

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, SEPTEMBER 18, 2006

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

At 6:30 p.m., an Anticipated "Non-Meeting" with Counsel was held.

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:15 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 Smith led in the Pledge of Allegiance to the Flag.

V. ACCEPTANCE OF MINUTES – AUGUST 7, 2006

Councilor Pantelakos moved to approve and accept the minutes of the August 7, 2006 City Council meeting. Seconded by Councilor Smith and voted.

VI. PUBLIC COMMENT SESSION

Rebecca Domoracki advised the City Council that she and her family pick up cigarette butts every weekend from Market Square. She said that this unsightliness detracts from the natural beauty of the downtown.

Frank Roth said the Blue Ribbon Committee on Dogs voted that the City Council reverse its decision to ban off-leashed dogs from Peirce Island. He advised the City Council that thoughtful discussion was held and an evaluation of complaints was addressed. He said that the Peirce Island Committee and the Blue Ribbon Committee on Dogs are dedicated to a course of action to better define dog owners and non dog owners. He spoke to the creation of an ad-hoc committee to review the issues at Peirce Island relative to dogs. Mr. Roth said that improved signage and dog waste bags will assist.

Dennett Page spoke in support of the Blue Ribbon Committee on Dogs recommendation to the City Council to reverse the ban of off-leash dogs on Peirce Island. She advised the City Council that she has high standards for her dogs and that her dogs are well behaved. She said that she has no tolerance for dog owners that do not pick up their dogs waste and do not control the behavior of their pet.

Esther Kennedy urged the City Council to reverse their decision relative to off-leash dogs at Peirce Island. She requested that the City Council move quickly and remove the signs that prohibit dogs off-leash currently at Peirce Island. She also spoke in favor of the creation of an ad-hoc committee to address the dog issues that have been brought forward over the last several weeks.

Attorney Malcolm McNeill, representing HarborCorp, spoke opposed to the two rehearing requests from Nine Seventy Six Realty Trust, and Dover Realty Trust. He said that this case has been discussed at length and numerous information has been provided regarding the project. He said that it is time to move forward with the development of the property.

Attorney Tom Keane, representing Nine Seventy Six Realty Trust and Ocean Properties, spoke to the reasons for requesting a rehearing on HarborCorp rezoning. He discussed the hospitality report that he provided to the City Council this evening. Attorney Keane reported that the Westin Hotel is ranked 39th in the country for profitable hotels. He spoke opposed to using taxpayer's money and the increase in height for this project. He requested that the City Council review the information provided and grant the rehearing request.

Neil Cohn spoke in favor of the Blue Ribbon Committee on Dogs recommendation to allow dogs off-leash at Peirce Island. He advised the City Council that they should deal with the real issues at Peirce Island, which is littering and encouraged the installation of signs relative to this matter.

Bob Pollard spoke to allowing dogs off-leash at Peirce Island. He encouraged the City Council to reverse their previous decision prohibiting dogs off-leash at Peirce Island.

Jane James thanked the City Council and urged their support of the public art ordinance. She advised the City Council that supporting this ordinance also supports the master and cultural plans for the City.

Peter Bresciano advised the City Council that Art-Speak is a non-profit organization registered with the NH Secretary of State under the name "City Cultural Commission." He said that they are presently a 501c3 non-profit charitable corporation registered with the NH Attorney Generals Office under the name, City Cultural Commission. The name "Art-Speak," is only registered as a trade name, not a non-profit or charitable organization. Mr. Peter Bresciano went on further to discuss his letter to the Mayor and City Council dated September 18, 2006 which was provided to City Clerk Barnaby for the record.

Attorney Doug Macdonald, representing 62 Deer Street, spoke to his request for a motion for rehearing regarding the City Council decision of August 7, 2006 regarding a driveway permit for 62 Deer Street. He advised the City Council that the property owner has spent a great deal of time and money on this property and that the driveway permit is necessary. He requested that the City Council grant his request for a rehearing relative to this matter.

Russ Grazier spoke in support of the public art ordinance. He said that the City Council has the ability to make decisions for the future of the community by adopting this ordinance which will enhance the City.

