

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, NOVEMBER 24, 2008 TIME: 6:00PM

AGENDA

• 6:00PM – JOINT WORK SESSION WITH SCHOOL BOARD RE: MIDDLE SCHOOL

- I. CALL TO ORDER [7:00PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

MAYOR'S AWARDS

1. Portsmouth High School Girls Volleyball Team Class I State Champions

PRESENTATION

1. Report Back from Blue Ribbon Committee on Housing

V. ACCEPTANCE OF MINUTES – OCTOBER 6, 2008; OCTOBER 20, 2008 & NOVEMBER 10, 2008

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Coalition Legal Fund
 - Town of Hebron - \$1,000.00

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Middle Road – Northerly side from Sylvester Street to Swett Avenue
- B. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Mechanic Street:
 - Southerly side, from Marcy Street to the Peirce Island Bridge
 - Northerly side, from Marcy Street to the Peirce Island Bridge between the hours of 11:00 p.m. and 6:00 a.m.
 - Westerly side, from Peirce Island Road to a point 86 feet north of Gates Street

IX. CONSENT AGENDA

(There are no items on this section of the Agenda this evening)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Sarah Hamill and residents regarding replacement for Alumni Field
- B. Letter from John Ricci, Chairman Portsmouth Planning Board, Re: Re-appointment of Planning Board Member Donald Coker
- C. Letter from Vicki Simpson, (H)EAT volunteer and local runner, Re: Road Race

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action Under Other Sections of the Agenda

- 1. Consideration of First Reading of Proposed Ordinance Amendments and Resolutions:
 - 1.1 First Reading of proposed Ordinance to amend Chapter 7, Article III, Section 7.330 – No Parking – Middle Road (***Action on this matter should take place under Section VIII of the Agenda***)
 - 1.2 First Reading of proposed Ordinance to amend Chapter 7, Article III, Section 7.330 – No Parking – Mechanic Street (***Action on this matter should take place under Section VIII of the Agenda***)

City Manager's Items Which Require Action

- 1. Bartlett – Islington Street Sewer Separation Project
- 2. Request to Extend the Deck Lease Agreement for Poco Diablo, Inc.
- 3. FairPoint Proposed Pilot of Internet Protocol Television (IPTV) Technology
- 4. Approval of 2009 City Council Schedule
- 5. Request to Extend Ceres Street Compactor License

Informational Items

- 1. Events Listing
- 2. Curbside Collection of Rubbish and Recyclables Re: Thanksgiving Holiday
- 3. Administrative Appeal from Attorney Charles Griffin Re: Toyota Illuminated Portal

B. MAYOR FERRINI

1. *Second Annual Recognition of Service for the City of Portsmouth Boards & Commissions
2. Appointment to be Voted:
 - Andy Bangs – Reappointment to PEDLP
 - Donald Coker – Reappointment to the Planning Board
3. Acceptance of Resignation:
 - Richard Adams – Conservation Commission
 - Brendan T. Ristaino – School Board

C. COUNCILOR DWYER

1. *Request for Work Session Re: Follow-up Discussion on Blue Ribbon Committee on Housing

D. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the November 13, 2008 meeting
2. Parking Committee Action Sheet and Minutes of the November 13, 2008 meeting

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT [AT 10:00PM OR EARLIER]

**KELLI L. BARNABY, CMC/CNHMC
CITY CLERK**

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Conservation Commission minutes of the October 8, 2008 meeting
2. Historic District Commission minutes of the October 1, 2008 and October 8, 2008 meetings
3. Site Review Technical Advisory Committee minutes of the November 4, 2008 meeting

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: November 20, 2008

To: Honorable Mayor Thomas G. Ferrini and City Council Members

From: John P. Bohenko, City Manager

Re: City Manager's Comments on November 24, 2008 City Council Agenda

Work Session:

6:00 p.m. – **Joint Work Session with School Board Re: Middle School.** The Mayor has advised me that he has confirmed a joint work session with the School Board at 6:00 p.m. on Monday, November 24th, to discuss the Middle School project, specifically, size and programming as requested by the City Council.

