CITY COUNCIL MEETING

MUNICIPAL COMPLEX DATE: MONDAY, AUGUST 20, 2018 PORTSMOUTH, NH TIME: 6:15 PM

Public Dialogue Session – One Table

<u>PRESENT:</u> Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Becksted

The members of the public were asked to introduce themselves and begin discussing their concerns and/or questions related to their individual topics.

Harold Whitehouse discussed his concerns with drinking water and asked if the City is looking for new sources.

Deputy Public Works Director Goetz explained that a 2008 study identified multiple sources which are part of our long-term plans. He explained that this information is updated on the website and is part of the Capital Improvements Plan.

Mr. Whitehouse stated he is also concerned about the expansion of Lonza at the Pease Tradeport stating that they use a lot of water.

Erik Anderson discussed the various tax exemptions that are available and feels that these exemptions create different tax rates for certain individuals and that everyone else pays the difference. He would like to see information presented on the fiscal consequences of these exemptions and have more discussion as these exemptions have consequences to all individuals.

Discussion ensued regarding the various types of exemptions with Assessor Lentz explaining the impacts or not to the tax rate.

Mr. Anderson stated he would also like to know how many businesses at the Pease Tradeport fall into the Airport District.

City Manager Bohenko explained that this was negotiated in the 1990's based on the FAA rules that the city can only recover actual costs i.e., police, fire, water/sewer, etc. but not schools. He stated the businesses outside of the airport district do pay all of the taxes, but some are also in Newington.

Justin Richardson discussed the recent issue of non-resident ex-officio membership on the Planning Board stating that as a lawyer and former ex-officio representative of the Planning Board on the Newington Zoning Board of Adjustment, he feels that he is confident in the opinion of City Attorney Bob Sullivan. He continued that he was concerned with the unfair criticism he saw regarding City Attorney Sullivan's opinion and referred to his letter which he submitted to the City Council and is on the agenda.

Esther Kennedy expressed her concern with the number of public hearings that were scheduled for the August 6th Council meeting and that the 3rd readings of the zoning ordinances are at a meeting with no public comment opportunity. She stated that people are on vacation in August but still do have concerns with these ordinances. Several Councilors responded that there were many opportunities for public input including the Planning Board process and e-mails.

I. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:00 p.m.

II. ROLL CALL

<u>PRESENT:</u> Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Becksted

III. INVOCATION

Mayor Blalock asked everyone to join in a moment of silence.

IV. PLEDGE OF ALLEGIANCE

Mayor Blalock led in the Pledge of Allegiance.

PRESENTATIONS

1. Letter of Recognition by Mayor Blalock

Mayor Blalock presented Robert Carpenter with a framed letter of recognition for his service to our community and creative inventions that significantly impacted society as a whole. Mr. Carpenter accepted with thanks and appreciation.

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

V. PUBLIC DIALOGUE SUMMARY

Councilor Roberts gave a summary of speakers and topics discussed.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby and moved to suspend the rules to bring forward City Manager Item XI.A.1. Seconded by Councilor Denton and voted.

1. Portsmouth Historical Society Portsmouth400 Grant Request (Presentation)

Susan Labrie, Executive Director of the Portsmouth400 Committee, introduced committee members Peter Loughlin and Kathleen Soldati and gave a brief presentation of their activities to date.

City Manager Bohenko explained that the funding from the City will help the Executive Director and the other money raised would go to the event itself.

Assistant Mayor Lazenby moved to approve a grant request by the Portsmouth Historical Society – Portsmouth400 of up to \$25,000 for the first half of FY19 with the City contributing \$1.00 for every \$2.00 raised by PHS and the same for the second half of FY19 for a total of up to \$50,000, seconded by Councilor Pearson.

Mayor Blalock stated he fully supports this and the great work done by Susan and the rest of the committee and feels this is an exciting educational opportunity.

Motion voted.

