

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, MAY 4, 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 Hejtmanek led in the Pledge of Allegiance to the Flag.

### **V. PROCLAMATION**

1. Police Week in Portsmouth – May 11, 2009 – May 17, 2009

Councilor Smith read the Proclamation and presented it to Police Chief Michael Magnant.

Councilor Smith recognized Police Commissioners Howe and Golumb and several police officers in attendance.

Tim Cashman, President of Portsmouth Police Relief Association, thanked the Council for the proclamation and cited several recent instances of officers who have died in the line of duty.

Chief Magnant stated he has been on the Portsmouth Police force for 30 years and remembers hearing of an officer being killed in the line of duty when he had first started and that it had a great impact on him. He stated that New Hampshire is not immune to losing police officers in the line of duty.

## VI. PRESENTATION

### 1. Annual Report Art-Speak

Ellen Fineberg, Chair, Board of Directors of Art-Speak, presented an overview of the past years' art related activities in the City of Portsmouth. (Full text on file)

## VII. ACCEPTANCE OF MINUTES – APRIL 15, 2009 AND APRIL 20, 2009

**Councilor Smith moved to approve and accept the minutes of the April 15, 2009 and April 20, 2009 City Council meetings. Seconded by Councilor Pantelakos and voted.**

## VIII. PUBLIC COMMENT SESSION

Donald Coker spoke regarding the proposed Council Rule changes stating that he doesn't agree with the proposal to limit board memberships to 10 years. He stated he is a member of the Planning Board and clarified he is not speaking on their behalf, but as an individual. He explained that it takes time for new members to learn the rules and laws pertaining to their particular boards and that limiting someone to 10 years is taking away a lot of knowledge on those boards. He concluded by stating that people should be appointed or not based on their merits and not on a time limit.

## IX. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from Mr. & Mrs. King to the Portsmouth Explorer's Cadets in the amount of \$75.00
- B. Acceptance of the following grants to the Portsmouth Police Department totaling \$43,542.00 from the New Hampshire Highway Safety Agency:
- \$10,513.80 – Portsmouth Statewide DWI Hunter Patrols & Sobriety Checkpoints
  - \$4,153.60 – Portsmouth Pedestrian Enforcement Patrols
  - \$4,153.60 – Portsmouth Enforcement Patrols (speed enforcement)
  - \$4,248.00 – Portsmouth DWI Patrols
  - \$4,153.60 – Portsmouth Red Light Running
  - \$2,725.80 – Portsmouth "Join the NH Clique" Seat Belt Campaign
  - \$13,593.60 – Portsmouth Sobriety Checkpoints (local)

**Councilor Smith moved to approve and accept the grants and donations to the Portsmouth Police Department, as listed. Seconded by Councilor Kennedy and voted.**

C. Acceptance of Grant for Household Hazardous Waste Collection

**Councilor Smith moved to approve and accept and expend a \$4,005.000 DES Grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Seconded by Councilor Pantelakos and voted.**

**IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

A. Third and final reading of Ordinance amending Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs)

**Councilor Novelline Clayburgh moved to pass third and final reading of the proposed ordinance amendment, as presented. Seconded by Councilor Smith and voted.**

**X. CONSENT AGENDA**

***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

A. Letter from Cindi Blanchette, Portsmouth City Soccer Club requesting permission to hang banners at Leary Field during soccer season (***Anticipated action – move to refer to the City Manager with power***)

B. Letter from Brian and Laurie Coughlin requesting permission to have a small gathering in Market Square for the installation of a bench to dedicate in memory of their son, Geoffrey (***Anticipated action – move to refer to the City Manager with power***)

C. Renewal of Sidewalk Obstruction License with no changes from last year

- Vanity Hair – 1 A-frame sign

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

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

**XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

A. Letter from Mario Giberti requesting to purchase City owned land located adjacent to 16 Barberry Land (***Sample motion – move to refer to the Planning Board for report back***)

**Councilor Pantelakos moved to refer to the Planning Board for a report back. Seconded by Councilor Novelline Clayburgh and voted.**

- B. Letter from Meredith Stolper, The Loaf and Ladle, requesting permission to display their “open sign” or a decorative flag in front of establishment (***Sample motion – move to refer to the City Manager with power***)

**Councilor Novelline Clayburgh moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.**

- C. Letter from Susan Penney, American Cancer Society, requesting permission to conduct a “Toll Road” fundraiser in Market Square on Sunday, May 17, 2009 from 10:00 a.m. – 2:00 p.m.