Presentation:

1. **Report Back from Blue Ribbon Committee on Housing.** As you know, in March of this year the City Council established the *Blue Ribbon Committee on Housing* and charged the Committee with developing a “road map” or guidance document on local housing options and issues, identifying creative solutions to address those issues and developing a short list of policy and action items that could be taken by others to increase the supply of affordable housing. The Committee has been meeting to carry out this charge and has now completed its work. The Committee's final report is on the inside cover of the packet and staff will present on Monday evening a brief overview of their findings. For your information, members of the Committee include:

Christine Dwyer, City Council, Chair
Kenneth Smith, City Council
Laura Pantelakos, City Council
William Gladhill, Economic Development Commission
Joseph Couture, Portsmouth Housing Authority
Dick Ingram, The Housing Partnership
Cliff Sinnott, Rockingham Planning Commission
Jane James, Real Estate/Development Community
Karen Maneen, Finance/Banking Community
John P. Bohenko, City Manager (ex-officio)
Cindy Hayden, Deputy City Manager
David Moore, Assistant Community Development Director

Acceptance of Grants/Donations:

1. **Acceptance of Donation to the Coalition Legal Fund.** Attached is a copy of a check from the Town of Hebron in the amount of \$1,000.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

I would recommend the City Council move to approve and accept the donation from the Town of Hebron in the amount of \$1,000.00, to be placed in the Coalition Legal Fund. Action on this matter should take place under Section VII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. **Consideration of First Reading of Proposed Ordinance Amendments and Resolutions:**

- 1.1. **First Reading of proposed Ordinance to amend Chapter 7, Article III, Section 7.330 – No Parking – Middle Road.** Attached under Section VIII of the Agenda is a copy of a proposed ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Middle Road, sub-section A of the Ordinances. As you may recall, at the October 20, 2008 City Council meeting, the Council approved the Traffic and Safety Minutes of October 15, 2008, which require an ordinance for No Parking on Middle Road.

I would recommend the City Council move to pass first reading and hold a public hearing and second reading of the proposed ordinance, as submitted, at the December 15th City Council meeting. Action on this item should take place under Section VIII of the Agenda.

- 1.2. **First Reading of proposed Ordinance to amend Chapter 7, Article III, Section 7.330 – No Parking – Mechanic Street.** Attached under Section VIII of the Agenda is a copy of a proposed ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Mechanic Street, sub-section A of the Ordinances. As you may recall, at the October 6, 2008 City Council meeting, the Council approved the Traffic and Safety Minutes of September 11, 2008, which require an ordinance for No Parking on Mechanic Street.

I would recommend the City Council move to pass first reading and hold a public hearing and second reading of the proposed ordinance, as submitted, at the December 15th City Council meeting. Action on this item should take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Bartlett-Islington Street Sewer Separation Project.** In order to commence the Bartlett-Islington Street sewer separation project, staff requires input from the City Council regarding the acquisition, or not, of certain property interests for the project.

As part of the City's on-going Combined Sewer Overflow - Long Term Control Plan (CSO-LTCP), the sewer which serves the Bartlett-Islington Street area of the City requires replacement. In addition to upgrading the sewer, a new separate storm drain is necessary to reduce the combined sewer overflows and to reduce flooding under the Bartlett Street Railroad Bridge. The existing combined sewer runs under the Papa Wheelie's Bicycle Shop, under the railroad tracks and connects to the brick box sewer that runs through the railroad and Ricci Lumber property. This project is federally mandated as part of a US Environmental Protection Agency (EPA) administrative order. City staff has held a number of meetings with abutting and impacted property owners in the Bartlett-Islington Street area over the course of the planning for this project.

As you may recall, on September 17, 2007, the City Council adopted a resolution finding that a public necessity existed to authorize the taking of certain easements from the railroad for this project. The City staff completed a taking of the required easements of the Boston & Maine Railroad Corporation (Pan Am Railways) property. At the time of the Council action in September of 2007, it appeared that all other impacted property owners were prepared to work cooperatively to provide the easements necessary to resolve the critical infrastructure needs. On January 24, 2008, the Planning Board recommended the City Council's approval of the acceptance of certain easements for the infrastructure upgrades. On February 11, 2008, the City Council authorized the acceptance of all the remaining easements necessary for the project.

As the City staff proceeded with the project, one of the property owners had a change of heart. The City believed it had agreement to secure a critical easement at 653 Islington Street, the property located at the corner of Bartlett and Islington Streets. The property is owned by Houston Holdings LLC, and occupied by the Papa Wheelie's Bicycle Shop. The property owner had previously indicated that the easement was acceptable if a number of conditions were met. These conditions included providing an alternative access to the property, landscaping and driveway improvements, and scheduling the work to coincide with the business off-season. In good faith, City staff proceeded to incorporate the required conditions into the project. In spite of these efforts and at the 11th hour, the property owner requested financial compensation for the easement that the City staff believes is in excess of fair market value.

Rain events within the last six months have highlighted the necessity of moving ahead with this Bartlett-Islington sewer separation project as soon as possible. Severe rain events not only continue to create flooding on Bartlett Street, but do cause sewer backups in the other parts of the system including Lovell Street and surrounding areas. Recent flow metering done as part of the City's Wastewater Master Planning process for the area confirms that this project is the only reasonable means of solving the back up and flooding problems in this area of the City.

As a result of the denial of the easement across the 653 Islington Street property and larger traffic issues related to the Islington Street corridor, staff worked with the City's engineering consultant to evaluate other options that would facilitate the completion of the sewer separation project in this area. In general there are three options for completing this project. All of them have pluses and minuses in terms of cost, traffic impacts and the potential of additional takings to be completed. The following is a brief summary of the options and a figure and aerial photo of the preferred option are attached.

1. Purchase or take by eminent domain the necessary temporary and permanent easements across the property of Houston Holdings LLC at 653 Islington Street. The easement required would be 3,200 square feet of his total property, which is approximately 14,000 square feet (he would have use of this area after the construction is done). Houston Holding's attorney has suggested a value of the easements that staff believes is in excess of the likely fair market value of the easements. Staff has engaged an appraiser to provide a value for the necessary easements and is awaiting a report. Whether by purchase or eminent domain action, the impact to the Houston Holding LLC would be minimized to the extent reasonably possible by ensuring continuous access to the property.
2. Purchase or take by eminent domain the necessary temporary and permanent easements across the property of Joseph Gobbi Supply Corporation at 685 Islington. This property is located across from Papa Wheelies on the South side of the Bartlett/Islington intersection. Purchase of the property would allow the eventual reconfiguration of the intersection to line up Bartlett Street and Jewel Court. This realignment has been identified as a method of improving the intersection in a number of past studies and is recommended in the current Islington Corridor Study being conducted by Richardson and Associates. An appraisal of the entire property (not just the required easement areas) has been completed and the value was placed at \$540,000. The City elected to appraise the entire property given the long-term interest in intersection improvements and that the easements would likely have a significant impact on the value of the property given the design requirements for location. As follow-up to the appraisal, staff met with the property owner who indicated he wanted \$750,000 for the property. Pursuing this option to construct the sewer and drain improvements would require two additional easements: one from the railroad, which would require an additional taking and would likely cost at least \$7,500 to complete; and an easement from the Merton property at the corner of Bartlett and Cate Street.
3. Relocate the sewer and drain alignment entirely into Bartlett Street to run under the railroad bridge. No further easements would be necessary for this option. The drawback would be significant impact to traffic during construction. The Bartlett Street-Islington Street intersection would have to be completely closed to traffic for some period of time during the construction; likely 30-60 days, although conditions could be different in the ground than anticipated. Given that local business owners and residents expressed significant concerns during the public meetings about the possible closure of the intersection for any length of time, this option has never been favored, but is an alternative.

Based on review of the above options, the Department of Public Works believes it is in the best interest of the City to commence eminent domain proceedings to acquire the

necessary easements across 653 Islington Street (Option 1). During this process City staff will continue dialog with the property owner in an effort to secure the easement without having to complete the taking. The appraisal report will be provided to the property owner when it is completed.

Should the City Council determine that it is in the best interest of the City to commence an eminent domain proceeding to acquire the necessary temporary and permanent easements across 653 Islington Street to alleviate the flooding on Bartlett Street and upgrade the infrastructure in the area, the City Council should schedule a public necessity hearing for the proposed acquisition. Staff anticipates that, given public notice requirements, a public necessity hearing could be held no earlier than the first meeting in January 2009. There is a thirty day notice requirement for a public hearing.

City Staff will be available to answer any questions regarding this matter.

If the City Council chooses, you may authorize the City Manager to schedule a public necessity hearing at a January 2009 meeting for the purpose of acquiring the necessary easements over the property of 653 Islington Street.

2. **Request to Extend the Deck Lease Agreement for Poco Diablo, Inc.** Attached is a letter dated October 30, 2008 from John Golumb requesting that the term of Poco Diablo's deck lease be extended until November 30, 2013. The current lease expired November 1, 2008. The City staff is not in favor of a five-year extension.

As you know, the current plan for this area is to work with property owners adjacent to the City owned parcel where Poco's deck is located to design a number of infrastructure upgrades for this area. These will include waterfront seating and pedestrian scale lighting, drainage improvements and the creation of a handicapped accessible, easily cleanable surface rather than the combination of pea stone, asphalt and brick that currently exists. Since these improvements cannot proceed until the Poco deck is relocated, a 5-year extension would delay those improvements for at least 5 years. A one-year extension, however, seems appropriate in that it will allow the City time to work with adjacent property owners to design and permit these improvements. In addition, while a one-year extension is not of concern in terms of issuing a food service permit, staff believes costly deck upgrades would be needed over the course of multiple years in order to meet food service requirements.