VII. PUBLIC HEARINGS & VOTES ON ORDINANCES AND/OR RESOLUTIONS

A. First Reading of Ordinance

First Reading of Ordinance amending Chapter 9, Article VIII – Boarding or Rooming Houses, Sections 9.801 – Section 9.805

Councilor Roberts moved to pass first reading and schedule a public hearing and second reading of the proposed amendment to the Boarding House Ordinance at the September 4, 2018 City Council meeting as presented. Seconded by Councilor Dwyer and voted.

B. **Proposed Public Hearing of Resolution**

Establish a Public Hearing Re: Exemption for Solar Energy Systems

Councilor Denton moved to establish a public hearing regarding Exemption for Solar Energy Systems at the September 4, 2018 City Council meeting, seconded by Councilor Pearson.

Councilor Becksted stated that during the public dialogue regarding the fiscal effect of the exemptions, he liked the explanation given by the Assessor. He stated that the last time, the Council was given maps and there was talk about filling in pockets, so will this be a part of the color-coded system. City Manager Bohenko stated he would e-mail the information.

Councilor Dwyer stated she also liked the explanation but would also like specific examples. She stated that Mr. Andersons' points of their being different levels are valid as there are 3 levels so far, so we should think about it in that way.

City Manager Bohenko stated that there are two more exemption resolutions he is bringing forward later on the agenda but he would like these to be scheduled to the September 17th meeting for public hearings, so as not to be confused with the Solar Energy resolution. He stated that Assessor Lentz will make a presentation on September 4th on the Solar Exemption resolution.

Councilor Denton thanked the City Manager for putting this on the agenda as there are currently 134 communities that have some type of this exemption. He stated this will bring it up to what 85 others offer which is either 100% of purchase value or the assessed value.

City Manager Bohenko stated that once the number is set it is a straight line depreciation and they will get the exemption for whatever the assessment is.

Motion voted.

C. **Public Hearing – Foundry Place Garage Designation**

ORDINANCE AMENDING CHAPTER 7, ARTICLE IV, SECTION 7.402 REGARDING THE FOUNDRY PLACE GARAGE DESIGNATION

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

Mayor Blalock opened the Public Hearing. Seeing no one wishing to speak, Mayor Blalock closed the Public Hearing.

Councilor Pearson moved to pass second reading and schedule a third and final reading of the proposed ordinance at the September 4, 2018 City Council meeting, as presented. Seconded by Assistant Mayor Lazenby and voted.

Councilor Roberts moved to suspend the rules to take up Third and Final Reading, seconded by Councilor Denton.

Councilor Becksted stated he is opposed as this is an issue of following the process.

Motion passed on an 8-1 roll call vote, Councilor Becksted voted opposed.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock stated that there were no speakers at the public hearing for this item and this is a rather routine, housekeeping issue, so supports moving forward.

Councilor Becksted stated there have been instances in the past where votes were changed based on public comments prior to third readings of ordinances.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

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

Councilor Becksted recused himself from voting on the following Zoning Ordinance Amendments and left the dais.

D. <u>Third and Final Reading of Ordinance amending Chapter 10</u> – <u>Zoning Ordinance – Petition for Rezoning, 105 Bartlett</u> <u>Street</u>

Part 1.A. – Ordinance amending Chapter 10 – Zoning Ordinance – Petition for Re-Zoning of 105 Bartlett Street: (Proposed Character District 4-W)

- Amendments to Article 4, Section 10.440 Table of Uses;
- Amendment to the Character-Based Zoning Building Placement Section 10.5A42;

- Amendments to the Character-Based Zoning Incentive Overlay Distriction Section 10.5A46;
- Amendments to the Character-Based Zoning Regulation Plan Maps (Maps 10.5A21A) to change Tax Map 157 Lots 1 and 2 from Office Research (OR) to Character District 4 West End (CD4-W) and a Portion of Tax Map 164 Lot 4 from OR and Transportation Corridor (TC) TO CD4-W
- Amendments to the Character-Based Zoning Regulation Plan Maps (Maps 10.5A21B) to extend the West End Overlay District and Add New Building Height Standards for Tax Map 157 Lots 1 and 2 and a Portion of Tax Map 164 Lot 4;
- Amendment to Article 15 Definitions Section 10.1530

Councilor Perkins moved to pass third and final reading of the proposed amendments Part 1A, as presented, seconded by Councilor Raynolds.

