

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, FEBRUARY 14, 2005

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER

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

II. ROLL CALL

Present: Mayor Sirrell, Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, Raynolds, Whitehouse and St. Laurent

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

MAYOR'S AWARD

1. William Elwell – Service to the Trustees of the Trust Fund

Mayor Sirrell presented Bill with a Mayor's Award in recognition of his 15 years of service to the Trustees of the Trust Fund. Councilor Ferrini presented Bill with a gift from the City Council in appreciation for his service to the Trustees. Bill accepted the award and gift with thanks and appreciation.

PROCLAMATION

1. American Red Cross Month

Councilor Ferrini read the proclamation declaring March as American Red Cross Month. Mayor Sirrell presented City Attorney Sullivan with the proclamation who accepted it with thanks and appreciation.

2. Read Across Portsmouth Day

Assistant Mayor Grasso read the proclamation declaring March 8th as Read Across Portsmouth Day. Mayor Sirrell presented Ms. Lovering with the proclamation who accepted it with thanks and appreciation.

PRESENTATION

1. Portsmouth Criterium Race Committee 2005 – Susanne Delaney

Susanne Delaney and Catherine Keenan presented a PowerPoint presentation and a short video on their request to bring the race back to the City. Susanne advised the City Council that the Committee discussed this event coming back to the City with 200 downtown businesses and a presentation was made to the Downtown Business Association.

V. ACCEPTANCE OF MINUTES – JANUARY 24, 2005

Councilor Whitehouse moved to accept and approve the City Council minutes of the January 24, 2005 meeting. Seconded by Councilor St. Laurent and voted.

VI. PUBLIC COMMENT SESSION

Joel Carp asked the City to consider increasing the amount of payment in lieu of taxes made by the Port. He said that if the Port is making a significant profit then they can afford to pay more in taxes. If they are not, then the property should be turned back to the City.

Tom Carroll thanked the City Council for their letter to the Pease Development Authority and the results received regarding the debris on the roads coming from the scrap metal operations.

Sue Madden spoke to the petition regarding the Bill of Rights and the request to have the City Council adopt the proposed Resolution to secure our rights.

Bob Vincent, resident of Rye, NH, spoke in support of the Resolution that would ensure the protection of the rights of each citizen.

Paul McEachern spoke in favor of the Bill of Rights Resolution. He said that all citizens have a right to speak out, and their rights need to be protected.

Peter Somssich spoke in support of the Bill of Rights Resolution. He asked the City Council to support this symbolic Resolution.

Adolph Berounsky presented the City Council with an article on affordable housing. He said there is a large percentage of City employees that live outside of Portsmouth. He said that we need more affordable housing.

James Horrigan spoke opposed to any signage being allowed at Leary Field. He requested that the City Council not take action on this item without receiving a response from the neighborhood on the request.

Clif Horrigan spoke opposed to signage at Leary Field. She said that advertising should not be allowed at the Park.

Jeff Ott spoke in favor of the proposed Resolution regarding the Bill of Rights and encouraged the City Council to support it as well.

Bob Vincent, resident of Rye, NH, said that the Patriots Act was adopted in haste and the City should adopt this Resolution to ensure the protection of the Bill of Rights.

Nancy Brown asked the City Council to adopt the Resolution to protect the Bill of Rights. She submitted the original petition with 500 signatures to the City Clerk.

Elissa Margolin spoke in support of the request from the Portsmouth Criterium Race Committee. She said that this event is sanctioned through the USA Cycling Association and this race can be enjoyed by participants and spectators. She urged the City Council to approve the request to hold the race in the City on September 18th.

Burt Cohen, resident of New Castle, NH, spoke in support of the proposed Resolution regarding the protection of the Bill of Rights. He said that our rights are under great threat and we need to stand together to protect our liberties and freedom.

Joshua Cyr spoke in support of the request by the Portsmouth Criterium Race Committee. He said that the Committee has done a great job reaching out to everyone to ensure that all concerns are heard and met.

