

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 18, 2021

PORTSMOUTH, NH
TIME: 6:00PM [or thereafter]

III. CALL TO ORDER

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

IV. ROLL CALL

PRESENT: Mayor Becksted, Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy, Huda, Tabor and Trace

V. INVOCATION

Mayor Becksted asked everyone to join in a moment of silent prayer in memory of Mr. Styles and Attorney Pelech.

VI. PLEDGE OF ALLEGINANCE

Mayor Becksted led in the Pledge of Allegiance to the Flag.

VII. ACCEPTANCE OF MINUTES – OCTOBER 4, 2021

Councilor Kennedy moved to accept and approve the minutes of the October 4, 2021 meeting. Seconded by Councilor Tabor and voted.

IX. PUBLIC COMMENT SESSION

Roy Helse said during the Portsmouth Listens sessions on the McIntyre a majority of people want open space and the post office to return.

Josh Denton, Commander of VFW #168, spoke in support of the Optional Tax Credit. He said this credit fills a gap that exists for veterans. He stated this would be a \$500.00 credit and you would only qualify for one credit.

Ted Jankowski spoke in support of the motion by Assistant Mayor Splaine and Councilor Whelan later in the agenda for additional testing of the playing field for PFAS. He stated we now have PFAS at two fields. He spoke to the new methods of testing and protecting the health of kids for future generations.

Arthur Clough spoke regarding affordable housing in the City and work force housing. He discussed the cap in income for affordable housing and the need to appoint people to the land use boards that are in favor of affordable housing.

Zelita Morgan thanked the City Council for their work over the last two years. She said you showed leadership and confidence. She said during the budget process the taxpayers were considered and lead to a flat budget.

Tricia Donohue spoke on the request of Community Gardens and asked for the City Council's support.

Andrea Amico spoke in support for additional testing of PFAS on playing fields. She said finding fluorine in the field is a concern for her. She said the City needs to be more diligent with its testing of PFAS to assure the community that we are PFAS free. She requested that signs be placed on the fields regarding turf safety. She also requested that the water be tested coming off the field as well.

Robin Husslage spoke regarding noise caused from the PAN AM railroad. She spoke to the 20 large propane tanks that remain unattended and parking overnight in our downtown area. She would like to know if PAN AM can do anything regarding this matter.

William Downey spoke regarding McIntyre and the interim agreement that there would be an attempt to get it done. He said since the deadline was not met both parties could walk away in September 2019. He said the community needs to hear that the Subcommittee has done a professional job.

Diana Carpinone, Dover, NH, urged the City Council to pass the motion on testing for PFAS at the field. She said we cannot afford to have more chemicals in the environment. She said PFAS was found in every component for testing and the RFP only called for one test. She stated it is necessary to conduct more testing and holding the contractor responsible for the PFAS being in the field.

Diane Welockie, Oceanside, CA, spoke to California taking PFAS seriously. She said PFAS is a serious concern and there are up to 10,000 components of PFAS. She stated the plastic carpets contain the PFAS and more extensive testing is needed for the fields.

Jeffrey Desantis, York, Maine, spoke to the walkability of Portsmouth. He said Portsmouth is the best walkable small City in the United States. He stated he would like to see continued improvements on air and noise pollutants.

Melissa Paly, Great Bay Conservation Law Foundation, urged the City Council to approve the PFAS free status of playing fields. She stated the vendor needs to deliver what was agreed upon. She spoke to the investments made by the City regarding storm water and the need to know there are contaminants flowing into the Sagamore Creek.

Assistant Mayor Splaine moved to suspend the rules to take up Item XV. A.4. – Resolution Regarding Optional Tax Credit for Combat Service and XV. A.5. – Approval of Community Garden License Agreement. Seconded by Councilor McEachern and voted.

A.4. Resolution Regarding Optional Tax Credit for Combat Service

Councilor Kennedy moved to schedule a public hearing and adoption of the Optional Tax Credit for Combat Service Resolution at the November 15, 2021 City Council meeting. Seconded by Councilor Huda.

Councilor Lazenby said he is in favor of moving this forward for November.

Mayor Becksted stated that this is the regular process. City Attorney Sullivan said the public hearing is required because that is the process for adopting a resolution.

Motion passed.

5. Approval of Community Garden License Agreement

City Manager Conard stated that the City would be responsible for the installation of water at the site.

Councilor Kennedy moved to authorize the City Manager to execute the Community Garden License Agreement as presented. Seconded by Councilor Trace and voted.

City Manager's Informational Items

5. Report Regarding Request for Costs of McIntyre Consultants to Date

Councilor Lazenby asked about the interim agreement. City Attorney Sullivan said the theory of the lawsuit by RedGate/Kane the Development Agreement authorizes and signed the agreement that is in effect and compels the City to build the first proposal and we could discuss these matters later in a Non-Public Session.

XI. PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTIONS

Third and Final Reading of Ordinances:

- A. Ordinance amending Chapter 7, Article XI, Section 7.1100 – SPEED LIMITS Sub-section E – Speed Limit: 25 MPH – Chevrolet Avenue

Councilor Kennedy moved to pass third and final reading of the ordinance as presented. Seconded by Councilor Huda and voted.

- B. Ordinance amending Chapter 7, Article XII, Section 7.1200 – Parking for the Walking Disabled

Councilor Kennedy moved to pass third and final reading of the ordinance as presented. Seconded by Councilor Huda and voted.

XII. MAYOR BECKSTED

1. Appointments to be Considered:
 - Hawk Furman appointment to the Audit Committee (2 year term)
 - Christopher White appointment to the Audit Committee (3 year term)

The City Council considered the appointments of Hawk Furman and Christopher White to the Audit Committee which will be voted upon at the November 15, 2021 City Council meeting.

2. Appointment to be Voted:
 - Sarah Lachance reappointment to the Economic Development Commission

Assistant Mayor Splaine moved to reappoint Sarah Lachance to the Economic Development Commission until October 1, 2025. Seconded by Councilor Kennedy and voted.

3. Appointment to the Mayor's Blue Ribbon Cemetery Committee (Not on Agenda)

Mayor Becksted announced the appointment of Eva Boice to the Mayor's Blue Ribbon Cemetery Committee.

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR SPLAINE & COUNCILOR WHELAN

1. Testing for PFAS On Artificial Turf Playing Fields

Assistant Mayor Splaine moved that the City Council requires the City Manager to commission independent third party test for PFAS of the new playing field. As recommended by independent experts, the testing shall use the non-targeted PFAS analysis and total oxidizable precursor (TOP) assay methods to look for the presence of PFAS in the synthetic turf, shock pad, and infill material. The results will be provided to the City Council within 30 Days. Seconded by Councilor Whelan.

Assistant Mayor Splaine said we heard testimony today and we need to make sure there is no PFAS in the field. He said this is a way to get the issue of whether there is PFAS cleared. He said next time we may look at turf we make sure there is no chemicals that could impact children.

Councilor Whelan spoke in support of the motion. He said he is active in water quality matters. He stated he does not want to see PFAS draining into our estuary. He said this City Council passed the resolution that the field would be PFAS free and we owe it to the community and children.

Councilor McEachern said we learned that the Biden Administration is moving forward on PFAS and we can thank Andrea Amico for this. He said we are the leader on this and we need to be certain that the field is PFAS free. He said we expect the field to be PFAS free and we need to create framework that we can agree on the testing.

Councilor Kennedy said she agrees with comments made and asked if 30 days would be enough time to provide a report back.

City Manager Conard said staff had a discussion with Weston and Sampson and we will need more time to make sure we have adequate testing. She said it makes sense to have a work session on this matter. She reported that the cost estimate for proper testing is in the \$15,000.00 to \$20,000.00 range.

Assistant Mayor Splaine said he would like a work session prior to the November 15, 2021 City Council meeting and would like it to include Ted Jankowski and Andrea Amico to speak on this matter.

Assistant Mayor Splaine moved to amend the motion that Mayor Becksted work with City Manager Conard to come up with a date and time up to a week before the next City Council meeting for a Work Session regarding this matter. Seconded by Councilor Whelan.

Acting Deputy City Manager/Deputy City Attorney Woodland said there is not a great deal of data on some of these and if you look at the report from Martha's Vineyard the report cost \$51,000.00. She said we want more information, data without context. She stated we need to know more about PFAS and we felt that we need to make sure we provide information that is useful to the City Council.

Councilor Lazenby said a work session is a good approach. He stated did we have an assurance from those that installed the field that they pay for testing. He said PFAS free, to be used must meet all three criteria and that was the guidance the engineering measured against but now there is a different definition. He said we might have a challenge and get another sample and have a chain of custody provided. He asked if we did a work session in November could they provide an estimate on the cost for a useful test and report. He asked what the range of cost would be and where in the budget would we pay for it.

Councilor McEachern said it is really important that we get a system in place to provide assurances to parents and we need to establish the proper way to test. He said he wants standards and spending to have community engagement.

Councilor Huda said she is looking for who would pay for this and stated they made the statement and they should pay for it.

Councilor Tabor supports testing and to see if we got our intent from Weston & Sampson. He said a work session would be beneficial.

Councilor Trace said she agrees with the comments made and there needs to be appropriate testing.

Assistant Mayor Splaine said this time it is totally understood that when we are sitting around the table that Ted Jankowski, Andrea Amico and others that they be involved.

Motion passed.

B. COUNCILOR McEACHERN

1. Letter requesting air quality testing in the immediate vicinity of the city railways

Councilor McEachern moved to request the City Manager to send a letter to the Department of Environmental Services requesting air quality testing in the neighborhoods abutting an active railroad. Seconded by Assistant Mayor Splaine.

City Manager Conard said Assistant City Attorney Ferrini has been working on this matter and the EPA has small air quality testing to be provided on public and private areas. She said we reached out to neighborhoods on good times for testing and we all worked through the EPA and DES on the testing.

Assistant Mayor Splaine said there are issues with the rail line sides and spoke to propane in the area being carried by railcars going through Portsmouth and Newington. He suggested the next City Council not be deterred to follow through on this.

Mayor Becksted said we received a letter from a resident on Kearsarge Way that we look at the entire rail road. He would like to do something with air quality issues and make a difference now.

Motion passed.

XIV. APPROVAL OF GRANTS/DONATIONS

- A. Donation to the Portsmouth 400th - \$10.00

Councilor Kennedy moved to approve and accept the donation from Valerie Rochon in the amount of \$10.00 as presented. Seconded by Councilor Huda.

City Manager Conard said that this was Valerie Rochon's kick off for the ability to make donations on the website.

Motion passed.

XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Request from Pontine Theatre for Shed

City Manager Conard reported that the Pontine Theatre wants to erect a shed for the storing of equipment and supplies.

Councilor Kennedy moved that the City Manager be authorized to approve Pontine's installation of the shed and to make such minor adjustments to the existing lease document as may be necessary to reference this new structure. Seconded by Councilor Huda.

Councilor Tabor asked if there is a give back on rent when a capital investment is made. City Manager Conard said they receive free rent and make necessary improvements.

Motion passed.

2. Surplus Granite and Portsmouth Housing Authority

City Manager Conard advised the Council that this is the community space area and that there is surplus granite available for the benches.

Councilor McEachern moved that the City Manager be authorized to release to the Portsmouth Housing Authority granite pieces for benches to be installed in the public community space areas as part of the Court Street work force housing project. Seconded by Councilor Whelan.

Mayor Becksted reported where the community space is located between the two buildings which is a park.

Councilor Huda asked if ownership will transfer to Portsmouth Housing Authority. City Attorney Sullivan that it is subject to an easement and requires Portsmouth Housing Authority maintain the property and we are just providing the granite.

Motion passed.

3. Eversource Pole and Vault License Request

Councilor Kennedy moved that the City Manager be provided with the authority to negotiate and approve a preliminary license agreement with Eversource for the excavation, conduit installation and other work needed ahead of the final pole licensing submission by Eversource. Seconded by Councilor Huda.

Councilor Huda asked if any businesses have been involved in this and how many businesses will this effect. City Manager Conard said this will provided initial power of utility lines. Councilor Huda said have we done a study on traffic flow. Acting Deputy City Manager/Deputy City Attorney Woodland said we have had meetings on this matter and communication with abutters and the McNabb Group sent out regular emails and Eversource communicated with us for a license and everyone attended the Eversource meeting. Councilor Huda asked how long this will take. Public Works Director Rice said we anticipate before Christmas with the most impact being Penhallow Street.

Motion passed.

XVI. CONSENT AGENDA

- A. Letter from Adam Benoit, The Greg Hill Foundation, requesting permission to hold the 9th Annual Jingle All The Way 5K Road Race on Saturday, December 4, 2021 at 10:00 a.m. – 11:30 a.m. (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- B. Request for License to Install Projecting Sign for owner Emily Stearns of The Drift Collective LLC, for property located at 50 Daniel 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 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***
- C. Letter from Nick Diana, requesting permission to host the 5th annual Running Road Race on Saturday, April 23, 2022 from 9:30 a.m. to 11:30 a.m. (***Anticipated action – move to refer to the City Manager with Authority to Act***)

Councilor Kennedy moved to refer to the City Manager with Authority to Act. Seconded by Councilor Huda and voted.

XVII. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Presentation Regarding Conditional Use Permits by Interim Planning Director, Peter Britz and Principal Planner, Nicholas Cracknell

Principal Planner Cracknell provided a detailed presentation regarding the Use of Conditional Use Permits (CUP) for new development in Portsmouth's Character Districts. He reported that there are 16 categories for conditional use permits. He stated that 5 – 6 are available in the Central Business District for CUP. He spoke to different dimensional controls and that they looked at 52 acres and have over 60 cells in the spread sheet to look at from a building environment. He said that there are 14 major projects in the Central Business District, two use CUP for density incentives, 7 use "as of right" incentives, and 5 use no incentives or provide public benefits.