City Manager Bohenko stated that he has concerns with this request because of the traffic and activity in Market Square. He stated he is uncomfortable with not allowing this because it is a worthwhile cause but he is concerned with getting more requests for this activity if this is allowed. He stated he would like to work with the organization to find alternative fund-raising activities.

Mayor Ferrini clarified that there is currently no motion pending so the Council can take several approaches to this item; accept it and place it on file, refer to the City Manager with power, or decide to not allow this for any other group going forward. He stated he prefers to place it on file.

Councilor Spear asked what exactly “with power” means when referred to the City Manager.

Mayor Ferrini clarified it means it is at the Manager’s discretion.

**Councilor Spears moved to place on file. Seconded by Councilor Pantelakos.**

Councilor Smith agrees with placing this on file but he doesn’t want to stop allowing the firefighters from doing this fundraiser as they have in the past because they are professionals and where protective gear, etc.

Mayor Ferrini stated these requests will still be taken case by case.

Councilor Novelline Clayburgh asked if this is placed on file, will the City Manager still work with the requestor to find an alternative.

City Manager Bohenko stated yes.

**Motion to place on file passed.**

City Manager Bohenko stated he has distributed a request that came in after the agenda deadline but the event is on May 15<sup>th</sup> and took place last year so he is asking for the Council to accept and refer to him with power. The event is the Seacoast Bike/Walk to Work Day commuter breakfast event held at Popovers on Market Square from 7-10 a.m.

Mayor Ferrini stated it is not usual for items to be voted to be passed out at the meeting but this had been handled by a former Councilor in years past.

**Councilor Pantelakos moved to refer to City Manager with power. Seconded by Novelline Clayburgh and voted.**

## **XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Report Back from Planning Board Re: Request for a License, Anello's Gluten Free Café, LLC at 41 Congress Street

**Councilor Dwyer moved to accept the recommendation of the Planning Board with the following stipulations and approve the request to install a projecting sign at 41 Congress Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Assistant Mayor Blalock and voted.**

- 1) 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
  - 2) 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.
2. Report Back from Planning Board Re: Request for a License, The Juicery, at 51 Hanover Street

**Councilor Smith moved to accept the recommendation of the Planning Board with the following stipulations and approve the request to install a projecting sign at 51 Hanover Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Assistant Mayor Blalock and voted.**

- 1) 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

- 2) 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.
3. Report Back from Planning Board Re: Request for a License, Fa La Lo of Portsmouth, LLC at 51 Ceres Street

**Councilor Smith moved to accept the recommendation of the Planning Board with the following stipulations and approve the request to install a projecting sign at 51 Ceres Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Assistant Mayor Blalock and voted.**

- 1) 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
- 2) That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal coast and subject to review and acceptance by the Department of Public Works.

City Manager Bohenko informed the Council that 3 more projecting sign requests have come in which were sent to the Planning Board per the impending Council Policy 2009-03. He stated they will come back to the Council after Planning Board review for Council ratification.

Next, City Manager Bohenko reminded the Council that on Monday, May 11<sup>th</sup> the budget public hearing will be reconvened and the final budget review work session is scheduled for May 13<sup>th</sup> unless the Council wants to schedule another session. He also stated he would like to discuss whether the Council would like to look at adopting the budget on June 22<sup>nd</sup> instead of June 8<sup>th</sup>, because of several major revenue issues pending at the State budget level. He stated that by Charter the budget must be adopted by June 30<sup>th</sup> or the proposed City Manager's budget goes into effect.

Mayor Ferrini stated there is no motion pending and stated that we will need to let the School Board know that we are looking at this because they have contract issues. He stated he would like to be able to have the option of still adopting the budget earlier if the State budget figures come in sooner. He stated we can also look at adding another budget work session if needed.

Councilor Kennedy stated she doesn't want to hold a budget work session at all until we get the information from the State, including the one on May 13th.

Mayor Ferrini stated there are still 2 portions of the budget that need to be reviewed as there were a set of statistical questions that the Council had for the School Department so he would like to at least have that done on the 13th.

City Manager Bohenko stated he will contact Superintendent Lister to come on the 13<sup>th</sup> to go over those questions.

After further discussion, Mayor Ferrini asked City Manager Bohenko to invite the School Board members to the May 13<sup>th</sup> Budget Work Session.

