

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, NOVEMBER 10, 2005

PORTSMOUTH, NH  
TIME: 6:30 PM

### **I. CALL TO ORDER**

Mayor Sirrell called the meeting to order at 6:30 p.m.

### **II. ROLL CALL**

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

Absent: Councilor Raynolds

### **III. INVOCATION**

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

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

Councilor St. Laurent led in the Pledge of Allegiance to the Flag.

### **V. CANVASS OF THE VOTE OF THE NOVEMBER 8, 2005 MUNICIPAL ELECTION**

City Clerk Barnaby provided the City Council with copies of the November 8, 2005 Municipal Election results and requested the City Council accept the results as presented.

The following positions were elected:

#### **City Council 2 year term**

Mayor Steve Marchand  
Assistant Mayor Thomas Ferrini  
Councilor Joanne Grasso  
Councilor M. Christine Dwyer  
Councilor Edward "Ned" Raynolds  
Councilor Laura Pantelakos  
Councilor Harold Whitehouse  
Councilor Kenneth Smith  
Councilor William St. Laurant

#### **School Board 4 year term**

Sheri Garrity, Kent LaPage, Carson Smith, Brendan Ristaino and Mitchell Shuldman

#### **Fire Commission 4 year term**

Richard Gamester and Paul Wentworth

**Police Commission 4 year term**

Gerald "Jerry" Howe and John Russo

**Ward Moderators 2 year term**

Petra Pantelakos-Barstow - Ward 1

Robert Padian – Ward 2

Charlene Kane – Ward 3

Daniel Blanchard – Ward 4

Jacqueline Pitts – Ward 5

**Ward Clerks 2 year term**

Joseph Pantelakos – Ward 1

Robin LeBlanc – Ward 2

Mary Bailey – Ward 3

Gerald Ward – Ward 4

John Grossman – Ward 5

**Ward Selectmen 2 year term**

Joann Wyckoff, Penny Reynolds, and Carolyn Marvin – Ward 1

Diane Schaefer, Debora Mayer and Leslie McCarthy – Ward 2

Jennifer Fahey, Nancy Lane and Catherine Cosgrove – Ward 3

Cristin Pugliese, Sharon Nichols and Elissa Stone – Ward 4

Nancy Grossman, Leah Caswell and Eva Powers – Ward 5

**Registrar of Voters 2 year term**

Tylene Jousse – Ward 1

Candace Thayer – Ward 2

Carlos Castro – Ward 3

Elizabeth "Betsy" Shultis – Ward 4

Charles Vaughn – Ward 5

**Registrar of Voters At Large 2 year term**

George Shultis

Assistant Mayor Grasso moved to accept the election results of the November 8, 2005 Municipal Election contained in the report of the City Clerk dated November 8, 2005 and declare the top vote recipients as elected. Seconded by Councilor St. Laurent.

Councilor Hynes said he would be requesting a recount. He provided the City Council with a memorandum with excerpts of State Law regarding recounts as well as the process in which he would request the recount to be handled. He said that he does not want to have the recount done by feeding the ballots back through the voting machine but rather a complete hand count of all the ballots for each of the five wards. He advised the City Council that this method is used by the Secretary of State for all recounts at the State level. He said if the City Council does not agree to a hand recount, he will take the matter to court to have the court instruct the City Clerk to conduct the recount via hand.

Assistant City Attorney Dwyer advised the City Council that the purpose of the canvass is to declare the elected officials and if any individual disagrees and is defeated then they are able to request a recount but you do not have a valid election until you canvass the votes and accept the results from the City Clerk.

Motion passed.

City Clerk Barnaby provided the City Council with a suggested motion for the recount request.

Assistant Mayor Grasso asked Councilor Hynes if City Clerk Barnaby's suggested motion was acceptable to him. He said that the motion is acceptable however, the method of the recount he would request be done by hand.

Councilor Pantelakos asked if she could include in the motion that the recount be conducted by hand.

City Clerk Barnaby explained the process in which she would conduct the recount. She advised the City Council that she would view each ballot prior to the ballot being feed through the machine, if a ballot appeared that voter intent should be examined that ballot would be set aside to be hand counted. She said that she spoke with LHS Associates who is the manufacturer of the Accu-Vote machine and was advised that the machine is 99.9% accurate as long as the voter executed the ballot properly.