Councilor Trace thanked Nick and Peter for the presentation. She said she was expecting something on wetland CUP as well. Principal Planner Cracknell said a presentation could be provided on that matter in the future.

Councilor Tabor said this presentation was great and asked what requires developers to have work force housing. Principal Planner Cracknell said work force housing can only be required with a CUP. He said work force housing is a different business model and many choose community space over work force housing.

B. Email Correspondence

Councilor Kennedy moved to accept and place on file. Seconded by Councilor McEachern and voted.

XVIII. CITY MANAGER'S INFORMATIONAL ITEMS

2. Household Hazardous Waste Collection Day – October 30, 2021

City Manager Conard announced that Household Hazardous Waste Collection Day will be held on Saturday, October 30, 2021.

3. Report Back on August 2021 Monthly Summary Report

City Manager Conard asked if there were any questions relative to the report back on August 2021 Monthly Summary Report.

4. Little Harbor Road Paving

City Manager Conard spoke to the paving that will be taking place on Little Harbor Road.

5. Report Regarding Request for Costs of McIntyre Consultants to Date

Councilor Lazenby said the Principal Group will require an additional appropriation.

Councilor Whelan said the Principal Group will make another presentation on November 3, 2021 and moving forward we will have to come back to the City Council for more funding. He said we need to make a formal presentation to the National Park Service which will require more money and staff has estimated \$75,000.00. He said that this has been money well spent. He said we will try to get the project through the National Park Service.

Councilor Lazenby said the \$75,000.00 is not just for consultants, does it include the Principal Group or will there be more funding necessary. Councilor Whelan said the Principal Group and David Eaton will need to look at the project still.

Assistant Mayor Splaine asked what the process would be for expenditure of funds and bids. Councilor Whelan said we interviewed 4 different groups with an RFP. He stated the Committee has approved all expenditures as they have come through. Assistant Mayor Splaine asked if the votes were in public or non-public session. Councilor Whelan said they were in public session and all votes were unanimous.

Councilor Tabor said that this has been money well spent. He said we budgeted \$480,000.00 to carry the building and that is a savings of \$165,000.00.

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor McEachern asked about public realm dining and when that is set to expire and could we extend that to areas where bollards are not required.

City Manager Conard said dining is expiring on October 31st and it is important to note that some businesses can serve in an area outside a public street or parking space. She stated staff is looking to remove the bollards for November 1st but this is not a conversation that is equal because of the area. She said she would like to keep tables outside as long as we have the ability to do so.

Assistant Mayor Splaine said the City Council and staff could make this a year round activity and takes focus on working with businesses. He urged the City Council to find a way to do this on a year round basis. He said we need to move Portsmouth outdoors.

Councilor Lazenby asked City Attorney Sullivan regarding the Non-Public Session held on October 13th and that the person was not given the right to answer the questions in public session. City Attorney Sullivan said it has been thoughtfully considered it must be identified by the maker of the motion. He said he listed the sections under which he did that because there were several people that would fit that category. He further stated he did not have that person in mind that night. Councilor Lazenby said the identification became clear in the meeting and asked if that situation and person has been made aware. City Attorney Sullivan said he will answer the questions in a memorandum and what person was addressed. Councilor Lazenby said that there was some unconventional processes during that evening. City Attorney Sullivan said a Non-Public Session is a Non-Public Session of the City Council and any significant decisions should be made by the City Council as a whole. He stated in the future the City Council should vote on things. Councilor Lazenby said things such as taking of minutes in Non-Public Session.

Councilor Tabor said the Energy Advisory Committee has looked at Keene and surveyed residents on the project and the majority agreed to look at renewable rates. He said they will provide a report back in December to the City Council.

Councilor Trace said she would like the presentation regarding CUP's be placed on-line.

Councilor Huda said she would like a date for the Sagamore Creek project. Acting Deputy City Manager/Deputy City Attorney Woodland said we are going out for a re-bid and we would like to get new numbers and speak with residents. Councilor Huda asked when the RFP would be done. Acting Deputy City Manager/Deputy City Attorney Woodland said we will keep the City Council aware of what the schedule looks like.

Assistant Mayor Splaine reported that the Citywide Neighborhood Committee will be meeting on Wednesday at 7:00 p.m.

At 9:37 p.m., Councilor Kennedy moved to enter into Non-Public Session with City Attorney Sullivan to discuss McIntyre. Seconded by Councilor Huda.

XX. ADJOURNMENT

At 10:30 p.m., Councilor McEachern moved to leave Non-Public Session, seal the minutes of the Non-Public Session and adjourn the meeting. Seconded by Councilor Kennedy and voted.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK