

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, April 20, 2009

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

At 6:15PM an Anticipated "Non-Meeting" with Counsel was held regarding Negotiations – RSA 91-A:2, I (b-c).

I. CALL TO ORDER

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

II. ROLL CALL

Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear, Pantelakos and Hejtmanek

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

V. ACCEPTANCE OF MINUTES – APRIL 6, 2009

Councilor Smith moved to approve and accept the minutes of the April 6, 2009 City Council meeting. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARING

A. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.213 – FEES AND TERMS FOR PERMITS/LICENSES (TAXICABS)

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

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda this evening)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Resolution Authorizing a Bond Issue of up to Thirty Eight Million Three Hundred Thousand Dollars (\$38,300,000.00) for School Improvements

Mayor Ferrini spoke to a memorandum that he has prepared asking questions of City Manager Bohenko to focus the discussion.

City Manager Bohenko said he would discuss Items 1-3 which are State of New Hampshire School Building Aid, Relocation of Alumni Field and Middle School Area Parking.

State of New Hampshire School Building Aid

He spoke to the \$83 million in State Building Aid from the State in which we have set aside \$1million over the life of the loan for the renovations to the High School. He advised the City Council that the funds were not put into the State budget by the House this year. City Manager Bohenko informed the Council that Senator Clark has indicated that the aid will be put back in the budget however, if the funding is not returned, future commitments would not be honored by the State.

Relocation of Alumni Field

City Manager Bohenko reported that the School Board wants a replica of the Alumni Field and the staff is reviewing the matter. He said various options must be considered in order to replace Alumni Field and its lights, concession stand and all other amenities.

Middle School Area Parking

City Manager Bohenko informed the Council that Public Works Director Parkinson will be speaking with Walker Consultants to review the parking specifically for Parrot Avenue lot.

Councilor Kennedy expressed concern regarding parking for the Middle School. City Manager Bohenko said that parking has always been part of the discussions however, they were never site specific.

City Manager Bohenko advised the City Council that City Attorney Sullivan will be discussing the eminent domain issue.

Eminent Domain

City Attorney Sullivan reviewed the history of the land. He said the City Council can exercise eminent domain for public purpose and the construction of a Middle School would meet the criteria. The process will take 6 to 9 months from the date the City Council voted to commence forward which was October 20, 2008. He reported that an appraiser has been hired to review and place a value on the land.

Councilor Spear said that the list of estimated costs has a value of \$2 million on the land. City Attorney Sullivan advised the City Council that figure was used as a place holder.

Councilor Smith asked if the land taking would be a separate vote. City Attorney Sullivan said it is not required to be a separate vote.

Assistant Mayor Blalock moved to pass first reading and schedule a public hearing after the adoption of the State budget. Seconded by Councilor Dwyer.

Councilor Novelline Clayburgh asked if the parking deck would be bonded separately. City Manager Bohenko said it would be his recommendation to bond the items separately. He also informed the City Council that if we commit the spaces to teachers the funds would be reimbursable. Councilor Novelline Clayburgh asked if the situation would be the same for the Connie Bean Center. City Manager Bohenko responded it would be a separate bond but it would not be reimbursable.

Councilor Pantelakos asked what the cost to the taxpayer would be if there is not a reimbursement of funds. City Manager Bohenko provided the Council with a copy of an amortization schedule for a 20 year bond with a 4.25% increase rate which would equal a \$.94 cent increase in the tax rate, with building aid it would be a \$.76 cent increase for the tax rate.

Assistant Mayor Blalock said the reason for delaying the public hearing and adoption is to get a better understanding of where the State is moving with their budget. He said without State aid it would make it more difficult to build a school. He spoke to the importance of the Alumni Field element and said he is pleased that the staff is taking a lead on this issue. Assistant Mayor Blalock said he would like to see the School Board and JCJ Architects take more of a lead on this issue before we take away the softball field. He said a parking deck needs to be created in order to create another 100-150 parking spaces.

Councilor Spear said an issue of concern during the eminent domain discussion was the loss of green space. He spoke to the possibility of relocating students during the renovation stage. He said if we were to move the students out of the building the construction could be done in one year.

Councilor Kennedy said she supports the motion for discussion purposes. She is concerned with parking issues and the construction of a parking deck at the Parrott Avenue lot. She said the construction of a parking deck at the Parrott Avenue location is also a concern for residents of the South end. She also informed the Council that she is not convinced that the Connie Bean Center should be relocated to the Middle School.

