

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MAY 18, 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 7:20 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 Novelline Clayburgh led in the Pledge of Allegiance to the Flag.

V. ACCEPTANCE OF MINUTES – MAY 4, 2009

Councilor Smith moved to approve and accept the minutes of the May 4, 2009 City Council meeting. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

There were no speakers this evening.

Councilor Smith moved to suspend the rules in order to take up Item XI. C. - Letter from Dawn McCandless, Agave Mexican Bistro, requesting a license agreement for the purpose of valet parking. Seconded by Councilor Pantelakos and voted.

XI. C. Letter from Dawn McCandless, Agave Mexican Bistro, requesting a license agreement for the purpose of valet parking

City Manager Bohenko informed the City Council that Councilor Smith, Chair of the Parking Committee, has spoken with Agave and the Common Man's Restaurant (former Victory Restaurant) and with the construction work on State Street we wanted to try valet parking. He advised the City Council that this would be a 90-day trial and should be referred to him with power.

Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Pantelakos.

Councilor Dwyer spoke in favor of the recommendation and said it was a great idea.

Councilor Smith informed the City Council that this would be a fluid document to allow for changes.

Councilor Kennedy expressed concern with parking at Strawberry Banke in the winter which the south end residents have become dependent on. City Manager Bohenko said he would list that as a concern.

Councilor Smith said that the intent of the document is only during construction period.

VII. PUBLIC HEARING

A. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.344 – USE OF ROLLER SKATES, COASTERS AND SKATEBOARDS

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

City Attorney Sullivan said that the ordinance has been around for awhile and it was brought in one form and referred back for further amendments. He reported that Councilor Smith and he met to discuss the ordinance and recommend the following changes as follows:

- The provision which would have required a skateboard operator to “keep all of the wheels of the device in contact with the ground at all times” has been deleted.
- A new provision has been added which would require skateboard operators to use bicycle lanes where such bicycle lanes exist.

It should be noted that he and Councilor Smith considered certain other amendments but determined not to make them for lack of sufficient enabling legislation. These included a provision which would have allowed for confiscation of skateboards and also a provision which would have prohibited the use of skateboards on private property, such as in church yards.

If the Council is in agreement with these changes, a simple motion which would successfully adopt them would be:

- That Article 7, Section 7.344 be amended at second reading by the substitution of that version of the ordinance presented with the agenda packet for the May 18, 2009 meeting in place of the version of the ordinance which passed first reading on January 26, 2009.

Andy Ward, Portsmouth resident, said he has followed the ordinance from the beginning stages and thanked the City Attorney for the work that has been done in preparing this ordinance. He said individuals should have the choice to wear a helmet and it will be an enforcement issue for the Police Department to handle.

Shaun Rafferty, Portsmouth resident spoke to the various items within the ordinance. He asked if skateboarders would be required to follow traffic laws and addressed a number of safety concerns he has with skateboards.

Sharon Imhoff, Portsmouth resident, said that we cannot start micromanaging people's behavior. She said that a helmet law needs to be realistic and the age requirement should be lowered and feels that teens will be targets by the Police Department with the helmet requirement. Ms. Imhoff discussed the reflective clothing and asked if that is a requirement for bicyclists, walkers, etc.

Charles Griffin, Attorney and Portsmouth resident, said that skateboarding is a dangerous activity. He outlined various concerns recently expressed by Deputy Police Chief DiSesa during a Traffic & Safety Committee meeting. Attorney Griffin said if the City Council wants to lift the ban on skateboarding it should be limited to residential areas as follows:

- Single Residence A
- Single Residence B
- General Residence A & B
- Garden Apartments

He reported that the areas would include the following neighborhoods and many others:

- Maple Haven
- Beechstone
- Patriots Park
- Elwyn Park
- The Woodlands
- Panaway Manor
- Atlantic Heights
- Osprey Landing

Attorney Griffin said skateboarding should not be allowed on the thoroughfares that pass through these areas. He suggested creating a trial period for the ordinance.

Erin Mack, Portsmouth resident, spoke in support of lifting the ban on skateboarding however, she feels the ordinance is still quite vague.

Andy Ward, Portsmouth resident, said the ordinance singles out a group of people and skateboarders do not want to be treated as second-class citizens. He expressed his opposition to the creation of a more restrictive ordinance.

