

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JUNE 22, 2009

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

At 6:00PM 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 7:10 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.

PRESENTATION

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

Mayor Ferrini, City Manager Bohenko and City Council presented Superintendent Dr. Robert Lister with a City of Portsmouth chair in honor of his retirement as well as a Proclamation recognizing his years of service to the City.

Dr. Lister thanked Mayor Ferrini, City Manager, City Council and his colleagues for their support over the years.

V. ACCEPTANCE OF MINUTES – JUNE 8, 2009

Councilor Smith moved to approve and accept the minutes of the June 8, 2009 City Council meeting. Seconded by Councilor Kennedy and voted.

VI. PUBLIC COMMENT SESSION

Martin Cameron said he would like to see the City Council remove the \$200,000.00 from the budget for parking meters.

Bill St. Laurent, Association of Portsmouth Taxpayers, said he would like to see action on the budget postponed for a week until the State budget is adopted. He expressed concern with the \$.11 increase in the City's budget. In addition, he would also request that the \$200,000.00 for parking meters be removed from the budget.

Erik Anderson said he understands any increase will have an impact on the budget and would like to know if the City has a contingency plan for a loss of funding by the State if that was to happen.

Judith Stadtman spoke regarding public assembly and first amendment rights of individuals. She requested that the City Council take a thorough review of public assembly and consider having a public hearing on the matter.

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

Councilor Pantelakos moved to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund. Seconded by Councilor Kennedy and voted.

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

Municipal	\$15,546,895.00
Police	\$ 8,613,059.00
Fire	\$ 6,814,861.00
School	\$36,062,771.00
Collective Bargaining Contingency	\$ 1,248,606.00
<u>Non-Operating</u>	<u>\$15,752,544.00</u>
Total	\$84,038,736.00

City Manager Bohenko spoke to the budget process and the guidelines which were established by the City Council. He said that multiple meetings and work sessions have been held on the budget and the goal for no increase in operating has been met. City Manager Bohenko said the challenge this year has been with the State budget and the revenue sharing aspect. He said that arriving at a \$.11 increase has been difficult with increases on the State and County side. City Manager Bohenko recommended that the City Council adopt Resolution #1 in the amount of \$84,038,736.00.

Councilor Pantelakos moved to adopt Resolution #1 – General Fund Expenditures. Seconded by Councilor Novelline Clayburgh.

Councilor Spear thanked the unions for waiving a salary increase and said this budget puts us in a good place and that next year's budget will be more difficult.

Councilor Pantelakos said she would like to thank everyone for their hard work on this budget.

Councilor Kennedy said she would have liked to come in at a 0% increase and would encourage everyone to speak with our State Representatives and County Representatives regarding their budgets and its impact on the communities.

Councilor Smith thanked all the department heads for their work on the budget. He said he is disappointed that we could not have a 0% increase. He suggested that the Association of Portsmouth Taxpayers start watching the county level and their budget.

Assistant Mayor Blalock said that he is pleased with the budget and that there will be no layoffs, as is the case in other communities. He thanked the City Manager, Fire Commission, Police Commission and School Board for their efforts in preparing this difficult budget.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini thanked all that have worked on the budget and said that the City Council does not take for granted the sacrifices made by individuals.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

On a unanimous roll call vote 9-0, motion passed.

2. Resolution #2 – Municipal Fees

City Manager Bohenko reviewed the Fee Schedule and advised the City Council that there has been an elimination by the Police Department of the \$.50 bicycle license fee.

Councilor Pantelakos moved to adopt Resolution #2 – Municipal Fees. Seconded by Councilor Novelline Clayburgh. On a unanimous roll call vote 9-0, motion passed.

3. Resolution #3 – Sewer Fund Expenditures

Total Budget Sum \$10,866,211.00

Sewer User Charge effective for invoices generated after July 1, 2009

\$5.00 per unit (1 unit equals 100 cubic feet or 748 gallons) for the first 10 units of sewer usage per month, and \$5.50 per unit for all units used thereafter to yield a portion of revenue to meet the cash requirements for the operation of the City of Portsmouth's sewer system.

City Manager Bohenko advised the City Council that this resolution sets the expenditure levels and user rates for the Sewer Fund. He reported that there is no increase in the rate for FY10.

Councilor Smith moved to adopt Resolution #3 – Sewer Fund Expenditures. Seconded by Councilor Pantelakos and voted.

