

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, AUGUST 3, 2009 TIME: 7:00PM

AGENDA

- 6:15PM – 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

MAYOR’S AWARD

1. Sharon Jones

PRESENTATIONS

1. Cable Television and Communications Commission Re: Proposed Public Access Charitable Trust - John Gregg, Chair (***Move to suspend the rules in order to take action on this item***)
2. Proposed Consent Decree with United States Environmental Protection Agency and New Hampshire Department of Environmental Services (***Move to suspend the rules in order take action on this item***)

V. ACCEPTANCE OF MINUTES – JULY 20, 2009

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Coalition Legal Fund
 - Town of Lincoln - \$2,000.00

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Third and 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)

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

There are no items under this section of the Agenda

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Peter Donovan requesting permission for the installation of a memorial bench for Carl Collins
- B. Letter from Paul Cincotta, Packard Development, regarding Banfield Road Conservation Land (***Sample motion – move to refer to the Planning Board for report back***)
- C. Letter from Wendy McCoole, CelebratePink, requesting permission to hold a 5k Road Race & Walk on Saturday, September 19, 2009 at 9:00 a.m.
- D. Letter from Lisa Mure, Community Health Institute, requesting permission to set up a table and two chairs for the purpose of collecting surveys from community members in the Vaughan Mall on Wednesday, August 12, 2009 from 3:00 p.m. – 7:00 p.m.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

- 1. Third and Final Reading of Proposed Ordinance Amendments and Resolutions:
 - 1.1 Third and Final 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***)

City Manager's Items Which Require Action

- 1. Non-Union Employee Contract Standards
- 2. Pease Tradeport Economic Revitalization Zone
- 3. Report Back Re: Request by Mario Giberti to purchase City-owned Land
- 4. Request for a License from Robert Sevigny owner of The Paper Patch for property located at 36 Market Street to Install a projecting sign
- 5. Request for a License from Deb Orlando, owner of Phly LLC for property located at 222 State Street to Install a projecting sign

Informational Items

- 1. Events Listing
- 2. Sustainability Newsletter
- 3. Question & Answer Meeting Re: Proposed Revised Zoning Ordinance – August 6, 2009
- 4. Public Hearing on Bond Resolution Re: Middle School

B. MAYOR FERRINI

1. Proposed Letter of Support Re: Bridge Grant
2. *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. Planning Board minutes of the June 11, 2009 and June 18, 2009 meetings
2. Zoning Board of Adjustment minutes of the April 28, 2009 and May 19, 2009 meetings

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: July 30, 2009
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on August 3, 2009 City Council Agenda

6:15 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.

Presentations:

1. **Cable Television and Communications Commission Re: Proposed Public Access Charitable Trust.** [Attached for consideration by the City Council is a proposed Cable Television Public Access Charitable Trust.](#) As you are aware the Cable Commission has been exploring the development of a public access and educational channel for the benefit of the Portsmouth community for the last several years. This effort began with the Cable Commission's ascertainment hearing process in which the Cable Commission received public comment in favor of education and public access. That effort continued during the Comcast negotiation process and resulted in the new franchise agreement providing the City with the opportunity to have a channel for public access and another channel for educational programming should the City so desire.

To that end the Cable Commission has recommended the establishment of a charitable trust in which to hold funds for the support of public access. This trust is similar in structure to that of Art Speak. This fund would hold all dollars, however contributed, for the benefit of public access programming.

In addition to seeking the City Council's approval for the establishment of this Trust the Cable Commission recommends that the City exercise its rights under the Comcast Franchise Renewal Agreement to send monies in excess of \$360,000 per annum directly to the Trust. The Renewal Agreement allows for the City to direct its payments, or

portions of payments, to another entity such as the proposed Cable Television Public Access Charitable Trust.

During the last fiscal year, cable television subscriber revenues produced approximately \$360,000 in franchise fee revenue that went directly to the general fund. The Cable Commission is requesting that fees from the Franchise Renewal Agreement above that baseline of \$360,000 be directed to the Trust. As you may recall the Cable Commission was able to negotiate the inclusion of advertising revenue into the calculation of the gross annual revenue from which the City's franchise fee is calculated. As a result, the City expects to realize additional revenues from cable television services.

John Gregg, Chair of the Cable Commission will make a brief presentation and will be available to answer questions. Also available will be the Assistant City Attorney Suzanne Woodland who assists the Cable Commission.

