

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, DECEMBER 21, 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

PRESENTATION OF CHAIRS TO OUTGOING CITY COUNCILORS

1. Assistant Mayor Jack Blalock
2. Councilor Laura Pantelakos

- V. ACCEPTANCE OF MINUTES – DECEMBER 7, 2009

- VI. PUBLIC COMMENT SESSION

- VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donations to the New Library Building Fund
 - Pax World Management Corp.- \$5,000.00 (*Fulfills contribution*)
 - John Maher - \$500.00 (*Fulfills contribution*)

(Sample motion – move to approve and accept the donations, as listed to be placed in the Library Capital Campaign Fund)

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second 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 (***Postponed from the December 15, 2009 City Council meeting***)
- B. Second 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 (***Postponed from the December 15, 2009 City Council meeting***)
- C. Second 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 (***Postponed from the December 15, 2009 City Council meeting***)

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Richard Wagner, AIDS Response Seacoast, requesting permission to hold the 14th Annual Seacoast AIDS Walk and Dog Walk on Sunday, May 16, 2010 from 10:00 a.m. – 5:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Pawn Nitichan and Megyn McClure, City Year, requesting permission to hold the 7th Annual “Martin Luther King Day March of Justice” on Monday, January 18, 2010 in downtown Portsmouth ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Susanne Delaney, Portsmouth Criterium, requesting permission to hold the Portsmouth Criterium on Sunday, September 19, 2010 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Acceptance of Donations for Art-Speak
- Betty LaBranche Real Estate - \$25.00
 - Sandy Domina - \$25.00
 - Mary Ann List - \$50.00
 - Stephen & Karin Barndollar - \$75.00
 - Jeff Hyland & Donna Jensen - \$75.00
 - Sarah MacDuffie & Blair Hundtermark - \$100.00
 - Peter & Lee Vandermark - \$100.00
 - Olde Port Properties - \$200.00
- (Anticipated action – move to accept and approve the donations to Art-Speak for operations, as presented)***
- E. Letter from Cynthia Yates-Rybezyk, Alzheimer’s Association, requesting permission to hold the annual Memory Walk and use South Mill Pond Playground on Saturday, September 11, 2010 ***(Anticipated action – move to refer to the City Manager with power)***
- F. Letter from Doug Bates, Greater Portsmouth Chamber of Commerce on behalf of The Portsmouth Community Road Race Series (PCRRS) requesting permission to hold the following events:
- Harbour Trail 5k Road Race & Children’s Fun Run on Saturday, July 10, 2010 at 9:00 a.m.
 - CelebratePink 5k Road Race & Walk on Saturday, October 9, 2010 at 9:00 a.m.
 - Healthy Kids Day 5k Road Race on Saturday, April 17, 2010 at 10:00 a.m.
 - Portsmouth Rotary Club Thunder Chicken 5k Road Race on Thursday, August 5, 2010 at 6:00 p.m.
- (Anticipated action – move to refer to the City Manager with power)***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from M. Christine Dwyer and Dexter Legg, JBC Co-Chairpersons, requesting the City Council designate the Wentworth School property as the replacement site for Alumni Field as part of the Portsmouth Middle School Project
- B. Letter from Mary Griffin, Griffin Family Corporation, regarding Gift of land in the Hodgdon Brook watershed to the City of Portsmouth (***Sample motion – move to refer to the Planning Board for report back***)
- C. Letter from David Choate, III, Grubb & Ellis Coldstream Real Estate Advisors, Inc., representing John Cronin property located at 56 Lois Street requesting to discuss the subdivision and possible sale of approximately 3.24 acres to the City for conservation purposes (***Sample motion – move to refer to the Planning Board for report back***)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

- 1. Second Reading of Proposed Ordinance Amendments and Resolutions:
 - 1.1 Second Reading of Ordinances Amending Chapter 10-Zoning Ordinance and Zoning Map. (***Action on this matter should take place under Section VIII of the Agenda***)
 - 1.2 Second Reading of Ordinances Amending Chapter 11, Articles VI and VIII. (***Action on this matter should take place under Section VIII of the Agenda***)

