

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, AUGUST 21, 2006

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

I. CALL TO ORDER

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

II. ROLL CALL

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

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

PRESENTATION

1. Portsmouth Criterium – Susanne Delaney and Catherine Keenan

Catherine Keenan provided a status update on the upcoming Portsmouth Criterium Race being held on Sunday, September 17, 2006 from 12:00 p.m. – 5:00 p.m.

V. ACCEPTANCE OF MINUTES – JULY 26, 2006

Councilor Whitehouse moved to approve and accept the City Council minutes of the July 26, 2006 meeting. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

Eric Spear spoke regarding the recent Joint School Advisory Committee meeting. He said that there needs to be a mission and time line to define the scope of the Committee. He also addressed the need to include all grades K-8 and the buildings.

Thanasis Tournas said that the City Council must be careful not to make rash decisions relative to the dogs at Peirce Island. He addressed the need to look at the entire issue when making a decision. He asked that the City Council be creative in their thinking relative to this matter.

Jane James said that Art Speak is the City of Portsmouth Cultural Committee and is not a special interest group. She spoke in favor of the Public Art Ordinance and its adoption. She requested the City Council support the ordinance. Jane also read a letter from Beth Shepard-Rabadam in support of the Public Art Ordinance and its adoption.

Ellen Fineberg read a letter from Mimi White in support of the Public Art Ordinance and its adoption. The letter indicated that the ordinance is part of the cultural and master plans for the City. The importance of growth and vitality in the City was also addressed in the letter as well as art enriching our lives.

Glenn Normandeau spoke opposed to not allowing dogs off-leash on Peirce Island. He advised the City Council that he has gone to the park for many years with his dog and never encountered any problems. He requested that the City Council reverse their previous decision requiring dogs to be on leashed at Peirce Island.

Tom Hindle spoke in favor of keeping dogs off-leash on Peirce Island. He said that this is the only area that allow dogs to have access to the water.

Frank Roth said that dogs should be allowed off-leash on Peirce Island. He also addressed the need for renovations to the Dog Park. He requested that the City Council reinstate the off-leash area at Peirce Island.

Kathleen Logan said that she uses Peirce Island to walk her dog. She said it is becoming difficult for people and dogs to coexist in the City and that needs to stop. She requested that the City Council look for a creative solution.

Esther Kennedy said that she would like to see statistics for why dogs should not be allowed off-leash at Peirce Island. She advised the City Council that she is disappointed by their decision to ban dogs off-leash at Peirce Island. She requested that the City Council consider the big picture when making a decision such as this.

Peter Bresciano said that the Public Art Ordinance has confused many people and the ordinance has been tabled and postponed because of it. He asked the City Council to not pass the ordinance. He said that the cost of this ordinance will be put on the taxpayers.

Kent Logan expressed concern with the decision of the City Council prohibiting dogs off-leashed on Peirce Island. He spoke to how this decision was made at the last meeting. He advised the City Council that the Dog Committee should have reviewed this matter prior to any vote of the City Council.

Martin Hanssmann said that he moved to Portsmouth because he thought it was a dog friendly environment. He said that dogs need off-leashed areas to allow them to run and exercise. He spoke opposed to prohibiting dogs off-leashed at Peirce Island. He advised the City Council that dog owners will work with the City Council to resolve any issues that may exist regarding dogs off-leash at Peirce Island.

Dennett Page spoke concern regarding the recent decision of the City Council to prohibit dogs off-leash at Peirce Island. She said that the City Council passed their decision on small undocumented offenses. She advised the Council that dog owners have a right to due process.

Ellen Fineberg spoke in support of the Public Art Ordinance and its adoption. She said that the City Council needs to consider the economic impact of arts on the community. She advised the City Council that a great deal of money is spent here by visitors on the arts.

Tom Holbrook spoke in support of his requests on the agenda for the book brigade and the Seacoast Local Festival. He said that these would be public events and requested the City Council's support.

Tom DeVries spoke in support of the Seacoast Local Festival. He said the event is to promote local volunteerism and sustainability.