## **B. MAYOR FERRINI**

### 1. Proposed Amendments to City Manager Employment Agreement

Mayor Ferrini stated that City Manager Bohenko approached him about reopening his employment agreement and feels that this was a true show of leadership and the right thing to do at this time. He reviewed the changes to the contract as follows:

1. *Employee will waive his cost of living adjustment (COLA) effective July 1, 2009.*
2. *Employee medical premium share will increase from 19% to 20% on July 1, 2010.*
3. *Commencing July 1, 2010 and every July 1<sup>st</sup> thereafter through July 1, 2013, the Employee will receive a COLA adjustment based on the ten (10) year rolling average of the CPIU for the Boston/Brockton Index to be in conformance with other city employment agreements.*
4. *Term of agreement to be extended by two (2) years to expire June 30, 2014.*

*Further, that all other terms and conditions of the City Manager's Employment Agreement dated October 12, 2006, shall remain in full force and effect.*

**Assistant Mayor Blalock moved to authorize the Mayor to execute the amendments to the City Manager's Employment Agreement. Seconded by Councilor Smith.**

Councilor Novelline Clayburgh thanked City Manager Bohenko for addressing the issue in response to the dire position our economy is currently in stating that this exhibits integrity.

Councilor Smith stated he would also like to be on the record thanking the City Manager for coming forward with this on his own.

Councilor Hejtmanek stated this sacrifice sets an example of good leadership towards helping to offset taxpayer suffering.

Councilor Kennedy stated she wants to make it clear that when the City Manager decided to forgo his COLA increased, that is a long term loss.

Assistant Mayor Blalock stated this was a selfless act and saves the City money and perhaps prevents layoffs. He stated that this may encourage other employees to follow suit if the occasion arises.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini stated he echoes all of the previous comments and stated this demonstrates an understanding of what community spirit is all about. He continued that in the private sector sacrifices are being made and this shows that a public figure is willing to sacrifice as well. He thanked City Manager Bohenko for his leadership.

Assistant Mayor Blalock passed the gavel back to Assistant Mayor Blalock.

**Motion passed.**

2. Appointments to be Considered:
  - Brian Gregg – Reappointment to the Cable Television and Communications Commission
  - Phyllis Eldridge – Reappointment to the Trustees of the Trust Fund

The City Council considered the above referenced reappointments which will be voted upon at the next Council meeting.

3. Resignations:
  - Skye Maher – Conservation Commission
  - John F. Golumb – Safe Routes to School Police Commission Representative

**Councilor Smith moved to accept the resignations with regrets and asked that the Mayor send a letter thanking them for their service. Seconded by Councilor Pantelakos.**

Councilor Dwyer stated that Skye Maher is a good example of how she feels board membership should be in relation to the proposed term limitations. She stated that Ms. Maher served on the Conservation Commission for many years and is now leaving it to serve on another Committee where she can use the skills and knowledge and link it to other committees instead of staying on one for 30 years.

**Motion passed.**

#### 4. Memorial Day Parade – Central Veterans Council

Mayor Ferrini read the Memo regarding the Memorial Day parade and asked the Council to let the City Manager know if they were planning to attend.

#### 5 \*Reports

Mayor Ferrini stated he has nothing further and stated that there are several items coming up that are not up for vote tonight and will be brought back, so discussion can be held until that time.

### **C. ASSISTANT MAYOR BLALOCK**

#### 1. Recommendations from the Vendor Committee

Assistant Mayor Blalock stated the Vendor Committee has met several times to try and clarify vending issues. He stated the recommendations are not up for a vote tonight but will hopefully be brought back on May 18<sup>th</sup>. He stated they began by concentrating on defining the locations that vendors can legally be in accordance with current ordinances and current measurements. He stated the goal is to create a brochure to distribute to vendors that will include all of the information they need to simplify and clarify the process.

Councilor Kennedy asked what vendors were invited to attend the meeting or did any attend at all.

Assistant Mayor Blalock stated that the meetings are open to the public and there were a few vendors but they did not have much input. He stated there was a representative from Pro-Portsmouth, but there are several different issues when it comes to vendors and clarified that at this time they are dealing with everyday vendors as opposed to event vending. He further stated that they are not changing any ordinances at this time, but as they continue, they may come back with ordinances changes.

Councilor Kennedy stated that she knows they can't vend from a parking spot, but can they park their car in a spot and leave it there while they vend elsewhere.

Assistant Mayor Blalock stated that this has also been referred to the Traffic and Safety Committee and Parking Committee but his understanding is that parking spaces are for parking.

Spear asked if other stakeholders, i.e. downtown merchants, were included in these meetings.

Assistant Mayor Blalock stated no merchants attended the meetings and again clarified that the focus at this time was to clarify the existing ordinances. He stated that after all of the review, it was found that there are only 7 spaces that legally fit the current criteria. He stated that he feels the ordinances are in place to protect the establishments.

