

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JUNE 5, 2006

PORTSMOUTH, NH
TIME: 7:00PM [or thereafter]

Mr. O'Connell of Boston Pedal Party provided the City Council with a CoBi Bicycle Demonstration at 6:00 p.m. in the City Hall Parking Lot.

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:10 p.m.

II. ROLL CALL

Present: Mayor Marchand, Councilors Grasso, Dwyer, Raynolds, Whitehouse, Smith and Hynes

Absent: Assistant Mayor Ferrini and Councilor Pantelakos

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

PRESENTATIONS

1. Acceptance of Donation in the amount \$100,000.00 from Granite State Minerals to the New Library Building Fund for the Naming of the Library Courtyard

Sean Mahoney said that his family has made this donation because they care greatly for the City of Portsmouth. He said that the donation would be designated for the naming of the Library Courtyard.

Councilor Grasso moved to suspend the rules in order to take up Item VIII A. to accept the donation. Seconded by Councilor Smith and voted.

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

2. Acceptance of Donation in the amount of \$15,000.00 to the New Library Building Fund by the Children of Ann and Archie McEachern for the naming of the Newspaper Reading Area in their memory

Duncan McEachern said that his family is pleased to make this donation in memory of his mother and father Ann and Archie McEachern. He said the Newspaper Reading Area will be named in their memory.

Councilor Whitehouse moved to suspend the rules in order to take up Item VIII B. to accept the donation. Seconded by Councilor Grasso and voted.

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

V. ACCEPTANCE OF MINUTES – MAY 15, 2006

Councilor Smith moved to approve and accept the minutes of the May 15, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

VI. PUBLIC COMMENT SESSION

Irwin Bierhans, Blue Ribbon Cemetery Committee, spoke in support of the Committee's request to have this made into a regular committee. He discussed the various programs and services provided by the Committee and the need for it to be elevated from a Blue Ribbon Committee to a regular Committee.

Harold Ecker asked if speakers would be limited to three minutes during the reconvened public hearing on the budget Wednesday evening. Mayor Marchand said depending on the number of individuals that attend, the comments may be limited to three minutes however, each individual would be afforded three opportunities to speak for a total of nine minutes. Mr. Ecker said that residents should be given the opportunity to speak as long as they wish during a public hearing.

Chris Mayeux urged the City Council to consider each proposed zoning amendment by HarborCorp separately. She spoke opposed to the proposed amendment to increase the height of a building. She also expressed concern regarding the parking amendments placing the burden onto the taxpayers.

Marylou McElwain said that the Sheraton Hotel expansion requests are moving too quickly and the changes will have an effect on the future of Portsmouth. She urged the City Council to control the development and growth of the City. She also expressed concern regarding the water and sewer needs that will accompany the expansion.

Peter Bresciano thanked the City employees that assisted with the flooding during Mother's Day weekend. He said that employees came to work here even with flooding at their own homes, which speaks volumes to the employees' dedication to the City of Portsmouth. He advised the City Council that he was told that the EPA was pleased with how our sewer plant handled the water and sewer issues from the flood.

James Horigan asked the City Council not to vote on the proposed zoning amendments for HarborCorp as a package, but to act on each one separately. He said that these proposed amendments deserve serious consideration by the City Council and should be handle separately.

VII. PUBLIC HEARING

A. ORDINANCE AMENDING CHAPTER 9 BY THE ADDITION OF A NEW ARTICLE VIII ENTITLED OUTDOOR DISPLAY OF BALLOONS

Mayor Marchand read the legal notice, declared the public hearing open and called for speakers.

City Attorney Sullivan advised the City Council that this ordinance was drafted at the request of Councilor Pantelakos. He said that Councilor Pantelakos expressed concern with balloons becoming loose and causing environmental issues. He said any person or business that violates this ordinance shall be subject to a fine of \$100.00 per violation, with each day of non-compliance with the ordinance to be deemed a separate violation.

After three calls and no speakers, Mayor Marchand declared the public hearing closed.