Danny Gerstein said he serves on the Dog Committee and spoke opposed to the City Council prohibiting dogs off-leash on Peirce Island. He said that dogs are owned by taxpayers and Portsmouth is becoming an unfriendly City for dogs.

Monica Kieser said that she agrees with what others have said regarding dogs off-leash at Peirce Island. She advised the City Council that dogs need open space to run and exercise. She said that perhaps the current signage at Peirce Island was not clear to dog owners.

Jennifer McCarthy said that Peirce Island should allow dogs to be off-leash.

Christopher Bonaer advised the City Council that people cannot have children and choose to have dogs and asked that the City Council think about their decision of prohibiting dogs off-leash at Peirce Island.

Nancy & John Anderson said that they support everything that has been expressed by previous speakers relative to dogs at Peirce Island. They advised the City Council that Portsmouth is about community and dogs are a vital part of the community. They requested that the City Council reverse their decision prohibiting dogs off-leash at Peirce Island.

Carol Eaton advised the City Council that she brings her dog to Peirce Island and would like it to go back to being an off-leashed area.

Wendy Kessler expressed concern with another area being taken away as an off-leash area. She spoke to the importance of dogs being socialized and the need for dogs to be allowed off-leash. She requested that the City Council reconsider their decision.

Mayor Marchand read a letter from Stuart Wisong indicating his support of requiring dogs to be leashed at Peirce Island. The letter addressed the public safety issues related to dogs being allowed off-leash.

Councilor Whitehouse moved to suspend the rules in order to allow for an additional speaker under the public comment session. Seconded by Councilor Pantelakos and voted.

Bob Pollard spoke opposed to prohibiting dogs off-leash on Peirce Island. He said that the City Council needs to reconsider their decision relative to this matter. He asked the City Council to keep in mind that people utilize Peirce Island that are not residents of the City.

VII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donation to the New Library Building Fund from Cynthia W. Harriman or Lewis G. Harriman III in the amount of \$1,000.00

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

- B. Acceptance of Donation from Sharon S. & Dennis D. Donnermeyer in the amount of \$10,000.00 to fund the Circulation Desk

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

- C. Acceptance of Wildlife Habitat Incentives Program (WHIP) Grant

Councilor Pantelakos moved to authorize the City Manager as follows:

1. To act on behalf of the City of Portsmouth and to enter into a USDA Natural Resources Conservation Services (USDA NRCS) cost sharing agreement under the WHIP program for the purpose stated in the City Manager's comments dated August 17, 2006; and
2. To negotiate and execute as necessary any further agreements, contracts, documents, payment requests or authorizations, or any further modifications to any of the above documentation; and
3. To take any and all further actions necessary to implement the intent of this authorization

Seconded by Councilor Dwyer and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Livermore Street: the easterly side from Pleasant Street to the dead end

Councilor Grasso moved to pass first reading of the amended ordinance, as submitted, and hold a public hearing and second reading at the September 18, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

- B. Second reading of Ordinance amending Chapter 1, by the creation of Article XVII – Funding of Public Art (*Recessed from the August 7, 2006 City Council meeting*)

Councilor Dwyer said the ordinance was recessed in order for City Attorney Sullivan to develop amendments into the ordinance as requested by City Councilors.

Councilor Dwyer moved to insert the following new provision as section 1.1704: Exemption – By a two-thirds (2/3) vote, the City Council may exempt a municipal building, such as a water or sewer plant, from the Public Art Commitment described in Section 1.1702 if the purpose of this ordinance would not be fulfilled due to the building's inaccessibility to the public, location, use or other factors. Seconded by Councilor Pantelakos and voted.

Councilor Dwyer moved to pass second reading of the amended ordinance, and hold third and final reading at the September 18, 2006 City Council meeting. Seconded by Assistant Mayor Ferrini.

Councilor Reynolds spoke in support of the ordinance. He advised the City Council that the arts are an essential part of the community and its economy. He said the ordinance is a taxpayer's investment in public art.

Councilor Hynes said the City Council represents the majority of the City to make this an attractive City to live in and visit. He said that these issues make the City unique and interesting.