Councilor Pantelakos said she does not see how the Council can move forward with first reading because of the parking issues that exist.

City Manager Bohenko said that permits would be issued to the teachers to park on the street. He said a parking deck would resolve the parking issues for the school and library, and prevent individuals from pushing into the neighborhoods to park their vehicles.

Councilor Dwyer said she would not make the parking part of the bond. She said she does not want to start talking as if the Parrott Avenue deck would be a solution.

Assistant Mayor Blalock said he agrees with Councilor Spear that we need to preserve green space. He said it would be irresponsible of the Council to compound the problem that we already have with parking.

Councilor Novelline Clayburgh said she would support the motion but she would not support the amount. She recommended that the amount be reduced by another \$5 million.

Councilor Pantelakos said she could not support the project, because the \$83 million from the State is for existing schools not schools that will be renovated.

Councilor Smith said he would support first reading of the resolution to allow for input from the public. He spoke opposed to the Connie Bean Center being a part of the resolution. He said that the size of the proposed school is too large and does not agree with the original narrative.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini said that this has been a good discussion and raises the many concerns of the Council and community. He said that it is important that the Council works together with the School Board.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

City Manager Bohenko informed the Council after the State budget is adopted. Mayor Ferrini will bring a date forward to conduct the public hearing of the resolution. He also advised the City Council that the resolution does not need to be adopted the night of the public hearing, it could take place at another time.

On a roll call vote 8-1, voted to pass first reading and schedule a public hearing after the adoption of the State budget. Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear, Hejmanek and Mayor Ferrini voted in favor. Councilor Pantelakos voted opposed.

- B. Second reading of Ordinance amending Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs)

Councilor Spear moved to pass second reading and schedule a third and final reading at the May 4th City Council meeting. Seconded by Councilor Smith and voted.

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Chris Curtis, The Music Hall, requesting permission for 3 separate closings of Chestnut Street this year as follows:
- Private Event on Saturday, May 16, 2009 – Barricades to be placed at either end of Chestnut Street beginning at 7:00 a.m. on Saturday until noon Sunday
 - New Film Festival on Friday, July 17, 2009 – July 19, 2009 – Barricade to be placed on Chestnut Street beginning at noon on Friday and removed on Monday morning
 - Telluride by the Sea Weekend Celebration of Film on Friday, September 18, 2009 through Sunday, September 20, 2009 – Barricades to be placed on either end of Chestnut Street beginning at noon on Friday and removed on Monday morning

(Anticipated action – move to refer to the City Manager with power)

- B. Letter from Joan Chawziuk, Greater Portsmouth Chamber of Commerce, requesting permission to hang Portsmouth Harbour Trail flags at 24 key sites for the 2009 season ***(Anticipated action – move to refer to the City Manager with power)***
- C. Renewal of Sidewalk Obstruction Licenses with no changes from last year
- Portsmouth Gas Light – 2 A-frame signs
 - Siren 49 Hair Studio – 1 A-frame sign

(Anticipated action – move to refer to the City Manager with power)

- D. Letter from Cori Taylor, March of Dimes, requesting permission to hold the March for Babies on Saturday, May 16, 2009 at the Portsmouth Middle School from 9:00 a.m. – 1:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***

Councilor Kennedy moved to adopt the Consent Agenda. Seconded by Councilor Novelline Clayburgh and voted.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Andrew Ward regarding recommendations to the skateboard ordinance

Councilor Pantelakos moved to accept and place the letter on file. Seconded by Councilor Novelline Clayburgh and voted.

- B. Request from Sonja Echt, Edelweiss, requesting permission for a Sidewalk Obstruction License to place 1 A-frame sign and a chair with a mannequin in front of establishment

Assistant Mayor Blalock moved to refer to the City Manager with power. Seconded by Councilor Smith.

Councilor Spear expressed concern regarding the use of a mannequin in a chair. City Manager Bohenko said we could allow this on a temporary basis and if the situation does not work out he would require the mannequin and chair to be removed.

Assistant Mayor Blalock said we should try this for one year and if there are difficulties we do not have to allow it. He views this as another form of art.

City Manager Bohenko advised the City Council that this will be a three month trial period and if any issues arise, the chair and mannequin will be removed.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Proposed City Council Policy #2009-02 Re: Group Parking License Discount

City Manager Bohenko said attached is a letter from Dana Levenson, Chair of the Economic Development Commission requesting that the City Council enact a modification to the 2006 Group License Policy pertaining to Section 7.402 of the City Ordinance. He said the Ordinance states that the City Council may authorize a separate parking rate for group licenses on a case-by-case basis for requests where a group consists of twenty-five (25) spaces or more. In 2006, the City Council adopted a group license policy for consistency in implementing Section 7.402. The policy was developed by the EDC and predicated on the economic development goal of recruiting corporate offices to the downtown and increasing the number of employees who support other private businesses in the Central Business District. In 2008, the City Council applied the policy in approving the group license discount for Prime, Buchholz & Associates, Inc., an investment consulting firm with corporate headquarters at 25 Chestnut Street in downtown Portsmouth.

In view of the developments recently permitted in the central business district and in the northern tier in particular, the EDC re-examined the group license policy at their April 3rd meeting. The EDC is proposing a modification that would create both a twelve (12) hour and a twenty-four (24) hour weekday parking pass discount (Monday through Friday). A sliding scale creates a higher discount for the more employees a corporation has.

City Manager Bohenko spoke to the proposed policy which has been created and asked for approval of the Council to move the policy forward.

Mayor Ferrini asked if the policy would go out when the Council's term ends. City Manager Bohenko advised the City Council that all policies adopted by the Council will be brought forward with each new term of the Council for approval and review.

Councilor Novelline Clayburgh moved to authorize the approval of City Council Policy 2009-02 Group Parking License Discount. Seconded by Councilor Dwyer.

Councilor Kennedy asked what kind of special rate they would receive. City Manager advised the Council that there would be a 10% discount off the rate in the parking garage.

Motion passed.

2. Proposed Ordinance to amend Chapter 7, Article III, Section 7.344 – Use of Roller Skates, Coasters and Skateboards

City Manager Bohenko informed the Council that the proposed ordinance has come back with 6 recommended amendments by the Traffic & Safety Committee.

Councilor Pantelakos moved to amend the Ordinance as presented and to establish a public hearing at the May 18th City Council meeting prior to passing second reading. Seconded by Councilor Smith.

Councilor Pantelakos said she feels it is important to have a new public hearing on the ordinance with the recommended amendments.

Councilor Spear said he does not agree with Item 2 which reads as follows:

Any person utilizing such devices on City streets or sidewalks shall keep all of the wheels of the device in contact with the ground at all times. The utilization of such devices for jumping, acrobatic tricks, traversing benches, railings or the lick on City streets or sidewalks is expressly prohibited.

Councilor Hejtmanek said he would like to see an age requirement for allowing kids to use the devices on the streets. He said it is a safety concern and feels more guidelines are needed.

Councilor Smith said that the Traffic & Safety Committee was very concerned and wanted a plan in place on the downtown area because it is dangerous.

Councilor Smith, Traffic & Safety Committee Chair, agreed to work with City Attorney Sullivan on further amendments to the ordinance relative to comments made and/or presented by the City Council members as well as items outlined in Mr. Ward's letter presented this evening with further recommendations.

Motion passed.

3. Additional Funding Request for the Recreational Study

City Manager Bohenko advised the City Council that Request for Qualifications packages were submitted by 21 firms and reviewed by a selection committee comprised of Recreation Board Chairman Carl Diemer, School Board member Kent LaPage, Deputy City Manager Cindy Hayden, Recreation Director Rus Wilson, Public Works Director Steve Parkinson and Assistant Community Development Director David Moore.

The selection committee short-listed five consultant teams for interviews and, based on the qualifications submitted and the interview process, the list was narrowed to 3 firms, which they rank ordered according to their top choice through 3rd choice. In order to insure competitive pricing, those 3 firms were then asked to submit detailed proposals, including a schedule and lump sum fee for the following three tasks:

1. Inventory and Assessment of Existing Recreation Facilities, Programs and Services: Review existing conditions of recreational facilities (indoor and outdoor), staffing and programs associated with the Recreation and School Departments, including determining usage of existing facilities, program enrollment, and overall program participation by age, activity and facility.
2. Public Outreach: Solicit public input on the type/location of facilities, programs and services desired by the community and recreation users.
3. Needs Assessment: Develop a needs assessment report, which outlines future recreational infrastructure (fields and facilities), programming and service requirements.