City Manager's Items Which Require Action

- 1. Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Civilian Employees Association
- 2. Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Ranking Officers' Union
- 3. Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Patrolman's Union, NEPBA Local #11
- 4. Request to Renew Lease of 251 Bartlett Street by the Creek Athletic Club
- 5. Public Art Acquisition Policy

Informational Items

- 1. Events Listing
- 2. City Hours of Operation and Curbside Collection Re: Christmas & New Year's

B. MAYOR FERRINI

1. *Reports

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the December 12, 2009 meeting
2. Parking Committee Action Sheet and Minutes of the December 12, 2009 meeting

XII. MISCELLANEOUS/UNFINISHED BUSINESS

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

**KELLI L. BARNABY, CMC/CNHMC
CITY CLERK**

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Conservation Commission minutes of the November 18, 2009 meeting
2. Historic District Commission minutes of the October 14, 2009 meeting
3. Planning Board minutes of the September 24, 2009; October 8, 2009; and October 15, 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: December 17, 2009
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on December 21, 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.

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Presentation:

1. **Presentation of Chairs to Outgoing City Councilors.** On Monday evening, Assistant Mayor Jack Blalock and Councilor Laura Pantelakos will be presented with chairs for their years of service to the City and its residents as members of the City Council.

Acceptance of Grants/Donations:

1. **Acceptance of Donations to the New Library Building Fund.** The New Library Capital Campaign Committee has received the following donations. This fulfills their pledge.
 - Pax World Management Corp. for \$5,000.00
 - John R. Maher for \$500.00

I would recommend that the City Council approve and accept the donations to the New Library Building Fund, as listed. Action on this matter should take place under Section VII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. Second Reading of Proposed Ordinance Amendments and Resolutions:

- 1.1 **Second Reading of Ordinance Amending Chapter 10 – Zoning Ordinance and Zoning Map.** As you know, a Matrix developed by staff listing “Amendments for Consideration” (Item A through Item K) was reviewed and discussed at the Council’s work session conducted on December 15th. Based on the Council’s deliberations at the work session, staff has revised several of the draft amendments and has prepared the [attached revised Matrix](#), under Section VIII of Agenda, dated December 21, 2009.

There was general consensus at the December 15th work session to adopt the following potential amendments that were presented in the Matrix and, therefore, these remain unchanged in the attached Matrix:

Item A, Off-Street Parking Provisions in the Downtown Overlay District

Item B, Design of Off-Street Parking Facilities

Item C, Islington Street Zoning

Item D, Gateway District – OR Parcels

Item F, Middle Street Historic District

Item H, Wetlands Protection – Discretion on Buffers

Item J, Include City-leased property in Municipal District

Item K, Housekeeping Items

With regard to *Item E, Gateway District – Front Setbacks*, there was consensus that staff should present a revised alternative reflecting an increase in the setback as well as increased landscaping. That change is addressed in the attached Matrix dated December 21, 2009.

With regard to *Item G, Wetlands Protection – Jurisdictional Area*, there appeared to be consensus that the jurisdictional area for wetlands should be 10,000 square feet as recommended by the Planning Board and presented at first reading, rather than have the jurisdictional wetlands area be one-half acre (21,780 square feet). If this is the case, Item G would need to be removed from the Matrix if, in fact, the Council wishes the jurisdictional area to be 10,000 square feet.

With regard to *Item I, Continuing Care Retirement Community*, a mix of opinions were expressed and no consensus was reached. Therefore, the proposed deletion of the Continuing Care Retirement Community (CCRC) remains in the Matrix.

Per the Council’s discussion on December 15th, two additional amendment items are shown in the attached Matrix:

Item L, Islington Street Historic District, which excludes from the proposed expansion of the Historic District the parcels bounded by Islington Street, Albany Street, Brewery Lane and Jewell Court.

Item M, Signs on Vehicles, which provides clarification with regard to those signs prohibited on vehicles versus those that are allowed.

The Mayor has requested that once amendments are made to the ordinance, and subsequent to the passage of second reading, that the City Council suspend its rules and pass third and final reading of the amended Zoning Ordinance. If the Council wishes to proceed in this manner, the following steps would need to take place:

- 1) Vote on the amendments to the revised Zoning Ordinance and Zoning Map, as presented in the Matrix dated December 21, 2009, or by removing items from the Matrix for independent vote (see below).
- 2) Pass second reading of the amended Chapter 10–Zoning Ordinance and Zoning Map.
- 3) Vote to suspend the rules to pass third and final reading of Chapter 10–Zoning Ordinance and Zoning Map (requires two-thirds vote of those present and voting).
- 4) Pass third and final reading of Chapter 10–Zoning Ordinance and Zoning Map.