Ellen Fineberg spoke in favor of the public art ordinance. She said arts have an important impact on our community. She reported that arts bring a great deal of money to the community and asked that the City Council take that into consideration when voting on this ordinance.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING SUB-SECTION A
- JENKINS AVENUE: NORTHERLY AND SOUTHERLY SIDES, WESTERLY END BETWEEN THE HOURS OF 7:00 A.M. – 3:00 P.M. MONDAY THROUGH FRIDAY

Mayor Marchand read the legal notice, declared the public hearing open and called for speakers. After three calls and no speakers, Mayor Marchand declared the public hearing closed.

- B. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING – LIVERMORE STREET: THE EASTERLY SIDE FROM PLEASANT STREET TO THE DEAD END

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

Greg Martin, Portsmouth resident, spoke in favor of the ordinance and advised the City Council that this is a safety concern. He discussed the safety issues relating to the street and requested the City Council's support of the ordinance.

Polly Hinkle, Portsmouth resident, said that safety issues are important and need to be addressed. She spoke in support of the ordinance and requested the City Council to pass the ordinance as presented.

Councilor Smith read a letter from Robert Scagliotti in favor of the ordinance. The letter indicated that cars parking on both sides of the street are creating safety issues.

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

VIII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donation to the New Library Building Fund from M. Kevin MacLeod & Kristen Sweet in the amount of \$25,000.00 for the naming of the Board Room on the second floor in honor of their parents

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

Library Director Maryann List and Board of Library Trustee Chair Suzanne Foley expressed their sincere appreciation for this very generous donation from M. Kevin MacLeod and Kristen Sweet for the naming of the Board Room on the second floor of the new library in honor of their parents.

Motion passed.

- B. Acceptance of Donation to the New Library Building Fund from Salvatore and Joanne Grasso 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.

- C. Acceptance of Police Department Grants:
- NH Highway Safety "Portsmouth Red Light Running" Grant in the amount of \$3,089.40
 - NH Highway Safety for "Portsmouth Regional DWI Saturation Patrols" Grant in the amount of \$3,707.28
 - NH Highway Safety for "Portsmouth Route 1 Corridor Enforcement Patrols" Grant in the amount of \$2,757.00

Councilor Grasso moved to approve and accept the grants to the Portsmouth Police Department as listed. Seconded by Assistant Mayor Ferrini and voted.

- D. Acceptance of Fire Department Donations
- Greenwood Emergency Vehicles, Inc. - \$250.00
 - Joni N Esperian in honor of son, Ian Esperian - \$500.00
 - Robert L & Nackey E Scagliotti - \$1,000.00
 - Granite State Minerals, Inc. - \$3,000.00

Councilor Pantelakos moved to approve and accept the donations to the Fire Department for the Firefighter's Monument, as listed. Seconded by Councilor Smith and voted.

- E. Acceptance of Donation to the New Library Building Fund in memory of Ida Belostock in the amount of \$686.00
- Ethylne Golub, Laurie Smith and Robert Golub
 - Chujen W. & J. Haywood Davis
 - Sheldon L. & Renee F. Goodman
 - Marc Keller
 - Morris W. & Elaine R. Larkin
 - Florence L. & Peter Pastor
 - Renee Silverman
 - Helen K. Sweeney
 - Elizabeth A. Tober
 - Marilyn & George Zaslav

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

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 10, Article II, Section 10-208 (35) – Uses in Business Districts

Councilor Whitehouse moved to pass first reading of the amended ordinance, as submitted, and hold a public hearing and second reading at the October 5, 2006 City Council meeting. Seconded by Councilor Grasso.

City Attorney Sullivan spoke to the need for this amendment and to clarify the intent of the ordinance. He 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.

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

- B. First reading of Ordinance amending Chapter 7, Article III, Section 7.327 – Limited Parking – Two Hours – Islington Street:
- Northerly side from Tanner Street to Parker Street
 - Northerly side from Pearl Street to a point westerly 335'
 - Northerly side from Cabot Street to a point easterly 515'

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.

Councilor Pantelakos moved to pass first reading of the amended ordinance, as submitted and hold a public hearing and second reading at the October 5, 2006 City Council meeting. Seconded by Councilor Smith.

- C. First reading of Ordinance amending Chapter 7, Article III, Section 7.325 – Limited Parking – Thirty Minutes – Islington Street:
- Northerly side from the corner of Brewster Street easterly 110'
 - Northerly side easterly 70' from Dover Street to a point 82' westerly from Salem Street
 - Northerly side from Pearl Street to Parker Street

Councilor Smith moved to pass first reading of the amended ordinance, as submitted and hold a public hearing and second reading at the October 5, 2006 City Council meeting. Seconded by Councilor Hynes and voted.