Maureen Barrows spoke in support of the request by the Portsmouth Criterium Race Committee. She said that biking is a great sport and urged the City Council to approve the request as presented.

Scott Bogal spoke in support of the request by the Portsmouth Criterium Race Committee and urged the City Council to support the request as presented. He said that this is a great event for the community.

VII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donation to the New Library Building Fund from Marsha Richelli in the amount of \$50.00

Councilor Pantelakos moved to approve and accept the donation to the New Library Building Fund as listed. Seconded by Assistant Mayor Grasso and voted.

- B. Acceptance of Donation to the Cemetery Committee from Janet Alperin in the amount of \$25.00

Councilor St. Laurent moved to approve and accept the donation to the Cemetery Committee as listed. Seconded by Assistant Mayor Grasso and voted.

- C. Acceptance of Donation to the Portsmouth Fire Department from Max and Norinne Chudy in the amount of \$20.00

Councilor Pantelakos moved to approve and accept the donation to the Fire Department as listed. Seconded by Councilor Reynolds and voted.

- D. Acceptance of Coastal Zone Management Grant Application for Peirce Island Boat Launch

Councilor Whitehouse moved to authorize the City Manager to apply for, accept and expend a grant from the NH Coastal Zone Management Program in support of the construction of a finger pier at the Peirce Island boat launch. Seconded by Assistant Mayor Grasso and voted.

- E. Acceptance of Grant from the Trust's Health Promotion WELLDollars Grant Program

Assistant Mayor Grasso moved to accept the \$1,000.00 grant awarded to the City of Portsmouth from the Trust's Health Promotion WELLDollars Grant Program. Seconded by Councilor Reynolds and voted.

VIII. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Allison De Sevo, Cystic Fibrosis Foundation, requesting permission to hold the Seacoast Safari for CF Bicycle Tour on Saturday, August 6, 2005 and Sunday, August 7, 2005

Councilor Reynolds moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.

- B. Letter from Stacy Chilicki, The Seacoast Repertory Theatre, requesting permission to hold the 39th Annual Bow Street Fair on Saturday, July 23, 2005 and Sunday, July 24, 2005

Assistant Mayor Grasso moved to refer to the City Manager with power. Seconded by Councilor Hynes.

City Manager Bohenko advised the City Council that parking passes would be provided to the residents in the area as was done last year.

Motion passed.

- C. Letter from Jeanine Sylvester, Runner's Alley, requesting permission to hold the 8th Annual Runner's Alley/Redhook Brewery Memorial 5k Race on Sunday, May 29, 2005 at 11:00 a.m.

Councilor Raynolds moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.

- D. Letter from Christine Groleau, The Children's Museum of Portsmouth, requesting permission to hold the Annual 5k Road Race on Saturday, May 7, 2005

Councilor Whitehouse moved to refer to the City Manager with power. Seconded by Councilor St. Laurent and voted.

- E. Letter from Attorney Malcolm McNeill regarding Proposed amendment to Zoning Ordinance to permit a 100 foot setback for a hotel where a 175 foot setback is presently required

Councilor St. Laurent moved to refer to the Planning Board for a report back. Seconded by Councilor Ferrini and voted.

- F. Letter from Attorney Malcolm McNeill regarding Proposed rezoning of premises located off of Mirona Road from Industrial (I) to General Business (GB)

Assistant Mayor Grasso moved to refer to the Planning Board for a report back. Seconded by Councilor St. Laurent and voted.

- G. Letter and petition from Sue Madden and members of Seacoast Alliance for Democracy regarding Resolution Affirming the Bill of Rights

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell moved to establish a work session on this matter for further discussion. Seconded by Councilor Pantelakos.

Councilor Whitehouse said he does not feel it is necessary to hold a work session on this matter. He said if we pass the Resolution it would be a symbolic act.

Councilor Hynes said the importance of the issue requires further study, therefore he will vote in favor of the motion to conduct a work session on this matter.

Councilor St. Laurent said that we should voted on this issue this evening, however if the motion passes to hold the work session he requested that the petition not be reproduced due to its size.