Mike Ferguson, Portsmouth resident, provided a handout with recent stats from the National SAFE KIDS Campaign and the American Academy of Pediatrics that reports more than 61,000 children ages 5 to 14 were treated in hospital emergency rooms for injuries. He advised the City Council that skateboarding is a form of transportation and a sport.

Sharon Imhoff, Portsmouth resident, said that respect needs to be shown for this activity.

Charles Griffin, Attorney and Portsmouth resident, said this is not an issue of stereotyping it is about safety. The City Council is just trying to impose some safety requirements that are needed.

Erin Mack, Portsmouth resident, said that stereotyping is a big issue and skateboarding is an acceptable activity.

Andy Ward, Portsmouth resident, said that skateboarding is an alternative transportation. He said that the ordinance will not make things easier; it just singles out a group of individuals.

Shaun Rafferty, Portsmouth resident, said he is sorry to hear that skateboarders feel they are being singled out. He said that skateboarding makes the streets more dangerous.

Chris Rais, Portsmouth resident, spoke opposed to the ordinance and he would support prohibiting skateboarding in the downtown area.

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

Councilor Spear moved to suspend the rules in order to take up Item IX. C. – Second reading of Ordinance amending Chapter 7, Article III, Section 7.344 – Use of Roller Skates, Coasters and Skateboards. Seconded by Councilor Pantelakos and voted.

Councilor Spear moved that Article 7, Section 7.344 be amended at second reading by the substitution of that version of the ordinance presented with the agenda packet for the May 18, 2009 meeting in place of the version of the ordinance which passed first reading on January 26, 2009 and schedule third and final reading at the June 8th City Council meeting. Seconded by Councilor Pantelakos.

Councilor Pantelakos said she came forward with the need for a new ordinance because she felt that skateboarders were being discriminated against. She said it should be a parent's responsibility to require kids to wear helmets.

Councilor Spear said he supports the ordinance and some great points were made this evening. He said it is important for residents to realize that if amendments need to be made to this ordinance it can be done in the future.

Councilor Dwyer said the majority of speakers this evening were against the ordinance presented.

Motion passed.

VIII. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of Community Development Block Grant Funds

Councilor Pantelakos moved to accept and expend a Community Development Block Grant (CDBG) in the amount of \$655,821.00 from the U.S. Department of Housing and Urban Development; and further accept and expend an American Recovery and Reinvestment Act of 2009 Community Development Block Grant (CDBG) in the amount of \$175,606.00 from the U.S. Department of Housing and Urban Development. Seconded by Councilor Smith and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. First reading of Ordinance amending Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking

Councilor Smith moved to pass first reading and schedule a public hearing and second reading at the June 8, 2009 City Council meeting, as submitted. Seconded by Councilor Novelline Clayburgh and voted.

B. First reading of Resolution Authorizing Borrowing in Anticipation of Revenues and Taxes in the amount of \$16,000,000.00

Councilor Smith moved to pass first reading and hold a public hearing and adoption of the Resolution at the June 8, 2009 City Council meeting. Seconded by Councilor Pantelakos.

City Manager Bohenko reported that this Resolution is passed every year to allow the Finance Director to borrow up to \$16,000,000.00 on a short-term basis until the property taxes come in as we bill our taxes in arrears.

Councilor Kennedy said given the concern relative to revenues being provided by the State, should we wait before approving this Resolution.

City Manager Bohenko explained the collection of taxes in the City and said we have had very limited use of this money over the years.

Motion passed.

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

A. Letter from Liam Carmichael requesting to install a stop light on the corner of Cass Street and Middle Street (***Anticipated action – move to refer to the Traffic & Safety Committee***)

- B. Renewal of Sidewalk Obstruction Licenses with no changes from last year
 - RiverRun Bookstore – 1 Table
 - Six Degrees A Unique Salon – 1 A-frame sign**(Anticipated action – move to refer to the City Manager with power)**

- C. Letter from Andrew Nitschelm, Water Country, requesting permission to hold a City Employee's Day at Water Country on Saturday, June 27, 2009 from 11:30 a.m. – 6:00 p.m. (rain date Sunday, June 28, 2009) **(Anticipated action – move to refer to the City Manager with power)**

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

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Patricia Taylor, Frank Jones Farm Neighborhood Group, requesting permission to erect a historical marker on city-owned land across from Market Basket on the corner of Woodbury Avenue and Market Street Extension

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

Councilor Dwyer said it was not clear in the request if the neighborhood would raise the funds for the historical marker. City Manager said he would discuss that issue with the neighborhood group.