VIII. APPROVAL OF GRANTS AND DONATIONS

C. Acceptance of Donation to the New Library Building Fund from P B Eames Revocable Trust in the amount of \$1,000.00

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

D. Acceptance of Donation to the Coalition Legal Fund from the Town of Stoddard in the amount of \$1,000.00; the Town of Moultonborough in the amount of \$1,000.00; and the Town of Tuftonboro in the amount of \$5,000.00

Councilor Whitehouse moved to accept the \$1,000.00 contribution from the Town of Stoddard; \$1,000.00 from the Town of Moultonborough; and \$5,000.00 from the Town of Tuftonboro to be placed in the Coalition Legal Fund. Seconded by Councilor Grasso and voted.

- E. Acceptance of Grant from the Directors of the Maine Community Foundation for the New Library Building Committee in the amount of \$1,500.00

Mayor Marchand announced that this donation was made by the Maine Community Foundation at the recommendation of Robert J. Dunfey, Sr.

Councilor Hynes moved to accept a grant for the New Library in the amount of \$1,500.00 from the Directors of the Maine Community Foundation. Seconded by Councilor Grasso and voted.

- F. Acceptance of Grant from HUD for the New Library in the amount of \$99,000.00

Councilor Smith moved to accept and expend a grant from U.S. Housing and Urban Development in the amount of \$99,000.00 for the purpose of constructing an environmentally responsible library. Seconded by Councilor Whitehouse.

City Manager Bohenko announced that this grant was secured with the assistance of Congressman Bradley to be used for the construction of the new library. He advised the City Council that these funds will play an important role in our goal of insuring the construction of an environmentally responsible library.

Motion passed.

- G. Approval to Apply for Regional Pandemic Planning Grant

Councilor Whitehouse moved to authorize the City Manager to apply for, accept, and expend a grant from the New Hampshire Department of Health and Human Services for the purpose of funding a regional influenza pandemic planning grant. Seconded by Councilor Hynes.

City Manager Bohenko advised the City Council that the City would receive \$21,416.00 for our region. He said that the Portsmouth Area Emergency Planning Team has coordinated emergency planning in the City of Portsmouth, and the Towns of New Castle, Rye, Greenland and Newington. He also informed the City Council that we would be conducting a tabletop exercise within 6 months of receipt of the funds.

Councilor Raynolds said it is important that agencies work through the logistics and communications for an emergency such as this.

Motion passed.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Resolution Authorizing Borrowing in Anticipation of Revenues and Taxes in the amount of \$16,000,000.00

Councilor Hynes moved to pass first reading and hold a public hearing and adoption of the Resolution at the June 19, 2006 City Council meeting. Seconded by Councilor Smith and voted.

- B. Second reading of Ordinance amending Chapter 9 by the addition of a new Article VIII entitled Outdoor Display of Balloons

City Attorney Sullivan said that some members of the City Council sought to clarify the application of the proposed law, therefore the following proposed amendment has been created:

Amend the first sentence of Section 9.801 of the ordinance to read as follows:

9.801 Findings:

The City Council hereby finds that outdoor display of balloons by commercial entities **for the purpose of attracting attention to businesses** causes littering and environmental pollution due to the fact that the balloons are prone to becoming blown by the wind from the property on which they are displayed with the result that the balloons then pollute the environment. (Note: New language is **bolded.**)

Councilor Dwyer moved to amend the first sentence of Section 9.801 of the ordinance as stated by City Attorney Sullivan. Seconded by Councilor Grasso.

Councilor Smith said he agrees with the intent but is concerned with a business holding a one-time event such as a grand opening being required to comply with the ordinance. He said that there needs to be something within the ordinance to allow for a special exception.

Voted to pass the amendment.

City Attorney Sullivan said that there is no provision to allow for a special exception but there is a level of enforcement and discretion when applying the ordinance.

Councilor Whitehouse moved to pass second reading as amended and schedule a third and final reading at the June 19, 2006 City Council meeting. Seconded by Councilor Dwyer.

Councilor Dwyer said that there are other ways to attract attention to businesses that are not harmful to the environment such as the use of banners or flags.

Councilor Reynolds said he agrees with the comments made by Councilor Dwyer. He said that balloons are harmful to the environment.

Councilor Whitehouse said he is uncomfortable supporting this ordinance and he does not feel there is a problem with the use of balloons in the City by auto dealerships. He said that the ordinance should specify if this ordinance is meant for dealerships.

Mayor Marchand said because Councilor Pantelakos is not present this evening to provide input relative to the ordinance perhaps the City Council should table second reading of the ordinance until the June 19, 2006 City Council meeting.