Councilor Denton asked Councilor Dwyer to discuss her request for Planning Director Walker to make a presentation at the September 4th meeting regarding a transitional zoning option in the Bartlett Street area.

Councilor Dwyer stated that the concept of transitional zoning or buffers between zones, have been brought up periodically and doesn't only apply in this area, but others as well. She stated this shouldn't hold up this vote, but feels this is a relevant issue and a good opportunity to learn about it.

Councilor Perkins agrees stating that this issue comes up at the Planning Board as well and should also discuss when we do not need transitional zoning. She stated that she has heard that most people are happy with these amendments.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock stated he had a lot of concern with the impact to the neighbors, but feels that the collaborative efforts and public involvement, as well as the developers, Planning and City Councilor hearing those concerns, have brought us to this point.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Motion passed on an 8-0 vote. Councilor Becksted recused from vote.

E. <u>Third and Final Reading of Ordinance amending Chapter 10</u> <u>– Zoning Ordinance – Petition for Rezoning, 105 Bartlett</u> <u>Street</u>

Part 1.B. – Ordinance amending Chapter 10 – Zoning Ordinance – Petition for Re-Zoning of 105 Bartlett Street (Proposed Character District 4-L1)

- Amendments to the Character-Based Zoning Building Placement Section 10.5A42;
- Amendments to the Character-Based Zoning Incentive Overlay District Section 10.5A46;

- Amendments to the Character-Based Zoning Regulation Plan Maps (Maps 10.5A21A) to change a Portion of Tax Map 164 Lot 4 OR and Transportation Corridor (TC) to CD4-L1; and
- Amendments to the Character-Based Zoning Regulation Plan Maps (Maps 10.5A21B) to Extend the West End Overlay District and Add New Building Height Standards for a Portion of Tax Map 164 Lot 4

Councilor Perkins moved to pass third and final reading of the proposed amendments Part 1B, as presented. Seconded by Assistant Mayor Lazenby and voted 8-0. Councilor Becksted recused from vote.

F. <u>Third and Final Reading of Ordinance amending Chapter 10</u> <u>– Zoning Ordinance – Petition for Rezoning, 105 Bartlett</u> <u>Street</u>

Part II. – Ordinance amending Chapter 10 – Zoning Ordinance – Petition for Re-Zoning of 105 Bartlett Street (Housekeeping)

- Amendments to Character-Based Zoning Development Standards Section 10.5A41;
- Amendments to Character-Based Zoning Building Form and Facades Section 10.5A43;
- Amendments to Character-Based Zoning Community Spaces Section 10.5A45

Councilor Perkins moved to pass third and final reading of the proposed amendments Part II, as presented. Seconded by Assistant Mayor Lazenby and voted 8-0. Councilor Becksted recused from vote.

G. <u>Third and Final Reading of Ordinance amending Chapter 7 -</u> <u>Parking Omnibus</u>

Ordinance amending Chapter 7 – Parking Omnibus

Councilor Roberts moved to pass third and final reading of the proposed Parking Omnibus Ordinance, as presented. Seconded by Councilor Pearson and voted.

VIII. APPROVAL OF GRANTS/DONATIONS

(There were no items under this section of the agenda)

IX. CONSENT AGENDA

Assistant Mayor Lazenby moved to adopt the Consent Agenda as presented. Seconded by Councilor Dwyer and voted.

A. Letter from Melissa Walden, American Lung Association, requesting permission to hold the 10th annual American Lung Association Cycle the Seacoast Ride on Sunday, May 5, 2019 (Anticipated action – move to refer to the City Manager with power)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

A. Email Correspondence

Councilor Dwyer moved to accept and place on file. Seconded by Assistant Mayor Lazenby and voted.

B. Letter from Attorney Justin Richardson regarding Planning Board Membership

Councilor Perkins moved to accept and place on file, seconded by Assistant Mayor Lazenby.