Councilor Pantelakos asked if the draft Resolution meets the City's standards as presented. City Attorney Sullivan advised the City Council that the Resolution in its format could be passed as presented this evening.

Councilor Raynolds moved to amend the motion to allow the public the opportunity to speak on this matter during the work session. Seconded by Mayor Sirrell and voted.

Main motion passed as amended with Councilor St. Laurent voting opposed.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

The City Council agreed to establish the work session for Monday, March 14, 2005 at 6:30 p.m. in Conference Room A.

- H. Letter from Diane Kelley Tefft regarding the new Portsmouth Public Library (See *City Attorney Sullivan's Responses attached*)

Councilor Pantelakos moved to accept and place the letter on file. Seconded by Councilor Raynolds.

Councilor Pantelakos asked City Manager Bohenko how long it took to prepare the response by City Attorney Sullivan. City Manager Bohenko responded eight hours with six staff members involved.

Motion passed.

- I. Letter from Scott Pafford, Portsmouth Babe Ruth, requesting permission to place temporary signage at Leary Field for the 2005 Baseball Season

Councilor Pantelakos moved to lay this on the table for a response from the neighborhood. Seconded by Councilor Raynolds.

Councilor Ferrini suggested referring this matter to the Planning Board but he would be concern with delaying the request.

Councilor Pantelakos withdrew her motion and Councilor Raynolds his second to the motion.

Councilor Pantelakos moved to refer to the Planning Board for a report back. Seconded by Assistant Mayor Grasso.

City Manager Bohenko said we have not referred sign requests to the Planning Board but it may be useful for the Planning Board to review this matter and decide if we should regulate these types of requests.

Councilor Pantelakos said that these requests are becoming more frequent and we need to look at the issue of whether to regulate the signs.

Motion passed with Councilor Whitehouse voting opposed.

- J. Letter from Monica Dorley in support of the Portsmouth Criterium bicycle race

Assistant Mayor Grasso moved to accept and place the letter on file. Seconded by Councilor St. Laurent and voted.

- K. Letter from Susanne Delaney and Catherine Keenan, Portsmouth Criterium Race Committee, requesting permission to hold the Criterium on Sunday, September 18, 2005 from 1:00 p.m. to 6:00 p.m.

Councilor Reynolds moved to approve the request and refer to the City Manager with power. Seconded by Councilor Whitehouse.

Councilor St. Laurent moved to suspend the rules in order to ask Susanne Delaney a question regarding the request. Seconded by Councilor Marchand and voted.

Councilor St. Laurent asked Ms. Delaney if the two churches in the area of the race have been considered. Ms. Delaney said the race would not start before 1:00 p.m. because of church services.

City Manager Bohenko said he would meet with the organization and invite Rev. Shippe of the North Church and the Reverend from the Unitarian Church as well to receive their input and concerns regarding this event.

Councilor Whitehouse suggested moving the time of the race to 2:00 p.m.

Assistant Mayor Grasso asked City Manager Bohenko to contact the Library Restaurant on this request to ensure that they will not be effected by the race.

City Manager Bohenko said we can't get all the businesses to not have concerns with the request but a letter announcing the event will be sent to all downtown businesses by the Committee.

Motion passed.

At 9:00 p.m., Mayor Sirrell declared a brief recess. At 9:10 p.m., Mayor Sirrell called the meeting back to order.

IX. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Seacoast Growers' Association Proposed 2005 License Agreement

City Manager Bohenko said that this request is to renew the license agreement with Seacoast Growers' Association for the Farmers' Market. He said that the Farmers' Market has been held at the municipal complex for the past three years. He said the primary modifications of this license agreement from those used in the 2004 agreement are as follows:

- Changes were made to Section A of the license agreement to limit the license to the parking lot located directly in front of City Hall, including allowing handicapped parking spaces to be used for Farmers' Market purposed by the Association.
- A condition has been added near the end of the license to allow Jewel Town Vineyards to sell bottles of wine at the Farmers' Market. The provision expressly prohibits any open containers or consumption of wine on visible premises. State statute does allow for Farmers' Market to sell wine as long as the containers are not opened.