The Council should be aware that following the completion of these tasks, additional work, at additional cost, would be necessary including the full engineering, design and permitting of any indoor or outdoor recreation facilities that may be identified through the needs assessment.

City Manager Bohenko said as you will recall, \$25,000.00 was allocated for this work in the FY 2009-2014 Capital Improvement Plan. The consultant team that was the Selection Committee's top choice submitted a competitive price proposal of \$63,720.00 and the City would like to enter into a contract with that firm to carry out the three tasks listed above. In order to proceed, additional funding in the amount of \$38,890.00 is needed, which is available in prior year capital contingency.

Assistant Mayor Blalock moved to authorize the use of \$38,890.00 from prior year capital contingency to supplement \$25,000.00 appropriated in the FY 2009 Capital Improvement Plan contract amount for a total of \$63,720.00. Seconded by Councilor Pantelakos.

Councilor Smith expressed concern with the price for the study. Councilor Pantelakos said that this does seem like a great deal of money however, we need a comprehensive look at our facilities and fields.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini asked if there was a way to move the study along because it would directly affect the school bonding. City Manager Bohenko said he would not recommend rushing the study.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

Councilor Dwyer suggested that the Council receive reports through the recreational study. City Manager Bohenko suggested that once the Joint Building Committee is formed it could work with the firm and JCJ relative to the study.

City Manager Bohenko said that the recreational study is not about the middle school. The only effect on the study would be the location of the Connie Bean Center.

City Manager Bohenko asked Recreation Director Wilson and Assistant Community Development Director Moore to come forward and provide a history of the process.

Recreation Director Wilson said that we have been looking at these matters for number of years. He informed the Council that the time has come where things need to be done and repairs made. He spoke to the major repairs needed to the fields.

Assistant Community Development Director Moore outlined the process and spoke to the City Council Retreat held in November where a framework was discussed for future decisions for our recreational needs. He said the expertise of the firm being brought to the table will provide a useful document for moving forward.

Councilor Smith requested to receive a copy of the RFP for the Recreational Study.

Motion passed.

4. Request for License Agreement Re: 159 State Street

City Manager Bohenko informed the City Council that Careno Construction seeks a license agreement affecting three parking spaces to facilitate the repair of the roof and facade at 159 State Street, 1827 Sheafe House Condominiums. The license agreement would extend from the date of approval for a period of 60 days at a cost of \$60 per day Monday through Saturday. He said there would be very occasional use of the sidewalk area, with the sidewalk remaining open at all times.

He advised the Council that City staff points out that a license agreement already exists at 68 State Street to facilitate construction services at that location. In addition, the City is prepared to undertake extensive sewer and drainage work along State Street. Careno Construction could stage its construction activities from the rear of 159 State Street but advises that work would be facilitated by using the parking spaces out front.

He said that Careno Construction has been in communication with the Department of Public Works and the gas company and has indicated its preparedness to coordinate with the gas company and the Department of Public Works as may be necessary to allow the State Street project to proceed without delay or inconvenience. There are no anticipated travel lane closures.

Councilor Pantelakos moved to authorize the City Manager to negotiate and execute a License Agreement with Careno Construction for purposes of facilitating construction activities at 159 State Street. Seconded by Councilor Smith.

Councilor Kennedy expressed concern regarding the number of parking spaces being inhabited by construction. She asked if we could put a penalty clause as part of the agreement if the firm does not finish the project on time. City Manager Bohenko advised Councilor Kennedy that there is a penalty clause in the agreements. City Attorney Sullivan reported that the penalty is usually \$100.00 per day.

Motion passed.

5. Report Back from Planning Board Re: Request for a License at Market Street

City Manager Bohenko said that this is a report back from the Planning Board.

Councilor Smith moved to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Empower Yoga Center, LLC, to install a projecting sign at 63 Market Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Councilor Novelline Clayburgh.

Planning Board Stipulations:

- *That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,*
- *That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.*

Councilor Spear suggested moving these matters to the Planning Board with power in an effort to move the issue forward in a timely manner. City Attorney Sullivan said that we have been reviewing this matter administratively and how to stream line the process. Councilor Dwyer said she has 4 options to bring forward on this matter and will present it at the end of the Council meeting.

