

VENDOR COMMITTEE MEETING

Monday, May 4, 2009 – 3:00 p.m.

Conference Room A

I. Call to Order

Assistant Mayor Blalock called the meeting to order at 3:00 p.m.

II. Attendance

Committee Members: Assistant Mayor Blalock, Michael Magnant, Police Chief; Steve Griswold, Deputy Fire Chief; Kim McNamara, Health Inspector; Jason Page, Code Enforcement Officer; Suzanne Woodland, Assistant City Attorney, and Dianne M. Kirby, Deputy, City Clerk

Committee Members Absent: Lea Aeschliman, Trustees of Trust Representative;

Others Present: Barbara Massar, Pro Portsmouth; Frederick Gray and Ronald Cypher, Traffic & Safety Representatives

III. Acceptance of Minutes – April 13, 2009

A motion was made and seconded to accept the minutes of the April 13, 2009 meeting. Motion passed.

IV. Status of Memorandum to Traffic & Safety Committee

Assistant Mayor Blalock said a memo was forwarded to the Traffic & Safety Committee stating the Vendor Committee was attempting to prohibit the use of parking spaces by vendors and voted to refer this issue to the Traffic & Safety Committee for review and report back through their action sheet and minutes at the City Council meeting. He said the City Council will meet tonight and he will announce the proposed policy on Vendors. He said the Council should vote on this policy at the May 18, 2009 meeting. He asked when the next Traffic & Safety Committee meeting will be held. Ronald Cypher, Traffic & Safety Representative stated their next meeting was May 14, 2009.

Kim McNamara, Health Inspector stated she thought the memorandum should go through the Parking Committee as well. She said both the Parking Committee and Traffic & Safety Committee meet on the same day. Assistant Mayor Blalock asked if we will need to get a memorandum out to the Parking Committee. Assistant City Attorney Woodland stated we should. Jason Page, Code Enforcement Officer stated that both Traffic & Safety and Parking will meet on May 14th and the City Council on the 18th of May. He said we should know after that if the Council wants to go ahead with this policy or not. Assistant City Attorney Woodland stated this is correct. Assistant Mayor Blalock stated he would be asking the City Council to act on a Vendor Policy at the May 18, 2009 City Council meeting.

Jason Page, Code Enforcement Officer said as far as the Vendor Committee getting together between the 14th and the 18th, it doesn't make sense. He said he would imagine that if the Traffic & Safety and Parking Committees on the 14th say this is our recommendation, it can just be brought up at the City Council meeting because it will be too late to add to our agenda. He said this way it won't be delayed any longer. Assistant Mayor Blalock agreed. Susan Woodland, Assistant City Attorney said this is what she anticipates. She said we would bring forth whatever the results are from Traffic & Safety and the Parking Committees. Assistant Mayor Blalock said if Parking and Traffic & Safety see no particular issues with this, the City Council will be able to move forward and if there are issues the Council could amend the policy. Susan Woodland, Assistant City Attorney stated if there are significant issues, we can defer the vote to a later meeting. Assistant Mayor Blalock agreed. He said one of the reasons for the rush is that spring is here and we need to have a policy ready before the vendors renew their permits. Kim McNamara, Health Inspector stated renewals go out for vendor permits the week of May 25, 2009, so we are in a real crunch to get this set. Assistant Mayor Blalock stated he is aware of the crunch time and he is hoping to get the Council to act in some manner or at least give us some direction.

Jason Page, Code Enforcement Officer stated that presently vendors are not prohibited from using metered parking spaces in front of someone's business. Frederick Gray, Traffic & Safety Representative stated he remembers there being complaints about vendors setting up in parking spaces on Market Square. He said the restaurants complained because these people were more visible than their restaurant. He said the Traffic & Safety Committee would look at it. He further stated prohibiting vendors from vending in metered parking spaces makes sense to him. Ronald Cypher said Councilor Ken Smith can report on the Traffic & Safety and Parking Committee's findings at the City Council meeting. Assistant City Attorney Woodland stated what the committee is looking for from the Traffic & Safety and Parking Committees is a clear statement that those committees agree that parking spaces are for the purpose of parking. She said she has heard requests from downtown businesses to make those parking spaces available for customers and tourists to park and for our local residents to enjoy the downtown businesses. She said if these spaces are being used to sell goods and items, then it is not meeting the purpose of why we have the parking spaces in the first place. Frederick Gray, Traffic & Safety Representative asked if there is anything illegal in prohibiting vendors from vending in metered parking spaces. Police Chief Magnant stated there is not.