4. Resolution #4 – Water Fund Expenditures

Total Budget Sum \$8,107,994.00

Water User Charge effective for invoices granted after July 1, 2009

\$3.30 per unit (1 unit equals 100 cubic feet or 748 gallons) for the first 10 units of water consumed per month, and \$3.90 per unit for all units consumed thereafter to yield a portion of revenue to meet the cash requirement for the operation of the City of Portsmouth's water system.

City Manager Bohenko reported that there is an increase to the rate which translates to an approximate monthly increase of \$9.00 to the average residential user. He said the increase is due to the requirement of building a new water treatment plant.

City Manager Bohenko announced that the City received an increase in our bond rating to a double A.

Councilor Smith moved to adopt Resolution #4 – Water Fund Expenditures. Seconded by Councilor Pantelakos.

Assistant Mayor Blalock commended City Manager Bohenko and the financial staff for achieving an increase in our bond rating during these difficult financial times.

Motion passed.

5. Resolution #5 – Special Revenues for Necessary Expenditures and Designated Fund Balances

City Manager Bohenko advised the City Council this resolution allows the City to expend from designated fund balances, donations and Federal and State Grants as they are accepted and received.

Councilor Kennedy moved to adopt Resolution #5 – Special Revenues for Necessary Expenditures and Designated Fund Balances. Seconded by Assistant Mayor Blalock and voted.

6. Resolution #6 – Investment Policy

City Manager Bohenko said this resolution deals with the adoption of an annual investment policy. He informed the City Council that State law requires the annual adoption of such a policy by every city and town.

Councilor Dwyer moved to adopt Resolution #6 – Investment Policy. Seconded by Councilor Smith and voted.

City Manager Bohenko thanked the City Council for their hard work with the staff on this budget. He said it has been a difficult process and the departments were able to meet the goals of the Council.

- 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)

Councilor Dwyer moved 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. Seconded by Councilor Smith.

Councilor Kennedy asked if there is a provision which allows individuals to park in the garage for long periods of time. Parking Manager Frederick responded affirmatively and advised the Council that an individual would advise the parking attendant if they plan on staying in the space for an extended period of time. She suggested adding a procedure for extended parking in the ordinance.

Motion passed.

- C. Third and final reading of Ordinance amending Chapter 7, Article IV, Section 7.408 – Peirce Island Boat Launch Overnight Parking

Councilor Smith moved to pass third and final reading of the Ordinance, as submitted. Seconded by Councilor Pantelakos and voted.

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***)

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Smith.

Councilor Kennedy asked if August 6th is the date that the dog exhibit will be out at Four Tree Island. City Manager Bohenko said he would check to see if there is a conflict with the exhibit and the Thunder Chicken 5k Road Race.

Motion passed.

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*)

Councilor Spear moved to accept and place the letters on file. Seconded by Councilor Novelline Clayburgh and voted.

- B. Letter from Peggy Lamb, Historic State Street Merchant's Association, requesting permission to display open flags during business hours on State Street

Councilor Dwyer moved to refer to the City Manager with power. Seconded by Councilor Kennedy.

City Manager Bohenko said that this request is similar to the merchant flags on Deer Street. He said an annual license would be required. He advised the City Council that he would work with staff and the merchant representatives on the placement of the flags.

Councilor Smith asked if every merchant is required to participate. City Manager Bohenko said that requirement could be part of the license.

Motion passed.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Fact Finder's Report Re: Firefighter Negotiations

City Manager Bohenko advised the City Council that the Fire Commission and the unions have reviewed this report and recommended its rejection.

Councilor Spear moved to reject the report. Seconded by Councilor Smith and voted.

2. Portsmouth Police Ranking Officers' Association Tentative Agreement

City Manager Bohenko informed the City Council that the Police Commission has approved the tentative agreement with the Portsmouth Police Ranking Officers' Association. He said 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. City Manager Bohenko recommended the City Council reject the agreement, as presented.

Councilor Spear moved to reject the Portsmouth Police Officers' Ranking Association Tentative Agreement, as presented. Seconded by Councilor Kennedy and voted.

3. Revised Contract for Edward McDonough, Superintendent of Schools

City Manager Bohenko advised the City Council that Edward McDonough has agreed to reduce his salary from \$134,000.00 to \$129,980.00. He reported that 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, he is submitting the revised contract to the City Council for consideration of approval.

Councilor Spear moved to approve the revised contract for Edward McDonough, Superintendent of Schools Designee, as presented. Seconded by Councilor Kennedy.

Councilor Pantelakos said she would like to thank Mr. McDonough for coming forward and taking a reduction in salary.

Motion passed.

