

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, SEPTEMBER 14, 2009

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

At 6:30PM an anticipated "Non-Meeting with Counsel was held Re: Negotiations - RSA 91-A:2, I (b-c).

I. CALL TO ORDER [7:00PM or thereafter]

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 Pantelakos led in the Pledge of Allegiance to the Flag.

MAYOR'S AWARD

1. Harbor Church – Seth Hoffman

Mayor Ferrini presented Seth Hoffman from Harbor Church with a Mayor's Award for the volunteer work performed, which included painting the foyer and lobby at Connie Bean Center, work on the walkways at Peirce Island, and weeding and mulching of the planting areas in Goodwin Park.

Mr. Hoffman accepted the award with thanks and appreciation.

2. Cornerstone Tree Care – Micum Davis

Mayor Ferrini presented Micum Davis of Cornerstone Tree Care with a Mayor's Award for the volunteer work performed, which included trimming deadwood out of the tree over the playground equipment in South Playground, as well as the tree at the corner of South Street and Junkins Avenue.

Mr. Davis accepted the award with thanks and appreciation and recognized the 6 other Tree Service Companies who also participated in the Arbor Day event.

PRESENTATION

1. Board and Commission Quarterly Report

- Richard Smith & Steve Marison, Peirce Island Committee

Steve Marison and Richard Smith gave an update of the recent activities and future goals of the Peirce Island Committee. They stated that signs will be erected in the Spring that will look more like an official park. They reviewed the work that was done over the Spring to clear debris from the ice storm and to replace trees that were lost.

Councilor Kennedy commended the committee for their work.

Councilor Spear asked if the ranger is still patrolling the park. Steve Marison stated that the ranger had been there when there was a lot of traffic, but it is mostly the members that are patrolling the area now.

Councilor Dwyer asked if the committee has given any input to the recreation assessment. Mr. Marison stated they have not, but will do so.

Councilor Smith also thanked the committee for their work and is glad to know that the trees will be replaced. He then asked about the soil erosion on Outlook Point. Mr. Marison explained that this is caused by natural washout but will be a part of the process of replacement.

Assistant Mayor Blalock stated that he rides his bike out there a lot and there are always a lot of people using the area.

- Steve Miller, Conservation Commission

Steve Miller gave an update of the recent activities and future goals of the Conservation Commission. Mr. Miller gave an overview of the Commissions' responsibilities which include protecting our natural resources. He discussed the current membership status, stating that 3 people have resigned in the last 6 months and they need more members. He explained that they have been working on the Public Undeveloped Land Assessment (PULA) RFP which they hope to have completed by mid-winter, but it is a comprehensive assessment of all publicly owned, undeveloped land. He stated we need to develop a stewardship of our public lands and it should be a volunteer group that will oversee the resources. He stated he is looking forward to working with the Peirce Island Committee and Recreation Board on the PULA.

Councilor Dwyer stated she is glad to hear about the stewardship because there are people who have expressed an interest. She stated that there should be a public meeting held to explain this process and to get people on board. Mr. Miller stated that this is already a part of the RFP process. Councilor Dwyer then asked if the State has moved anywhere on vernal pool protection.

Discussion ensued regarding vernal pools and buffers.

Councilor Kennedy suggested the Sustainability Committee as another resource for volunteers.

Mayor Ferrini stated that regarding stewardship, there is a lot of land and asked if it is a part of the RFP to recommend the structure of a stewardship. He stated that we need to start organizing this and we will need a lot of people. Mr. Miller stated it is not a part of the RFP and feels that there should be a meeting held on the stewardship.

- Carl Diemer, Recreation Board

Carl Diemer gave an update of the recent activities and future goals of the Recreation Board. Mr. Diemer stated that it was a very successful summer for the Recreation Department and praised the Recreation Director Rus Wilson and his staff for their professionalism. He further discussed the ongoing Needs Assessment Study which is reviewing all of the city fields and has involved meetings with all of the stakeholders, league officials, etc. including surrounding towns. He stated this is an extremely thorough and exhaustive process and they have several more meetings to hold. He concluded by asking that the yet to be determined Joint Building Committee for the Middle School take those fields into consideration so they can be up and running before construction begins.

Councilor Dwyer asked if the timing of this report will be such that its recommendations can be included in the CIP. Mr. Diemer stated yes, it was intended to be done by the end of the year for that purpose.

Councilor Kennedy asked if it will be rolled out to the public as well as presented to the Council. Mr. Diemer stated that request can be accommodated.

Mayor Ferrini thanked everyone for their reports.