I would recommend the City Council move the following actions:

1) Amendments.

Given that there was substantial consensus among the members of the Council to adopt the majority of ordinance alternatives discussed at the Council’s December 15th work session, I would recommend that the City Council handle the amendments listed in the Revised Zoning Ordinance Matrix dated December 21, 2009 in a manner similar to the way in which the Council typically deals with its normal consent agenda.

Therefore, I would recommend that the Mayor request members of the Council to indicate whether any Councilors desire to remove items from the Matrix in order to vote on those items separately. Any item requested by any Councilor should then be removed from the Matrix to be voted upon separately after a vote on the remainder of the Matrix. Once that action has been taken an appropriate Motion would be:

- *"Move to amend the ordinance under consideration by adopting all the amendments shown in the Revised Zoning Ordinance Matrix dated December 21, 2009, except for Items _____, which have been removed by the Council for separate consideration."*

It would then be appropriate for each of the items which were removed from the Matrix to be the subject of separate motion, deliberation and vote. With respect to each such item, an appropriate motion would be:

- *"Move to amend the ordinance under consideration by adopting Item _____ from the Revised Zoning Ordinance Matrix dated December 21, 2009."*

2) Second Reading.

At the completion of Council action on the items which were removed from the Matrix, it would then be appropriate to consider the following motion:

- *"Move to pass second reading of Chapter 10 – Zoning Ordinance and the Zoning Map as amended, by deleting the existing Chapter 10 in its entirety and replacing it with the proposed new Chapter 10 in the form which passed first reading on November 16, 2009, as amended by the Council to date."*

3) Suspend the Rules.

If the Council wishes to suspend the rules in order to take up third reading, it would then be appropriate to consider the following motion:

- *"Move to suspend the rules to allow third and final reading."*

Suspension of rules requires two-thirds vote of those present and voting.

4) Third Reading – Adoption of Revised Zoning Ordinance.

It would then be appropriate to consider the following motion:

- *"Move to pass third and final reading of Chapter 10 of the Zoning Ordinance and the Zoning Map as amended, by deleting the existing Chapter 10 in its entirety and replacing it with the proposed new Chapter 10 in the form which passed second reading on December 21, 2009".*

Note that the terms contained in the ordinance specify that the revised Zoning Ordinance would take effect January 1, 2010.

"Action on this matter should take place under Section VIII of the Agenda."

1.2 **Second Reading of Ordinances Amending Chapter 11, Articles VI and VIII.**

The Council will note that also [attached](#) for second reading under Section VIII of the Agenda are the amendments to Chapter 11 of the City Ordinances. Subsequent to the adoption of second reading for the Chapter 11 amendments, the City Council could suspend its rules and adopt third and final reading. Suspension of rules requires two-thirds vote of those present and voting.

It would be appropriate to consider the following motions:

- *"Move to pass second reading of the amendment to 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 make other ministerial changes."*
- *"Move to pass second reading of 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."*

If the Council wishes to suspend the rules in order to take up third reading, it would then be appropriate to consider the following motion:

- *"Move to suspend the rules to allow third and final reading of all amendments to Chapter 11."*

It would then be appropriate to consider the following motions:

- *"Move to pass third and final reading of 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 make other ministerial changes."*
- *"Move to pass third and final reading of 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."*

"Action on this matter should take place under Section VIII of the Agenda."

Consent Agenda:

1. **Acceptance of Donations for Art-Speak.** Art-Speak requests that the following unrestricted donations, totaling \$650.00 be accepted by the City Council for Art-Speak's operations. These funds are donations resulting from Art-Speak's Annual Appeal letter.

