERTAINING TO THE CITY'S FOOD LICENSING AND REGULATIONS BY STRIKING ARTICLES I-V IN ITS ENTIRETY AND REPLACE WITH NEW LANGUAGE

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

(Sample motion – move accept all the amendments to the Food Licensing and Regulations Ordinance as set forth in the Memorandum from the Legal Department to the Acting City Manager dated August 30, 2017 and to pass second reading and schedule third and final reading of the proposed ordinance at the September 18, 2017 City Council meeting)

B. WHETHER TO ALLOW KENO ON THE BALLOT – SENATE BILL 191

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

(Sample motion – move to place the following question on the November 7, 2017 Municipal Election Ballot “Shall we allow the operation of keno games within the city”)

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the Agenda)

IX. CONSENT AGENDA

(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)

(There are no items under this section of the Agenda)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Diana Nyad requesting permission to pass through Portsmouth for the EverWalk on Wednesday, September 14, 2017 and set up a few tables at Prescott Park to hand out snack food and water for the walkers ***(Sample motion – move to refer to the Acting City Manager with power)***
- B. Flyer for the Electric Vehicle Show on Saturday, September 16, 2017, 2pm-5pm at Red Hook Brewery Parking Lot ***(Sample motion – move to accept and place on file)***
- C. Letter from Amber Day, New Hampshire Film Festival, requesting permission to close Vaughn Mall on Saturday, October 14, 2017 for the NH Film Festival Hospitality Day Party from 11:00 a.m. – 2:00 p.m. ***(Sample motion – move to refer to the Acting City Manager with power)***

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. ACTING CITY MANAGER

Acting City Manager's Items Which Require Action:

- 1. Request to Schedule a Public Hearing Re: Elderly Exemptions
- 2. City Cemeteries and RSA 289:3
- 3. 2018 Schedule of City Council Meetings and Work Sessions

Acting City Manager's Informational Items:

- 1. Events Listing
- 2. Schedule for Work Session on September 9th Re: McIntyre Property
- 3. Household Hazardous Waste Day
- 4. Peirce Island Wastewater Treatment Facility Upgrade Quarterly Report
- 5. Coakley Landfill Update
- 6. FY 2017 Inspections Department Annual Report (Period July 1, 2016 to June 30, 2017)

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Appointment of Richard Katz to the Library Board of Trustees
 - Reappointment of Stephanie Hausman to the Library Board of Trustees
 - Reappointment of Donald Margeson to the Library Board of Trustees
 - Reappointment of Sarah Lachance to the Economic Development Commission
2. Appointments to be Voted:
 - Appointment of Alan Gold to the Economic Development Commission
 - Appointment of Lindsay Gallant to the Sustainable Practices Blue Ribbon Committee
 - Appointment of Maria Stowell as the PDA Representative to the Renewable Energy Committee
3. Resignation – Amy Burns from the Cable Television and Communications Commission

C. ASSISTANT MAYOR SPLAINE

1. Toxic-Free Weed Program (***Proposed motion - That the city immediately stop using toxic chemicals in public places, that it encourage toxin-free property maintenance for all new developments, and to provide an educational program for all property-owners on safe, proven organic property maintenance. We aspire to lead the way to make Portsmouth the first non-toxic community in New Hampshire***)

D. COUNCILOR PEARSON

1. The Arts Reinvestment Agreement

E. COUNCILOR DENTON

1. *Maple Haven Crosswalk

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

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

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. Notification that the minutes of the August 1, 2017 meeting of the Site Review Technical Advisory Committee are now available on the City's website
2. Notification that the minutes of the July 20, 2017 and July 27, 2017 meetings of the Planning Board are now available on the City's website

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: August 31, 2017
To: Honorable Mayor Jack Blalock and City Council Members
From: Nancy Colbert Puff, Acting City Manager *NCP*
Re: Acting City Manager's Comments on September 5, 2017 City Council Agenda

5:30 p.m.