Councilor Pantelakos moved to authorize the City Manager to enter into a License Agreement with the Seacoast Growers' Association as presented. Seconded by Councilor Whitehouse.

Assistant Mayor Grasso moved to amend the motion to remove the condition within the lease that allows Jewel Town Vineyards to sell bottles of wine at the Farmers' Market. Seconded by Councilor St. Laurent.

Councilor Raynolds said he would not vote in favor of the amendment because there is no problem allowing the sale of this product.

Councilor Whitehouse said he would not support the amendment.

Councilor Whitehouse moved to suspend the rules to allow representatives of the Seacoast Growers' Association the ability to speak to the request. Seconded by Councilor Pantelakos and voted.

Gary representing the Seacoast Growers' Association advised the City Council that the Vineyard is located in North Hampton, NH and everything is locally grown and made.

On a roll call vote 5-4, amendment to the motion failed to pass. Assistant Mayor Grasso, Councilors Hynes, St. Laurent and Mayor Sirrell voted in favor. Councilors Ferrini, Marchand, Pantelakos, Raynolds and Whitehouse voted opposed.

Main motion passed.

2. Economic Development Commission Report Back Re: Private/Public Graffiti Removal Partnerships

City Manager Bohenko spoke to the memorandum outlining the findings of the Economic Development Commission on this issue. He asked Cliff Taylor of the Economic Development Commission to come forward to discuss the report.

Cliff Taylor said the report indicates that this would be a public/private project and would not cost the City any money. A plan has been developed that would remove the graffiti in 48 hours. He said the recommendations are broken into three categories including enforcement, education and awareness, and eradication. We would develop a six-month pilot public/private partnership with the Greater Portsmouth Chamber of Commerce to remove graffiti from privately owned buildings in the City. He said that the Economic Development Commission is asking the City Council to approve the report.

Bob Hassold thanked the City for working on this matter and said that the Committee did a great job. He urged the City Council to approve the report as submitted by the Economic Development Commission.

Councilor Whitehouse moved to approve the Economic Development Commission's report on the removal of graffiti through public/private partnerships. Seconded by Councilor St. Laurent and voted.

Councilor Reynolds spoke to a system that is in place in Burlington, Vermont where locations are set aside to display official signage and a bulletin board for other types of signs.

Cliff advised Councilor Reynolds that the Committee did look at that and that could happen at some point. He said one place that was suggested for posting signage was at the kiosk in Market Square.

Motion passed.

3. Request to Extend License Agreement for Trash Compactor on Ceres Street

City Manager Bohenko said that this request is to renew the license agreement for the Trash Compactor on Ceres Street.

Councilor Ferrini moved to authorize the City Manager to extend the License Agreement between the City of Portsmouth and Old Ferry Landing, Inc., Poco Diablo, Inc. and Stockpot, Ltd. for the period December 1, 2004 through November 30, 2005. Seconded by Councilor Pantelakos and voted.

4. Planning Board Report Back Re: Request for Permanent Easements and License from the City for Property Located within the Hanover Street Right of Way (Hilton Garden Inn and Related Structures)

City Attorney Sullivan explained that Cathartes Investments is requesting permanent licenses, easements or agreements to accommodate some aspects of the final building, which will utilize either City property or City airspace. Those elements of the building requiring either licenses, easements or some other form of approval consist of the following:

- The footings and perimeter drain of the building being constructed beneath the City sidewalks
- Canopies, cornices, windowsills and box bays begin constructed in the City airspace over the sidewalks
- Dormer, wall, roof overhangs and the like in the airspace over the City sidewalks

He advised the City Council that the Planning Board considered these requests from the developer and unanimously acted to recommend that the request by the developer be granted by the City Council.

Councilor Pantelakos expressed concern with the building being built right to the sidewalk.