Councilor Smith moved to table second reading of the Ordinance until the June 19, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

- C. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking sub-section A by the addition of Cottage Street: both sides from Route 1 By-Pass
- the southerly side from Route 1 By-Pass easterly three hundred feet (300')
 - the northerly side from Route 1 By-Pass easterly four hundred feet (400')

Councilor Hynes moved to pass third and final reading of amended ordinance, as submitted. Seconded by Councilor Smith and voted.

X. CONSENT AGENDA

Councilor Smith requested that Item B – Letter from Kiarna Boyd, Portsmouth Halloween Parade Committee, requesting permission to hold the 12th annual Portsmouth Halloween Parade on Tuesday, October 31, 2006 at 7:00 p.m. be removed from the Consent Agenda.

Councilor Whitehouse requested that Item F – Request from Popovers on the Square, LLC to place 10 tables and 38 chairs in front of their establishment located at 6-16 Congress Street Units M-1 & M-2 be removed from the Consent Agenda.

Councilor Grasso moved to adopt the remainder of the Consent Agenda as presented. Seconded by Councilor Dwyer and voted.

- A. Acceptance of Donations to the New Library Building Fund
- Judith S. Wiseman & Susan K. Scolnik - \$10.00
 - Norman M. & Elizabeth T. Henderson - \$50.00
 - Keith J. Dolan & Martha R. Eshoo - \$50.00
 - Merrilee J. Possner - \$50.00
 - J. Scott Astle - \$150.00

- Ross Gittell & Jody Hoffer Gittell - \$200.00
- Cuzin Richard Entertainment Associates - \$250.00
- Jack & Pat Palmer - \$300.00

(Anticipated action – move to approve and accept the donations to the New Library Building Fund as listed)

- C. Letter from Perry Silverstein withdrawing his request for a license for an outswing door on his proposed addition at 10 Commercial Alley ***(Anticipated action – move to accept and place the letter on file)*** (See attached memorandum from the Planning Department)
- D. Request from Assiah Russell, Puttin' on the Glitz, to place one bench in front of establishment located at 150 State Street ***(Anticipated action – move to refer to the City Manager with power)***
- E. Request from Carolyn McGee, Buyer's Brokers of the Seacoast, to place 1 A-frame sign in front of establishment located at 33 Deer Street, #4A ***(Anticipated action – move to refer to the City Manager with power)***
- G. Letter from Wendy Segit, Seacoast Mental Health Center, Inc., requesting permission to hold the 9th annual Bridges 4 Friendship 10k Road Race on Saturday, October 14, 2006 at 10:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- H. Letter from George Barnard, Rotary Club of Portsmouth, requesting permission to hold the annual Thunder Chicken 5k Road Race, on Thursday, August 3, 2006 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Kiarna Boyd, Portsmouth Halloween Parade Committee, requesting permission to hold the 12th annual Portsmouth Halloween Parade on Tuesday, October 31, 2006 at 7:00 p.m.

Councilor Smith said that he was concerned with some of the content and display at the last Halloween Parade.

Councilor Raynolds moved to refer to the City Manager with power. Seconded by Councilor Dwyer.

Councilor Smith said he does not have a problem with the parade but he does not feel that children should be subjected to inappropriate content and display. He also expressed concern with the political content of the parade as well.

Councilor Grasso said that City Manager Bohenko can require that the parade is appropriate for families to attend.

City Manager Bohenko advised the City Council that he would work in conjunction with the City Attorney to ensure that the parade is respectfully to individual rights and that the organizers understand the issues and concerns of the City Council.

Councilor Smith said that if the content does not change perhaps they should change the name of the parade or organizers need to advise the public of the nature of the event.

Councilor Raynolds spoke concern regarding individuals throwing candy during the Holiday Parade. He said that we need to control this issue to protect the citizens attending the parade. He also advised the City Manager that Burlington, Vermont has specific guidelines for parade participants to follow and suggested that City Manager Bohenko review their website for ideas.

City Manager Bohenko informed the City Council that he would address these concerns.

Motion passed.

- F. Request from Popovers on the Square, LLC to place 10 tables and 38 chairs in front of their establishment located at 6-16 Congress Street Units M-1 & M-2

Councilor Whitehouse moved to refer to the City Manager with power pending the approval from the Planning Department. Seconded by Councilor Smith.