Attorney Richardson gave a brief overview of his letter to the City Council which expressed his confidence in the opinion to the City Council by City Attorney Sullivan concerning ex officios members of the Planning Board.

Discussion ensued regarding the various interpretations of the State RSA's and implementation in cities and towns in the State of New Hampshire.

Assistant Mayor Lazenby thanked Mr. Richardson for his time and communicating with the City Council on this issue.

Motion voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Portsmouth Historical Society Portsmouth400 Grant Request (Presentation)
- 2. Report Back Re: Osprey Landing Water Tank Release of Land

Councilor Raynolds moved to authorize the City Manager negotiate the transfer of the property to Spinnaker Point Condominium Association and to execute all necessary documents to effectuate that transfer. Seconded by Councilor Perkins and voted.

3. Rockingham Avenue Subdivision Easements

Councilor Roberts moved to authorize the City Manager negotiate, execute, deliver and record the deeds regarding the Rockingham Avenue Subdivision, as presented. Seconded by Councilor Pearson and voted. 4. Islington Common LLC Water Access Easement

Councilor Becksted moved that the City Manager be authorized to negotiate, execute, deliver and record the deeds regarding the Islington Commons property, as presented. Seconded by Councilor Pearson and voted.

5. 15 Thornton Street Subdivision Easements

Councilor Perkins moved to ratify the acceptance and recording of the easement deeds and plan related to the 15 Thornton Street Subdivision. Seconded by Councilor Pearson and voted.

6. 299 Vaughan Street Temporary Construction Licenses

Councilor Perkins moved that the City Manager be authorized to execute and accept the revised temporary construction license regarding 299 Vaughan Street as submitted. Seconded by Councilor Dwyer and voted.

7. Proposed Tax Exemptions for Wind-Power and Woodheating

Councilor Becksted moved to bring back for public hearing two proposed Resolutions at the September 17, 2018 City Council meeting, seconded by Councilor Denton.

Councilor Denton explained that the State has only 3 pieces of enabling legislation for renewable energy sources and tax exemptions, which are solar, wind and wood pellets. He continued that it is tough to figure out how to get heat out of renewable energy sources, but one option is wood pellets to heat your home, not for stoves, etc.

Councilor Roberts asked if this enabling legislation would not allow us to be EPA certified. Councilor Denton stated he would work with the City Attorney.

Motion voted.

City Manager's Informational Items:

- 1. Events Listing
- 2. McIntyre Update

Councilor Becksted asked where we stand with Washington, DC and Philadelphia in regards to the McIntyre building.

Deputy City Manager Colbert Puff reported that we received good news today that both offices have looked at the new design and are okay with it.

Councilor Becksted asked about the upcoming public input hearing for the Post Office.

Deputy City Manager Colbert Puff stated the hearing is scheduled for September 19th at 7:00 p.m. in the Council Chambers.

Mayor Blalock clarified that the city is hosting the meeting, not presenting the meeting.

Assistant Mayor Lazenby asked when the Council and public will be able to see the designs.

Deputy City Manager Colbert Puff stated that now that we have received the feedback, they can be posted.

Councilor Dwyer clarified that it is not a design drawing but a massive scale drawing and doesn't want people to misunderstand.

Councilor Denton asked if the design still contains an indoor market. Deputy City Manager Colbert Puff stated it does.

Councilor Becksted asked if we have flexibility in the time as that is a concern of the public.

Deputy City Manager Colbert Puff stated she is in contact with them every day and that is not a concern as of yet.

Councilor Perkins stated we need to make sure our principles match up and also complimented the staff on their advocacy for this project as there has been a lot of behind the scenes work.

Councilor Roberts stated that people should not expect a dramatic change in the design, but they are following the park service guideline to not detract from the "magnificence" of the McIntyre Building.