Councilor Pantelakos asked how the machine reads a ballot if the voter voted for more than the required candidates. City Clerk Barnaby explained that the machine would consider that ballot an over vote and that particular race would be registered as a blank and the rest of the ballot would be recorded properly.

Councilor St. Laurent discussed the process in which City Clerk Barnaby has recommended for the recount and said that the City Clerk has explained that any ballot that needs to be examined for voter intent would be set aside and not feed through the machine which is an acceptable process and was done with the recount of 1997.

Councilor Hynes said that he trusts the City Clerk's judgement and honesty but he has heard from many individuals requesting that the recount be done by hand. He said that he feels a hand count is a more open process whereby the ballots may be viewed by observers.

Assistant City Attorney Dwyer said that the City Charter requires the City Council to order a recount as it has been requested by Councilor Hynes. She recommended that the City Council vote to order the recount but not to co-mingle the terms in which the recount would be conducted. She said the method of the recount is an administrative function. She said that she spoke with an attorney today who is advising Councilor Hynes' advisers. She said she informed the attorney that the process would be open and every ballot would be visually inspected and that there would be opportunities for each representative to look at the ballots.

Councilor Hynes said he is looking for an open process without the use of the Accu-Vote machine.

Councilor Pantelakos moved to conduct a recount of the vote for City Council of the election of November 8, 2005 of the ninth and tenth positions, those being the votes cast for William St. Laurent and John Hynes. Seconded by Assistant Mayor Grasso.

Councilor Whitehouse asked how the recount would be handled and the set up of the room. City Clerk Barnaby advised the City Council that the recount is currently scheduled to take place on Tuesday, November 15, 2005 and discussed the process in detail.

Councilor Ferrini asked if the machine is used for the recount he would like to know if it would be challenged. He said he does not believe that there is an impediment to vote on a procedure for the recount.

Motion passed.

Assistant City Attorney Dwyer said that the City Clerk would conduct the recount consistent with State Law with the procedure she has identified.

Councilor Hynes asked if Assistant City Attorney Dwyer is recommending that the recount be handled through the Accu-Vote machines as described by City Clerk Barnaby. Assistant City Attorney Dwyer said the process the City Clerk has described is legally permissible and will provide accurate results also providing each candidate the ability to challenge ballots. Councilor Hynes said he does not agree with the method as described by the City Clerk. He said if the recount is conducted by using the Accu-Vote machine he will take the matter to court. Assistant City Attorney Dwyer said that observers could view each ballot before it goes through the machine. Councilor Hynes said if the recount is not conducted by hand he would bring the matter to court.

Assistant Mayor Grasso advised Councilor Hynes that people are not 100% accurate either. She suggested that City Attorney Sullivan, City Clerk Barnaby and Councilor Hynes meet to determine the method used to conduct the recount. She said it is not the City Council's job to determine the method of the recount.

Assistant City Attorney Dwyer said that City Attorney Sullivan and City Clerk Barnaby would arrange a meeting with Councilor Hynes and Councilor St. Laurent Monday to discuss the matter further.

Councilor Marchand said at this point regardless of how one thinks the best method is, the City Council has taken this matter as far as they can this evening.

Councilor Pantelakos asked that the City Council move the question. Discussion followed as to whether the City Council had voted on the recount and City Clerk Barnaby indicated that her notes did not indicate that the motion was voted on, therefore she requested the City Council move the question to record the vote.

Councilor Marchand indicated that he felt the City Council voted on the question. Councilor Ferrini concurred with Councilor Marchand but requested the City Council move the question again to ensure that the vote is recorded.

Motion passed with Councilor Hynes opposed.

**VI. ADJOURNMENT TO ENTER INTO CONFERENCE ROOM A FOR WORK SESSION REGARDING PERFORMANCE/OPERATIONAL AUDITS**

At 7:05 p.m., Councilor Ferrini moved to adjourn the meeting. Seconded and voted. The City Council adjourned into Conference Room A following this meeting to enter into a work session regarding Performance/Operational Audits.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC  
City Clerk