➤ Betty LaBranche Real Estate	\$25.00
➤ Sandy Domina	\$25.00
➤ Mary Ann List	\$50.00
➤ Stephen & Karin Barndollar	\$75.00
➤ Jeff Hyland & Donna Jensen	\$75.00
➤ Sarah MacDuffie & Blair Hundtermark	\$100.00
➤ Peter & Lee Vandermark	\$100.00
➤ Olde Port Properties	\$200.00

I would recommend the City Council move to accept and approve the donations to Art-Speak for operations, as presented. Action on this matter should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Civilian Employees Association.** The Police Commission is requesting that you act on the [attached proposed Tentative Agreement](#) with the Portsmouth Police Civilian Employees Association for the period of July 1, 2008 through June 30, 2014. The salient issues of this Agreement are as follows:

Cost Items

- A new step at 2.5% for 8 years of service effective July 1, 2011. (17 employees will be eligible for this step over the course of the contract).
- A new step at 2.5% for 12 years of service effective July 1, 2013. (11 employees will be eligible for this step over the course of the contract).
- Increase training stipend \$0.25 per hour for 4 years beginning July 1, 2010.
- Increase Clothing Allowance by COLA July 1, 2008 through July 1, 2014, except for July 1, 2009.
- Up to 5 days total per year for union executive board members to attend union meetings.

Concessions

- Delete payment for negotiations to off-duty employees.
- Reduce period where employee is entitled to full wages while on workers' comp from 52 to 26 weeks.
- Eliminate daily OT, except for Dispatchers and IT position.

- Delete provision that OT of 1 hour will be paid for time worked in excess of 15 minutes.
- Sick days will not be counted as hours worked for purposes of calculating overtime.
- Reduce call-bank minimum for 3 to 2 hours of OT.
- Delete provision that call-back time in excess of the minimum is at OT rates.
- Delete requirement that when employees are called at home for work the time is automatically at OT rate.
- Delete provision that employees who work on holidays automatically receive OT in addition to the holiday pay.

The City Council has the following options as it relates to this matter:

- 1) It can approve the proposed Agreement.
 - 2) It can reject the Agreement and send it back to the Police Commission.
 - 3) It can table the Agreement to be reviewed and acted on by the new City Council.
2. **Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Ranking Officers' Union.** The Police Commission is requesting that you act on the [attached proposed Tentative Agreement](#) with the Portsmouth Police Ranking Officers' Union for the period of July 1, 2008 through June 30, 2014. The salient issues of this Agreement are as follows:

Cost Items

- Effective July 1, 2012, \$500 for AA, \$1000 for BA/BS, \$1500 for MA/MS/PhD/JD.
- Maintain the 15% gap between top step patrol and first step sergeant.
- Increase life insurance from \$20,000 to \$40,000. Add AD&D coverage up to \$20,000.
- Apply rolling 10-year COLA adjustments to longevity schedule and clothing allowance effective July 1, 2008. No COLA adjustments for 2009-10.
- Increase Special Detail and Patrol Stipend by rolling 10-year COLA average beginning July 1, 2010.

Concessions

- Effective July 1, 2010, eight (8) of the hours required for annual New Hampshire Police Standards and Training Council certification on programs not required by the PPD will be without compensation.
- Donning and Doffing – The Union agrees not to support directly or indirectly a claim against the City or Commission for pre and post shift donning and doffing wages for the duration of this contract.
- Increase Temporary Service Out of Rank pay requirement from 5 to 10 consecutive days.
- Delete provision that OT of 1 hour will be paid for time worked in excess of 15 minutes.

The City Council has the following options as it relates to this matter:

- 1) It can approve the proposed Agreement.
- 2) It can reject the Agreement and send it back to the Police Commission.
- 3) It can table the Agreement to be reviewed and acted on by the new City Council.

3. **Proposed Tentative Agreement between the Portsmouth Board of Police Commissioners and the Portsmouth Police Patrolman's Union, NEPBA Local #11.**

The Police Commission is requesting that you act on the [attached proposed Tentative Agreement](#) with the Portsmouth Police Patrolman's Union, NEPBA Local #11, for the period of July 1, 2008 through June 30, 2014. The salient issues of this Agreement are as follows:

Cost Items

- Effective July 1, 2010, a new 8-year step at 3.75%.
- Effective July 1, 2010, \$.50 per hour shift differential for working a departmentally-scheduled shift between 3 p.m. and 7 a.m., excluding call-backs, K-9, SIU, SERT, and private details.
- Increase life insurance from \$15,000 to \$20,000.
- Effective July 1, 2012, \$500 for AA, \$1,000 for BA/BS, \$1,500 for MA/MS/PhD/JD. These incentives are non-cumulative (7 AA, 27 BS and 3 MS).
- Union executive board members will be eligible for a total of 40 hours of paid leave for union business.

