

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JUNE 22, 2009 TIME: 7:00PM

AGENDA

- 6:00PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS – RSA 91-A:2, I (b-c)

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

PRESENTATION

1. Presentation to Superintendent of Schools Dr. Robert J. Lister

V. ACCEPTANCE OF MINUTES – JUNE 8, 2009

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donations to the Coalition Legal Fund
 - Town of Sugar Hill - \$500.00
 - Town of Moultonborough - \$4,000.00
 - Town of Tuftonboro - \$5,000.00

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Adoption of Budget Resolutions for Fiscal Year July 1, 2009 through June 30, 2010 (FY2010)
 1. Resolution #1 – General Fund Expenditures
 2. Resolution #2 – Municipal Fees
 3. Resolution #3 – Sewer Fund Expenditures
 4. Resolution #4 – Water Fund Expenditures
 5. Resolution #5 – Special Revenues for Necessary Expenditures and Designated Fund Balances
 6. Resolution #6 – Investment Policy
- B. First reading of Ordinance amending Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City – Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage)
- C. Third and final reading of Ordinance amending Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Acceptance of Grant to Mayor's Blue Ribbon Cemetery Committee from the Portsmouth Garden Club - \$200.00 (***Anticipated action – move to accept a grant in the amount of \$200.00 to the Mayor's Blue Ribbon Cemetery Committee***)
- B. Letter from Jay Diener, Seacoast Half Marathon, requesting permission to hold the 4th annual Seacoast Half Marathon on Sunday, November 8, 2009 (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Eric Weinrieb, Portsmouth Rotary Club, requesting permission to hold the 17th annual Thunder Chicken 5k Road Race on Thursday, August 6, 2009 (***Anticipated action – move to refer to the City Manager with power***)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letters from Judith Stadtman, Seacoast for Change Grassroots Network, regarding City of Portsmouth Policies Affecting Peaceable Political Assembly and the Exercise of First Amendment Rights (*See City Attorney Sullivan's Response*)
- B. Letter from Peggy Lamb, Historic State Street Merchant's Association, requesting permission to display open flags during business hours on State Street

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

- 1. Adoption of Proposed Budget Resolutions:
 - 1.1 Adoption of Budget Resolutions for Fiscal Year July 1, 2009 through June 30, 2010 (FY2010)
 - Resolution #1 – General Fund Expenditures
 - Resolution #2 – Municipal Fees
 - Resolution #3 – Sewer Fund Expenditures
 - Resolution #4 – Water Fund Expenditures
 - Resolution #5 – Special Revenues for Necessary Expenditures and Designated Fund Balances
 - Resolution #6 – Investment Policy

(Action on this matter should take place under Section VIII of the Agenda)

2. First Reading of Proposed Ordinance Amendments and Resolutions:
 - 2.1 First Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City - Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage) (**Action on this matter should take place under Section VIII of the Agenda**)
3. Third and Final reading of Proposed Ordinance Amendments and Resolutions:
 - 3.1 Third and Final Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking (**Action on this matter should take place under Section VIII of the Agenda**)

City Manager's Items Which Require Action

1. Fact Finder's Report Re: Firefighter Negotiations
2. Portsmouth Police Ranking Officers' Association Tentative Agreement
3. Revised Contract for Edward McDonough, Superintendent of Schools
4. Ratification of Prescott Park Arts Festival Agreement
5. Adoption of Policy Re: Public Gathering in Market Square
6. Report Back Re: Rezoning of Land between Bartlett Street and the US Route 1 Bypass
7. License Agreement for Dumpster at 1 Harbour Place

Informational Items

1. Events Listing
2. Half-Day Work Session Re: Proposed Zoning Ordinance

B. MAYOR FERRINI

1. Appointments to be Considered:
 - Dennis Moulton – Reappointment to the Building Code Board of Appeals
 - Ron Zolla – Appointment to the Economic Development Commission
 - Robert Pollard – Appointment to the Peirce Island Committee
2. Appointments to be Voted:
 - Elena Maltese – Reappointment to the Historic District Commission
 - Jeffrey Mountjoy – Reappointment to the Portsmouth Housing Endowment Fund
 - Arlene Corriveau – Appointment to the Peirce Island Committee
 - Harold Hapgood – Appointment to the Peirce Island Committee