Councilor Pantelakos said that she would not support this ordinance.

Councilor Whitehouse said he appreciates the work that has been involved in preparing this ordinance however, he would not support it. He said that the City already does many things for the arts and culture. He spoke to the issues facing the City and their importance such as the waste water treatment plant.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand said that these amendments help in terms of the money. He said that no one claims that you will raise a great deal of money from this ordinance. He advised the City Council that he would like to set aside funds through our capital improvement plan. He said he would support the ordinance.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

Assistant Mayor Ferrini said he supports the ordinance and much of what has been said this evening. He said in a variety of ways we do a great deal to support the arts and this is one more way to do that.

Councilor Grasso said that she would not support the ordinance and she has received calls from individuals opposed to the ordinance.

Councilor Smith said that he would support the ordinance and stated that artists have brought the color back to the City. He said that this ordinance is an investment in the City. He advised the City Council that this is something that was supported through the master plan.

On a roll call vote 6-3, motion passed. Assistant Mayor Ferrini, Councilors Dwyer, Reynolds, Smith, Hynes and Mayor Marchand voted in favor. Councilors Grasso, Pantelakos, and Whitehouse voted opposed.

IX. CONSENT AGENDA

- A. Acceptance of Donations to the New Library Building Fund
- RB Cole - \$25.00
 - Katherine Towler & James Sparrel, PHD - \$50.00
 - Ellen S. Cohn - \$100.00
 - Ann H. Graf - \$200.00

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

- B. Acceptance of Donations to the Cemetery Committee
- John W. & Sharon C. Churchill - \$50.00
 - Anonymous - \$90.61

(Anticipated action – move to approve and accept the grants and donation to the Cemetery Committee as listed)

- C. Request from Joe Hickey, Blue Athletic, Inc. to place one A-frame sign in front of their establishment located at 67 Bow Street ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Rick Condon, Portsmouth Professional Fire Fighters Local 1313, requesting permission to hold a second Muscular Dystrophy Boot Drive on August 26, 2006 with a rain date of August 27, 2006 in Market Square ***(Anticipated action – move to refer to the City Manager with power)***

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

X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Patricia Lynch, The Music Hall, requesting the City Council consider creating a pedestrian walkway on Chestnut Street from Congress Street to Porter Street

Councilor Whitehouse moved to refer this request to the Traffic & Safety Committee for report back to the City Council. Seconded by Councilor Pantelakos.

Councilor Grasso said she would like to have this referred to the Planning Board. City Manager Bohenko advised Councilor Grasso that the matter should be referred to traffic and safety and then determine if it needs to go to another board.

Councilor Whitehouse said he would like this matter on the September agenda for the Traffic & Safety Committee.

Motion passed.

- B. Letter from Lenore Weiss Bronson, Frank Jones Farm Neighborhood Association, regarding adverse effects of illegal truck traffic on Woodbury Avenue

Councilor Smith said that the Traffic & Safety Committee is reviewing this matter and will provide a report back to the City Council.

Councilor Smith moved to place this matter on file and for the Traffic & Safety Committee to report back. Seconded by Councilor Grasso and voted.

- C. Letter from Tom Holbrook, RiverRun Bookstore, requesting permission to hold the RiverRun Bookstore Book Brigade on Thursday, September 7, 2006 from 5:00 p.m. to 8:00 p.m.

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

Councilor Whitehouse expressed concern with traffic issues relating to this request. City Manager Bohenko advised the City Council that he would meet with Mr. Holbrook to discuss this matter.

Motion passed.

- D. Letter from Seacoast Local requesting permission to close Pleasant Street from State Street to Market Square on Saturday, September 30, 2006 from 2:00 p.m. to 6:00 p.m. for a Seacoast Local Festival

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

Councilor Whitehouse expressed concern with the loss of parking meters and their revenue during this event. City Manager Bohenko expressed concern with closing Pleasant Street to Market Square. He advised the City Council that we normally close from Porter Street to Market Square and the flow of traffic is reversed.