I would recommend the City Council move to make the following two motions:

1. *Move to establish the Cable Television Public Access Charitable Trust.*
2. *Move to authorize the City Manager to exercise the City's rights under the Cable Franchise Renewal Agreement such that fees from the Comcast Franchise Renewal Agreement above the baseline of \$360,000 be directed to the Cable Television Public Access Charitable Trust.*

2. **Proposed Consent Decree with United States Environmental Protection Agency and New Hampshire Department of Environmental Services.** The Public Works Department and Legal Department request that the City Council enter into a proposed consent decree between the City of Portsmouth, the United States Environmental Protection Agency (USEPA) and New Hampshire Department of Environmental Services (NHDES) relative to the City's upgrade of its wastewater and combined sewer overflow facilities. USEPA has requested that the City Council approve the pending consent decree by the end of August.

[Attached is a memorandum](#) from the City's consulting attorneys E. Tupper Kinder and Jeffrey Meyers, which provides an overview of the regulatory history, a status report on the on-going Wastewater Master Plan, [and a summary](#) of the proposed consent decree. [Also attached is the proposed consent decree.](#)

The City staff as well as our legal and engineering consultants will be making a presentation to the City Council on Monday, August 3rd on this matter. The presentation will include the quarterly update of the Wastewater Master Plan as well as an overview of the consent decree.

I would recommend the City Council move to authorize the City Manager to finalize and execute the proposed consent decree with USEPA and NHDES.

Acceptance of Grants/Donations:

1. **Acceptance of Donations to the Coalition Legal Fund.** Attached is a copy of a check from the Town of Lincoln in the amount of \$2,000.00 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 donation, 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. **Third and Final Reading of Proposed Ordinance Amendments and Resolutions:**

- 1.1 **Third and Final 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).** As a result of the July 20th City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final reading the [attached 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 third and final reading of the proposed Ordinance, as submitted. Action on this matter should take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Non-Union Employee Contract Standards.** In accordance with the City Council's direction to provide a preliminary outline of my expectations for establishing employee contract standards, I propose the following:

The Human Resources Department will conduct a detailed wage and benefit survey from nineteen (19) comparable communities located in Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island. These include Groton, CT; Andover, MA; Barnstable, MA; Brookline, MA; Concord, MA; Gloucester, MA; Lexington, MA; Newton, MA; Peabody, MA; Salem, MA; Waltham, MA; Portland, ME; Concord, NH; Dover, NH; Keene, NH; Manchester, NH; Nashua, NH; Rochester, NH and Newport, RI.

These communities were selected based on shared comparability amongst six principal factors, namely: population, proximity to coastal area, similarity in municipal services, valuation per capita, tourism and geographic proximity to Portsmouth.

The objectives of this study are:

1. Establish external competitiveness in wages. In order to attract and retain the highest caliber of employees, the City recognizes the need to revise its formal pay structure, for the non-union contract employees, in order to assure the City remains competitive in the job market without placing undue burdens on the taxpayer.
2. Establish internal consistency. The City recognizes it needs to evaluate the various positions in order to maintain internal consistency within the current pay structure. Therefore, the City will need to review job content and apply it to the City's established formula in order to establish job worth in comparison with all positions in the City's organizational structure.

Once the information is collected from these municipalities, I will provide the results to the City Council with my recommendation for a salary range for each of the five (5) public safety positions that are up for renewal/negotiations. These include the Fire Chief, Assistant Fire Chief, Deputy Fire Chief, Police Chief and Deputy Police Chief. In addition to the salary range, I will also recommend a standard benefits package to provide to all employees.

I have also directed Thomas Flygare, Labor Negotiator, to simplify the contracts, as well as, to establish a unified contract that all non-union employees will follow with the same terms and conditions of employment.

I will provide the results of the survey with my recommendations along with a sample copy of the contract to the City Council for their review within 30 days.

I would recommend the City Council move to accept the non-union employee contract standards.

2. **Pease Tradeport Economic Revitalization Zone.** In June, the City Council authorized the City Manager to submit an application to the New Hampshire Department of Resources and Economic Development for designation of High Liner Avenue as an Economic Revitalization Zone (ERZ) per RSA 162-N:8. You will recall that the ER Zone designation is an economic development tool that qualifies businesses expanding or relocating into these zones for tax credits to be used against Business Profit Tax and Business Enterprise Tax up to a maximum of \$40,000 annually for a five year period. Qualifying ERZ zone projects must create new jobs and expand the economic base for the State and can range from the creation of new facilities to the rehabilitation of existing structures.

