

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, NOVEMBER 22, 2010 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

- V. ACCEPTANCE OF MINUTES – OCTOBER 18, 2010 AND NOVEMBER 8, 2010

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARING
 - A. ORDINANCE AMENDING THE CITY ZONING ORDINANCE, CHAPTER 10, ARTICLE 5, SECTION 10.517 REGARDING ROOFTOP APPURTENANCES AND OTHER ROOFTOP FEATURES

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES
 - A. Second reading of Ordinance amending Chapter 10, Article 5, Section 10.517 regarding Rooftop Appurtenances and Other Rooftop Features (***Sample motion – move to pass second reading and schedule a third and final reading on the proposed Ordinance, as presented, at the December 6, 2010 City Council meeting***)
 - B. Third and final reading of Proposed Ordinance amending Chapter 1, Article IV, Section 1.404(A)(1) – Commissions and Authorities, Historic District Membership (***Sample motion – move to pass third and final reading on the proposed Ordinance, as presented***)

- IX. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS
 - A. Letter from Jill Etori, Cystic Fibrosis Foundation, requesting permission to use Peirce Island for the 2011 Seacoast Safari: CF Cycle for Life on Saturday, July 16, 2011 from 7:45 a.m. – 10:00 a.m. (***Sample motion – move to refer to the City Manager with power***)
 - B. Letter from Robin Normandeau requesting that the City Council publish the Vision appraisal cards on line

- C. Letter from Attorney Alec McEachern, Shaines & McEachern, PA, regarding Request for License Agreement, Easement Agreement and Amended Private Street Easement Agreement in connection 99 Hanover Street

X. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

1. Public Hearing/Second Reading of Proposed Ordinance Amendment:
 - 1.1 Public Hearing/Second Reading of Proposed Ordinance Amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 5, Section 10.517 – Rooftop Appurtenances and Other Rooftop Features (**Action on this matter will take place under Section VIII of the Agenda**)
2. Third and Final Reading of Proposed Ordinance Amendments and Resolutions:
 - 2.1 Third and Final Reading on Proposed Ordinance Amending the City Ordinances Chapter 1, Article IV (Section 1:404(A)(1) – Commissions and Authorities, Historic District Membership (**Action on this matter will take place under Section VIII of the Agenda**)

City Manager's Items Which Require Action

1. Report Back from Conservation Commission Re: Creek Farm Trail
2. License Request from Witcher Builders Re: 111 Market Street

Informational Items

1. 99 Bow Street Update
2. Events Listing

B. MAYOR FERRINI

1. Appointments to be Voted:
 - Eric Gregg – Economic Development Commission
 - Todd Henley – Recreation Board
 - Kory Sirmaian – Recreation Board
2. Resignation – Linda King from the Peirce Island Committee

XI. MISCELLANEOUS/UNFINISHED BUSINESS

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

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

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Notification that the Conservation Commission Minutes of the October 13, 2010 meeting are available on the City's website for your review
2. Notification that the Historic District Commission Minutes of the September 1, 2010 and September 8, 2010 meetings are available on the City's website for your review
3. NH Coastal Adaptation Workgroup – Water, Weather, Climate and Community Workshop I on Tuesday, November 30, 2010 from 5:00 p.m. – 8:30 p.m. at the Hugh Gregg Coastal Conservation Center at the Great Bay Discovery Center at Sandy Point in Greenland, NH

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: November 18, 2010
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on November 22, 2010 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.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Ordinance Amendment:**

- 1.1 **Public Hearing/Second Reading of Proposed Ordinance Amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 5, Section 10.517 – Rooftop Appurtenances and Other Rooftop Features.** As a result of the November 8th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached proposed Ordinance Amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 5, Section 10.517 – Rooftop Appurtenances and Other Rooftop Features.

As you may recall, at the October 4, 2010 City Council meeting, the Council referred the [attached request](#) from Peter J. Loughlin, Esquire, on behalf of Service Credit Union, to the Planning Board for report back to the City Council. [Attached is a memorandum](#) from Rick Taintor, Planning Director, regarding this matter. At the October 21, 2010 Planning Board meeting, the Board voted unanimously to recommend that the City Council enact the proposed Zoning Ordinance Amendment as presented.

I would recommend that the City Council move to pass second reading and schedule a third and final reading on the proposed Ordinance amendment, as presented, at the December 6, 2010 City Council meeting. Action on this matter will take place under Section VIII of the Agenda.

2. **Third and Final Reading of Proposed Ordinance Amendments and Resolutions:**

2.1 **Third and Final Reading on Proposed Ordinance Amending the City Ordinances, Chapter 1, Article IV (Section 1:404(A)(1) – Commissions and Authorities, Historic District Membership.** As a result of the November 8th City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final reading the [attached proposed Ordinance Amendment](#) to the City Ordinances, Chapter 1, Article IV (Section 1:404(A)(1) – Commission and Authorities, Historic District Membership. The membership of the Commission is defined in Section 1.404(A)(1) which states in part,

One of the members shall be a City Council member and another shall be a Planning Board member as provided by State Law.

However, the applicable State statute (RSA 673:4, II) actually provides as follows:

One commission member shall be a member of the local governing body and one commission member may be a member of the planning board. [emphasis added]

In Portsmouth, both the Planning Board and the Historic District Commission have heavy workloads, frequently requiring special meetings. As a result, it has been difficult to fill the Planning Board seat on the HDC.

The HDC ordinance also requires that “At least two members shall be residents of the Historic District and at least one member shall be a person owning or being employed in a business within the Historic District.” This requirement supports the requirement that members “have demonstrated interest in and commitment to promote the purposes” of the Historic District. However, it also means that individual members must often recuse themselves from acting on particular cases where they may be abutters to a proposed project or participants in an application.

As a result of the lack of a Planning Board representative combined with recusals of other members, the Commission often hears applications with less than a full complement of members, which may be detrimental to the applicant. After considering this issue for several months, the Planning Board voted at its meeting on September 16, 2010, to recommend that the City Council amend the City Ordinance to reflect the State statute on Historic District Commissions. The specific change would be as follows:

Amend the City of Portsmouth Ordinances, Chapter 1 – Administrative Code, Article IV – Commissions and Authorities, Section 1.404(A)(1), second sentence, by changing the words “shall be a Planning Board member” to “may be a Planning Board member.”

This change would free up the HDC seat reserved for Planning Board members, and allow it to be filled by another qualified member, thereby increasing the number of members potentially available to sit on a particular case.

I would recommend that the City Council move to pass third and final reading on the proposed Ordinance, as presented. Action on this matter will take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Report Back From Conservation Commission Re: Creek Farm Trail.** At the October 18, 2010 City Council meeting the [attached letter](#) from the Society for the Protection of New Hampshire Forests was referred to the Conservation Commission for a report back. As you will recall, the letter invited the City to participate in an effort to explore whether a loop trail across the parcels shown on the [attached map](#) is feasible and worth exploring on a more formal basis. This loop trail, as conceived, would cross over a 23 acre parcel of land (map 204 lot 7) owned by the City along Little Harbor Road, as well as land at the Creek Farm and the Wentworth Coolidge Mansion. The Conservation Commission took up this referral at their regular meeting on November 10, 2010.

The Conservation Commission was supportive of the concept and voted unanimously to recommend the City accept the invitation to move ahead in developing a concept for a trail, which would be partly on City property along Little Harbor Road. The Conservation Commission requested that they be kept involved in the process as it moves forward.

I would recommend that the City Council accept the proposal to move ahead in developing a concept for a trail from The Society for the Protection of New Hampshire Forests which would be partly on City property along Little Harbor, as well as land at the Creek Farm and the Wentworth Coolidge Mansion.

2. **License Request from Whitcher Builders Re: 111 Market Street.** Whitcher Builders seeks a license to encumber the Ceres Street sidewalk and to hang staging over the Market Street sidewalk to complete repairs to the structure at 111 Market Street. By way of background, Whitcher Builders is presently engaged in repair work at 111 Market Street, with scaffolding erected on both the Ceres Street and the Market Street side of the building pursuant to an Encumbrance Permit issued by the Inspection Department. See the [Encumbrance Permit and property sketch attached](#) showing the area. The Market Street scaffolding is being removed from the sidewalk at the end of this week in order to accommodate one of the owners of a retail business during the holiday season.

Whitcher Builders is requesting a license for three months to permit the existing scaffolding to remain on Ceres Street in order to complete work. Conditions in the existing encumbrance permit would be carried over including the obligation to maintain safe pedestrian passage along with additional obligations relative to vehicular passage, insurance and restoration. With

regard to the Market Street side of the building, wall brackets will be placed on the structure to permit for “hanging staging”. The Market Street sidewalk will remain free and clear.

The building at 111 Market Street is owned by a condominium association. Concerns with regard to a license initially arose from some condominium owners regarding the impact of continued scaffolding on the Market Street side during the holiday season. After meetings with the builder and the individual owners, a written agreement was reached with regard to construction activities. The “hanging staging” on the Market Street side of the building and the continuation of staging on the Ceres Street side of the building constitutes the key elements of the agreement and would be incorporated in the license terms. In addition, the contractor has agreed to manage/limit construction vehicles and deliveries so as to avoid disruption to the businesses in the area during the holiday season.

I would recommend the City Council move to authorize the City Manager to enter into a License Agreement with Whitcher Builders consistent with the terms outlined above to facilitate construction activities at 111 Market Street.

Informational Items:

1. **99 Bow Street Update.** [Attached is a memorandum](#) from Assistant City Attorney Suzanne M. Woodland, dated November 16, 2010, regarding steps Martingale Wharf is taking to address concerns raised relative to the timing of deliveries and pedestrian and vehicular safety around the licensed area in front of 99 Bow Street.
2. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on November 8, 2010. In addition, this now can be found on the City’s website.