3. Berry's Brook Update Re: PFAS

City Attorney Sullivan gave a brief update on the recent findings of potential causes of high PFAS levels at the base of the landfill cap. He stated that through an analytical process it was determined preliminarily that the PFAS is not coming from the Coakley Road Landfill, but from the cap over the landfill refuse which was built in accordance to EPA specifications and has flexible membrane layer made of plastic as well as a layer of sand which allows migration to the top level. He stated that this is a possible source and will need further investigation, but he wanted to bring this to the Council's attention. He stated that this was the standard in the 1990's and other sites will be looked at now in light of this report. He concluded that a letter has gone out to the DES and EPA.

B. MAYOR BLALOCK

1. Adoption of Policy Re: Planning Board Residency Requirement

Mayor Blalock handed the gavel to Assistant Mayor Lazenby.

Mayor Blalock moved to adopt the Policy regarding Planning Board Residency Requirement, seconded by Councilor Denton.

Mayor Blalock stated this is a delicate situation and he is following the lead of the City Manager who will sit on the Planning Board and appoint an ex-officio that lives in Portsmouth. He stated this is being done to avoid distraction and not to have to wait for a court case that would ultimately be the authority. He continued that the media and Secretary of State Office have weighed in on the issue, but he believes that the Planning Board members brought a lot to the table. Going forward, he doesn't want any detractions from Planning Board decisions and wants people to have a fair shake going before the Board.

Councilor Dwyer started she supports the City Manager appointing himself and another ex-officio but not the policy. She continued that we have existing RSA's, Supreme Court and other case law as well as our own ordinances, so adding a policy is not the correct procedure. She stated she feels we should ask our legislative delegation to clarify the RSA's on ex officio.

Councilor Perkins stated she is also not in support of the policy change. She stated the ex officios add incredible value to the sophisticated work of the Planning Board and feels that the City Attorney's interpretation of the law is correct. She stated that Mr. Moore and Deputy City Manager Colbert Puff work very hard on all of the issues.

Councilor Pearson stated she respects the City Manager's decision to tamp down distraction but doesn't feel we should change ordinances etc. every time someone complains. She continued that these are staff members who's professional careers is to put Portsmouth first and these two individuals are exceptional. She continued that any of our staff would be expected to be professional and put Portsmouth first. She stated that just because people disagree with us, doesn't mean we are untruthful.

Councilor Denton stated there is a legal argument and a public policy argument. He stated the legal argument supports the current ex officios being there, but he doesn't mind tailoring the policy to require the ex officios to be residents.

Councilor Becksted stated he understands that Mr. Moore and Ms. Colbert Puff are valuable to the Planning Board, but last week, the Planning Board was run by only the citizen representatives and it went well. He stated he feels the RSA clearly establishes that board members must be residents.

Councilor Raynolds stated he found City Attorney's Sullivans memo on the subject helpful and persuasive as well as Attorney Richardson's memo. He rejects the notion that because the staff with the expertise are not residents, they are not representing the best interests of the city.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Assistant Mayor Lazenby asked the City Attorney if our Charter requires the City Manager to be a city resident. City Attorney Sullivan replied yes.

Assistant Mayor Lazenby stated that with that, he looks at the will of our democracy and it is not unreasonable to think that the ex officio should also be a Portsmouth resident. He continued that there is ambiguity with our laws and the City Charter and those should be looked at and sorted out, but at this point we need to set this policy.

Discussion ensued.

Motion passed on a 5-4 roll call vote. Assistant Mayor Lazenby, Councilors Roberts, Denton, Becksted and Mayor Blalock voted in favor. Councilors Pearson, Dwyer, Perkins and Raynolds voted opposed.

Councilor Dwyer moved that the Legislative Delegation be requested to review the RSA''s related to ex-officio to clarify residency. Seconded by Councilor Perkins and voted.

- 2. Appointments to be Considered:
 - Shari Donnermeyer reappointment to the Parking, Traffic & Safety Committee

The City Council considered the reappointment of Shari Donnermeyer to the Parking and Traffic Safety Committee which will be acted upon at the September 4, 2018 City Council meeting.