Councilor Whitehouse said that he welcomes this new establishment to the City. He asked the City Manager what the exact boundaries of the placement of the tables and chairs would be. City Manager Bohenko referred the City Council to exhibit 1 of the materials and referred to City Clerk Barnaby's highlighted copy of the exhibit for reference.

Councilor Whitehouse withdrew the requirement in the motion pending the approval from the Planning Department. Councilor Smith agreed with the removal of the language. The motion now reads to refer to the City Manager with power.

Councilor Smith suggested moving the location of the bike rack ninety degrees. He also expressed concern with some of the establishments with licenses extending the placement of the tables and chairs from in front of their businesses. City Manager Bohenko advised Councilor Smith that he would have the Code Enforcement Officer review the placement of each businesses tables and chairs to ensure that they are in the appropriate location.

Councilor Raynolds advised the City Manager that residents are not utilizing the cigarette receptacles and suggested that the businesses create signs advising all patrons to utilize the receptacles. City Manager Bohenko advised Councilor Raynolds that business owners have informed him that the majority of debris is created by pedestrians and not patrons utilizing the tables and chairs.

Councilor Dwyer asked about Popovers reference to table service. City Attorney Sullivan said that there would be no table service allowed by the establishment to the outside tables and chairs.

Motion passed to refer to the City Manager with power.

XI. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Brett Constantine requesting permission to perform at the small stage in the Vaughan Mall pedestrian area

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

- B. Letter from Rick O'Connell, Boston Pedal Party, requesting permission to operate (2) 7 passenger CoBi bikes in the City seasonally from May to September

Councilor Raynolds moved to refer to the City Manager with power. Seconded by Councilor Whitehouse.

Councilor Whitehouse spoke to the demonstration received by the City Council earlier this evening. He expressed some concern with the proposed route and requested that City Manager Bohenko work with Mr. O'Connell to select an appropriate route. City Manager Bohenko advised Councilor Whitehouse that staff members met with Mr. O'Connell and Deputy Police Chief Len DiSesa approved this route.

Councilor Smith asked where the staging area would be for the bicycles. City Manager Bohenko said that the former horse and carriage stand would be used as the staging area.

Motion passed.

- C. Letter from Bill St. Laurent, Association of Portsmouth Taxpayers, requesting that the City Council hold a public work session with the Portsmouth Taxpayers to discuss the 2006/2007 budget

Councilor Hynes moved to accept and place the letter on file. Seconded by Councilor Grasso.

Councilor Dwyer said that there is a desire for a different kind of engagement with the City Council and we need to consider how we conduct our public hearings.

Councilor Smith said that we opened up the process by allowing the study circles and the Association of Portsmouth Taxpayers should be allowed an opportunity. He spoke to the process used by the Planning Board during the master plan and suggested that the City Council consider meeting in other locations during the budget sessions outside of the Council Chambers. He suggested possibly meeting in neighborhoods and to put a plan in place for the next budget.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Proposed Wamesit Pilot Agreement

City Manager Bohenko referred to the Pilot Agreement before them and recommended approval.

Councilor Whitehouse moved to approve the proposed Wamesit Pilot Agreement, as submitted. Seconded by Councilor Grasso.

Councilor Smith asked about the term shelter rent within the agreement. City Manager Bohenko said that the term is defined in the State statute.

Motion passed.

2. Proposed Changing Places Easements

City Manager Bohenko advised the City Council that Changing Places, LLC has received approval for its subdivision of property on Falkland Way. He said as part of the approval, Changing Places is required to convey to the City a Landscape Easement and a Drainage and Utility Easement.

Councilor Smith moved to authorize the City Manager to accept a required landscape easement and a required drainage and utility easement from Changing Places, LLC. Seconded by Councilor Dwyer.

Councilor Whitehouse asked if this was the final phase. City Attorney Sullivan advised Councilor Whitehouse that there are minor issues remaining but they will be handled administratively and do not require action by the City Council.

Motion passed.

3. Report Back from Planning Board Re: HarborCorp Zoning Amendments

City Manager Bohenko said that he is requesting the City Council advise him if they would like the proposed ordinances brought back for first reading at the June 19, 2006 City Council meeting. He advised the City Council that the ordinances would not be brought forward as a package, but individually. He also informed the City Council that channel 22 would rebroadcast the Planning Board meeting when these ordinances were discussed.