- Heather Hurtt – Appointment to the Recreation Board
 - Carl Diemer – Reappointment to the Recreation Board
 - Kathy Birse Siegel – Reappointment to the Recreation Board
3. *Status Update on Portsmouth Middle School
 4. *Reports

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 May 13, 2009 meeting
2. Historic District Commission minutes of the May 6, 2009 meeting
3. Zoning Board of Adjustment minutes of the April 21, 2009 meeting
4. Letter from Christine Bibeau regarding the wonderful programs offered at Spinnaker Point

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: June 18, 2009
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on June 22, 2009 City Council Agenda

6:00 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Presentation:

1. **Presentation to Superintendent of Schools Dr. Robert J. Lister.** On Monday evening, City Council will make a presentation to retiring Superintendent of Schools Dr. Robert J. Lister.

Acceptance of Grants/Donations:

1. **Acceptance of Donations to the Coalition Legal Fund.** Attached are copies of checks from the Town of Sugar Hill in the amount of \$500.00; the Town of Moultonborough in the amount of \$4,000.00; and the Town of Tuftonboro in the amount of \$5,000.00, 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 donations, as listed, 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. Adoption of Proposed Budget Resolutions:

- 1.1 **Adoption of Budget Resolutions for Fiscal Year July 1, 2009 through June 30, 2010 (FY2010).** On Monday evening, I am requesting that the City Council adopt the proposed FY 2010 Budget (July 1, 2009 thru June 30, 2010). For your review and action there are six proposed Resolutions relative to the annual budget adoption process [attached under Section VIII of the Agenda](#).

Resolution No. 1 – General Fund Expenditures. In this Resolution, the proposed appropriations for the Municipal, Police, Fire and School Departments as well as Collective Bargaining Contingency and non-operating appropriations are listed separately.

The FY 2010 Proposed Budget was submitted to the City Council on April 10, 2009. The submitted budget of \$84,746,159 resulted in proposed tax increase of 30¢ for a rate of \$17.28 per \$1000 of valuation.

As a result of various work sessions with departments and the City Council, reductions were made in the Police Department, School Department and Overlay for a total of \$453,023 which reduced the proposed tax rate by approximately 12¢ to \$17.16 or a total increase of 18¢.

In addition, the City Council approved six collective bargaining agreements. The approval of these contracts included a wage freeze for FY10 which will reduce the amount proposed for Collective Bargaining Contingency for FY10 by \$254,400.

The total reductions from the April 10th proposed budget are as follows:

Police Department reduction	(\$124,601)
School Department reduction	(\$228,422)
Reduction in Overlay	(\$100,000)
Collective Bargaining Contingency:	
• Portsmouth Management Association (PMA)	(\$107,600)
• Supervisory Management Alliance's (SMA)	(\$ 17,200)
• School Contracts:	(\$129,600)
○ Portsmouth Association of Clericals	
○ Custodial Supervisors'	
○ Portsmouth School Administrator's	
○ Portsmouth Paraprofessionals Association	

Total Reduction to the proposed FY10 Budget is \$707,423.00. With all other factors remaining the same, this will reduce the proposed tax increase from 30¢ to 11¢ resulting in a tax rate of \$17.09.

For your information, an 11¢ tax increase equals \$11.00 per year for every \$100,000 of assessed property valuation.

Therefore, the FY10 budget both operating and non-operating would be \$84,038,736 or 1.95% over FY09 if this proposal is adopted.

Resolution No. 2 adopts Municipal Fees that have been recommended by the Fee Committee. The total revenue generated from these fees is estimated at \$919,000 or 1% of the total FY10 General Fund Revenues.

Resolution No. 3 establishes the annual appropriation, cash requirements and user rates for the Sewer fund. The adoption of this resolution includes a two step, inclining block rate structure. This means the first 10 units (1 unit equals 100 cubic feet or 748 gallons) of sewer usage per month will be charged at \$5.00 per unit, all consumption over 10 units per month will be charged at \$5.50 per unit. There is no increase in the sewer rate for FY10. Eighty percent (80%) of all residential customers fall in the 10 units or less tier.

Resolution No. 4 establishes the annual appropriation, cash requirements and user rates for the Water fund. Similar to Sewer, the adoption of this resolution will include a two step, inclining block rate structure. The first 10 units (1 unit equals 100 cubic feet or 748 gallons) of water consumed per month will be charged at \$3.30 per unit, all consumption over 10 units per month will be charged at \$3.90 per unit. This increase translates to an approximate monthly increase of \$9.00 to the average residential user. Eighty percent (80%) of all residential customers fall in the 10 units or less tier.

Resolution No. 5 allows for the expenditure of Special Revenues and Designated Fund Balances. This allows the City to expend from designated fund balances, donations and Federal and State Grants as they are accepted and received.

Resolution No. 6 deals with the adoption of an annual investment policy. State law requires the annual adoption of such a policy by every city and town.

(suggested motions:

- 1) *Move to adopt Resolution #1 – General Fund Expenditures.*
- 2) *Move to adopt Resolution #2 – Municipal Fees.*
- 3) *Move to adopt Resolution #3 – Sewer Fund Expenditures.*
- 4) *Move to adopt Resolution #4 – Water Fund Expenditures.*
- 5) *Move to adopt Resolution #5 – Special Revenues for Necessary Expenditures and Designated Fund Balances.*
- 6) *Move to adopt Resolution #6 – Investment Policy.*

(Actions on Resolutions 1 thru 6 should take place under Section VIII of the Agenda.)

2. **First Reading of Proposed Ordinance Amendments and Resolutions:**

- 2.1 **First Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City – Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage).** Attached under Section VIII of the Agenda is a proposed Ordinance amendment to Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinance of the City. As you are aware, at the June 8th City Council meeting, the Council approved the Parking Committee minutes of May 14, 2009 which requested an ordinance change regarding the number of days a vehicle can remain in the High Hanover Parking Garage.

I would recommend the City Council move to pass first reading of the proposed Ordinance, as submitted, and schedule a public hearing and second reading at the July 20, 2009 City Council meeting. Action on this matter should take place under Section VIII of the Agenda.

3. **Third and Final Reading of Proposed Ordinance Amendments and Resolutions:**

- 3.1 **Third and Final Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking.** As a result of the June 8th City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final reading the amended [attached ordinance](#) to Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking.

I would recommend that the City Council move to pass third and final reading of the Ordinance, as submitted. Action on this matter should take place under Section VIII of the Agenda.

Consent Agenda:

1. **Acceptance of Grant to Mayor’s Blue Ribbon Cemetery Committee.** Attached is a [copy of a letter](#) from the Portsmouth Garden Club awarding the Festival of Trees Conservation Grant in the amount of \$200.00 to the Mayor’s Blue Ribbon Cemetery Committee.

I would recommend the City Council move to accept a grant in the amount of \$200.00 to the Mayor’s Blue Ribbon Cemetery Committee. Action on this matter should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Fact Finder's Report Re: Firefighter Negotiations.** [Attached is a copy of the Fact Finder's Report](#) between the Portsmouth Professional Fire Officers Association, Local 4039 IAFF and the City of Portsmouth and the Portsmouth Board of Fire Commissioners. [Also, attached is a copy of the fact-finding brief](#) on behalf of the Portsmouth Board of Fire Commissioners and the City of Portsmouth. As you are aware, the Fact Finder's report did not support many of the goals the Council wished to achieve through negotiations.