- 3. Appointments to be Voted:
 - Ralph DiBernardo appointment as a Regular member to the Parking, Traffic & Safety Committee – term to expire 09/17/2021
 - Stephen T. Pesci appointment as Alternate member to the Parking, Traffic & Safety Committee – term to expire 08/04/2020
 - Mary Lou McElwain reappointment to the Parking, Traffic & Safety Committee term to expire 09/17/2021
 - Harold Whitehouse reappointment to the Parking, Traffic & Safety Committee term to expire 09/17/2021
 - J. Stephen McCarthy reappointment to the Building Code Board of Appeals term to expire 07/01/2023

Councilor Roberts moved to approve the aforementioned appointments. Seconded by Assistant Mayor Lazenby and voted.

C. COUNCILOR ROBERTS

1. Parking, Traffic & Safety Action Sheet and Minutes of the August 2, 2018 meeting

Councilor Roberts moved to accept and approve the action sheet and minutes of the August 2, 2018 Parking, Traffic & Safety meeting. Seconded by Assistant Mayor Lazenby and voted.

D. COUNCILOR DWYER

1. Request to have Planning Director Juliet Walker make a presentation at the September 4th City Council meeting regarding a transitional zoning option in the Bartlett Street area

Councilor Dwyer moved to request to have Planning Director Juliet Walker make a presentation at the September 4th City Council meeting regarding a transitional

zoning option in the Bartlett Street area. Seconded by Councilor Raynolds and voted.

E. COUNCILOR DENTON

1. Piscataqua Region Estuaries Partnership: Discussion: Would it be beneficial for the City Council to have a Work Session where the Piscataqua Region Estuaries Partnership (PREP) presents findings from, and answers questions regarding, their 2018 State of Our Estuaries Report?

Councilor Denton stated he is looking to see if the City Council would like to have a work session to ask questions regarding the Piscataqua Region Estuaries Partnership and if so, he would like it to coincide with Wastewater Treatment facilities decisions. He reviewed the 3 documents included in the packet and stated he has visited the estuary.

Assistant Mayor Lazenby thanked Councilor Denton for his work and encouraged obtaining more information.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock stated he feels the report is very thorough but we wouldn't have enough time to cover it in a work session. He feels that a public presentation by the group would be more appropriate for those interested parties.

Assistant Mayor Lazenby passed the gavel back to Mayor Blalock.

Council consensus was to recommend that a public informational meeting be held at the Levenson Room of the Portsmouth Public Library.

Councilor Denton requested an update on upcoming Wastewater Treatment Facility issues.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer requested review of an issue acted upon by the City Council at a recent meeting regarding the Conference on Climate Change for which the City Council approved funding. She stated that at the time the speakers of the conference were not announced and it was thought that the Conference would focus on innovations, etc. Since that time we have become aware that this would be about climate change denial which is in opposition to the positions taken by the City of Portsmouth.

Councilor Roberts stated he agrees and that there are three speakers who are identified as skeptics in England and it is not consistent with the City of Portsmouth stance on the issue.

Councilor Denton stated he feels that initially supporting the conference was a good idea and feels that people have the right to hold them, but should not be supported financially by the city as there are other organizations that could use the funding. City Manager Bohenko clarified that PS21 has received city funding for controversial presentations so it has been done before.

Councilor Raynolds shares the concerns expressed, but feels that Ms. Plummer had good intentions when it was presented to the City Council.

Councilor Pearson stated she whole-heartedly believes in science and is not in favor of city funding for this conference.

Mayor Blalock clarified that the funds have already been sent.

City Manager Bohenko stated he will reach out to the organizer of the group for further information.

Councilor Becksted requested the Pease Development Authority be invited to give a presentation of the properties at Pease and what falls under the Airport District, etc.

Assistant Mayor Lazenby invited people to attend the upcoming Tricycle Races being held on Tuesday, September 18th at 2:30 p.m. on Pleasant Street with proceeds to benefit the Alzheimer's Association.

XIII. ADJOURNMENT

Councilor Becksted moved to adjourn at 9:12 p.m., seconded and voted unanimously.

Respectfully submitted:

VALERIE A. FRENCH, CNHMC DEPUTY CITY CLERK