1. **Work Session Re: Review of Parking Principles and Initiatives.** As requested by the City Council, on Tuesday evening at 5:30 p.m., Parking Director Ben Fletcher will be present at the Work Session to answer any questions the City Council may have regarding this matter.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing and Second Reading of Proposed Resolutions and Ordinances.**
 - 1.1 **Public Hearing and Second Reading of Proposed Ordinance Amendments to Chapter 4 Pertaining to the City's Food Licensing and Regulations by striking Articles I-V in its entirety and replaced with new language.** As a result of the August 21, 2017 City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance](#) amending Chapter 4 Pertaining to the City's Food Licensing and Regulations by striking Articles I-V in its entirety and replaced with new language.

As a result of the July 2017 City Council Retreat, presentations were made by City staff regarding the need to update our local Fire, Building and Health Codes in order to reference current state statutes and to ensure that our local ordinances reflect best practices to guide public safety and public health. Chapter 4, Food Licensing and Regulations, needs to be completely revised in order to remove obsolete sections (e.g. Articles I- Milk; Articles II-Meat Inspections; Article III-Slaughter Houses;

Article IV- Butchers) that are now regulated by state or federal regulations. The revised ordinance deletes and replaces Article V, Common Victuallers, by adopting the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Food Code, 2009 edition (“2009 FDA Food Code”) (which is also adopted in state regulation) and parts of NH Code of Administrative Rules, Part He-P 2300, Sanitary Production and Distribution of Foods (“He-P 2300”). Local Amendments to these rules will be proposed for the following sections: Outdoor Bars; Animals Prohibited; Mobile Food Units; Special Process Review; Food Processing Plants; Special Requirements for Bed and Breakfast Facilities and Soup Kitchens and Churches.

The revised ordinance will also set forth our current rules and procedures regarding Temporary Events, Licensing, Applications and Enforcement. It is important to note these changes will have little substantive effect on our long standing practices and procedures.

Upon further review of the proposed ordinances by the Legal Department following first reading, definitions pursuant to He-P 2301 were duplicative ([see attached memo](#)). As a result, we recommend the amended ordinance reflecting these deletions be considered at this second reading.

In addition, [attached is an annotated version of the ordinance](#) to assist in understanding why certain provisions have been included, amended, or deleted (note: the reference documents, He-P 2300 and Food Code 2009 are so lengthy as to prohibit a “track changes” view). Health Officer Kim McNamara will make a brief presentation at the start of the public hearing and will use this document as a reference.

I am recommending the City Council move to accept all the amendments to the Food Licensing and Regulations Ordinance as set forth in the Memorandum from the Legal Department to the Acting City Manager dated August 30, 2017 and to pass second reading and schedule third and final reading of the proposed ordinance at the September 18, 2017 City Council meeting. Action on this matter should take place under Section VII of the Agenda.

2. **Public Hearing.**

- 2.1 **Public Hearing Re: Whether to allow Keno on the Ballot.** As voted on by the City Council at the August 21, 2017 City Council meeting, the Council will hold a public hearing on whether to allow Keno on the November 7, 2017 ballot.

Action is required regarding this matter under Section VII of the Agenda.

Acting City Manager's Items Which Require Action:

1. **Request to Schedule a Public Hearing Re: Elderly Exemptions.** The results of the 2017 Statistical Revaluation indicate based on the estimated tax rate of \$15.53 a median increase of \$544 in taxes for the 107 taxpayers who are currently receiving the Elderly Exemption at the existing exemption levels of:

- Age 65 to 74 \$120,000
- Age 75-79 \$160,000
- Age 80 + \$200,000

On February 16, 2016, the City Council adopted resolution #1-2016 for the fiscal year 2017 / tax year 2016 which decreased these exemption amounts as follows:

- Age 65 to 74 From \$125,000 to \$120,000
- Age 75-79 From \$175,000 to \$160,000
- Age 80 + From \$225,000 to \$200,000

In order to reduce this impact to those who are currently qualified to receive the Elderly Exemption, I propose that the City Council consider adopting a resolution to adjust the exemption levels back to the levels prior to tax year 2016.