Motion passed.

- B. Letter from Jack Kimball, Granite State Patriots, requesting permission to hold a Remember our Fallen Soldiers event on Monday, May 25th at 5:30 p.m. – 7:30 p.m. in front of Market Square in front of the North Church with a sound system and small portable podium

Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Pantelakos.

Councilor Kennedy said she thought we were trying to move activities to the Vaughan Mall area.

City Manager Bohenko said that this is a similar activity that takes place every Friday. He said he can ask the organization to consider moving to the Vaughan Mall.

Councilor Dwyer said we should not allow the use of a sound system. City Manager Bohenko said he would offer the Vaughan Mall with a sound system.

City Attorney Sullivan said that people have a right to speak but they cannot obstruct the sidewalk without permission from the City Council.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Report Back from Planning Board Re: John Dussi, Northern Tier Real Estate Acquisition & Development, LLC, seeking to remove the current glass atrium enclosure located at 172 Hanover Street to replace with a more permanent structure

Councilor Dwyer moved to deny this request based on the recommendation of the Planning Board, as submitted. Seconded by Councilor Pantelakos and voted.

Planning Board Recommendations:

- *That the Board advises the Council that more permanent encroachments should not be allowed within this right-of-way;*
- *That the public's interest in this right-of way is significant and should be retained and maintained so as to meet future public needs;*
- *That no permanent easements should be authorized by the City;*
- *That properly drafted, a License Agreement could be prepared/approved that would protect the City's interest in this right-of-way and allow for existing (or modified) encumbrances;*
- *That conceptually the Board would favorably recommend that minor modifications should be allowed to the existing structure subject to the Board's review and the offering of favorable recommendation to the Council concerning this design; and,*
- *That a new License Agreement between the City and Mr. Dussi shall be prepared/approved as to content and form by the Legal Department and approved by the City Council or as appropriate*

Note: Since the Planning Board's action on March 19, 2009 no actions have been pursued by Mr. John Dussi. The department does not anticipate any further action at this time.

2. Request for Approval of Professional Management Association Collective Bargaining Agreement to expire June 30, 2014

City Manager Bohenko said that this contract achieves the goal of the City Council for no salary increases for FY10. He said that this would achieve a savings to the City of approximately \$136,000.00.

Councilor Novelline Clayburgh moved to accept the proposed contract with the Professional Management Association to expire on June 30, 2014. Seconded by Councilor Pantelakos.

Councilor Spear said when he was first elected to the City Council, one thing that stuck with him was that every department had been recognized nationally or with the state. He said that this follows the pattern of excellence with our staff. He said when he attends meetings outside of the City; he always hears how Portsmouth staff is hands above other communities.

Motion passed.

City Manager Bohenko echoed the comments of Councilor Spear. He said this group is leading the way for others to come forward.

3. Proposed Funding Re: Public Undeveloped Lands Assessment

City Manager Bohenko asked Steve Miller, Conservation Commission Chair, to speak to this request.

Steve Miller, Conservation Commission Chair, reported at the June 16, 2008 City Council meeting the City Council voted that the Conservation Commission as a whole, or acting through a subcommittee comprised of its own members, conduct an open space inventory with a focus on land that has conservation value (for example, wildlife habitat, rare/endangered species, farmland) and/or passive recreation value (for example walking trails rather than active recreation such as playing fields) and contract with a natural resource protection specialist, such as a wildlife biologist, to accomplish this work.

The subcommittee has met and defined a project in keeping with the recommendation above, which will consist of a public undeveloped land assessment. In order to complete that effort the City Staff developed an RFP in consultation with the Conservation Commission and a selection committee consisting of myself and 3 city staff members reviewed proposals, conducted interviews, and selected the finalist firm in keeping with the City's procurement procedures. If funding is authorized, the Contractor will start within the next month and work through the summer and into the fall to conduct the assessment.

Therefore, the Conservation Commission recommends to that \$27,330.00 from the Conservation Fund be authorized to fund the work.

Councilor Pantelakos moved to approve, as recommended by the Conservation Commission, the expenditure of \$27,330.00 to hire a consultant to conduct a citywide public undeveloped land assessment. Seconded by Councilor Smith.

Councilor Kennedy thanked the Conservation Commission for doing a great job and it is time to look at the Conservation land in the City.

Councilor Dwyer said she is pleased with the work of the Conservation Commission and asked about land at Pease. City Manager Bohenko said we could look at the land and add an appendix to the study and work with the Pease Development Authority on the matter.

Motion passed.

Councilor Spear said he would hope in the next few months we reach out to non-traditional spots to include in the discussion.

B. MAYOR FERRINI

1. Appointments to be Considered:
 - Maryann Blanchard – Appointment as Regular member to Conservation Commission

The City Council considered the appointment of Maryann Blanchard as a regular member to the Conservation Commission. This appointment will be voted on by the City Council at the June 8, 2009 City Council meeting.

2. Appointments to be Voted:
 - Brian Gregg – Reappointment to the Cable Television and Communications Commission

Councilor Pantelakos moved to reappoint Brian Gregg to the Cable Television and Communications Commission until April 1, 2012. Seconded by Councilor Smith and voted.

- Phyllis Eldridge – Reappointment to the Trustees of the Trust Fund

Councilor Smith moved to reappoint Phyllis Eldridge to the Trustees of the Trust Fund until January 1, 2012. Seconded by Councilor Pantelakos and voted.

3. *Status Update on Portsmouth Middle School

Mayor Ferrini said we are still in a watchful mode with the Middle School.

4. *Reports

Councilor Kennedy asked when people will be appointed to the Peirce Island Committee. Mayor Ferrini said more people will be voted on at the next City Council meeting.

C. ASSISTANT MAYOR BLALOCK

1. Proposed City Council Policy #2009-04 Re: Vending

City Manager Bohenko advised the City Council that Health Officer Kim McNamara is here this evening to provide a presentation on the Vending Policy.

Health Officer McNamara advised the City Council that the Vendor Committee is reviewing cart sizes and locations. She said there are a number of applicants and problems with over sized carts operating in the downtown is an issue. She spoke to various sections of the ordinances that relate to the vendors that are contained throughout the ordinance book which will be recommended to summarize to one location for reference. She outlined the 7 locations that have been authorized by the Vendors Committee for the location of vendors as follows:

- In front of Market Square
- In front of 1 Pleasant Street
- In front of 15 Pleasant Street
- In front of 55 Market Street
- Outside the Ladd Street side of the parking garage
- Outside the parking garage on Hanover Street
- Vaughan Mall

Health Officer McNamara advised the City Council that we will be permitting more vendors than there are spaces and it will be first come, first served.

Assistant Mayor Blalock thanked Health Officer McNamara for her presentation and spoke to his support of the Vending Policy.

Councilor Pantelakos said she does not see any area for Prescott Park. Assistant Mayor Blalock reported that the sidewalk in front of Prescott Park has been determined to be too small and does not meet the requirement for vendors.

Councilor Kennedy asked about the vendor located across from Strawberry Banke. Health Officer McNamara said that they are on Prescott Park property. Councilor Kennedy asked if there should be a height restriction for carts. Health Officer McNamara said we have not addressed that at this time but it could be considered.

Councilor Dwyer asked if all the locations accommodate one cart. Health Officer McNamara said that the Vaughan Mall location could accommodate two carts.

Motion passed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Kennedy said she would like to have the City review instituting a policy with a penalty for companies that are doing building projects but are not completed within the time frame reported to the City. City Manager Bohenko said he has asked the staff to make that part of the construction management plan. Councilor Kennedy expressed concern regarding the project on Bow Street. Assistant City Attorney Woodland said she spoke with the individuals involved in that project regarding the lack of activity with completion of the project and was told that they would be moving forward with the project but activity is still not occurring, therefore, she will be having another conversation with them regarding this matter.

Mayor Ferrini announced that the Memorial Day Parade will start at 1:00 p.m. on Monday, May 25, 2009.

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

At 9:20 p.m., Councilor Smith moved to adjourn. Seconded 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/CNHMC
City Clerk