Kim McNamara, Health Inspector stated with regular canteen trucks their standard operating procedure is to go to a construction site or a large business. She said they are usually on contract to go in at a certain time of day to a business or construction site. She further stated as further distinction this is usually on private property versus public parking spaces.

Assistant City Attorney Woodland said the only authority Traffic & Safety and Parking Committees have is relative to public, municipally regulated parking spaces. She said it would not affect canteen trucks that visit a private establishment or are parked on private property. Assistant Mayor Blalock stated we are only talking about metered

parking spaces and City owned parking spaces such as City parking lots and the High Hanover garage.

Assistant Mayor Blalock stated the memorandum is clear enough and he assumes we are attaching the City Council Policy to the memorandum. Assistant City Attorney Woodland stated she was not sure the policy went with the memorandum, but we can include it. Assistant Mayor Blalock asked if they will need the policy. He said he doesn't want to encumber them with unnecessary paperwork, but wants them to focus on the one issue. Assistant City Attorney Woodland said because the policy is relatively short and sweet and it does spell out the public/private distinction, it may be helpful. She stated a package would be put together for both the Traffic & Safety and Parking Committees.

V. Status of City Council Consideration of Vending Recommendations

Kim McNamara, Health Inspector reviewed the highlights of the draft policy. She stated the policy is written that the seven locations on public sidewalks within the Central Business District A & B that are suitable as vending locations for licensed hawker and peddlers are identified on the brochure attached. She said the use of a space will be on a first come first served basis and if a vendor leaves a spot another vendor can assume that spot and a vending location cannot be reserved. She further stated this policy does not affect or address vending on property under the control of Prescott Park. Assistant Mayor Blalock said one item that was discussed that he is unsure should be on the policy at this time is a division of food and non-food vendors. Police Chief Magnant stated he remembers all agreeing that having some sort of ratio was a good idea. Assistant City Attorney Woodland stated under the existing ordinance we do not have a good enforcement mechanism to really put into place that type of ratio, so assuming these designated spots and working within this structure works, we will look at an overhaul of the entire ordinance. She said at that time, we could look at a ratio, but based on the existing ordinance she was unsure if we could reasonably turn away a vendor who did not fall within the ratio amounts. She stated we all want to do this, but it would need to be done as part of an ordinance overhaul. Assistant Mayor Blalock agreed. He asked if there were any other comments or concerns with the draft policy that will go to the City Council tonight.

Jason Page, Code Enforcement Officer stated the example of the brochure that could be made up and handed out to people who come to get their license is added as an attachment to the draft policy. Assistant Mayor Blalock said he will bring his color sheets to the City Council meeting should anyone need a clearer picture. He said we originally had a potential eighth spot that did not qualify. Kim McNamara, Health Officer said when they did the actual tape measurements from the place of assembly, the location by Cabot House was ruled out. Assistant City Attorney Woodland said should the City Council decide at the end of the summer season to do a new ordinance structure, one of the items for consideration would be do we want to keep the requirement at 50 feet from any public assembly. She said there might be additional spaces that to us appear appropriate in terms of space, location, safety and traffic, but because of our existing ordinance that space does not qualify. She said this will be a learning season until we get some feed back in terms of designated spaces. Assistant

Mayor Blalock said the important fact is the seven spaces were not just picked. He said this is all there is under the current ordinance. Assistant City Attorney Woodland stated this is correct, everything else is not allowed under the ordinance. Assistant Mayor Blalock stated this is presently all that we have unless the ordinance is changed.