Recent inquiries from businesses contemplating expansion or relocation to Pease Tradeport prompted discussion between PDA Executive Director Dave Mullen, State and City Economic Development staff about submitting an application for ERZ designation for Pease. It was determined that an ER Zone at Pease would be a valuable asset for business attraction and retention.

To implement the program so that local businesses are able to qualify for the tax credits, the City must identify a revitalization area and apply to the State for approval of the designated area. After State approval from the Division of Business Resources, businesses can apply for tax credits. There is no cost to the local community for designating ER Zones.

[Attached for your review is a plan](#) showing the proposed Pease Economic Revitalization Zone and a fact sheet on the ERZ designation process. Mr. Mullen will be present at the August 3rd City Council meeting to answer any questions.

I recommend that the City Council authorize the City Manager to submit an application to the New Hampshire Department of Resources and Economic Development for approval of Pease Tradeport as an Economic Revitalization Zone (ERZ).

3. **Report Back Re: Request by Mario Giberti to purchase City-owned Land.** As you may recall, at the May 5, 2009 City Council meeting, the Council referred the request of Mario Giberti, 16 Barberry Lane, to purchase City-owned land known as Assessor Map 233, Lot 133 on Barberry Lane, to the Planning Board for report back to the City Council. [Attached for your information is a copy of a memorandum, as well as a map](#) from Planning Director Rick Taintor outlining the following recommendation by the Planning Board regarding the aforementioned matter:

1. The City should retain long-term ownership of the subject lot for potential future recreational use, either as a neighborhood park or in connection with recreational use of the rail corridors.
2. If the Council determines that private use is appropriate, disposition should be through a ground lease and only for passive uses, including landscaping. No structures should be permitted on the lot. Lease payments should be based on the equivalent tax revenue based on assessed valuation.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations regarding the request of Mario Giberti to purchase City-owned land known as Assessor Map 233, Lot 133 on Barberry Lane.

4. **Request for a License from Robert Sevigny owner of The Paper Patch for property located at 36 Market Street to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Robert Sevigny the owner of The Paper Patch for property located at 36 Market Street, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on July 2, 2009, and reviewed by the Planning Board on July 16, 2009. The Board voted to recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Robert Sevigny owner of The Paper Patch to install a projecting sign at 36 Market Street and further authorize the City Manager to execute a License Agreement for this request.

5. **Request for a License from Deb Orlando, owner of Phly LLC for property located at 222 State Street to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Deb Orlando the owner of Phly LLC for property located at 222 State Street, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on July 7, 2009, and reviewed by the Planning Board on July 16, 2009. The Board voted to recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Deb Orlando owner of Phly LLC to install a projecting sign at 222 State Street and further authorize the City Manager to execute a License Agreement for this request.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on July 20, 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. **Sustainability Newsletter.** On Thursday, August 6th, the Portsmouth Herald will include a 4-page tab insert newsletter entitled "City of Portsmouth Sustainability News" produced under my direction with support from a NH Charitable Foundation grant. The Portsmouth Herald also gave us a discount on the printing costs.

Portsmouth residents who do not subscribe to the Portsmouth Herald will receive it by mail on Friday as part of the weekly free "It's Portsmouth" section distributed by the Herald. The Sustainability News includes a welcome from the Mayor's Blue Ribbon Committee on Sustainable Practices, information on City initiatives and suggestions for how our residents can adopt a more sustainable lifestyle. The Sustainability News was produced by the City's newsletter committee comprised of Sustainability Coordinator Peter Britz, Recycling Coordinator Silke Psula, Pat Remick and intern Shannon Rogers. The layout design was done in-house. We hope to produce additional newsletters in the future.

3. **Question & Answer Meeting Re: Proposed Revised Zoning Ordinance – August 6, 2009.** This is a reminder that the second of two question and answer meetings, regarding the proposed revised zoning ordinance is scheduled for Thursday, August 6th at 7:30 a.m., in Conference Room A ([see attached agenda](#)). The July 28th meeting on this matter is available by web streaming archives. If any City Council member would like a CD of the July 28th meeting, please let me know.
4. **Public Hearing on Bond Resolution Re: Middle School.** For your information, [attached is a copy of the public hearing notice](#) regarding the public hearing on the bond resolution for the Middle School.