Rosann Lentz, the City Assessor, will present the impact to these taxpayers using both the current and the recommended exemption levels.

On Tuesday evening, I am requesting that the City Council move to authorize the Acting City Manager to bring back a Resolution for public hearing and adoption at the September 18, 2017 City Council meeting.

2. **City Cemeteries and RSA 289:3.** As you know, the City has performed a number of improvements to its City-owned historic cemeteries in recent years through the Capital Improvement Program. This work has included restoration of grave stones and improvements to hill and ledger tombs as well as various walls, enclosures and other structures in the City's historic cemeteries.

The most recent improvement was in North Cemetery, which is located along Maplewood Avenue and listed on the National Register of Historic Places. The project included the restoration and repair of the 200-foot long North Cemetery front enclosure wall likely constructed in the middle 1800s, approximately 170 years ago. The project was carried out in order to address the wall's deteriorated condition that posed a threat to public safety. Over the course of addressing one 25' section of wall, it was discovered that this portion of wall was originally constructed immediately on top of the ends of several burials.

This discovery set into motion several protocols established in state law, which the City is in the process of completing in close coordination with the Division of Historical Resources

(DHR). This includes the creation of an archaeological report that will document the discovery, and identify the burials if possible. Meanwhile, in accordance with the state law (RSA 289:3) and guidance from the Attorney General's Office and the Division of Historical Resources, the City Council is required to make a determination about the future of the wall.

In coordination with the State Archaeologist and the consulting archaeologist, the decision was made to stabilize the archaeological site by replacing the stones in the original location as a temporary measure, while a long-term solution was devised. Going forward, there are two options for a long-term solution for the wall, which include A) leaving it in place (with no further disturbance required), or B) potential relocation of the wall. These options will be presented in more detail at the meeting by Assistant City Manager David Moore. For a variety of reasons to be presented, we recommend option "A" as the preferred approach.

I recommend City Council move to determine that the reconstruction of the North Cemetery wall in its current location constitutes construction of an essential service pursuant to RSA 289.3, and appropriate markers/recognition of the unmarked burials be developed and installed.

Finally: to respond to additional guidance received from the State related to the performance of municipal public works projects located within 25' of cemeteries, we further recommend the City Council pro-actively move to determine that emergency repairs or replacement of existing infrastructure be considered as "construction of an essential service."

I recommend City Council move to determine that emergency repairs or replacement of existing infrastructure, pursuant to RSA 289.3, be considered as "construction of an essential service."

3. **2018 Schedule of City Council Meetings and Work Sessions.** [Attached for your review and adoption is a proposed schedule](#) for City Council Meetings and Work Sessions for calendar year 2018.

May I have your approval on this 2018 Schedule.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on August 21, 2017. In addition, this can be found on the City's website.
2. **Schedule for City Council Work Session on Saturday, September 9, 2017 Re: McIntyre Property.** As you know, the City Council Work Session regarding the McIntyre property is scheduled for Saturday, September 9, 2017. [See attached schedule.](#)

3. **Household Hazardous Waste Day.** [Attached is a memorandum from Jacob Levenson, Solid Waste Sustainability Coordinator](#) regarding Household Hazardous Waste Day, which will take place from 8:00 a.m. to Noon on, Saturday, October 28, 2017 at the Public Work's Vehicle Maintenance Facility on 680 Pevery Hill Road. In addition, a spring event will be scheduled in May 2018.
4. **Peirce Island Wastewater Treatment Facility Upgrade Quarterly Report.** For your information, I have [attached the Peirce Island Wastewater Treatment Facility Quarterly Report from April to June 2017.](#)
5. **Coakley Landfill Update.** [Attached is a memorandum](#) from City Attorney Robert Sullivan and Environmental Planner Peter Britz updating the City Council regarding the Coakley Landfill.
6. **FY 2017 Inspection Department Annual Report (Period July 1, 2016 to June 30, 2017).** I am providing the City Council with the [attached FY 2017 Inspection Department Annual Report for the period July 1, 2016 to June 30, 2017](#) submitted by the City's Chief Building Inspector Robert Marsilia.