VI. Review of Draft Brochure Re: Vending Locations

Kim McNamara, Health Officer said with the brochure we want to provide a visual photo to the vendors to make it easier for them to visualize the area then just by written word. Jason Page, Code Enforcement Officer said there are three or four sections in the ordinance where the written places are confusing, so if we give them the handout they can see the authorized areas and know where they can set up. Frederick Gray, Traffic & Safety Representative asked if there will be a packet going out to all the previous vendors. Kim McNamara, Health Officer said the goal is to get this brochure made up. She said that whatever the City Council decides as the policy will be put in the blank space and this brochure will go out with every application for renewal along with an explanation of the limited spaces. She said for this year it will be a first come, first serve basis. She said next year if there are permanent changes to the ordinance we can update the brochure. Assistant Mayor Blalock stated said the challenge will be to re-educate those that have claimed a space that is no longer an approved space. Jason Page, Code Enforcement Officer stated to make it clear, the space at 8 Market Square is in front of Foster's and not in front of the Athenaeum. Kim McNamara, Health Officer stated when the brochure is printed it will be in color and Jason will put in his red lines to show the exact spots.

VII. Vendor Accessory Equipment

Assistant Mayor Blalock stated this is something we have not tackled in the policy. Kim McNamara, Health Officer stated we still have the issue of how many coolers to allow each vendor. We also have the issue of vendors showing up with chairs and generators. She said this is when the discussion became a footprint. She said she doesn't know if we want to still go with a footprint or if we just want to say you can have one chair, one cooler etc. She said just to let you know how Portsmouth compares with other places, the State of New Hampshire licenses most cities that allow vendors and then other towns just do not allow vendors. She further stated that some towns will allow hot dog vendors, but only steamed hot dogs. She said steamed hot dogs are less dangerous because of obvious issues. However, where we have limited parking downtown for vendors to park close to their carts and the vendors cannot leave their carts unattended, for safety reasons, it seems reasonable to her that if someone is operating for four hours that they have a cooler. She said she feels it would be better for food safety. Jason Page, Code Enforcement Officer said in the past the definition of a vending cart was that it has to be on wheels, which would be the cart itself and the chairs and everything else. He said we have an artist that sets up next to Popovers (which is not a valid spot) with his pictures and a couple of chairs. Kim McNamara, Health Officer stated this is a good example. She said the Art vendor does take up a lot of space. She said we may need to develop a foot print for allowable space.

Jason Page, Code Enforcement Officer said he does not know with the 18th being so close, whether or not we should do this as a policy decision saying we limit items to say two coolers not bigger than quart size or if we look at that when we do the ordinance. Kim McNamara, Health Officer stated numbers are good. She said it should be specific such as one chair, one cooler, etc. Assistant City Attorney Woodland said we could state "a cooler or coolers, whatever is necessary for food safety". Kim McNamara, Health Officer stated she has one gentleman that would bring eight coolers. Assistant City Attorney Woodland asked if all those coolers would be necessary for that days vending. Kim McNamara, Health Officer said she didn't think he would bother to bring them if they weren't necessary. She said he does a high volume of business. She said he generally sets up on private property, but does come to our 4th of July events as a routine vendor. Jason Page, Code Enforcement Officer stated eight or multiple coolers would be more for special events as opposed to the everyday hot dog vendor. He said he feels one cooler and one chair is reasonable for daily vending. Kim McNamara, Health Officer said this sounds reasonable

Police Chief Magnant asked if generators have been an issue at all. Kim McNamara, Health Officer said generators are very unpleasant for some people, but is how some people have been doing business for years. Assistant Mayor Blalock asked if we have vendors who use generators. Police Chief Magnant stated we do for special events, but not for day-to-day vending.

Kim McNamara, Health Officer stated this makes perfect sense. She said we do have a mobile truck that runs on a generator that everyone is always complaining about, but that may go away with the metered space issue. She said it makes sense to have generators for special events and not for day to day vending. Assistant Mayor Blalock asked if the number of coolers and chairs and other accessories for everyday vending would be a future ordinance change or should it be addressed now. Kim McNamara, Health Officer stated she would like to vote on the number today so they could add it to the brochure. She said a number for special events could be discussed later. Assistant Mayor Blalock asked if this should be added to the Council Policy letter. Kim McNamara, Health Officer stated she did not feel it was that vital. Assistant City Attorney Woodland agreed. She said she would prefer to get the policy drafted, assuming we get support from Traffic & Safety and Parking Committees, and then work on the details in terms of looking at the space available. She said with some sites it might be easy to allow two to three coolers and others not. Jason Page, Code Enforcement Officer said it is easier to just say one cooler, one chair etc. He said if we start allowing more equipment for the bigger spaces, we will end up with everyone fighting for the bigger space. Assistant Mayor Blalock said Mr. Page has a good point. He said from an enforcement point of view a number would work better.