Motion passed.

6. Request for Approval of Pole License Agreement #63-0468

City Manager Bohenko informed the Council that the Public Works Department has reviewed the pole location information provided by PSNH for Petition and Pole License Agreement #63-0468. This request is to license one replacement pole on Dennett Street. The existing pole was determined to be rotten and a new pole was erected. Although PSNH considered this pole to be a "straight replacement" not needing a license, they were unable to verify any previous license and decided to request one at this time. This pole poses no impact to existing City infrastructure and the Public Works Department recommends approval of this license

Councilor Smith moved to approve the request from PSNH for Pole License Agreement #63-0468 as recommended by the Public Works Department. Seconded by Councilor Pantelakos and voted.

City Manager Bohenko said that former City Councilor Harold Whitehouse has provided the City Council with information regarding the Shriner's parade which will take place on May 2nd.

B. MAYOR FERRINI

1. Resignations:
 - John Howe – Traffic & Safety Committee

Councilor Smith moved to accept with regret the resignation of John Howe from the Traffic & Safety Committee. Seconded by Councilor Pantelakos and voted.

Councilor Smith requested that Mayor Ferrini send a letter to Mr. Howe thanking him for his years of service to the Traffic & Safety Committee.

- Christina Westfall – Safe Routes to School Committee

Councilor Smith moved to accept with regret the resignation of Christina Westfall from the Safe Routes to School Committee. Seconded by Councilor Pantelakos and voted.

Councilor Smith requested that Mayor Ferrini send a letter to Ms. Westfall thanking her for her years of service to the Safe Routes to School Committee.

2. *Reports

Mayor Ferrini said a number of board and commission appointment applications will be brought forward at the May 4th meeting for consideration by the City Council.

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the April 9, 2009 meeting

Assistant Mayor Blalock moved to approve and accept the action sheet and minutes of the April 9, 2009 Traffic & Safety Committee meeting. Seconded by Councilor Pantelakos and voted. Councilor Kennedy voted opposed.

2. Parking Committee Action Sheet and Minutes of the April 9, 2009 meeting

Councilor Pantelakos moved to approve and accept the action sheet and minutes of the April 9, 2009 Parking Committee meeting. Seconded by Councilor Novelline Clayburgh. Councilor Kennedy voted opposed.

Councilor Smith spoke regarding the request of Atlantic Parking to operate a valet service in the downtown. He informed the Council that two locations will be used for the service, one will be Harbour Place and the second will be on Green Street. Councilor Smith advised the City Council that this will be a 90 day trial period. He said that the parking valet agreement will be brought forward at the May 4, 2009 City Council meeting.

Councilor Kennedy advised the City Council that she will not approve the Traffic & Safety and Parking Committees minutes because the Council does not approve any other board/commission minutes.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer said as the Council's representative to the Planning Board she would like to request that we reform the current approach to receiving, reviewing, and granting licenses for signs that hang over the public right of way. The problem is illustrated by several recent requests that we have received as a Council for new businesses taking over vacant space downtown; naturally the businesses are interested in having signs posted as soon as possible to attract customers. The Planning Board discussed this problem at the April 16th meeting and would like to streamline the process. Options include:

- a) *a request could go simultaneously to the Council and Planning Board and be reviewed by both bodies; any need for resolution would take longer but, for the most part, these are routine requests.*
- b) *a request could go directly to the Planning Board for approval, and, the disposition then be sent to the Council.*

Councilor Dwyer said it would be helpful for new businesses if we could resolve this problem by cutting out a few weeks of time for sign license approval.

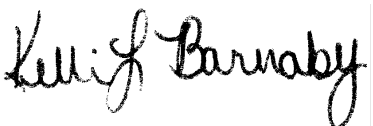
City Manager Bohenko suggested that the staff bring back City Council policy #2009-03 to address this matter.

The City Council agreed that a policy needs to be created for dealing with receiving, reviewing and granting licenses for projecting signs on City property. City Manager Bohenko suggested that City Council Policy 2009-03 be created to handle these issues and have the policy brought back for City Council approval at the May 4, 2009 meeting.

Councilor Dwyer also spoke regarding the recent meeting between the Legislative Delegation and reviewed discussions pertaining to retirement issues.

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

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



Kelli L. Barnaby, CMC/CNHMC
City Clerk