- D. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking - Adding to the Ordinance (with appropriate deletions):
- Brewster Street: easterly side, from Hanover Street southerly to Islington Street
 - Hanover Street: (Hanover Street Extension) southerly side from Brewster Street easterly 40'
 - Islington Street: northerly side from the corner of Congress Street/Maplewood Avenue/Middle Street running westerly to the easterly corner of Tanner
 - Islington Street: northerly side – easterly from a point 145' from Salem Street to a point 73' westerly of Cabot Street
 - Rock Street: deletion of easterly side from Islington Street to Hanover Street

Councilor Smith moved to pass first reading of the amended ordinance, as submitted and hold a public hearing and second reading at the October 5, 2006 City Council meeting. Seconded by Councilor Hynes and voted.

- E. First reading of Ordinance amending Chapter 7, Article III, Section 7.324 – Limited Parking – One Hour subsection A – deletion of Islington Street: northerly side from the west side of Bridge Street westerly for a distance of 131 feet to the east side of Tanner Street

Councilor Pantelakos moved to pass first reading of the amended ordinance, as submitted, and hold a public hearing and second reading at the October 5, 2006 City Council meeting. Seconded by Councilor Smith and voted.

- F. Second reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking sub-section A
- Jenkins Avenue: Northerly and Southerly sides. Westerly end between the hours of 7:00 a.m. – 3:00 p.m. Monday through Friday

Councilor Smith moved to pass second reading and hold third and final reading at the October 5, 2006 City Council meeting. Seconded by Councilor Hynes.

Councilor Whitehouse said that the street is narrow and there would be limited parking by the creation of this ordinance.

Councilor Smith said that this is a safety issue and this ordinance is necessary. He advised Councilor Whitehouse that this ordinance was requested by the neighborhood.

Councilor Whitehouse suggested the this ordinance have language added to say except holidays.

Councilor Smith spoke opposed to Councilor Whitehouse's suggestion and advised the City Council that this is a safety issue that is being addressed by the creation of this ordinance.

Motion passed.

- G. Second 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 Pantelakos moved to pass second reading of the amended ordinance, as submitted, and hold third and final reading at the October 5, 2006 City Council meeting. Seconded by Councilor Smith.

City Attorney Sullivan advised the City Council that the City interests runs to the water.

Motion passed.

Assistant Mayor Ferrini moved to suspend the rules in order to take up Item XI. E. - Letter from Philip Pettis and Jameson French, Market Square Steeple Fund, requesting use of UDAG Funds for North Church Steeple Improvements. Seconded by Councilor Smith and voted.

- XI. E. Letter from Philip Pettis and Jameson French, Market Square Steeple Fund, requesting use of UDAG Funds for North Church Steeple Improvements

City Manager Bohenko referred to his comments dated September 15, 2006. He advised the City Council that the City owns the clock in the tower and it is a widely held view that the steeple and clock tower are unmistakable city landmarks and part of what some consider a critical part of the city's commitment to historic preservation and community. He said that Mr. Pettis and Mr. French are suggesting that the City make a monetary contribution to the Market Square Steeple Fund which could be matched by other donations. City Manager Bohenko reported that the suggested grant would be \$100,000.00 with the challenge to the community to contribute an additional \$200,000.00 as match to the city's participation. He recommended funding this challenge grant concept through the UDAG funds, which are non-local-tax dollars and which are typically used for economic development and community enhancement projects. City Manager Bohenko advised the City Council that there is currently \$3,549,173.00 in the UDAG fund. He also reported that the City's legal staff has been consulted on this proposal and has found it to be an allowable use of UDAG funds.

Assistant Mayor Ferrini moved to approve and authorize the City Manager to implement a North Church Steeple Restoration Challenge Grant Program of providing a one dollar UDAG fund match for every two private dollars donated up to a total of \$100,000.00 in UDAG funds. Seconded by Councilor Smith.

Councilor Whitehouse spoke in support of the motion.

Councilor Dwyer asked if the match would be for new dollars going forward. City Manager Bohenko said that is correct.

Motion passed.

- H. Third and final reading of Ordinance amending Chapter 1, by the creation of Article XVII – Funding of Public Art

Councilor Dwyer moved to pass third reading of the public art ordinance and authorize the creation of the public art trust to implement the provisions of that ordinance. Seconded by Councilor Hynes.