New Hampshire law provides that both cost and non-cost items in a Fact Finder's report be submitted to the city's legislative body for an up or down vote. Because both the unions and the Fire Commission have rejected the Fact Finder's report, the vote by the City Council will not change the current status quo situation with respect to negotiations with the union in the Fire Department.

I would request that the City Council move to reject the report.

2. **Portsmouth Police Ranking Officers' Association Tentative Agreement.** The Police Commission has approved a Tentative Agreement with the Portsmouth Police Ranking Officers' Association to expire on June 30, 2013. I am forwarding the Tentative Agreement to the City Council for vote of final approval as is required by Amendment B of the City Charter.

The Portsmouth Police Ranking Officers' Association reached a Tentative Agreement on December 31, 2008. The Negotiating team met with the Ranking Officers' negotiating team and informed them that they did not feel that this Tentative Agreement would pass and asked them to consider taking a year without a COLA increase. The Police Ranking Officers' team brought it back to their membership and the membership rejected the wage freeze proposal and voted to move forward with the original agreement.

I have [attached the following documents](#) for your review:

- Summary outlining the changes to the contract.
- A copy of the contract showing the insertions and deletions to implement the Tentative Agreement if approved.
- Cost Analysis of the five-year agreement

It is my recommendation that the City Council reject this Tentative Agreement. Given the status of the economy, the uncertainty of the state budget and the fact that six bargaining units have agreed in good faith to a wage freeze in FY 2010, the passage of this tentative agreement would not be in the best interest of the City.

Therefore, I would recommend the City Council move to reject the Portsmouth Police Officers' Ranking Association Tentative Agreement, as presented.

3. **Revised Contract for Edward McDonough, Superintendent of Schools Designee.** Attached is a revised contract for Edward McDonough, Superintendent of Schools Designee reflecting a 3% reduction in salary. As you are aware, Edward McDonough has agreed to reduce his salary from \$134,000 to \$129,980. On Tuesday, June 9, 2009, the School Board voted to approve the revised contract. Therefore, in accordance with Section 4.9 – Authority to Determine Salaries of the City Charter, I am submitting the revised contract to the City Council for consideration of approval.

I would recommend the City Council move to approve the revised contract for Edward McDonough, Superintendent of Schools Designee, as presented.

4. **Ratification of Prescott Park Arts Festival Agreement.** As you may be aware, the Prescott Park Arts Festival (hereinafter “PPAF”) is a non-profit entity which works with the City’s Trustees of Trust Funds to advance artistic endeavors at Prescott Park, and in particular to put performances on the stage.

The relationship between the Trustees of Trust Funds and PPAF has grown in an organic fashion over the years. While the Trustees knew what was expected of PPAF and PPAF has come to have a very large presence at Prescott Park, the relationship between the two was never written. Rather, through various verbal arrangements and understandings, PPAF came to occupy some of the physical space at Prescott Park, to have significant control over the artistic elements of Prescott Park in the summer and to operate the concession stand at Prescott Park as a fundraiser for PPAF.

This system has worked well for a long period of time. However, a point has been reached at which it is necessary for both the Trustees of Trust Funds and PPAF to have a more formalized agreement.

With that thought in mind a significant amount of time was spent over the winter to produce a written agreement between the Trustees of Trust Funds and PPAF which, for the first time, would clearly delineate the rights and responsibilities of each entity going forward. The attached six (6) page document was negotiated between the Trustees of Trust Funds and PPAF to accomplish that result.

As your review of it will indicate, the agreement is expansive in nature, covering a wide range of topics including:

1. The manner in which PPAF shall produce performances in the park with particular attention being given to the stage area.
2. Recognition that Prescott Park is primarily a pastoral area which members of the public can enjoy without charge. Therefore, the authority of PPAF to solicit donations and place signs is delineated in detail.