Councilor Smith stated that he knows of 2 hot dog vendors who go out at night and doesn't see the spots they use included in this report so does that mean they can't do it anymore.

Assistant Mayor Blalock stated that the Atrezzi spot is not legal but they can move up to the space by the parking garage on Hanover Street.

City Manager Bohenko stated that he will have the Vending Committee staff present to review the current policy and to address how to amend/add/delete ordinances.

Councilor Dwyer stated that she would like to see the list of the existing ordinances being referred to that govern the existing policy.

#### **D. COUNCILOR DWYER**

1. Proposed City Council Policy #2009-03 Re: Projecting Signs

**Councilor Dwyer reviewed the Policy as stated below and moved to adopt. Seconded by Councilor Smith and voted.**

#### **CITY COUNCIL POLICY No. 2009-03**

1. *Requests for the construction of signs over City property shall be submitted in the first instance to the Planning Board;*
2. *The Planning Board shall then report its recommendation with respect to the sign to the City Council for approval or denial,*
3. *Upon approval of the City Council a revocable license in the form approved by the City's Legal Department may be issued including, but not limited to, the following terms and conditions:*
  - a. *All costs related to the construction and/or removal of the sign shall be borne by the applicant.*
  - b. *The License shall be for an indefinite term.*

*This policy shall take effect upon the passage of the City Council.*

#### **E. COUNCILOR SMITH**

1. Proposed Permit for Overnight Parking at Peirce Island

**Councilor Smith moved to bring this item back for a first reading on May 18. Seconded by Councilor Pantelakos.**

Councilor Smith explained that this came as a result of citizens who launch boats at Peirce Island and stay out overnight and need to be able to keep their cars there. This is limited to 6 spaces.

**Motion passed.**

2. Atlantic Valet Parking Agreement

**Councilor Smith moved to authorize the City Manager to execute a 90 day trial period. Seconded by Councilor Pantelakos.**

Councilor Smith stated the people from Atlantic Valet are in the audience. He explained the premise of this and stated that most of the neighbors are in favor and the city staff has worked closely with Atlantic. He stated that this is also a part of the Master Plan. He stated they are predicting 100-150 cars being transferred to the two alternate sites at a fee of \$10.00 each.

Councilor Kennedy asked if there is any legal liability to the City.

City Attorney Sullivan stated there is a hold harmless provision as well as liability insurance.

**Motion passed.**

**F. COUNCILOR SPEAR**

1. Potential Council Rules

Councilor Spear explained that he has worked on some potential Council rule changes and has asked for Council input. He then reviewed the proposals;

Council Rule #47 regarding Appointments to Boards and Commissions, not reappointing persons having served 10 or more consecutive years, excepting Zoning Board of Adjustment, Planning Board, Historic District Commission or Traffic and Safety Committee.

Council Rule #48 regarding removal of board/commission members.

Council Rule #49 regarding board/commission attendance minimum of 75% required per calendar years.

Councilor Novelline Clayburgh asked if the Council can vote on the 10 year rule since it had already been addressed this year. City Attorney Sullivan stated that this is slightly modified and can be voted at the next meeting with a 2/3 majority. Councilor Dwyer asked about proposed rule #49 and the term "rebuttable presumption".

City Attorney Sullivan explained that this would allow the Council not to have to remove the person if they saw fit.

Councilor Dwyer asked if an "excused" absent counts as a "failed to attend".

City Attorney Sullivan stated that and excused absence is still an absence.

Council Kennedy stated she has a concern that there is a 10 year limit for some boards and not others.

Councilor Spear stated that not all boards are created equal and that the institutional knowledge is needed for the boards that are listed as exceptions.

Discussion then ensued regarding the "due process" of removing someone from a board/commission with City Attorney Sullivan explaining that currently, there is no such option if the Mayor removes someone and stated that the discussions would be held in non-public session, but the vote to remove would be held in public.

Mayor Ferrini clarified that this would be considered as a personnel issue in accordance with State law.

### **XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Smith reminded everyone that the State of the City Address will be held May 6<sup>th</sup> at 7:30 a.m. at the Sheraton. City Manager Bohenko asked the Council to let him know if they would be attending.

Mayor Ferrini reminded the Council that Student Government Day will be held at City Hall on May 7<sup>th</sup> and explained that there is a change in the program in that there will not be any Council meeting held nor will there be any students shadowing Councilors.

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

**Councilor Smith moved to adjourn at 8:20 p.m. Seconded by Assistant. Mayor Blalock and voted.**

Respectfully submitted:

Valerie A. French  
Deputy City Clerk I