Concessions

- Effective July 1, 2010, eight (8) of the hours required for annual New Hampshire Police Standards and Training Council certification on programs not required by the PPD will be without compensation.
- Off-duty officers will no longer be paid overtime for negotiation sessions.
- No overtime for physical therapy sessions after clearance for duty.
- Donning and Doffing – The Union agrees not to support directly or indirectly a claim against the City or Commission for pre and post shift donning and doffing wages for the duration of this contract.
- Officers hired after December 31, 1986, may only request advance payout of accrued sick leave over the last three years prior to their intended retirement or voluntary termination date. Employees hired after March 1990 cannot receive payment for more than a total of one hundred and fifty (150) days of sick leave.
- Delete provision that OT of 1 hour will be paid for time worked in excess of 15 minutes.

The City Council has the following options as it relates to this matter:

- 1) It can approve the proposed Agreement.
- 2) It can reject the Agreement and send it back to the Police Commission.
- 3) It can table the Agreement to be reviewed and acted on by the new City Council.
4. **Request to Renew Lease of 251 Bartlett Street by the Creek Athletic Club.** [Attached is a copy of a letter](#) from George McKenna, President of the Creek Athletic Club requesting renewal of the Lease Agreement for 251 Bartlett Street by the Creek Athletic Club. Also, attached is a copy of the revised Lease Agreement. The current Agreement is scheduled to expire on March 31, 2010. The request is for a one-year extension effective April 1, 2010 through March 31, 2011.

I would recommend that the City Council move to extend the Lease for 2010 with an annual lease payment of \$2,046.00.

5. **Public Art Acquisition Policy.** [Attached please find a revised policy](#) on City acquisition of public art through donation, acquisition or commission. The policy reflects the changes suggested by the City Council at the December 7, 2009 City Council meeting and two changes suggested by the Library Director relative to recording of the art in the City's Art and Artifact Index. These revisions include the following:
 1. Language clarifying that the policy refers to all City Departments with the exception of the library (which adheres to a separate Library Trustee policy – see footnote #1 in revised policy).
 2. Language clarifying that indoor art may or may not require a stewardship donation.
 3. Language clarifying that the City reserves the right not to display a donated piece of art.
 4. Language clarifying that changes in location or decommissioning of the accepted artwork, will be recorded in the City's Art and Artifact Index.

I would recommend the City Council move to approve the Public Art Acquisition Policy, as revised.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on December 7, 2009.
2. **City Hours of Operation and Curbside Collection Re: Christmas & New Year's.** In the spirit of the holiday season, the hours of operation for City Hall, Recreation, Public Works Office and the Library will be from 8:00 a.m. to 3:00 p.m.

on Thursday, December 24, 2009 and Thursday, December 31, 2009. The hours of operation for Public Works (excluding the office staff) will be from 7:30 a.m. to 3:00 pm.

On Friday, December 25, 2009 in honor of Christmas Day and Friday, January 1, 2010 in honor of the New Year's Holiday, Portsmouth City offices, including the Department of Public Works and the Recycling Center will be closed.

Some changes have been made to the curbside collection of trash and recyclable waste. Please note the following schedule:

Holiday	Observed	Rescheduled Day
Christmas Day	Friday, December 25 th	Thursday, December 24 th
New Year's Day	Friday, January 1 st	Thursday, December 31 st

Christmas trees will be collected curbside, for grinding and ultimately recycling, January 4th through January 15th. Alternately, Portsmouth residents may bring their Christmas trees to the Recycling Center. Please remove all decorations from the tree.

The Recycling Center's hours are:

Tuesdays	8:00 a.m. to 3:30 p.m.
Wednesdays	8:00 a.m. to 3:30 p.m.
Thursdays	8:00 a.m. to 3:30 p.m.
Saturdays	8:00 a.m. to Noon

If there are any questions or concerns, please call the Portsmouth Department of Public Works at 427-1530.