3. PPAF is given the authority to operate the concession stand for its own fundraising purposes.
4. All of the areas and buildings within Prescott Park which may be used by PPAF are listed in the agreement.
5. Authority is given to PPAF to perform certain activities other than performances on the stage, such as the conduct of a juried art show, the Chili and Chowder festivals and the Fairy House Tours.
6. The agreement contains provisions requiring PPAF to maintain certain insurances.
7. The agreement requires PPAF to fully account to the Trustees for its income and expenses related to the operation of the park, and PPAF is specifically authorized to adopt a cash handling policy.

An important part of the agreement is that it is self renewing from year to year unless amended by further agreement of the Trustees of Trust Funds and PPAF. However, either party may terminate this agreement without cause by providing sixty (60) days notice to the other party.

Although the direct parties to this agreement are the Trustees of Trust Funds and PPAF, in negotiating and drafting the agreement both the Trustees and the City Attorney were mindful that all authority of the Trustees to take any action in Prescott Park is derived from the City Council. Therefore, the City Attorney has recommended, and the Trustees have agreed, that the document should be approved by the City Council in order to ratify the proposed relationship between the Trustees and PPAF. Accordingly, this is brought to the City Council seeking passage of a motion by the City Council to approve the agreement as negotiated and executed by the Trustees of Trust Funds and PPAF.

I would recommend the City Council move to approve the agreement as negotiated and executed by the Trustees of Trust Funds and the Prescott Park Arts Festival.

5. **Adoption of Policy Re: Public Gathering in Market Square.** As a result of the June 8th City Council meeting, I am bringing back for City Council adoption the [attached proposed policy](#) regarding the aforementioned subject matter drafted by City Attorney Robert Sullivan with input from various City departments.

I would recommend the City Council move to adopt the policy regarding Public Gathering in Market Square, as presented.

6. **Report Back Re: Rezoning of Land between Bartlett Street and the US Route 1 Bypass.** As you will recall, JASK Realty Trust has requested that the City rezone from Industrial (I) to General Business (GB) the area bounded by the US Route 1 Bypass, the B&M Railroad line, and Bartlett, Cate and Cottage Streets ([see attached letter from Bernard W. Pelech, Esq., dated February 17, 2009](#)). The City Council referred this

request to the Planning Board on March 2nd, and the Planning Board reviewed the request at its March 19th and May 21st meetings.

At its meeting of May 21, 2009, the Planning Board voted to recommend that the requested zoning change be considered as part of the overall revision of the Zoning Ordinance and Zoning Map, and requested the Planning Department to review land use and circulation issues in this Industrial district and the immediately surrounding area. The Board's recommended zoning for this area will be included on the revised Zoning Map which will be recommended to the Council this fall along with the revised Zoning Ordinance.

I would recommend the City Council move to accept the recommendation from the Planning Board, as submitted.

7. **Request for License Agreement for Dumpster at 1 Harbour Place.** Two International Construction is renovating the entire fifth floor and a third floor unit at 1 Harbour Place. In order to facilitate construction activities at the location, the company is requesting a license to allow the continued use of a dumpster in a loading zone along Daniel Street through September 30, 2009 or such additional time up to 90 days for good cause. [See attached picture of the area.](#) The occupation permit for the existing dumpster has expired and a license would be more appropriate given the intended length of the encumbrance.

The existing screening shown in the [attached picture](#) would remain in place during the license period. Two International Construction will pay \$20.00 per day, Sundays excepted, for use of the licensed area. Standard license provisions relative to insurance, repair, late fees and the like would apply.

I would recommend the City Council move to authorize the City Manager to negotiate and enter into a license agreement with Two International Construction for purposes of facilitating construction activities at 1 Harbour Place.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on June 8, 2009. As you can see on the listing, I have highlighted those dates that will have two events going on at the same time.
2. **Half-Day Work Session Re: Proposed Zoning Ordinance.** For your information, the Half-Day Work Session regarding the Proposed Zoning Ordinance is on Thursday, June 25, 2009 from 12:30 p.m. to 4:30 p.m., in the Levenson Room at the Library ([see attached agenda](#)). Please bring your copy of the proposed ordinance that was sent out last week.