Frederick Gray, Traffic & Safety Representative said he assumes that most vendors park their vehicle as close as legally possible so a runner can go back and forth between cart and truck. Kim McNamara, Health Officer stated there is usually only one operator per cart. Frederick Gray, Traffic & Safety Representative asked what happens when a vendor tows his cart in and sets it up then he has to go and park his vehicle. Kim McNamara, Health Officer said it is certainly not perfect. She said technically this is a food safety issue. Jason Page, Code Enforcement Officer stated the vendor is not

suppose to let the food out of his sight. He suggested the vendor drop the cart, park their vehicle and then move the food items using a two-wheeler or handcart. Kim McNamara, Health Officer said we have now added a two-wheeler or handcart to our accessory equipment list. Assistant Mayor Blalock asked if we wanted to arrive at a number at this meeting. Kim McNamara, Health Officer said she would like to see one cooler and one chair. Assistant Mayor Blalock stated he would agree. He asked if we need any discussion on a hand cart. Kim McNamara, Health Officer stated if people did use the handcart it would enhance food safety. She said technically a vendor is not suppose to leave their food unattended. She further stated this could be put in the brochure. Assistant Mayor Blalock asked about generators. Kim McNamara, Health Officer stated they should be allowed for special events only.

VIII. Special Events

a. Event Coordinator

Kim McNamara, Health Officer said with events like the 4th of July, a vendor cannot get a temporary license because there is not an event coordinator. She stated an event coordinator is a person who takes responsibility for the overall event and is the contact person. She said when there is an event that does not have an event coordinator we just do not issue temporary permits. She said the Health Office does show up for these events because unlicensed vendors are there and are selling some pretty nasty things.

Barbara Massar, Pro Portsmouth stated the problem is enforcement. She said the main problem is with the out of town vendors that drop off kids with shopping carts full of trinkets that roam the streets without permits. She said no one wants to accept the responsibility of enforcement. Jason Page, Code Enforcement Officer stated he did have a run in with this gentleman last year. He stated he waits until late in the day on the Friday prior to the event and wants a permit. He stated last year he informed the gentleman that he would have to pay the \$250.00 vendor fee for each and every cart he had and could not have 8-10 kids with carts all under one license. He stated the gentleman declined to do this. Barbara Massar, Pro Portsmouth said these people unload in the same spot every year. She stated these shopping cart vendors are dangerous. She said they dart in the streets and are a total hazard. Kim McNamara, Health Officer asked since these vendors are a Traffic & Safety problem should we add this in the memorandum to the Traffic & Safety Committee.

Kim McNamara, Health Officer stated that the Health Department would not license these vendors because there is not a food issue. She said the City Clerk's office does not issue any temporary licenses, but a person can apply for a year round permit and only come to one event and therefore, these people have turned it into a temporary license. She said people can get a temporary license to sell these items by getting a yearly Hawkers and Peddlers license. Jason Page, Code Enforcement Officer said a vendor that has a year round license can pick and choose which events they want to vend at as there are no guidelines. He said what has happened in the past when Pro Portsmouth is doing an event; these guys show up and say they have a vending permit. Barbara Massar, Pro Portsmouth said she is speaking of special events where vendors are showing up with no permit or permission, but because there is no enforcement

policy in place they set up and she chases them out and when she leaves they come back. Assistant Mayor Blalock said the enforcement is a police issue. Assistant City Attorney Woodland said if we have a name and address we can send out a Cease and Desist letter. She said our ordinance is set up rather simply and right now it is a simple police matter. She said in the future we may want to look at what other tools would be more effective and maybe that is finding out which organizations are causing the problems and trying to take some other or additional action.