Councilor Whitehouse moved to suspend the rules in order to allow Mr. Holbrook to address the City Council. Seconded by Councilor Raynolds and voted.

Mr. Holbrook advised the City Council that he would accept City Manager Bohenko's proposal to close Porter Street to Market Square and that we would work with Mr. Bohenko on all details of this event.

Motion passed.

- E. Letter from Dan Young, Seacoast Mental Health Center, Inc., requesting that the City install signs that would close the conservation land at dusk near their facility

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

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request to Reschedule Public Hearing/Second Reading Amending Chapter 7, Article III, Section 7.330 – No Parking – Jenkins Avenue

City Manager Bohenko said he is requesting to reschedule the public hearing until the September 18, 2006 City Council meeting regarding Jenkins Avenue due to a clerical error in which the legal notice was not published.

Councilor Grasso moved to reschedule the public hearing and second reading until the September 18, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

2. Request for First Reading of Ordinance amending Chapter 10, Article II, Section 10-208 (35) – Uses in Business Districts

City Manager Bohenko advised the City Council that he is looking for a consensus to move this ordinance forward for first reading.

Assistant City Attorney Woodland spoke to the need for this amendment and to clarify the intent of the ordinance. She advised the City Council that the ordinance preserves the 200-foot buffer between the activities of a motor vehicle sales operation and abutting residential neighborhoods.

Councilor Grasso moved to authorize the City Manager to bring back for first reading at the September 18, 2006 City Council meeting a proposed ordinance amendment to Chapter 10, Article II, Section 10-208 (35) Uses in Business Districts. Seconded by Assistant Mayor Ferrini and voted.

3. Request for First Reading of Traffic Ordinance Updates:
- First Reading of Ordinance Amending Chapter 7, Article III, Section 7.327 – Limited Parking – Two Hours Islington Street
 - First Reading of Ordinance Amending Chapter 7, Article III, Section 7.325 – Limited Parking – Thirty Minutes – Islington Street
 - First Reading of Ordinance Amending Chapter 7, Article III, Section 7.330 – No Parking – Brewster Street, Hanover Street, Islington Street and Rock Street
 - First Reading of Ordinance Amending Chapter 7, Article III, Section 7.324 – Limited Parking – One Hour – Islington Street

City Manager Bohenko advised the City Council that Chapter 7 is the most rapidly changing section of the City's Code of Ordinance. That ordinance section has not been rewritten in its entirety for at least 30 years. Traffic Engineer Deborah Finnegan has reviewed Chapter 7, and in order to make it current, she will periodically propose ordinance amendments. The following are the first four of her suggested improvements to the Chapter. The four ordinances would each have the effect of eliminating an ambiguity in the ordinance or bringing the ordinance into conformance with the actual practice in the street.

Assistant Mayor Ferrini moved to authorize the City Manager to bring back for first reading at the September 18, 2006 City Council meeting the aforementioned proposed ordinance amendments. Seconded by Councilor Pantelakos.

Councilor Smith thanked Deborah Finnegan for reviewing Chapter 7 and said that she is doing a terrific job.

Councilor Whitehouse said that Deborah Finnegan has a great deal of knowledge and thanked her for her hard work.

Motion passed.

4. License Agreement Re: Parking Kearsarge Mills Condominiums

City Manager Bohenko advised the City Council that this is a license agreement for Kearsarge Mill Condominiums. He requested that the City Council review the map provided of the area. He said approximately 20 years ago, it appears that the owners of the property known as Kearsarge Mill Condominiums began to park automobiles on adjacent City owned land. The City land is part of the lot on which the Rock Street garage is located. City Council approval has never been requested or granted for this parking arrangement to be lawful. He advised the City Council that Kearsarge now seeks to legitimize its encroachment by securing permission from the City Council to maintain the parking arrangement. He said to resolve the parking encroachment the City would issue a parking license to Kearsarge. The license would be under the following terms and conditions:

- A. The License Agreement shall be revocable at any time that the City determines in its unfettered discretion that it chooses to revoke the license.
- B. Kearsarge shall make no payment to the City on account of its past encroachment onto municipally property.
- C. In the future Kearsarge shall make a single annual lump sum payment to the City as consideration for its license in an amount to be determined as fair market value by the City Assessor and adjusted annually if necessary.
- D. As a precondition to being granted its parking license Kearsarge will convey to the City a permanent easement for purpose of allowing access, maintenance and reconstruction of the Rock Street garage.