Councilor Ferrini said that these requests are unintrusive and there is no significant impact.

The City Council on a unanimous voice vote, voted to authorize the City Manger to negotiate and execute any licenses, easements or other similar agreements as may be required by Cathartes Investments consistent with the request forwarded to the Planning Board by the City Council on December 20, 2004.

5. Temporary License Agreement 6-16 Congress Street (former Eagle Photo Site)

City Manager Bohenko advised the City Council that the developer of the former Eagle Photo property is requesting a temporary license to use certain portions of the public way during the course of its construction of a new building at the corner of Church Street and Congress Street. Under the proposed license agreement, a portion of Church Street would be closed when construction gets underway in March and would remain closed throughout the summer and fall. He reported that Church Street would re-open no later than December 30, 2005. He also informed the City Council that during 2006, the developer may need to close Church Street for intermittent deliveries, but would do so only in coordination with the Department of Public Works. He advised the City Council that all approvals have been received from the various land use boards.

Councilor Hynes moved to grant the City Manager authority to negotiated and enter into a license agreement with 6-16 Congress Street LLC relative to the use of certain public areas along Congress Street and Church Street. Seconded by Assistant Mayor Grasso.

Councilor Whitehouse expressed concern with the length of time Church Street would be closed and the item relative to intermittent deliveries during 2006.

Councilor Ferrini advised Councilor Whitehouse that the license agreement requires the developer to coordinate intermittent deliveries with the Public Works Department.

Motion passed.

6. Proposed Amendment to the City's 1995 Zoning Ordinance Regarding the Adoption of Flood Insurance Study and Rate Maps

City Manager Bohenko asked Building Inspector Hopley to come forward and explain the proposed amendment.

Building Inspector Hopley advised the City Council that the US Department of Homeland Security and the Federal Emergency Management Agency informed the City we needed to take certain actions in a timely manner so as to remain eligible for national flood insurance. To maintain the City's eligibility, the Inspection and Planning Departments have revised the appropriate sections of the Zoning Ordinance.

Assistant Mayor Grasso moved that this amended Ordinance be scheduled for first reading at the March 7, 2005 City Council meeting. Seconded by Councilor St. Laurent and voted.

City Manager Bohenko announced that a Public Informational Meeting will be held in the City Council Chambers on Thursday, February 24th at 7:00 p.m. to receive public input on the preliminary design plans for the Hanover and High Street multimodal improvements.

City Manager Bohenko advised the City Council that we are over expended in our snow removal budget. He said that we appropriated \$270,000.00 and \$150,000.00 of that was for salt. He reported that the price of salt has doubled and we have spent \$223,000.00 at this point. He said that there is money left in FY04 and FY05 Contingency Accounts in which he has reserved \$150,000.00 thus far. He advised the City Council that he would provide a full report at the close of the season and make a recommendation for the transfer of funds. He said at this time we are \$129,000.00 over budget.

B. MAYOR SIRRELL

1. Establish Work Session with Portsmouth Housing Authority

Mayor Sirrell requested to schedule a work session with the Portsmouth Housing Authority on March 10, 2005 at 6:30 p.m.

The City Council agreed to establish a work session on Thursday, March 10, 2005 at 6:30 p.m. in Conference Room A with the Portsmouth Housing Authority.

2. Appointments

The City Council considered the following appointments: Randal Leach to the Dog Committee, Anthony Coviello to the Building Code Board of Appeals, Eric Spear to the Peirce Island Committee, Barbara Driscoll and Stephen Lichtenstein to the Citizens Advisory Committee. These appointments will be voted on by the City Council at the March 7, 2005 City Council meeting.

C. ASSISTANT MAYOR GRASSO

1. Report from Joint Budget Committee concerning Goals for the Fiscal Year 2006 Operating Budget

Assistant Mayor Grasso provided the City Council with a report from the Joint Budget Committee indicating that the overall total fixed costs estimates for all departments is approximately 5.6%. By consensus of the Joint Budget Committee, it was determined that each department would strive to maintain fixed costs at or below 5.5%.