Councilor Hynes moved to authorize the City Manager to bring back for first reading at the June 19, 2006 City Council meeting the four zoning amendments proposed by HarborCorp. Seconded by Councilor Smith.

Councilor Whitehouse said it is important that the City Council consider each ordinance separately. He expressed concern with the height issue in one of the proposed amendments.

Motion passed.

Informational Items

1. Reconvened Budget Public Hearing – June 7th

City Manager Bohenko announced that the reconvened public hearing on the budget would be held tomorrow evening at 7:00 p.m. in the City Council Chambers.

Councilor Smith expressed concern with limiting public input to three minutes during the reconvened public hearing. Mayor Marchand said that the majority of speakers requested that there was a time limit at the last public hearing to allow everyone the opportunity to speak. He said that all residents were allowed three opportunities to speak for a total of nine minutes.

Councilor Smith moved to prohibit the use of a three-minute time limit for speakers during the reconvened budget public hearing on June 7, 2006. Seconded by Councilor Whitehouse.

Councilor Reynolds said it is important to understand the strategy the Mayor applied for the time limit. He said the time limit was used to ensure that time was distributed fairly to all residents that wanted an opportunity to address the City Council.

City Attorney Sullivan advised the City Council that it is the discretion of the Chair to make the decision on a time limit per speaker. He suggested the City Council allow the ordinary rules to play out for the public hearing. He also advised the City Council that they have a right to appeal the decision of the Mayor.

Councilor Smith withdrew his motion and Councilor Whitehouse the second to the motion.

Councilor Grasso said that it is more effective for a speaker to limit their comments to three minutes.

Councilor Whitehouse expressed concern with the proposed vote of the legislature regarding the Statewide property tax issue and its potential effect on the budget. City Manager Bohenko said that we must build our budget based on the law in effect at the time of budget adoption.

2. BRAC Reuse Process for Paul A. Dobles Army Reserve Center

Councilor Smith asked if we are moving forward with the Local Redevelopment Authority (LRA). City Manager Bohenko advised Councilor Smith that the City is moving forward with the LRA.

B. MAYOR MARCHAND

1. Appointments

The City Council considered the reappointment of Sandra Dika and John Golumb to the Historic District Commission. The appointment of Hank Sanders as an alternate to the Zoning Board of Adjustment filling the unexpired term of Steven Berg who was appointed as a regular member. The appointment of Susan Turner to the Taxi Commission filling the expired term of Betty Sanford. The reappointment of Jeff Mountjoy to the Portsmouth Housing Endowment Fund Advisory Board. The City Council will vote on these appointments at the June 19, 2006 City Council meeting.

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the May 11, 2006 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the May 11, 2006 Traffic & Safety Committee meeting. Seconded by Councilor Whitehouse and voted.

2. Parking Committee Action Sheet and Minutes of the May 11, 2006 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the May 11, 2006 Parking Committee meeting. Seconded by Councilor Hynes.

Councilor Smith advised the City Council that the forgiveness ticket program would be reviewed and discussed further by the Committee at their July meeting.

Councilor Whitehouse asked if the Parking Committee is reviewing the program used by the City of Portland, Maine. Councilor Smith advised Councilor Whitehouse that the program is used in certain areas of Portland, not the entire City.

Motion passed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

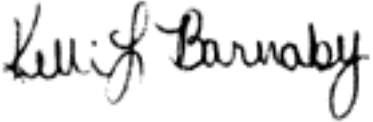
Councilor Whitehouse requested that City Manager Bohenko send a memorandum to the Dog Committee in reference to possibly restricting dogs on the easterly end of Peirce Island in the walking paths and reinforce the need for owners to pick up the dog waste. Councilor Grasso said that she has received calls as well and feels the issue needs to be addressed.

Councilor Dwyer said that we may need to educate certain boards and commissions on the use of City funds and lobbying the City Council on the budget. She also expressed concern with materials being placed in their personal mailboxes as well. City Manager Bohenko said that he would have City Attorney Sullivan address this matter.

Councilor Smith said he received materials that had City postage used and asked that City Manager Bohenko have the City Attorney Sullivan address this matter as well.

XIV. ADJOURNMENT

At 9:25 p.m., Councilor Whitehouse moved to adjourn. Seconded and voted.

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

Kelli L. Barnaby, CMC
City Clerk