4. Ratification of Prescott Park Arts Festival Agreement

City Attorney Sullivan reported that 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. He spoke to the six page document that was negotiated between the Trustees of Trust Funds and PPAF to accomplish that result.

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.

City Manager Bohneko said 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.

Councilor Dwyer moved to approve the agreement as negotiated and executed by the Trustees of the Trust Funds and the Prescott Park Arts Festival. Seconded by Councilor Novelline Clayburgh.

Councilor Dwyer said she is pleased that we are making this agreement. She referenced Item #4 under The Stage which reads as follows:

PPAF understands that the stage located in the Park is not a forum for public expression, but rather is strictly limited in use to artistic performances and cultural presentations as authorized by the Trustees

She said she understands what the item is trying to do but because it is a public place she asked if it could be a forum for public expression. City Attorney Sullivan said the stage is a widely sought after venue. The issue is allowing the stage for public forum, which means once anyone uses the stage, it becomes public access and the City would lose control over it.

Motion passed.

5. Adoption of Policy Re: Public Gathering in Market Square

City Manager Bohenko provided the City Council with changes to the policy and would like to ask the Council to table acting on this matter until the July 20, 2009 City Council meeting. He said tabling it would allow for him to review the policy with City Attorney Sullivan and receive further input from the City Council.

Councilor Smith moved to table action on this matter until the July 20, 2009 City Council meeting. Seconded by Councilor Pantelakos and voted.

6. Report Back Re: Rezoning of Land between Bartlett Street and the US Route 1 Bypass

City Manager Bohenko said 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. He said 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.

Councilor Smith moved to accept the recommendation from the Planning Board, as submitted. Seconded by Councilor Dwyer and voted.

Planning Board Recommendation:

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 immediate surround area. The Board's recommended zoning for this area will be included on the revised Zoning Map which will be recommended to the City Council this fall along with the revised Zoning Ordinance.

7. License Agreement for Dumpster at 1 Harbour Place

City Manager Bohenko advised the City Council that 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. 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 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.

Councilor Pantelakos moved 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. Seconded by Councilor Spear.

Councilor Kennedy asked how many parking spots we are losing in the City due to construction projects. City Manager said that this is not a specific parking space but a loading zone. He said he could review the various construction projects and report on the number of parking spaces that are being occupied due to construction projects.

Motion passed.

8. Proposed Contract for David Ferland, Deputy Police Chief Designee (Not on agenda)

City Manager said that the approval of the Deputy Police Chief Designee contract is not on the agenda to be acted upon this evening.

Councilor Smith moved to suspend the rules in order to take up the Proposed Contract for David Ferland, Deputy Police Chief Designee. Seconded by Councilor Spear and voted.

Police Commissioner Howe urged the City Council to approve the contract, as submitted.

Councilor Smith moved to approve the contract for David Ferland, Deputy Police Chief Designee, as presented. Seconded by Councilor Pantelakos and voted.

City Manager's Informational Items

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

City Manager Bohenko informed the City Council that the Half-Day Work Session regarding the Proposed Zoning Ordinance will take place on Thursday, June 25, 2009 from 12:30 p.m. to 4:30 p.m., in the Levenson Room at the Library. He requested that the Council bring their copy of the proposed ordinance that was sent out last week.

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

The City Council considered the above listed appointments to be voted on at the July 20, 2009 meeting.

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

Councilor Pantelakos moved to reappoint Elena Maltese to the Historic District Commission until June 1, 2012; to reappoint Jeffrey Mountjoy to the Housing Endowment Fund until June 22, 2012; to appoint Arlene Corriveau to the Peirce Island Committee until December 31, 2009; to appoint Harold Hapgood to the Peirce Island Committee until December 31, 2009; to appoint Heather Hurtt to the Recreation Board until April 1, 2011. (*The Recreation Board is a 3-year term however, the term expired in 2008*); to reappoint Carl Diemer to the Recreation Board until April 1, 2011. (*The Recreation Board is a 3-year term however, the term expired in 2008*); to reappoint Kathy Birse Siegel to the Recreation Board until April 1, 2011. (*The Recreation Board is a 3-year term however, the term expired in 2008*). Seconded by Councilor Novelline Clayburgh and voted.

3. *Status Update on Portsmouth Middle School

Mayor Ferrini said that we will continue to watch the State budget. Councilor Pantelakos said that the State has set aside both Wednesday and Thursday for action of the State budget.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

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

At 8:30 p.m., Councilor Smith moved to adjourn. Seconded by Councilor Pantelakos 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