Councilor Marchand moved to direct the City Manager to present an operating budget to the City Council that includes a total increase for Municipal, Police, Fire and School of no more than 4%. Seconded by Councilor St. Laurent.

Councilor Marchand said that the 4% is 60% higher than the CPI figure. He said we need to change the structure on how best to spend the money. He mentioned an article which appeared in the Portsmouth Herald on February 12th, which he felt, was a scare tactic.

Councilor Pantelakos said she agrees with Councilor Marchand and will vote in favor of the motion. She said that the article was used to play on the sympathies of people. She said that the taxpayers ability to pay needs to be considered when approving a budget.

Councilor St. Laurent spoke in support of the motion. He said he feels we need to take the purse strings back.

Councilor Whitehouse said the 4% is reasonable and he would support the motion.

Councilor Raynolds said he would support the motion. He said we need to send a message to the fellow elected officials in the School Board, Police and Fire Commissions that they have to be responsible to the resident of this City.

Councilor Hynes said the City Council should support the recommendation of the Joint Budget Committee for a 5.5% increase. He said that the 4% might cause for a reduction in labor.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell said she would not support any increase in the tax rate. She said there are people that can no longer hold onto their homes because of the taxes.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

Councilor Ferrini said he echoes many of the sentiments expressed this evening, however he is concerned with the percentage figure. He questioned whether the 5.5% is the figure needed to maintain all services that we currently have.

City Manager Bohenko said that is a fair assumption. The numbers were done to determine what fixed costs were and work with the departments for level funded services to allow the City Council to make a policy decision. The School Department has indicated their fixed costs are 5.9%. The Fire Department will try to stay within the guideline of the Joint Budget Committee. The Police Department is going through their process and their numbers do not jive with our numbers. He advised the City Council that he has directed the Municipal Department not to come in with anything higher than a 5.5% increase. He said that if the motion passes he would send out a memorandum to all departments with the vote of the City Council.

Councilor Marchand said that there are costs that are beyond the CPI that we do not have control over such as health care costs. He said we need to prioritize items and if a department feels they need more than the 4% they must justify that need.

Assistant Mayor Grasso said that she would vote in favor of the motion but as the Council goes through the budget work sessions if a department shows a need for more than the 4% that the City Council will listen to their request and make a decision whether to increase the figure beyond the 4%.

Councilor Ferrini moved to amend the motion that would require the City Manager to provide a memorandum outlining the effects of a 4% operating budget. Seconded by Assistant Mayor Grasso.

Councilor Raynolds spoke against the amendment and said he would like Councilor Marchand's motion to pass without an amendment.

Councilor Whitehouse moved to suspend the rules in order to continue the meeting beyond 10:30 p.m. Seconded by Councilor St. Laurent and voted.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell said she has worked with the City Manager for seven years and he always prepared a great budget and he will supply the City Council with what they ask for.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

On a roll call vote 7-2, the amendment to the motion *failed* to pass. Assistant Mayor Grasso and Councilor Ferrini voted in favor. Councilors Marchand, Pantelakos, Hynes, Raynolds, Whitehouse, St. Laurent and Mayor Sirrell voted opposed.

On a unanimous roll call vote 9-0, main motion passed.

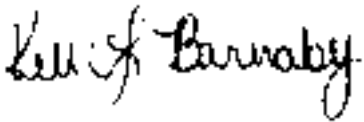
D. COUNCILOR HYNES

1. Traffic & Safety Committee Action Sheet and Minutes of the January 20, 2005 meeting

Councilor Hynes moved to accept and approve the action sheet and minutes of the Traffic & Safety Committee meeting of January 20, 2005. Seconded by Councilor St. Laurent and voted.

XI. ADJOURNMENT

At 10:55 p.m., Councilor Pantelakos moved to adjourn. Seconded by Councilor Whitehouse and voted.

A handwritten signature in cursive script that reads "Kelli L. Barnaby".

Kelli L. Barnaby, City Clerk