As you may recall, at the Council's July 16, 2007 meeting the City Council accepted a recommendation from the Planning Board that requires relocation of the Poco restaurant deck to private property adjacent to the rear of the Bow Street building at the corner of Ceres Street owned by DiLorenzo Real Estate, LLC. While the documents for the conveyance of the property between the City and DiLorenzo have been prepared, they have not been executed since one of the stipulations of the Planning Board's subdivision approval was that no property transfers should until the deck is demolished.

I would recommend the City Council move to extend the Poco Diablo deck lease agreement until November 1, 2009 and have the Legal Department draft the proposed lease Agreement for a one-year extension.

3. **FairPoint Proposed Pilot of Internet Protocol Television (IPTV) Technology.**

Attached is a copy of a letter from FairPoint dated October 23, 2008, to Cable Commission Chairman John Gregg. This letter outlines a proposed trial of IPTV technology in Portsmouth (“IP” refers to “internet protocol”). This proposed trial is a first step to bring competition into the video television market. The Cable Commission is excited about the potential trial program and at its October 23, 2008 meeting voted to recommend to the City Council that it authorize the City Manager to negotiate such agreements with FairPoint as are necessary to bring about a proposed trial of this IPTV technology.

As the letter describes, the proposed trial is intended to provide FairPoint with customer feedback with regard to this new technology. The trial envisions that up to 250 customers will be provided IPTV services at no cost for a limited period. Residents will be provided with the use of a flat panel high definition television, a set-top-box and dedicated fiber connection for trial viewing. The dedicated connection and use of flat panel HDTV is designed to prevent interference or disruption of services of existing internet, phone, cable and/or satellite services. The programming will be a limited offering. FairPoint anticipates only 40 channels with 11 consisting of the rebroadcast of local stations. It is the Cable Commission’s understanding that the purpose of the trial is not to develop programming content, but to evaluate the technology on the existing fiber network and evaluate residents’ experience with that technology.

This trial will come at no expense to the City. As part of the trial, FairPoint is prepared to install a TV and set-top-box in City Hall to allow the City to evaluate the technology that may be offered commercially in the future.

As this FairPoint trial is limited in its offerings and will be provided to residents at no charge, FairPoint and the Legal Department concur that it is not necessary to enter into a franchise agreement for purposes of this limited trial. When and if FairPoint is prepared to offer video services over its fiber network commercially, whether with this new IPTV technology or using some other technology, a franchise agreement will be required. Under New Hampshire law that franchise agreement must be on equivalent terms and conditions as that entered into with Comcast.

FairPoint is prepared to designate a point of contact for this trial and provide regular updates with regard to the status of the trial as well as a general summary of the results of the trial. A FairPoint representative will be available at the City Council meeting.

This proposed trial in Portsmouth is the culmination of a series of communications that have taken place following the Cable Commission’s letter to FairPoint in June of 2008 expressing certain concerns that the Cable Commission had with regard to FairPoint’s advertising and to encourage FairPoint to offer video services over its fiber network.

I would recommend the City Council move to authorize the City Manager to take such action, including the negotiation and execution of a Memorandum of Understanding to allow FairPoint to undertake a trial of its IPTV technology as outlined in FairPoint’s letter of October 23, 2008.

4. **Approval of 2009 City Council Schedule.** Attached is a copy of the proposed 2009 City Council Schedule for Meetings and Work Sessions. *I would recommend the City Council move to approve the 2009 City Council Schedule for Meetings and Work Sessions, as submitted.*
5. **Request to Extend Ceres Street Compactor License.** Attached is a letter from Jack Blalock of Ferry Landing requesting that the License Agreement for the compactor on Ceres Street be extended for one-year. The staff and I concur with their request and would recommend a one-year extension with the provision that the structure that houses the compactor be inspected to assure its structural integrity. Further, during the one-year extension, businesses utilizing the compactor work with City staff to develop a permanent plan for the structure and location of the compactor that would fit into the proposed work that is being done on the waterfront.

I would recommend the City Council move to authorize the City Manager to extend the compactor License Agreement for Ceres Street for one-year.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on November 10, 2008.
2. **Curbside Collection of Rubbish and Recyclables Re: Thanksgiving Holiday.** For your information, on Thursday, November 27th and Friday, November 28th in recognition of the Thanksgiving Holiday, Portsmouth City Offices, including the Department of Public Works and the Recycling Center, will be closed. There are some changes to curbside collection due to the holiday. Thursday's collection of solid waste and recycling takes place Wednesday, November 26th, but Friday's collection remains as scheduled. However, there will be no yard waste collection Wednesday, Thursday or Friday of Thanksgiving week.
3. **Administrative Appeal from Attorney Charles Griffin Re: Toyota Illuminated Portal.** For your information, attached is an Administrative Appeal from Attorney Charles Griffin regarding the aforementioned subject matter. Also, be advised that this Administrative Appeal will be before the Board of Adjustment at their December 16th regular meeting.