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

X. CONSENT AGENDA

- A. Acceptance of Donations to the New Library Building Fund
- Rachel L. Hopkins - \$50.00
 - Frances Allen - \$100.00
 - Bottomline Technologies, Inc. - \$500.00
 - Greenwood Heinemann Publishing Group - \$500.00
 - HighLiner Foods - \$500.00

(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
- Anonymous - \$30.00
 - Anonymous - \$112.26
 - Saint Andrew's Lodge No. 56 - \$200.00
 - New Hampshire Humanities Council - \$200.00

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

- C. Letter from Peter Bresciano, Seacoast Adult Baseball League, thanking the City of Portsmouth and various Municipal Departments for their outstanding support over the summer months ***(Anticipated action – move to accept and place the letter on file)***

Councilor Pantelakos moved to adopt the Consent Agenda as presented. Seconded by Councilor Hynes and voted.

XI. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Attorney Douglas Macdonald, Keane & Macdonald, Re: Driveway Permit Application – 62 Deer Street - Motion for Rehearing of the City Council's August 7, 2006 decision (*See attached memorandum from City Attorney Sullivan*)

Assistant Mayor Ferrini moved to deny the Motion for Rehearing for a driveway at 62 Deer Street to place the Motion for Rehearing on file. Seconded by Councilor Hynes and voted.

- B. Letter from Attorney John Ryan, Casassa and Ryan, Re: Dover Realty Trust / HarborCorp Re-Zoning – Motion for Reconsideration and Rehearing pursuant to RSA Chapter 677:2 (*Proposed Conference Center*) (*See attached memorandum from City Attorney Sullivan*)

Councilor Pantelakos moved to deny the Motion for Rehearing and place on file. Seconded by Councilor Grasso and voted.

- C. Letter from Attorney Thomas Keane, Keane & Macdonald, Re: Ninety Seventy Six Realty Trust, 1000 Market Street Corporation, Trustee, Vs. City of Portsmouth – Motion for Reconsideration of Rehearing Re: HarborCorp Re-Zoning Pursuant to NH RSA 677:2 (*Proposed Conference Center*) (*See attached memorandum from City Attorney Sullivan*)

Councilor Pantelakos moved to deny the Motion for Rehearing and place on file. Seconded by Councilor Hynes and voted.

- D. Letter from Zhana Morris, The Music Hall, requesting parking meter bags for the Music Hall's 2006-2007 Season

Assistant Mayor Ferrini moved to approve the aforementioned request from the Music Hall. Seconded by Councilor Pantelakos and voted.

- F. Letter from Tim Veilleux, The Stone Pigeon, requesting permission to use the space in front of Breaking New Grounds, in Market Square for a poetry reading event and the use of a small-scale sound amplification system on October 9, 2006 from 7:00 p.m. – 9:00 p.m.

Assistant Mayor Ferrini moved to refer to the City Manager with power. Seconded by Councilor Hynes and voted.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request for First Reading on Bonding Resolution

City Manager Bohenko advised the City Council that this request is for the bonding of 4 Public Works Department projects as part of the Capital Improvement Plan for FY 2007 – FY 2012. He reported that the projects are as follows:

- Citywide Facilities Capital Improvements - \$1,000,000.00
- Citywide Sidewalk Reconstruction Program - \$500,000.00
- Congress Street Area Improvements - \$450,000.00
- Street Paving Management and Rehabilitation - \$2,500,000.00

City Manager Bohenko advised the City Council that he would bring back the bonding resolution for first reading at the October 5, 2006 City Council meeting.

Councilor Grasso moved to authorize the City Manager to bring back for first reading a bond resolution in the amount of \$4,450,000.00 for the October 5, 2006 City Council meeting. Seconded by Councilor Pantelakos and voted.

City Manager's Informational Items

1. Revaluation

City Manager Bohenko reviewed his comments dated September 15, 2006 with the City Council regarding the revaluation. He advised the City Council that in accordance with state law, tax year 2006 is the year for the City of Portsmouth to complete a full revaluation. He reported that the Assessor's Office is scheduled to release final property values for the 2006 revaluation on September 22, 2006. As in the past, there will be a special insert in the Portsmouth Herald listing all property assessments by address. In addition, all assessments will be available on the City's web-site. City Manager Bohenko advised the City Council that values are expected to increase 10% to 15%, with a median increase of 11.79%. He also advised the City Council that the tax calculator would be available on the web-site as well.

2. Report Back Re: Bicycle Friendly Communities

City Manager Bohenko reported that he met with Councilor Reynolds to discuss this matter, and is currently working with staff relative to this matter. He advised the City Council that he would continue to work with Councilor Reynolds, and more time is needed for a more comprehensive report.

3. September 25th Work Session

City Manager Bohenko announced that the City Council will be holding a work session on Monday, September 25, 2006 regarding the water rate ordinance study. He reported that Mayor Marchand has requested that another item be added which would include a site walk for the proposed Riverwalk. City Manager Bohenko suggested that the City Council start at 5:30 p.m. in the vicinity of Poco's Deck with the work session starting at 6:30 p.m. in the City Council Chambers.

B. MAYOR MARCHAND

1. *Reports

Mayor Marchand reported on the courts decision relative to the education funding issue. He said that there would be no impact to FY07 but there would be an impact for FY08.

C. COUNCILOR PANTELAKOS

1. Report Back and Requested Action Re: Dogs on Peirce Island

Councilor Pantelakos moved to direct the City Manager to return Peirce Island to an off-leash area and to establish a temporary committee to work with the City staff to develop recommendations for signage on Peirce Island and rescind the previous vote of the City Council. Seconded by Councilor Hynes.

Councilor Pantelakos reported on the August 30, 2006 Blue Ribbon Committee on Dogs meeting. She advised the City Council that the vast majority of speakers were dog owners voicing an interest in maintaining Peirce Island as an off-leash area. Hugh Jencks, representing the Peirce Island Committee, requested both that Peirce Island be returned to an off-leash area and that an ad-hoc committee evaluate signage on the island. Councilor Pantelakos said a proposal that also had some support was to make Peirce Island a leashed area during the daytime (for example 9:00 a.m. to 5:00 p.m.) during the summer season (perhaps consistent with the pool opening in mid-June and closing in late August). She reported the Dog Committee voted to make the following recommendations to the City Council:

- A. That Peirce Island be returned to an off-leash area;
- B. That a temporary committee be established to review signage; and
- C. That whatever signage is posted be large enough to catch the attention of users of the area.

Councilor Pantelakos said her motion is to reverse the previous action of the City Council and establish a temporary committee to work with City staff to develop recommendations for signage on Peirce Island.

Mayor Marchand said that the committee could be a report back from the Blue Ribbon Committee on Dogs.

Councilor Grasso asked if this action could lead to an ordinance. City Attorney Sullivan said it could be a first step in that direction. Councilor Pantelakos said no ordinance has been decided, just the creation of rules and regulations for Peirce Island.

Councilor Dwyer said she does not see a reason to set up another committee when we have a Peirce Island Committee and a Blue Ribbon Committee on Dogs.

Motion passed.

D. COUNCILOR SMITH

1. Disposal of (8 Islington Street) Old Library Building

Councilor Smith moved to refer to the Planning Board to begin the process of looking at the old library building for disposal or reuse under the City ordinance. Seconded by Assistant Mayor Ferrini.

Councilor Smith said that the Planning Board must go through the process of disposal or reuse of a building. He advised the City Council that he would like this to run in time with the Building Reuse Committee. He said it is important that the building does not remain vacant for any length of time.

Councilor Raynolds said the Building Reuse Committee is looking at all the old City buildings.

Mayor Marchand said that this is just a statement that this is a high priority and to make sure it is done quickly and well.

Councilor Pantelakos advised the City Council that she is in favor of the Planning Board reviewing the building.

Councilor Whitehouse spoke to the creation of the Building Reuse Committee and does not want to see a duplication of duties.

Councilor Dwyer said that the Planning Board would review specific criteria.

Councilor Smith said it is intended to be parallel and redundant and that he does not want to see the building sit vacant.

Assistant Mayor Ferrini said he agrees with Councilor Smith and that many committees are advisory in nature.

Councilor Whitehouse asked that everyone remember that there is a covenant on the building.

Motion passed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Mayor Marchand announced that the next City Council meeting will be held on Thursday, October 5, 2006.

XIV. ADJOURNMENT

At 9:00 p.m., Councilor Whitehouse moved to adjourn. Seconded by Councilor Pantelakos 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