- E. The license will contain a provision under which Kearsarge agrees to indemnify and hold harmless the City of Portsmouth from any and all liability associated with the use of the license by Kearsarge.

Councilor Pantelakos moved to authorize the City Manager to negotiate and execute a Revocable License to Kearsarge Mill Condominiums in accordance with the terms and conditions outlined in the City Manager's comments dated August 17, 2006. Seconded by Councilor Whitehouse and voted.

City Manager's Informational Items

1. Dog Committee Meeting Agenda

City Manager Bohenko announced that the Dog Committee will be meeting on Wednesday, August 30, 2006 at 6:30 p.m., in Conference Room A.

2. Recycling Center (Not on agenda)

City Manager Bohenko announced that the Recycling Center will extend its hours on Tuesdays seasonably from April 1st through November 15th. The hours on Tuesday's will be extended from 3:30 p.m. to 6:30 p.m. He advised the City Council that this would require overtime and the cost would be \$7,000.00 annually and \$2,500.00 for the remainder of the season. He said that the extended hours would start immediately as long as there is no objection by the City Council.

Assistant Mayor Ferrini thanked City Manager Bohenko for his efforts. He said for the average person, the extension from 3:30 p.m. to 6:30 p.m. is nice but may not be useful. He said he realizes that there are contract issues that need to be addressed before any further changes are considered.

City Manager Bohenko advised the City Council that there is a need to expand the area at the Recycling Center. He reported that he is working with the Foundation for additional space.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand suggested that the hours be extended further, but understands that there is a space issue.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

Councilor Pantelakos thanked City Manager Bohenko for looking into this matter and said that it is a step in the right direction.

Councilor Smith thanked the City Manager for working on this matter as well. He asked if the hours could be from 10:00 a.m. to 2:00 p.m. on Saturdays.

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the August 10, 2006 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the August 10, 2006 Traffic & Safety Committee meeting. Seconded by Councilor Whitehouse.

Councilor Smith reported that the Traffic & Safety Committee is reviewing possible name changes for same or similar street names and that a report on this matter will come back to the City Council for consideration and review.

Motion passed.

2. Parking Committee Action Sheet and Minutes of the August 10, 2006 meeting

Councilor Hynes moved to approve and accept the action sheet and minutes of the August 10, 2006 Parking Committee meeting. Seconded by Councilor Whitehouse.

Councilor Smith advised the City Council that Livermore Street is looking at resident parking and that this matter has been tabled.

Motion passed.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer said that she would like a clarification on the Joint School Advisory Committee purposes. She said that the Committee should look at the large context of issues.

Councilor Grasso announced that the Joint School Advisory Committee will be meeting on August 30, 2006. She advised the City Council that Superintendent Lister and Principal Stokel will discuss the parcels reviewed for a new middle school. She said that the main goal is to come up with how the middle school students will be housed and educated.

Councilor Pantelakos said that she was very impressed with the presentation provided last week. She said that the City Council should thank the Committee for doing the work on the middle school.

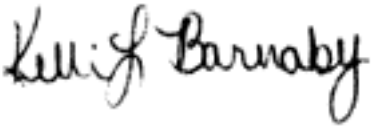
Councilor Grasso reported that the Joint Building Committee for the high school is preparing to close out. She said that it was a six year process.

Councilor Raynolds said that the former middle school committee took a narrow view of the issues. He said the important thing is to expand the contact on what to do with the middle school.

Mayor Marchand said the first priority of the committee is to build a middle school. He said that all facilities need to be reviewed during the process.

XIII. ADJOURNMENT

At 9:30 p.m., Councilor Pantelakos moved to adjourn. Seconded by Councilor Whitehouse and voted.

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