Frederick Gray, Traffic & Safety Representative stated since the majority of the licenses are food vendors, can we limit our permits to only food vendors. Assistant City Attorney Woodland stated the City could if we wanted to limit vending on its sidewalks to food only. Assistant Mayor Blalock said we discussed this before and decided to have a division of maybe four food and three non-food or a two/five division.

Jason Page, Code Enforcement Officer said the calls he gets are about people who want to come to an event such as the fireworks only. He said they ask if they need a permit and he tells them they do. He said they usually say never mind when he tells them if they are going to have eight kids with shopping carts vending trinkets, they will need eight Hawkers & Peddlers Licenses at \$250.00 per license, then the day of the event they are there. Assistant Mayor Blalock said we have tried to keep yearly vending and special event permits separate. He said with the day to day permits by ordinance we have only seven legal spots and we have talked about giving out only seven permits. He asked if we would have to have another permit and policy for special events. Kim McNamara, Health Officer said yes. She said it is logical to break away everything we have done with regular permits. She said we have more time to address the special events issue because those come in on a rolling basis. She further stated that if we were to limit permits for this type of vending, it would perhaps require the City Clerk's office to adopt a policy that they also have to have an event coordinator that has to approve the vendor. She said when people apply for Market Square Day permits; we do not license a vendor until Ms. Massar, Pro Portsmouth, has sent us an event coordinators list of approved vendors. She said if something like this was in place for all events from the City Clerk's office, we could eliminate this issue. She did say we would still have the enforcement issue. Assistant Mayor Blalock said it is important to keep this issue separate.

Kim McNamara, Health Officer said her office inspects and coordinates the food vendors. She said they do their best to control them and if they offer resistance, they contact the police for backup. She said when there is no food involved, she doesn't know if she has the authority to tell the trinket salesman to leave if they do not have a permit. Assistant Mayor Blalock said it would have to be someone in the position to inform the violator and turn any resistance over to the police. Jason Page, Code Enforcement Officer stated if Ms. Massar said she knows where the trinket vendor drops off the kids, if we know in advance where they are going to be can't we just meet him there and stop him before he gets started. Assistant Mayor Blalock said since they are a known violator, assistance from the Legal Department could hold some of this at bay. He asked if we can restrict what can be sold. Assistant City Attorney Woodland said that would be really hard from a legal standpoint due to the varied amounts of products that there are out there. She said encouraging green is doable, but to say

your product is ok and yours is not would not be feasible. Assistant Mayor Blalock said all we can do is to restrict them from vending based on whether they have a permit or not. Kim McNamara, Health Officer said if a person is an event coordinator and they are under that system, they can approve or deny someone's application to sell those items. She said with an event coordinator the City does not give out permits without the permission of the event coordinator. She said we could attack this problem that way. Assistant City Attorney Woodland said we would have to have an organization step up to the plate, like Pro Portsmouth does, for every event. Kim McNamara, Health Officer said if there is no event coordinator we just don't issue any permits. Assistant Mayor Blalock said if that is the case, everyone vending at this event would be operating without permission. Assistant City Attorney Woodland said this would make it easy in terms of enforcement. Deputy City Clerk Kirby stated the City Clerk's office only has two licensed vendors that are not food related – that is the horse and carriage and the painter. Assistant Mayor Blalock asked if we are aiming at a separate Council policy for special event vending issues or if we will address it through a future ordinance change or a vending committee policy. Assistant City Attorney Woodland said it cannot be a policy of the Vending Committee. She stated it would be more effective in terms of enforcement if it was an ordinance. She said we can do more enforcement under our present ordinance. She said our present ordinance says if you do not have a Hawkers and Peddlers license you can be written up for violation. She said there is a fine attached to it, but it does need enforcement. Assistant Mayor Blalock asked if the restriction to have approval from the event coordinator to get a permit from the City a policy of the City Clerk? Assistant City Attorney Woodland said it would have to be an ordinance. Assistant Mayor Blalock asked if under the present ordinance we can restrict sales from anyone that just does not have a permit. Assistant City Attorney Woodland stated we can. Assistant Mayor Blalock said most of these trinket vendors do not have permits at these events. Kim McNamara, Health Officers said she has not found one that has had a permit except the one guy who got the license the day prior to the event and cancelled his check after it was over. Assistant Mayor Blalock said this is sort of a future problem that we are anticipating. He said once the vendor catches on that they can get a yearly permit we may have more show up at various events. Kim McNamara, Health Officer said more and more people are learning that game. She said it is a current problem but is manageable at this point.

