

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, NOVEMBER 16, 2009

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

At 6:00 p.m. a Work Session was held regarding the Parking Master Plan.

I. CALL TO ORDER

Mayor Ferrini called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear, Hejtmanek and Pantelakos

III. INVOCATION

Mayor Ferrini asked everyone to join in a moment of silent prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Smith led in the Pledge of Allegiance to the Flag.

PROCLAMATION

1. Seacoast Local – “Buy Local First”

Councilor Kennedy read the Proclamation declaring the week of November 30th through December 6th as “Buy Local First” Week. Mayor Ferrini presented the Proclamation to Kelly Cioe of Seacoast Local who accepted it with thanks and appreciation.

PRESENTATIONS

1. Cable Television and Communications Commission Re: Establishment of Non-Profit Corporation for Public Access

John Gregg, Chair of Cable Television and Communications Commission spoke to the interest of residents to create a public access channel and the creation of by-laws for Portsmouth Public Media, Inc. He advised the City Council that a formal vote would be required by the Council at their December 7, 2009 meeting. In addition, Mr. Gregg addressed the establishment of Board of Directors for the Portsmouth Public Media.

Board Size, Terms and Selection

- *7 to 11 voting directors – one of which will be appointed by the Portsmouth Mayor*
- *The initial board will be selected by the Cable Commission with the advice of the City Manager and City staff and with the ratification of the City Council*
- *Thereafter, directors will be nominated by a committee of the existing board and voted by the membership*
- *No director will be allowed to serve more than a total of 6 consecutive years.*

Councilor Spear said he would like to see entertainment included as part of the access channel and inquired of Mr. Gregg if that could be included in the vision. Mr. Gregg said it could be included.

Councilor Dwyer said that the By-laws should be clear between the Cable Television and Communications Commission and the Non-Profit Corporation for Public Access as separate and independent entities.

Councilor Novelline Clayburgh asked where the studio would be located. Mr. Gregg said that has not been determined at this point. Councilor Novelline Clayburgh spoke regarding the studio at the High School and suggested that be considered as a possible location.

2. Quarterly Report on Wastewater

Deputy Public Works Director Allen provided a Quarterly Update on the Wastewater Master Plan. He spoke to the scope of work that has been completed, that remains on-going and what is planned for the future.

Peter Goodwin addressed the components of the Master Plan and the project schedule. In addition, he spoke to the collection system status and informed the City Council since 1997, the City has spent over \$25 million dollars on sewer separation projects which have resulted in the following:

- *A reduction in CSO volume by approximately 50%*
- *A reduction in flood volume by 85%*

Mark Allenwood spoke to CSO Control Alternatives and treatment facility location scenarios.

Scenario 1:

- *Pease or Waterfront Industrial: all sanitary flow*
- *Peirce Island: excess wet weather flow only*

Scenario 2:

- *Pease; portion of sanitary flow*
- *Peirce Island: upgrade to secondary, remainder of sanitary flow and excess wet weather flow*

Scenario 3:

- *Pease: Unchanged*
- *Peirce Island: upgraded to secondary, sanitary flow and excess wet weather flow*

He addressed the Treatment Alternative Assessment and said that evaluation has centered on potential nitrogen limits of:

- Secondary treatment only
- 8 mg/L (design goal)
- 5 mg/L (potential future)
- 3 mg/L (future/limit of BNR in warm climate)

Evaluation of Treatment Technologies to Determine:

- Siting Requirements
- Capital Costs
- O&M Costs

Mr. Allenwood said that the site selection screen summary consists of location, land availability/ownership, truck access, current land use, natural resource proximity, permit limit implications (relocated outfall) and construction premium.

Capital Cost Comparison

	Peirce	Pease	Waterfront
SBR Capital	\$79.8 Million	\$68.5 Million	\$78.0 Million
Rerouting Flow	\$10.0 Million	\$15.5 Million	\$16.5 Million
Total	\$89.8 Million	\$84.0 Million	\$94.5 Million

Deputy Public Works Director Allen said the next steps are to submit draft TM 5 to EPA and NHDES for review December 1, 2009; perform value engineering on WMP, complete affordability analysis, and meet consent decree milestones.

Councilor Smith asked what happens with costs as nitrogen limits go down. Deputy Public Works Director Allen said from 8mg/L to 5mg/L is 40% with significant operational costs.

Councilor Spear asked if the plant at Peirce Island would remain. Deputy Public Works Director Allen said it would be reduced but could be used for a wet weather facility.

Assistant Mayor Blalock asked if we would need to negotiate with the Pease Development Authority to move the facility out to Pease. City Manager Bohenko advised the City Council that we have met with the PDA Board of Directors and there seems to be consensus to accept the expansion.

V. ACCEPTANCE OF MINUTES – OCTOBER 5, 2009; OCTOBER 19, 2009 AND NOVEMBER 5, 2009

Councilor Smith moved to approve and accept the minutes of the October 5, 2009, October 19, 2009 and November 5, 2009 City Council meetings. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

Ralph DiBernardo spoke to the proposed zoning ordinance and asked the Council to give proper consideration to break the ordinance into sections. He said the Council should not hold one public hearing in one evening.

Councilor Smith moved to suspend the rules in order to allow for one additional speaker during the public comment session. Seconded by Councilor Pantelakos and voted.

Patrick Ellis spoke in support of the presentation regarding Wastewater and the project. He asked the Council to strongly consider sustainability efforts with the construction of the facility to go 100% green.

VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.336 – ONE WAY STREETS – PARKER STREET – NORTHERLY FROM TANNER COURT TO HANOVER STREET

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

Attorney Paul McEachern spoke in favor of the ordinance and said it will be making Parker Street two-way from Tanner Court to Hanover Street.

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

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donations to the Fire Department for the Firefighter's "Vigilance" Sculpture
- National Wrecker, Inc. - \$500.00
 - Industrial Protection Services, LLC - \$1,000.00
 - J. Kutt, LLC - \$1,000.00

Councilor Pantelakos moved to approve and accept the donations, as listed, to the Fire Department. Seconded by Councilor Novelline Clayburgh and voted.

- B. Acceptance of Donation to the Fire Department from the Firefighter's Charitable Foundation, Inc - \$300.00 (***Sample motion – move to approve and accept the donation, as listed to the Fire Department***)

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

- C. Acceptance of Donations to the Coalition Legal Fund
- Town of North Hampton - \$2,000.00
 - Town of New London - \$5,500.00

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

- D. Acceptance of Grant from the Department of Justice Office for radio encryption to the Police Department - \$105,000.00

Councilor Novelline Clayburgh moved to approve and accept the grant to the Portsmouth Police Department, as listed. Seconded by Councilor Pantelakos and voted.

- E. Acceptance of Grant from the U.S. Department of Justice Office for replacement of old crime-scene van - \$80,000.00

Councilor Pantelakos moved to approve and accept the grant to the Portsmouth Police Department, as listed. Seconded by Councilor Smith and voted.

- F. Acceptance of Grant for the purchase of new and replacement bulletproof vests - \$7,170.00

Councilor Smith moved to approve and accept the grant to the Portsmouth Police Department, as listed. Seconded by Councilor Pantelakos and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Resolution Appropriating the Sum of Six Hundred Fifty-Nine Thousand, Three Hundred Ninety-Four Dollars and Fifty Cents (\$659,394.50) for Expenses relating to the Water Portion of the State Street Utilities and Road Upgrade Project

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the Resolution in the sum of \$659,394.50 at the December 7, 2009 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- B. First reading of Resolution Appropriating the Sum of Two Hundred Eight Thousand, Two Hundred Twenty-Nine Dollars and Eighty-Five Cents (\$208,229.85) for Expenses relating to the General Fund Portion of the State Street Utilities and Road Upgrade Project

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the Resolution in the sum of \$208,229.85 at the December 7, 2009 City Council meeting. Seconded by Councilor Dwyer and voted.

Councilor Smith moved to suspend the rules in order to take action on Items IX F. – Second reading of Ordinance amending Chapter 7, Article III, Section 7.336 – One Way Streets – Parker Street – Northerly from Tanner Court to Hanover Street. Seconded by Councilor Novelline Clayburgh and voted.

- F. Second reading of Ordinance amending Chapter 7, Article III, Section 7.336 – One Way Streets – Parker Street – Northerly from Tanner Court to Hanover Street

Councilor Smith moved to pass second reading of the Ordinance and schedule third and final reading at the December 7, 2009 City Council meeting. Seconded by Councilor Pantelakos and voted.

City Manager Bohenko informed the City Council that the ordinances dealing with the zoning ordinance will pass first reading this evening with a public hearing and second reading scheduled for the December 7, 2009 City Council meeting. In addition, he suggested taking all three ordinances up with one vote of the Council.

Councilor Smith moved to suspend the rules in order to take action on Items IX C. – IX E. as one motion. Seconded by Councilor Dwyer and voted.

- C. First reading of Ordinance amending Chapter 10 – Zoning Ordinance and Zoning Map by deleting it in its entirety and replacing it with a new Chapter 10
- D. First reading of Ordinance amending Chapter 11, Article VIII, Section 11.801 to Reduce the Threshold for Site Plan Review of multi-family residential units from five (5) to three (3) Units
- E. First reading of Ordinance amending Chapter 11, Article VI – Comprehensive Plan Information by deleting it in its entirety and inserting in its place a new Article VI – Referrals to Planning Board

Councilor Smith moved to pass first reading of Chapter 10 of the Zoning Ordinance and Zoning Map by deleting it in entirety and replacing it with a new Chapter 10 and Chapter 11, Article VIII, Section 11.801 to reduce the Threshold for Site Plan Review of multi-family residential units from five (5) to three (3) Units and Chapter 11, Article VI – Comprehensive Plan Information by deleting it in its entirety and inserting in its place a new Article VI - Referrals to Planning Board and further schedule a public hearing and second readings at the December 7, 2009 City Council meeting. Seconded by Councilor Spear.

Councilor Smith said he would like to have the public discuss this matter in more than one public hearing if necessary.

Councilor Dwyer recommended organizing sections of comment for the public hearing in order to provide order to discussions.

City Manager Bohenko advised the City Council that we could leave the public hearing open and schedule additional public hearings.

Mayor Ferrini said we may want to split the ordinance up during the public hearing process.

Councilor Smith said we can find out the sections that are of interest to the public at the first public hearing.

Motion passed.

Assistant Mayor Blalock moved to suspend the rules in order to take up Mayor Ferrini's Items XII. B.1. – XII. B.5. Seconded by Councilor Smith and voted.

B. MAYOR FERRINI

1. Appointments to be Considered:
 - Catherine Ennis – Appointment to the Conservation Commission
 - Eduardo DelValle – Appointment to the Recreation Board

The City Council considered the appointments of Catherine Ennis to the Conservation Commission and Eduardo DelValle to the Recreation Board. These appointments will be voted on by the City Council at the December 7, 2009 meeting.

2. Appointment to be Voted:
 - John F. McVay – Appointment to the Peirce Island Committee

Councilor Kennedy moved to appoint John F. McVay to the Peirce Island Committee until December 31, 2009. Seconded by Councilor Dwyer and voted.

3. Resignations
 - Kirsten Barton – Safe Routes to School
 - Paul Houlares – Recreation Board
 - Brendan Cooney – Traffic & Safety Committee
 - Kent Kirkpatrick – Taxi Commission
 - Karina Quintans – Mayor’s Blue Ribbon Committee for Sustainable Practices

Councilor Smith moved to accept with regret the resignations of Kirsten Barton from the Safe Routes to School Committee; Paul Houlares from the Recreation Board; Brendan Cooney from the Traffic & Safety Committee; Kent Kirkpatrick from the Taxi Commission; and Karina Quintans from the Mayor’s Blue Ribbon Committee for Sustainable Practices. Seconded by Assistant Mayor Blalock and voted.

Councilor Smith requested letters of thanks and appreciation be sent to Ms. Barton, Mr. Houlares, Mr. Cooney, Mr. Kirkpatrick and Ms. Quintans for their years of service.

4. Establish Blue Ribbon Committee on Downtown Events
 - One representative from the Economic Development Commission; - Susanne Delaney
 - One representative from Downtown Businesses; - Gail Licciardello
 - One Downtown Resident; - George Carlisle
 - One City Council member; - Eric Spear
 - One representative from event organizations (e.g. Pro Portsmouth, Critterium, etc.); - Barbara Massar
 - One representative from the Clergy; - Dawn Shippee
 - One Chamber representative; - Doug Bates
 - Ex-officio non-voting members: City Manager or his designee, Police Chief or his designee, Fire Chief or his designee, Public Works Director or his designee, City Attorney or his designee

Mayor Ferrini announced that the above referenced individuals will serve on the Blue Ribbon Committee on Downtown Events. He also informed the City Council that Councilor Eric Spear shall serve as Chair of the Committee.

The charge of the Committee shall be as follows:

The committee shall be charged with making findings, which shall include the pros and cons of downtown events and the impact of such events on downtown life and economic activity within the City.

The committee shall meet no more than 4 times to establish an agenda, hold a public hearing, complete findings and offer a report to the City Council. The committee will sunset on or before December 31, 2009, but shall be reconstituted in January 2010 if work remains to be completed.

5. *Holiday Parade

Mayor Ferrini announced that the downtown Holiday tree lighting and 2009 Illuminated Holiday Parade celebrating "A Portsmouth Christmas" will be Saturday, December 5th. The City is again in charge of both events this year. The tree lighting ceremony begins at 5:00 p.m. at the Reviewing Stand in Market Square. Afterward, City Council members will be transported by trolley to the beginning of the parade route near Plaza 800. The parade steps off at 6:00 p.m. Council members are asked to contact the City Manager's office by December 1st if they wish to ride the trolley when it leaves the City Hall lower parking lot at 4:45 p.m. and how many guests will be accompanying them.

Mayor Ferrini left the meeting at 8:15 p.m. and handed the gavel to Assistant Mayor Blalock to chair the remainder of the meeting.

X. **CONSENT AGENDA**

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Heidi Roy, National Multiple Sclerosis Society, requesting permission to hold the 2010 Walk MS Portsmouth on Saturday, April 17, 2009 from 10:00 a.m. – 2:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Major Chester Emmons, Jr., The Salvation Army, requesting permission to place "Christmas Kettles" in Market Square, November 13, 2009 – December 24, 2009 (***Anticipated action – move to refer to the City Manager with power***)

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

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

- A. Letter from Jane James, Art-Speak, requesting permission to place temporary public art on city property for Art-Speak *Overnight Art! 2010*

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

- B. Letter from Ronald Smith requesting the installation of a bench in memory of his son, Mark "Smitty" Smith in the new Port Walk Area

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

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Establish City Council Work Session for November 30, 2009 Re: Zoning Ordinance and Zoning Map Amendments

City Manager Bohenko suggested conducting a work session on November 30, 2009 regarding the Zoning Ordinance and Zoning Map Amendments.

Councilor Spear moved to establish a Work Session on November 30, 2009 for the purpose of discussing the Zoning Ordinance in greater detail. Seconded by Councilor Smith and voted.

2. Request for 99 Bow Street License Extension

City Manager Bohenko informed the City Council that this is an extension to the License for 99 Bow Street.

Assistant City Attorney Woodland reported to the Council that 99 Bow Street has requested an extension to the License Agreement. She said if the Council elects to extend the License, staff recommends the following changes to the existing terms of the License:

- a) In the event that work does not progress for a period of more than thirty (30) days the License will be suspended, all materials removed from the right-of-way and the area restored to its regular use.
- b) Licensee will contribute towards the City's purchase of 6 large concrete planters. Licensee's contribution will be half the cost. The City will provide these large planters to Licensee for use within the public way as part of the project. Licensee will be responsible for maintaining suitable attractive seasonal plantings in the concrete planters during the course of the use of the Licensed Area. The planters will remain the property of the City.

Councilor Kennedy expressed concern regarding snow removal of the area. She said there needs to be a clear area to allow access for pedestrians and baby strollers. Assistant City Attorney Woodland said under the license the property owner has the responsibility to keep the area clear of snow and passable for pedestrians.

Butch Ricci, owner of 99 Bow Street, informed the City Council that extensive work has been completed in the last 30 days. He advised the Council that the area between the jersey barriers will be paved and cleaned for the winter and the building will be secure and weather tight with occupancy by next summer.

Councilor Smith asked if work would continue through the winter months. Mr. Ricci advised the City Council that work will continue forward through the winter and until the end of construction and occupancy takes place.

Councilor Spear moved to authorize the City Manager to negotiate an extension of the License Agreement with Martingale Wharf L.P. for construction activities at 99 Bow Street with changes in terms relative to suspension of the license and use of planters as outlined. Seconded by Councilor Smith and voted.

Councilor Dwyer suggested building these terms into future construction management plans for assurance when projects are stalled. City Manager Bohenko said he has made a note of this suggestion.

3. Proposed Approval of Percent for Art for Fire Station 2

City Manager Bohenko said as you may recall, in September 2006 the City adopted a percent for art ordinance entitled Funding of Public Art and Public Art Trust. The ordinance became effective August 21, 2007. The new Fire Station 2 on Lafayette Road is the first City project to which the ordinance applies. Sue Cobler, Art-Speak Coordinator and Chris LeClaire, Fire Chief developed a Request for Proposals (RFP) for the fire station art project, and in accordance with the ordinance, one percent (1%) of the negotiated construction cost, or \$36,939 has been reserved for the public art project. The ordinance states that a maximum of 90% of this amount will be allocated for the art with the balance reserved for maintenance, stewardship and contingency.

City Manager Bohenko informed the City Council to comply with Section 1.1705 of the ordinance, the City Council needs to do two things. First, it must authorize the public art project for the fire station and second, it must determine a method for selecting the public art project. For the latter, the City Council has the following options:

- 1) Refer the selection question to any public, private or non-profit agency for advice, or;
- 2) Refer the question selection to a standing committee for public art which exists or could be created by the City Council, or;
- 3) Create an ad hoc committee for any particular public art project under such terms as the Council may establish, or;
- 4) Seek such other advisory recommendation as the City Council deems appropriate.

Councilor Novelline Clayburgh moved to authorize the project and refer the selection of the art project to Art-Speak. Seconded by Councilor Smith.

Councilor Kennedy spoke to the current sculpture located at Fire Station 2 and asked why that cannot be moved to the new station. City Manager Bohenko said the current sculpture will be moved to the new station but this would be in addition to the existing piece.

Councilor Spear asked how much involvement in the process the Fire Department would have. Sue Cobler, Art-Speak said the lead person on the project would be Fire Chief LeClaire with an overview of the process by Art-Speak. City Manager Bohenko also informed the City Council that in addition to Chief LeClaire, Dan Hartrey of Community Development and Public Works Director Parkinson would be part of the process.

Motion passed.

4. Establish City Council Schedule for 2010

City Manager Bohenko said the proposed schedule for 2010 City Council meetings and Work Sessions is before the Council for acceptance this evening. He also advised the Council that Council-elect Robert Lister and Anthony Coviello have received copies of this schedule.

Councilor Smith moved to approve the schedule as presented. Seconded by Councilor Novelline Clayburgh.

Councilor Dwyer expressed concern with having meetings move to the Tuesday if a holiday is on a Monday as it may cause conflicts. City Manager Bohenko said we can change those date if there are conflicts.

Motion passed.

5. Proposed Dates Re: Holiday Meter Parking

City Manager Bohenko reported it is recommended that free holiday meter parking take place from Monday, December 14, 2009 through Saturday, January 2, 2010. Last year, we had free parking for the holiday season from Monday, December 15th through Saturday, December 27th. The Parking Committee is proposing to add an additional week this year which would mean free parking from Monday, December 14th through Saturday, January 2nd. It should be noted that each week of free parking costs the City approximately \$15,000.00 in parking revenues.

He further advised the City Council that time limits and illegal parking will be enforced as usual. Inserts will be placed in all single spaced and pay and display parking meters, stating, "Seasons Greetings, 2-hour free parking".

Councilor Pantelakos moved to approve free holiday meter parking from Monday, December 14, 2009 through Saturday, January 2, 2010. Seconded by Councilor Smith.

Councilor Kennedy asked if we could forego meter enforcement for the downtown shopping evenings. City Manager Bohenko said we could look at that issue next year.

Motion passed. (*Please note: Time limits and illegal parking will be enforced as usual*).

6. Seacoast Watershed Alliance – Senate Bill 168 (formerly EAST)

City Manager Bohenko suggested appointing Peter Rice, the city's Engineer for the Water and Sewer Divisions, as a representative to the Seacoast Watershed Alliance.

Councilor Smith moved to appoint Peter Rice, the city's Engineer for the Water and Sewer Divisions, as a representative to the Seacoast Watershed Alliance (SWA). Seconded by Councilor Pantelakos and voted.

City Manager Bohenko said under the events listing you will see that the Rotary is conducting the first Thanksgiving Turkey Trot from 8:00 a.m. – 10:00 a.m.

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the October 8, 2009 meeting

Councilor Pantelakos moved to approve and accept the action sheet and minutes of the October 8, 2009 Traffic & Safety Committee meeting. Seconded by Councilor Novelline Clayburgh and voted. Councilor Kennedy voted opposed.

2. Parking Committee Action Sheet and Minutes of the October 8, 2009 meeting

Councilor Pantelakos moved to approve and accept the action sheet and minutes of the October 8, 2009 Parking Committee meeting. Seconded by Councilor Novelline Clayburgh and voted. Councilor Kennedy voted opposed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer suggested conducting a Work Session in December with the Portsmouth Housing Authority to discuss a proposed parking facility. City Manager Bohenko suggested holding the Work Session on December 21, 2009 prior to the regular City Council meeting.

The City Council agreed to hold a Work Session on December 21, 2009 prior to the City Council meeting with the Portsmouth Housing Authority to discuss a proposed parking facility.

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

At 8:45 p.m., Councilor Pantelakos moved to adjourn. Seconded by Councilor Smith and voted.



Kelli L. Barnaby, CMC/CNHMC
City Clerk