V. **ACCEPTANCE OF MINUTES** (*There were no minutes on for acceptance at this meeting*)

VI. **PUBLIC COMMENT SESSION** (*There were no speakers for the Public Comment Session*)

VII. **APPROVAL OF GRANTS/DONATIONS**

A. Acceptance of Donation from Elinor Frank to the Portsmouth Fire Department - \$50.00

Councilor Smith moved to approve and accept the donation to the Portsmouth Fire Department as listed. Seconded by Council Pantelakos and voted.

B. Request to apply for and accept a \$10,000.00 grant from the National Association of County and City Health Officials (NACCHO)

Councilor Smith moved to authorize the City Manager to apply for, accept and expend a \$10,000.00 grant from the National Association of County and City Health Officials to sustain current efforts and further develop the regional Medical Reserve Corps unit. Seconded by Councilor Pantelakos.

Councilor Pantelakos asked if this requires matching funds. Deputy City Manager Hayden stated no.

Motion passed.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article II – Taxicabs - Section 7.210 – Permits and Inspections Required by the addition of Item C – Each taxi permitted in the City shall be inspected in the month of June each year for compliance with the requirements in this Ordinance

Councilor Spear moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as submitted, at the October 5th City Council meeting. Seconded by Councilor Smith and voted.

- B. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Washington Street – both sides from Hancock Street to Howard Street

Councilor Smith moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as submitted, at the October 5th City Council meeting. Seconded by Councilor Novelline Clayburgh.

Councilor Kennedy stated she will not support this because when Washington Street was upgraded, people were told that there would be no changes to the parking and she feels we do not need to lose anymore parking anywhere in the City. She stated she has also been told that we have only lost 19 spots in the last 7 years and wants a list of those spots.

Councilor Spear asked if there is currently parking only on one side of Washington Street. Councilor Smith stated yes. Councilor Spear stated he also does not support this ordinance. Councilor Smith clarified that this vote is only to move to a public hearing and second reading to give the people a chance to voice their opinion.

Motion passed on a 7-2 vote. Councilors Kennedy and Spear voted opposed.

- C. First reading of Ordinance amending Chapter 5, International Fire Code; Chapter 12, Part I - International Building Code and Part II – International Residential Code; Chapter 15, Part I – International Plumbing Code and Part II – International Mechanical Code

Councilor Pantelakos moved to pass first reading of the proposed amendments to the Fire Code, Commercial Building Code, Residential Building Code and Plumbing/Mechanical Code Ordinances and schedule a public hearing and second reading at the October 5, 2009 Council meeting. Seconded by Assistant Mayor Blalock.

Councilor Dwyer asked for clarification of the ordinance changes. City Attorney Sullivan explained that this will adopt the National Codes which is defined within the ordinance, but she is looking at the cover sheet.

Councilor Spear stated there are lots of pages to this ordinance and most of it is technical and has been vetted by many organizations, but he is looking for the Portsmouth specific changes from the administration.

Mayor Ferrini asked Rick Hopley to come forward to address this request. Chief Building Inspector Hopley stated it can be done.

Assistant Mayor Blalock stated that he wouldn't want the staff to waste a lot of time doing this for one or two Councilors. He stated if it is something that can be done without wasting valuable city resources but time is money. Mr. Hopley stated he will try to highlight the Portsmouth specific items.

Motion passed.

- D. First reading of Resolution Authorizing the Borrowing through the State Revolving Fund (SRF) Loan Program / American Recovery and Reinvestment Act (ARRA) for Costs related to Two Water System Improvements not to exceed Fifty-Five Thousand Dollars (\$55,000.00)

Councilor Pantelakos moved to pass first reading and schedule a public hearing and adoption of the Resolution, as submitted, at the October 5, 2009 City Council Meeting. Seconded by Councilor Dwyer and voted.

IX. **CONSENT AGENDA** – *(There were no items on this section of the agenda.)*

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

- A. Petition for Municipal Storm Drain on Custom House Court

Councilor Novelline Clayburgh moved to accept and place on file. Seconded by Assistant Mayor Blalock and voted.

- B. Letter from Paul LeBlanc requesting permission to set up a Missing Man Table in honor of POW / MIA Recognition Day on Saturday, September 19, 2009 from 9:00 a.m. – 4:00 p.m. at 22 Pleasant Street

Mayor Ferrini stated that the suggested motion is to recommend the location for the request be changed to the Vaughan Mall.

Deputy City Manager Hayden explained that there are several events going on in the downtown area during that weekend and they were not exactly sure where 22 Pleasant Street location was, but felt that it would be better for this event to be moved to the Vaughan Mall.

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

- C. Request of Poco Diablo, Inc. Re: Unmet Parking Need Fee

Mayor Ferrini and Assistant Mayor Blalock abstained from discussion and voting on this item, turning the gavel over to Councilor Novelline Clayburgh.

Councilor Spear moved to authorize the City Manager to transfer \$22,220.00 from the benefit payments made by Poco Diablo, Inc. to the Unmet Parking Need Fund. Seconded by Councilor Kennedy.

Councilor Smith asked for the amounts of how much was paid into each fund. Deputy City Manager Hayden explained the 2 different funds stating that \$133,700.00 was paid into the Benefits Fund and \$202,640 was paid into the Lease Payment. She explained that the Benefits Fund was meant to be used for the Riverwalk Project.

Councilor Dwyer stated she will support this because this is on the books and is appropriate for this situation.

Motion passed.

Mayor Ferrini and Assistant Mayor Blalock rejoined the Council.

D. Letter from Trevor Bartlett, PHP Committee requesting permission to hold the annual Portsmouth Halloween Parade on Saturday, October 31 at 6:00 p.m.

Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Kennedy and voted.

XI. **REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

A. CITY MANAGER

1. Policy for Hanging Private Flags Projecting over City Property. *(See attached memorandum with recommendation to refer to the Economic Development Commission for report back)*

Deputy City Manager Haden explained that there is currently a request from a business requesting an "Open" flag, but because there is currently no policy in place regarding these flags and to avoid an unwanted proliferation of flags that could cumulatively detract from the downtown's economic vibrancy and insure that businesses making such requests are treated equitably and consistently, it is suggested that a moratorium be put in place until a policy is adopted.

Councilor Spear moved to refer this matter to the City's Economic Development Commission so that they may develop and recommend to the City Council a policy on flags that would project over City property and pending a recommendation from the EDC, institute a moratorium on the issuance of any additional licenses for flags that would project over City property. Seconded by Councilor Kennedy and voted.

2. Bow – Ceres Street Waterfront Improvement Project, Construction Access Agreements, Easements, Compactor License and Loan Agreements.

Mayor Ferrini and Assistant Mayor Blalock abstained from discussion and voting on this item, turning the gavel over to Councilor Novelline Clayburgh.

Assistant City Manager Hayden explained that there are 5 different issues that go along with this item. Councilor Novelline Clayburgh stated that each item will be voted separately.

A. Acquire the temporary passageway construction access agreements as outlined in the City Manager's Comments.

Councilor Kennedy moved to acquire the temporary passageway construction access agreements as outlined in the City Manager's Comments, seconded by Councilor Smith.

Assistant City Manager Hayden explained that the City will be installing a 10' wide trench for all of the utilities in that area and that any future access will need permission from the City.

Motion passed.

B. Grant the Utility easements as outlined in the City Manager's comments.

Councilor Kennedy moved to grant the utility easements as outlined in the City Manager's comments. Seconded by Councilor Smith and voted.

C. Approve the compactor loan agreements and associated promissory notes with the terms as outlined in the City Manager's comments.

Councilor Kennedy moved to approve the compactor loan agreements and associated promissory notes with the terms as outlined in the City Manager's comments, seconded by Councilor Spear.

Deputy City Manager Hayden explained that this involved a land swap with Portsmouth Navigation in order to push back the compactor. She continued that there were in depth negotiations with the entities that use the compactor and explained that they will divide the cost 3 ways paying 2% interest over ten years with a 10 year license agreement that replaces the current annual licensing agreement. She concluded by stating that there is a housekeeping change to the agreement which changes the 2 a week emptying requirement to Memorial Day to Labor Day instead of Columbus Day, and there will also be 3 signatory pages for each party instead of one for all.

Councilor Pantelakos asked why the previously mentioned funds can't be used for the compactor. City Attorney Sullivan explained that those funds can't be used for private benefit.

Councilor Smith asked if the parties involved were able to get their own bids or was it only through the city. Deputy City Manager Hayden explained that there were competitive bids on all public portions, but the private portion was done separately.

Councilor Smith then asked about provisions for additional restaurants or businesses and if they will be reimbursing the original 3 businesses. Assistant City Attorney Woodland explained the agreement stating that any future businesses would go through

the current participants to negotiate an agreement which would then be presented to the City. Councilor Smith asked how many businesses are in the current agreement. Deputy City Manager Hayden stated the agreement is no longer in effect, but there were 5 businesses. Councilor Smith asked what the other 2 businesses are now doing with their trash. Assistant City Attorney Woodland stated that she does not know. Councilor Smith explained that his concern is how the other businesses will deal with their trash as he doesn't want to have recycling trucks emptying buckets in the early morning hours etc. He stated that he feels the City should have shared the expense so that other businesses could participate as he feels there will be issues arising from this. Councilor Dwyer asked for clarification of ownership. City Attorney Sullivan explained that the City owns the enclosure and the area but not the compactor.

Deputy City Manager Hayden clarified that this vote is for Item C only, as discussion was on both Item C and D.

Motion passed.

D. Approve the compactor license agreement attached to the City Manager's comments.

Councilor Pantelakos moved to approve the compactor license agreement. Seconded by Councilor Kennedy and voted.

E. Approve the temporary construction license for Poco Diablo's new restaurant deck.

Councilor Kennedy moved to approve the temporary construction license for Poco Diablo's new restaurant deck. Seconded by Councilor Spear.

Councilor Smith stated he is disappointed that the Riverwalk Project which was the intent for this area 20 years ago is not going to happen, but he is thankful that the park is finally worked out. He continued that he is concerned with keeping the area clean and that it does not become a smoking area and is closely monitored.

Motion passed.

Mayor Ferrini and Assistant Mayor Blalock returned to their seats and the gavel was handed back to Mayor Ferrini.

3. Police Department request to utilize Propertyroom.com to dispose of property

Councilor Pantelakos moved to approve the Police Department request to utilize Propertyroom.com to dispose of property. Seconded by Councilor Novelline Clayburgh and voted.

Informational Items

1. Events Listing

Deputy City Manager Hayden stated that there are a lot of events scheduled for the upcoming weekend and noted that the Breast Cancer Walk route has been changed slightly.

2. Fall Household Hazardous Waste Collection Day

Deputy City Manager Hayden stated that the Fall Household Hazardous Waste Collection Day will be held September 26th at the Public Works Facility and is open to Portsmouth, Newington and Greenland residents.

B. MAYOR FERRINI

1. Appointments to be Voted:

- Ryan Baker – Appointment to Citywide Neighborhood Steering Committee
- James Horrigan – Reappointment to Conservation Commission
- George Melchior – Reappointment to Historic District Commission (Alternate)
- Calvin Couch – Reappointment to Housing Endowment Fund Advisory Board
- Jeff McLean – Appointment to Portsmouth Economic Development Loan Program
- Drew Martin – Appointment to Blue Ribbon Committee on Sustainable Practices
- Brett Pasinella – Appointment to Blue Ribbon Committee on Sustainable Practices

Councilor Spear moved to approve the appointments as listed, seconded by Councilor Kennedy.

Councilor Smith moved to remove Brett Pasinella to be voted separately, Councilors Spears and Kennedy agreed.

Motion to approve remainder of appointments passed.

Councilor Spear moved to approve Brett Pasinella appointment to Blue Ribbon Committee on Sustainable Practices, seconded by Councilor Kennedy.

Councilor Smith stated that Mr. Pasinella has only been a resident of Portsmouth for 2 months according to his application, and the usual unwritten rule has been to appoint people who have been residents for at least 2 years. He stated he has nothing personal against Mr. Pasinella, but wanted clarification as to why he was considered. Mayor Ferrini agreed that this was not the usual practice, but felt that Mr. Pasinella had good credentials and had served on boards in his previous city, so he made an exception.

Motion passed.

2. *Reports

C. COUNCILOR KENNEDY

1. Letter of Support – Fishermen

Councilor Kennedy moved to forward the letter from Erik Anderson, President of the Commercial Fishing Industry to City Manager Bohenko and Legislative Liaison Pat

Remick to draft a letter (with detailed background explanation of what is specifically being supported) to the Legislative Delegation in support of local Fishermen on regulation issues to be brought back to Council for approval, seconded by Councilor Pantelakos.

Councilor Pantelakos stated it is important to support the local fishermen as it is all being commercialized and soon there will no longer be private traps, etc.

Councilor Dwyer wants to make sure that it is clearly stated in the letter what the Council will be supporting as there are different issues involved.

Motion passed.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Smith requested a copy of the loan agreement regarding Bow-Ceres Street Waterfront Improvement Project.

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

Councilor Novelline Clayburgh moved to adjourn at 8:40 p.m. Seconded by Councilor Kennedy and voted.

Respectfully submitted:

Valerie A. French
Deputy City Clerk I