Assistant Mayor Blalock asked if we could have a stated period for obtaining their license/permits, such as 5-7 days prior to an event. He said this would allow time for any check to clear the bank. Assistant City Attorney Woodland stated we could certainly add that into the ordinance.

IX. Enforcement of Locations for Food/Non Food Vendors

Kim McNamara, Health Officer stated that most of this items have already been discussed under previous topics.

Assistant Mayor Blalock said it is really a coordination of asking the vendor to leave and if he causes resistance then contacting the police. He stated there is a vendor that sets up at night in an illegal space he has used for a long time and yet there is a legal space just up the hill for him. He said at some point someone needs to inform him he needs to

move. He said it will probably be when he applies for his 2009 permit. He asked if this will be a police matter to see that he does set up on the hill. Kim McNamara, Health Officer said she was actually not thinking that the police were going to have to enforce that at all. She said actually the Health Department would do an inspection and if they find a problem and the vendor is resistant then they would contact the police. She doesn't think this should change police enforcement. She stated that they do notify the police dispatch when they are going to be out on inspections at night. Jason Page, Code Enforcement Officer asked if we could put into the policy three strikes and you are out item. Kim McNamara, Health Officer stated this is a good question. She said the Health Office does not have any citation power so she can not write them a ticket for \$200.00. She said this is an area we need to discuss. She said they do have the ability in the present ordinance to pull the vendors permit if they are out of compliance with the ordinance. She said this is how we can proceed. Assistant Mayor Blalock said he thinks this would be very appropriate. He said if they are not complying after the third time, their license gets pulled. He said this will give the ordinance teeth. Kim McNamara, Health Officer said in the ordinance under failed inspection, if a vendor fails a second health inspection they lose their license and they can not even reapply for a period of three years. She said this doesn't quite cover location, but if we could get to that she is sure we wouldn't have any problems.

X. Discussion/Questions

Barbara Massar, Pro Portsmouth asked about an ordinance change as it relates to outdoor activity whether its performance, food or non-food. She asked if in the summer months when a vendor sets up a hot dog stand or someone is sketching and you have a guy sitting on a bench playing music is this ok. She also stated that when Pro Portsmouth has their Summer in the Streets, which is approved and permitted there have been some ugly situations when you have dueling groups of performers. Assistant City Attorney Woodland said vending is separate from performing arts. She said we do have a policy on the website on performing arts/sidewalk performers that spells out the current stand the City has on this issue. She said she has not heard recently of an interest in looking into the issue of performing spaces. She said this again is a City Council issue. Assistant Mayor Blalock stated some street performers have permits. Jason Page, Code Enforcement Offices stated this was not true. Assistant Mayor Blalock asked if there were any requirements for street performers to be permitted. Assistant City Attorney Woodland stated there were not.

Jason Page, Code Enforcement Officer said he can see Ms. Massar of Pro Portsmouth's concern if they are going to the City Council to get a permit for an event and around the corner you have a guy playing the bagpipes. He said we should have some type of perimeter where if they have permission to hold an event then a street performer can't be within so many feet. Assistant Mayor Blalock said this is a separate issue from the vending committee.

Kim McNamara, Health Officer said if the City Council makes a policy to deal with the present vending issues, we can spend this year developing the ordinance changes and deal with what might happen if we only have seven spaces and only issue seven permits. She requested if we could have the next meeting on May 26, 2009 because

that would be the last meeting before this information goes out to the actual vendor applicants. She said if we meet on the 26th we could get a report back on what the City Council, Traffic and Safety and Parking Committees have decided. She said we can then put it all into the brochure and at least have that section done and ready to go out.

Assistant Mayor Blalock stated the next meeting will be held on May 26, 2009 at 3:00 p.m. in Conference Room A.

Steve Griswold, Deputy Fire Chief; suggested the City Clerk's office send out e-mail reminders prior to the meeting.

VIII. Adjournment

At 4:02 p.m., Assistant Mayor Blalock closed the meeting.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk