

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, FEBRUARY 6, 2012

PORTSMOUTH, NH
TIME: 6:30 PM [or thereafter]

At 5:30 p.m. an anticipated "Non-Meeting" with Counsel was held regarding Negotiations RSA 91-A:2, I (b-c).

At 6:30 p.m. a Work Session was held regarding FY13 Budget Discussion.

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

Mayor Spear called the meeting to order at 7:10 p.m.

II. ROLL CALL

Present: Mayor Spear, Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen.

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Dwyer led the Pledge of Allegiance.

PRESENTATIONS

1. Comprehensive Annual Financial Report (CAFR) – Scott McIntyre of Melanson, Heath & Company, P.C. Auditors' Financial Report for the Year Ending June 30, 2011 (Annual Audit)

Scott McIntyre of Melanson, Heath & Company reviewed the City of Portsmouth Financial Report for the Year Ending June 30, 2011 highlighting various sections of interest. He concluded that the overall findings show that the audit went well with no significant audit adjustments.

Councilor Dwyer asked for an explanation of OPEB in layman's terms. Mr. McIntyre explained that OPEB, Other Post Employment Benefits, refers to benefits that retirees continue to receive at the City of Portsmouth's rate, and therefore, the retiree is indirectly being subsidized by the City and is therefore a liability.

In answer to Councilor Smith's inquiry as to another way to fund this liability, Mr. McIntyre stated an irrevocable trust could be set up but there is no statutory authority to do so. City Manager Bohenko stated that is why we have a stabilization fund and going forward as insurance rates increase, retirees could look elsewhere for coverage.

Councilor Kennedy referred to page 48, Sewer Fund, asking if the \$31,647,669.00 in the Net Assets at the End of the Year, are cash assets. Mr. McIntyre stated it is all assets, infrastructure, fixed, etc.

Mayor Spear thanked Mr. McIntyre for his presentation.

V. ACCEPTANCE OF MINUTES – DECEMBER 19, 2011; JANUARY 3, 2012 AND JANUARY 17, 2012

Councilor Coviello moved to accept the Council Meeting Minutes of December 19, 2011, January 3, 2012 and January 17, 2012. Seconded by Assistant Mayor Lister and voted.

VI. PUBLIC COMMENT SESSION

Mayor Spear opened the public Comment Session:

Joseph Caldarola – stated he is speaking on behalf of the people who signed the letter that is on the Agenda regarding the parking issue on Dennett Street and Kane Street, asking the Parking and Traffic Safety Committee to reconsider their previously approved plan. He stated that the neighbors have come up with their own plan and would like to present it to the Parking and Traffic Safety Committee to review. *(Councilor Smith stated that the Parking and Traffic Safety Committee will review this item at the March meeting).*

Attorney Malcolm McNeill – representing 10 State Street LLC, referred to City Manager item 1, Various Approvals Requested by NHDOT Re: Construction of Memorial and Scott Avenue Bridges, stated that his clients hold a building permit that expects certain progress to be made on the project. He stated that this is being complicated due to the contemporaneous building of the bridge and there is a concern that the State project may interfere with this project. He stated that the City Manager and the City have been responsive since learning of this conflict last week and he requests that the City take reasonable measure for his clients reasonable access to the property.

Jerry Hejtmanek – spoke regarding the Sunday Parking ordinance change stating that he was a City Councilor when this was passed and there were reasons that it was adopted. He stated that it alleviates residents parking in a spot on Saturday evening until Monday morning and also, most people visiting downtown are non-residents which burden our City services, but create revenue with this parking provision. He stated we would lose \$175,000.00 in revenue which can only be used for parking related expenditures, but this frees up money for other issues.

Dean Plager – stated he does not want to see the Sunday Parking changed stating it makes good sense and provides needed revenue.

Linda Plumer – stated she supports Councilor Kennedy’s proposal for an advisory committee for the Waste Water Treatment Facility as her water/sewer bill went up 100% this month and feels that people need to get educated and have better communication with what is coming up on this issue.

Rebecca Emerson – spoke regarding Sunday Parking stating that she wants the Sunday parking enforcement to continue year-round as it is mostly tourists who choose to visit Portsmouth and feels that the Sunday Parking enforcement promotes turnover. She stated that we shouldn’t use church goers as a reason to change the ordinance because that already is accommodated by enforcement starting at noon. She stated if we choose to accommodate one religion then we need to accommodate others as well. She stated that the Council should not turn away \$200,000.00 in revenue, noting that it could fund the Fire Station budget supplement being discussed this evening. She concluded by stating that she would also like to see the parking garage fee raised to \$1.00 per hour.

Mary Olea – stated she supports the formation of the Waste Water Treatment Facility Advisory Committee and feels that community thrives on public participation.

Tom Martin – spoke regarding the Sunday Parking issue stating that the Council has a fiduciary responsibility and this is not the time to rescind any funding. He stated he finds this odd that it is being discussed when there are other issues that are more important. He conclude by stating that he would like to see more bike racks and noted that there is plenty of free parking spaces that are just a short walking distance away from town.

Aaron Garganta – speaking as president of the Sherburne Civic Association – thanked the City for their support of the letter to the State regarding noise from I-95 which was recently discussed at a hearing with the Public Works Committee where the Rockingham Avenue neighborhood presented their request to get a sound barrier. He stated their goal is to get the State to build sound barriers which they have been asking for 12 years and have recently joined with the Rockingham Avenue Neighborhood. He thanked Councilors Thorsen and Smith for testifying at the hearing and stated that even if they are not successful, it has pointed out that the DOT process is broken and doesn’t provide relief for neighborhoods in existence long before the highway was put in. He stated he looks forward to working with the City and finding out how we can we collaboratively with the Rockingham Planning District for the DOT to see if we can get something put into the 10-year CIP.

Bill St. Laurent - thanked the City for making the agenda packet information available on-line. Secondly, he stated he supports the formation of the Advisory Committee for the Waste Water Treatment Facility stating there are important decisions that need to be made and wants to see people appointed that are concerned for the future of the City.

Seeing no one else wishing to speak, Mayor Spear closed the public comment session.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDMENTS TO CHAPTER 7 – VEHICLES, TRAFFIC PARKING OMNIBUS ORDINANCES, SECTION 7A.406 – HORSE DRAWN CARRIAGES SPACES ON PLEASANT STREET AND SECTION 7.330 – BY ELIMINATING THE NO PARKING AREA ON STATE STREET BETWEEN COURT PLACE AND CHURCH STREET TO INSTALL 4 NEW METER SPACES AND ORDINANCE CLEANUP MEASURES

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. Seeing no one wishing to speak, Mayor Spear closed the public hearing.

- B. ORDINANCE AMENDMENT TO CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING – JUNKINS AVENUE BOTH SIDES.

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. Seeing no one wishing to speak, Mayor Spear closed the public hearing.

- C. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF UP TO \$150,000.00 FROM UNASSIGNED FUND BALANCE (F.K.A. UNDESIGNATED FUND BALANCE) FOR THE OPERATION OF THE FIRE DEPARTMENT.

Mayor Spear read the legal notice, declared the public hearing open and called for a first round of speakers with a 3 minute time limit:

Fire Chief LeClaire – reviewed his request to restore funds that were cut from the budget last spring. He stated his professional recommendation is always to staff at recommended levels for all three fire stations. He continued that in the past Mayor Sirrell had wanted to staff fully at 14 during the night shift as that is when people are most vulnerable and now we don't have enough staff for more than 2 stations resulting in longer response times. He stated that in order for him to meet the 2.9% budget requested by the City Manager, he needs to have the \$150,000.00 restored to his budget. Next, he discussed the ISO issue that was in today's newspaper stating this is reviewed every six years and they are due back this spring. Previously our rating was a 4 which is one of the best ratings, but now it will be worse and insurance will be affected negatively. He stated this isn't about insurance or negotiations, but is about the safety of the citizens and the Council needs to make a decision, how much is a life worth? He stated they had previously presented an ordinance for city-wide sprinklers but that is now illegal due to a State ruling and urged people to contact their State Representatives. He stated his mission is to ensure the safety of all that enjoy the City of Portsmouth and asked the Council to approve this funding from unassigned fund balance.

Fire Commission Chairman Richard Gamester – referred to a statement on the Taxpayer's Association that the Fire Commission is a "rubber stamp" for the Fire Chief, stating that this isn't the case, but they don't air their dirty laundry in public. He reviewed the previous times that they have appeared before the Council for this supplemental funding due to it being removed from the budget and knowing that it would affect the operation of Station 3. He stated that costs have risen for all departments in uncontrolled costs, i.e. salary, personnel, health insurance, NH Retirement, etc. and trimming the fat is now cutting deep into the bone. He concluded by asking that we don't play politics with public safety any longer.

Kara Kelley – supports funding to keep Station 3 open.

Sarah Sullman – supports funding to keep Station 3 open.

Ralph DiBernardo - supports funding to keep Station 3 open.

Mark Brighton, President of Portsmouth Taxpayers Association – is not in favor of the supplemental budget request unless offset suggestions are made.

Shelly Vetter – owner of Discover Child Center - supports funding to keep Station 3 open.

Arthur Clough – is not in favor of the supplemental budget request.

Nick Paquette – supports funding to keep Station 3 open. (Presented a petition with 500 names of people supporting funding to keep Station 3 open.)

Bill St. Laurent – is not in favor of the supplemental budget request.

Aaron Kelly – supports funding to keep Station 3 open.

Joe (Inaudible) - supports funding to keep Station 3 open.

Janet Davis – supports funding to keep Station 3 open.

Tim Marden – supports funding to keep Station 3 open.

Lea Chase – supports funding to keep Station 3 open.

Joseph Freda – supports funding to keep Station 3 open.

Kim Bridge – supports funding to keep Station 3 open.

Laura Griswold – supports funding to keep Station 3 open.

Grant Turpin – supports funding to keep Station 3 open.

Michelle Young - supports funding to keep Station 3 open.

Ruth Griffin - supports funding to keep Station 3 open.

Tom Lebosquet– supports funding to keep Station 3 open.

Jennifer Matthes – supports funding to keep Station 3 open.

Susan Delaney, Vice President of Pease Tenants Association. – read a letter from Discovery Child Care Center and presented other tenant letters in support of funding to keep Station 3 open.

Ryan Chase – supports funding to keep Station 3 open.

Bill Charland – supports funding to keep Station 3 open.

James Lamond – supports funding to keep Station 3 open.

Steve Griswold – supports funding to keep Station 3 open.

Stephen Gallagher – supports funding to keep Station 3 open.

Ian Shearman – supports funding to keep Station 3 open.

Crystal Paradis – supports funding to keep Station 3 open.

Kelly Heard – supports funding to keep Station 3 open.

Erik Anderson - is not in favor of the supplemental budget request.

Justin Gamester – supports funding to keep Station 3 open.

Vassilios Pamboukes – supports funding to keep Station 3 open.

George Remick – supports funding to keep Station 3 open.

Linda Plumer – supports funding to keep Station 3 open.

Mayor Spear called for the second round of speakers with no limit of time:

Aaron Garganta – supports funding to keep Station 3 open.

Arthur Clough – is not in favor of the supplemental budget request.

Mark Brighton – is not in favor of the supplemental budget request.

Janet Davis – supports funding to keep Station 3 open.

Rick Condon, President of the Firefighters Union – supports funding to keep Station 3 open.

Seeing no one else wishing to speak, Mayor Spear closed the public hearing.

Assistant Mayor Lister moved to suspend the rules to move up Item IX.E. on the agenda for Council action. Seconded by Council Smith and voted.

E. Adoption of Resolution Authorizing a Supplemental Appropriation of up to \$150,000.00 from Unassigned Fund Balance (F.K.A. Undesignated Fund Balance) for the Operation of the Fire Department.

Assistant Mayor Lister moved to authorize a supplemental appropriation of up to \$150,000.00 from Unassigned Fund Balance for the Operation of the Fire Department, seconded by Councilor Smith.

Assistant Mayor Lister stated he doesn't want to compromise the safety of the citizens of Portsmouth, but the Council has a financial responsibility. He stated that the opinion of most people he has spoken with is to keep Station 3 open, but there is still some misinformation out there. He stated that Chief LeClaire has explained many times the coverage of each station and their response times and has given a strong recommendation regarding keeping Station 3 open tonight. He stated that he is concerned with the physical building of Station 3 and that will need to be addressed in the long-term and we need to look at the big picture of public safety.

Councilor Smith stated he also supports the request stating that the comparisons being made to the City of Manchester aren't correct as they have 15 firefighters at each of 4 stations per shift and we have 11-12 divided between stations. Secondly, he stated that regarding the \$150,000.00 for the Indoor Pool, he stated that was approved because of all of the people who came out in support of their quality of life, which is important as well. He then discussed the ISO rating, stating he has an insurance broker's license and he can confirm that this rating is an important factor in setting rates. He concluded by stating that during the recent ice storm that paralyzed the morning commute, our safety personnel demonstrated their dedication to their jobs.

Councilor Coviello stated he has changed his position and will now support this request but feels that there now needs to be an honest conversation with the taxpayers. He stated that taxes will go up as will the water and sewer rates, how much depends on the EPA ruling. He stated that this means that some families won't be able to afford to live in Portsmouth any longer. He continued regarding the Pool funding, that figure stays the same for 5 years and then it is over, but with this funding, the Fire Department budget will continue to increase every year. He stated he values the work of the firefighters and will support this because Chief LeClaire has said he would be able to come in with the 2.9% budget requested by the City Manager if this is approved.

Councilor Kennedy stated she will also support this based on the outpouring of support both in the chambers and the 500 signatures on the petition. She stated she doesn't want to see the demographics of the City change either but feels that it is important to keep Station 3 open at this time, but it means we will have to say no to other things coming up.

Councilor Dwyer stated she has supported this twice before and appreciates everyone coming out tonight and feels that it is unfortunate that the facts are not understood unless accompanied by hundreds of people speaking their minds, and hopes that it isn't necessary for other issues. She stated she is also concerned with where to take the money from as she feels it should come from Contingency.

City Attorney Sullivan stated that the Council must deal with the motion on the table before changing it.

Councilor Novelline Clayburgh stated she supports the motion as she has learned recently that we receive revenues from our coverage of Newington and Greenland which is approximately \$70,000.00 and several members in the union have also made changes in their insurance coverage to Matthew Thornton which has saved \$18,000.00 already with potential for more in the future. She stated that she was happy to hear the Chief say the 2.9% restriction will be reached by the Fire Department.

Councilor Lown stated it is a difficult decision as he respects the people who have spoken as well as the Fire Department and the importance of public safety, but his job is to speak for the taxpayers. He stated that if he thought that anybody or neighborhood was in jeopardy, he would vote for this. He continued that he doesn't like the idea of a supplemental request and is uncomfortable with handling a budget issue that was decided by the previous Council. He stated the funding is coming from either Unassigned Fund Balance or Contingency Fund and the fund balance should not be used for non operating budget expenditures according to the rating agencies. He stated that the issue is not about keeping Station 3 open because it is open when the staffing levels are enough to send a truck out and that is the choice of the Fire Chief not to send the truck out with just 2 people and he understands that, but if you sent the truck out with 2 people you could respond within 4 minutes, and then perhaps wait another 4 minutes for another truck to get there. He stated we could triple the budget and some of the tragedies or potential tragedies would still occur, there is no way to eliminate that risk. He concluded that in light of the economy we need to start doing business a different way and he will oppose this motion.

Councilor Thorsen stated he has looked at the standards, spoken with the Chief, attended the neighborhood meeting, looked at the maps and travelled the routes himself to measure the times. He continued that Portsmouth is not a grid City and it is not a straight shot across the City, and he feels that closing Station 3 would result in a black hole of coverage. He stated he wishes that Station 2 would have been located more centrally, such as near Market Basket, but we need to put safety before finances. He stated he will not support the current motion because of the funding source.

Councilor Smith thanked everyone for their e-mails and then discussed that the City has an excellent bond rating and we have extra money in the Unassigned Fund Balance above the recommended 8-10%. He continued that last budget year the Chief told everyone that he would be back if they passed the level-funded budget and here he is. He stated that Mayor Sirrell was a founding member of the Taxpayer's Association, but she wouldn't have denied public safety.

Councilor Dwyer stated that public safety is a priority but so is economic development and if we believed that the current situation is never going to change, and closed our eyes to what Pease has become over a ten year period, an economic engine of our workforce, then she would have similar concerns that we will never catch up. She stated that giving priority to Station 3 is giving priority to economic development. She addressed Councilor Lown's concerns, stating there was a full explanation of the budget and staffing levels at the January 28, 2012 Retreat so people should be up to speed. She stated she would still like to know if the Council would vote to take it out of Contingency instead.

Councilor Coviello stated that Contingency versus Unassigned Fund Balance is semantics and he is concerned with depleting the Contingency. He stated it takes 6 votes to take it out of Unassigned Fund Balance if something happens, and only 5 votes you take it out of Contingency.

Discussion ensued regarding the process of changing the motion and funding source and its implications on the next budget with City Manager Bohenko clarifying that appropriating the funds from unassigned fund balance would add it to the FY12 making the Fire Department budget \$150,000.00 higher than it is today. Taking it out of the Contingency Fund, would be a one time expenditure and would not add it to the bottom line of the Fire Department budget.

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear stated that everyone wants Station 3 to remain open and not diminish public safety, but the problems we are facing are cost problems. He read the increases of the Fire Department budget over the last 10 years which ranged from 4-6% annually until the last 3 years where it was flat. He stated that during the last 3 years with the level-funding, the staffing levels have gone down and none of the public hearing speakers talked about solving the problem. He stated these challenges have to be met and cannot be ignored. He stated that safety is important and we could keep removing other services, but the decisions have to be made.

Assistant Mayor Lister passed the gavel back to Mayor Spear.

Councilor Dwyer stated other solutions do need to be addressed i.e., regionalization, contracts, etc. but doesn't think it is an either/or situation. She stated it is not logical to close it and we should move forward on 2 tracks.

Councilor Smith referred to Mayor Spear not supporting this because the increases have not been in line with inflation, but there are lots of other things that are not in line with inflation. He stated that since 9/11 the City has had to take on additional duties, i.e. Port coverage, underground rescues, etc.

Councilor Thorsen stated he wants to see Station 3 remain open, but will vote no on this motion due to the funding source.

Chief LeClaire stated that if the funding does not come from the unassigned fund balance, he will have to come back again next year and do the same thing all over again.

Motion passed on a 6-3 roll call vote. Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Dwyer and Smith voted in favor. Councilors Lown, Thorsen and Mayor Spear voted opposed.

Mayor Spear called a recess at 10:10 p.m. and reconvened the meeting at 10:20 p.m.

Councilor Kennedy moved to suspend the rules to continue the meeting past 10:00 p.m. Seconded by Assistant Mayor Lister and voted.

Assistant Mayor Lister moved to suspend the rules to move up Item XI.A.1 – Various Approvals Request by NH DOT regarding Construction of Memorial and Scott Avenue Bridges - 1.1 through 1.3 on the agenda for Council action. Seconded by Councilor Novelline Clayburgh and voted.

1. Various Approvals Requested by NHDOT Re: Construction of Memorial and Scott Avenue Bridges

City Manager Bohenko stated he has met with Attorney McNeill and Lisa Destefano addressing their concerns and stated that a new traffic pattern has been established. He stated they will continue to communicate with all parties concerned throughout the process.

- 1.1 License for Temporary Construction Laydown Area and Temporary Traffic Pattern

Councilor Novelline Clayburgh moved to authorize the City Manager to enter a license agreement with NHDOT for the Memorial Bridge construction laydown area and to authorize the temporary traffic pattern as presented, and further authorize the City Manager to take any other actions necessary to implement the provisions of that license agreement.

Councilor Kennedy stated that there have been a number of people that have been mesmerized by the activity at the bridge and asked if there is going to be an assigned viewing area established so people can watch the process safely. City Manager Bohenko stated that probably Prescott Park will be designated and reminded people that there is a web cam to watch the activity as well.

Councilor Smith stated that the Parking and Traffic Safety Committee usually reviews the traffic pattern issues, but has not on this issue, so asked Public Works Director Parkinson to verify that the appropriate signage has been erected. He also asked how many metered parking spaces will be lost. Public Works Director Parkinson verified that the appropriate signage has been placed and stated that 15-20 spaces will be lost.

Councilor Smith asked about the effect on businesses at the south end of State Street. Public Works Director Parkinson stated that these businesses will remain open.

Councilor Smith stated that the City usually gets a licensing agreement when spaces are being used. City Manager Bohenko stated this is an 80%-20% funding between the State and City, so it isn't necessary.

Councilor Smith asked that the construction workers not be allowed to park at Prescott Park.

Motion passed on an 8-0 vote with Councilor Coviello abstaining due to being the structural engineer of the 10 State Street LLC project.

- 1.2 License for Use of City Property Under Scott Avenue Bridge for Bridge Maintenance Staff Parking

Councilor Smith moved to authorize the City Manager to enter a license agreement with NH DOT for the Memorial Bridge lift operators on City land under the Scott Avenue Bridge as presented, and further authorize the City Manager to take any other actions necessary to implement the provisions of that license agreement, seconded by Councilor Novelline Clayburgh. Motion passed on an 8-0 vote with Councilor Coviello abstaining due to being the structural engineer of the 10 State Street LLC project.

- 1.3 Easement for Use of City Property Under Scott Avenue Bridge for Backup Generator and Utility Transformer Cabinets

Councilor Smith moved to refer the NH DOT's request for an easement to locate a backup generator and utility transformer cabinets on City land under the Scott Avenue Bridge as part of the Memorial Bridge replacement project to the Planning Board for a report back, seconded by Assistant Mayor Lister. Motion passed on an 8-0 vote with Councilor Coviello abstaining due to being the structural engineer of the 10 State Street LLC project.

Keith Cota, Chief Project Engineer for the State of New Hampshire Department of Transportation gave an update of the progress of removing the middle part of the bridge.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. *Acceptance of Wellness Grant - \$2,500.00

Assistant Mayor Lister moved to accept and approve the Wellness grant as presented. Seconded by Councilor Novelline Clayburgh and voted.

- B. Acceptance of Re-allocation Grant for Sagamore Island Purchase - \$12,500.00

Councilor Dwyer moved to authorize the City Manager to accept and expend a NH Coastal Program grant in the amount of \$12,500.00 to purchase the Island in Sagamore Creek as presented. Seconded by Councilor Novelline Clayburgh and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Resolution Increasing the Maximum Income Limit for Individuals Qualifying for the Elderly Real Estate Tax Exemption:

Elderly Exemption at 2.9%

Single	\$34,486.00 increase of \$972.00
Married	\$42,542.00 increase of \$1,199.00
Asset Limit of	\$114,958.00 increase of \$3,240.00

Councilor Smith moved to pass first reading and authorize the City Manager to bring back for public hearing and adoption the proposed Resolution at the February 21, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- B. First reading of Resolution Increasing the Maximum Income Limit for Individuals Qualifying for the Disabled Real Estate Tax Exemption:

Disabled Exemption at 2.9%

Single	\$34,486.00 increase of \$972.00
Married	\$42,542.00 increase of \$1,199.00
Asset Limit of	\$114,958.00 increase of \$3,240.00

Councilor Smith moved to pass first reading and authorize the City Manager to bring back for public hearing and adoption the proposed Resolution at the February 21, 2012 City Council meeting. Seconded by Councilor Coviello and voted.

- C. Second reading of Amendments to Chapter 7 – Vehicles, Traffic Parking Omnibus Ordinances, Section 7A.406 – Horse Drawn Carriages spaces on Pleasant Street and Section 7.330 – by eliminating the No Parking Area on State Street between Court Place and Church Street to install 4 new metered spaces and Ordinance cleanup measures

Councilor Smith moved to pass second reading for the proposed changes to Chapter 7 of the Vehicles, Traffic Parking Omnibus Ordinances, as recommended by the Parking Committee, and schedule a third and final reading at the February 21, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- D. Second reading of Amendment to Chapter 7, Article III, Section 7.330 – No Parking – Junkins Avenue both sides

Councilor Smith moved to pass second reading for the proposed changes to Chapter 7 of the Vehicles, Traffic Parking Omnibus Ordinances, as recommended by the Parking Committee, and schedule a third and final reading at the February 21, 2012 City Council meeting. Seconded by Assistant Mayor Lister and voted.

IX. CONSENT AGENDA

Councilor Kennedy asked to remove Item F, Fairy House Tour, from the Consent Agenda.

Councilor Smith moved adopt the Consent Agenda Items A-E and G as presented. Seconded by Assistant Mayor Lister and voted.

- A. *Acceptance of Funds for Art-Speak – Betty LaBranche Real Estate - \$50.00
(Anticipated action – move to accept and approve the donation to Art-Speak to support Art-Speak’s Art & Economic Prosperity Survey, as presented)
- B. Request for Approval of Pole License to install/replace one pole located on Mendum Avenue ***(Anticipated action – move to approve the aforementioned pole license as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- C. Letter from Olivia Kopri, Sexual Assault Support Services, requesting permission to hold the 5th Annual 5K to Keep Kids SAFE on Pease International Tradeport on Sunday, April 15, 2012 at 11:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Jeanine Sylvester, Runner’s Alley, LLC, requesting permission to hold the 15th Annual Runner’s Alley/Redhook Brewery Memorial 5K on Sunday, May 27, 2012 at 11:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- E. Letter from Robert Sutherland, Jr., St. John’s Lodge, requesting permission to hold the 5K “Out of Hibernation” Road Race on Saturday, April 14, 2012 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***

- G. Letter from Eli Sokorelis, State Street Saloon, requesting the renewal of license for 2 dumpsters located on Church Street (***Anticipated action – move to refer to the City Manager with power***)
- F. Letter from Caroline Amport and Nancy Pollard, Friends of the South End, requesting permission to hold the Annual Fairy House Tour on Saturday, September 15, 2012 from 9:00 a.m. – 1:00 p.m. and Sunday, September 16, 2012 from 11:00 a.m. – 3:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)

Councilor Smith moved to adopt Consent Agenda Item F with anticipated action to refer to the City Manager with power. Seconded by Councilor Novelline Clayburgh and voted 8-0. Councilor Kennedy abstained as she is a member of the Friends of the South End.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Dennett Street residents requesting that the Parking and Traffic Safety Committee reconsider the parking plan for the intersection of Dennett and Kane Streets

Councilor Smith moved to refer to the Parking and Traffic Safety Committee for reconsideration. Seconded by Assistant Mayor Lister and voted.

- B. Letter from the Greater Portsmouth Chamber of Commerce regarding UDAG Loan Request for Tourism Website

Councilor Dwyer stated there was a lot of discussion at the Economic Development Commission meetings to make sure that this is different than other websites. She stated that people will be able to book hotels and restaurants from the website. She stated it is a revolving loan and they may not need to use that much of it.

Councilor Coviello asked who will be overseeing this loan and how quickly it is spent.

City Manager Bohenko stated that it will be jointly monitored by the EDC and City staff.

Councilor Dwyer stated that the EDC gets quarterly reports from the Chamber of Commerce.

Councilor Coviello stated that the money could be spent before the quarterly report.

Councilor Smith asked if the businesses have to be members of the Chamber to be included on the website.

City Manager Bohenko stated that this is a loan and not a grant but he will have the Chamber of Commerce at the February 21st meeting to answer these questions.

Councilor Dwyer moved to bring back for action at the February 21, 2012 City Council meeting. Seconded by Assistant Mayor Lister and voted.

- C. Letter from Julie Bokat and Jeanne Carter, Fuel Training Studio, requesting permission to hold outdoor fitness classes on Peirce Island 2 evenings and 2 mornings starting in April through September

Councilor Kennedy moved to refer to the Recreation Board and Peirce Island Committee for report back. Seconded by Assistant Mayor Lister and voted.

- D. Letter from David Choate, III, Grubb & Ellis Northern New England, requesting that the Planning Board consider amending Section 10.836.20 of the Zoning Ordinance regarding drive-through lanes for retail/commercial buildings outside of the Central Business District

Councilor Dwyer moved to refer to the Planning Board for report back. Seconded by Councilor Novelline Clayburgh and voted.

- E. Letter from John Golumb, Chairman of Portsmouth Police Commission requesting amendments to the Pawn Shop Ordinance

Councilor Coviello moved to refer to the City Attorney to draft an ordinance for first reading, seconded by Assistant Mayor Lister.

Councilor Thorsen asked if this will impact all jewelry stores as well.

Councilor Smith asked if the City even has the authority to regulate this activity.

City Attorney Sullivan stated it is a chicken and egg situation.

A friendly amendment was made to the motion as follows with mover and seconder agreeing.

Councilor Coviello moved to refer to the City Attorney for a report back. Seconded by Councilor Lister and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

2. Sunday Parking Enforcement

Assistant Mayor Lister moved to refer to the City Attorney to bring back an ordinance for first reading at the February 21, 2012 City Council meeting, seconded by Assistant Mayor Lister.

Councilor Novelline Clayburgh stated she had an idea to issue stickers to residents so that they don't have to pay for Sunday parking.

Councilor Dwyer stated she is not in favor of changing this because we have been meeting with a parking consultant with a major parking report to look at parking in a major way, so looking at one issue like this, we are undermining what has been put in place. She stated that we need to use the consultant's report to establish a policy.

Councilor Smith stated he would like to see this issue be referred to the Parking and Traffic Safety Committee for review with the Parking Consultant's report.

Original motion was withdrawn.

Councilor Smith moved to refer to the Parking and Traffic Safety Committee for a report back at a Council Work Session, seconded by Assistant Mayor Lister.

Councilor Coviello asked if this is appropriate for that committee as they are not a policy making group. Councilor Smith stated that they would be reviewing the data from the study and enterprise fund, not creating a policy. City Manager Bohenko stated the committee would come back to the Council with a report and recommendations for Council to vote on.

Councilor Lown stated he would like to have a Council Work Session to review this issue.

Councilor Thorsen would also like a Work Session after the Parking and Traffic Safety Committee has reviewed it. He stated he would like to be able to discuss the new ideas i.e. stickers for residents, but is in favor of eliminating Sunday enforcement altogether. He stated he wants to know the financial impact of that and also find ways to off-set that loss.

Motion voted.

3. Proposed Zoning Ordinance Amendments – Office Research District

Councilor Dwyer moved to accept the Planning Board's recommendation and further, authorize the City Manager to bring back for first reading the proposed ordinance amendment, as presented, at the February 21, 2012 City Council meeting, seconded by Councilor Lown.

Councilor Kennedy stated she is concerned that there are potential CCRC's in this ordinance. Deputy City Manager Hayden explained that there are 100% assisted living units which are different from Continuous Care Retirement Communities that have various stages of care units. She stated she is also concerned with height of buildings as this was a concern of many people while she was campaigning. Deputy City Manager Hayden stated there are no height changes in this ordinance proposal.

Motion voted.

Informational Items

1. Events Listing
2. Economic Development Commission Agenda and Minutes
3. Next Steps Resulting from City Council Retreat

Councilor Smith expressed a concern with city e-mails that the Council has received that are returned undelivered as anonymous and feels it is because people are clicking "Do not reply" not realizing what it will do. He asked that the IT staff look into it.

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Appointment of Sherry-Lea Bloodworth Botop as an Alternate to the Planning Board
 - Reappointment of Phyllis Eldridge to the Trustee of the Trust Funds

Mayor Spear explained that since the last meeting he has reconsidered how he will handle appointments to Committees and referred to the City Attorney's memo outlining the Mayor's authority regarding appointments. He stated he felt that the Rule 23 process adopted by the Council is confusing, taxing on the City staff and an unnecessary diminution of his duties and authorities. He deferred to City Attorney Sullivan for further explanation.

City Attorney Sullivan explained that relative priority of law applies in this situation where an Ordinance or the City Charter trumps a Council Rule, a State Law trumps an Ordinance, and so on. He stated that he had explained at the time Rule 23 could only be operative if the Mayor agreed to abide by it.

Councilor Smith stated he respectfully disagrees and feels that the applicants should be presented by the Council Representative to the Board. He continued that he will not support the recommended applicant to the Planning Board as she has only been a resident for 6 months.

Councilor Kennedy asked for a list of appointments directed by Ordinance for clarification. She stated she agrees with the unwritten rule that a person should be a resident for at least 2 years to be considered and feels that this should have been discussed privately prior to this being presented to the Council.

Councilor Lown stated he will be recusing himself from the vote on the Planning Board appointment because the applicants' husband works for his law firm, but he feels that the unwritten 2-year rule should not be applied to this applicant because she is a highly qualified individual and the City and Planning Board would be lucky to have her.

Councilor Thorsen asked if there were other applicants for this position.

Mayor Spear replied yes, and he interviewed both applicants.

Councilor Thorsen stated he has met the recommended applicant and was impressed with her exemplary qualifications, but he is willing to listen to the discussion.

Assistant Mayor Lister stated that this is what creating Rule 23 was meant to eliminate, the discussion of individual candidates in the public forum.

Councilor Novelline Clayburgh stated she wants the City Attorney to draft verbage to create a rule requiring two year residency.

Councilor Smith stated he is appalled at the Mayor for not following Rule 23 which he previously agreed to abide by and that he said he would work with the Council, but now has chosen not to.

The two applicants will be voted at the February 21, 2012 City Council Meeting.

2. Resignations
 - Jennifer Wilhelm as an Alternate to the Conservation Commission
 - Brett Pasinella of the Sustainable Practices Blue Ribbon Committee

Councilor Smith moved to accept the resignations with regret and a letter of thanks. Seconded by Assistant Mayor Lister and voted.

3. *Appointment of City Council Representatives

Councilor Novelline Clayburgh stated that Rule 23 should be applied to these appointments.

Councilor Smith urged Mayor Spear to do the right thing.

City Attorney Sullivan ruled that Rule 23 would apply to these appointments.

In accordance with the procedure outlined in Rule 23, the following Council appointments were made:

- African Burying Ground Blue Ribbon Committee – Councilor Dwyer
- Chamber of Commerce Liaison – Councilor Thorsen
- Fee Schedule Study Committee – Councilors Novelline Clayburgh and Smith
- Legislative Subcommittee – Assistant Mayor Lister, Councilors Dwyer and Smith
- Pease Development Authority Liaison – Assistant Mayor Lister
- Pease Development Authority – Port Subcommittee – Councilor Kennedy
- Recreation Board – Councilor Novelline Clayburgh
- Rockingham Planning Commission – No appointment made at this time
- Sustainable Practices Blue Ribbon Committee – Councilor Lown and Councilor Kennedy
- Veteran Organization – Assistant Mayor Lister and Councilor Smith

After some discussion, it was decided that no Councilor would be appointed to the Rockingham Planning Commission until City Manager Bohenko clarifies the status of this Commission.

4. *Reactivate the following Mayor's Blue Ribbon Committees *(No action required)*
 - African Burying Ground Blue Ribbon Committee
 - Citywide Neighborhood Steering Blue Ribbon Committee
 - Sustainable Practices Blue Ribbon Committee
 - Transportation Policy Blue Ribbon Committee
 - Trees & Public Greenery Blue Ribbon Committee

Mayor Spear stated that he is not ignoring Rule 23 but he was elected by the people to be the Mayor and perform those duties.

C. COUNCILOR KENNEDY

1. Advisory Committee for Wastewater Treatment Facility Improvements

Councilor Kennedy moved that the City Council create an Advisory Committee to facilitate communication between the citizens of the City, the City Council, consultants and municipal staff during the anticipated process of designing and constructing a new Wastewater Treatment Facility on Peirce Island. The role of the Committee will be to facilitate communications from the community at-large and the City Council to municipal staff during the design and construction process. The Committee shall also assist in the dissemination of the information to the community at-large and the City Council from municipal staff in the design and construction process. The Committee shall consist of the following persons appointed by the City Council following the submission of written applications:

- 2 members of the City Council**
- 2 City staff members**
- 1 member of the Economic Development Commission**
- 1 member of the Friends of the South End**
- 1 representative from the Peirce Island Committee**
- 2 community members at-large**

Further, the committee shall assume its functions at the time that the borrowing resolution to fund the design and construction of the Wastewater Treatment Facility is adopted by the City Council. The Committee shall continue in existence and operation until final acceptance by the City of the new Wastewater Treatment Facility.

Motion seconded by Councilor Novelline Clayburgh.

Councilor Kennedy stated that this Advisory Committee would be similar to those that were formed for the new Library, Fire Station 2, etc. and she made a promise to bring this forward.

Discussion ensued regarding whether there is a need for this committee and the appropriate timing of appointing the committee which would be after the bonding resolution is adopted, probably in 2014.

City Manager Bohenko stated that the City tries very hard to put information out to the public as it becomes available via the website, presentations, etc. He stated we are scheduling an open house on a Saturday in March for people to go out to the island when the weather is better.

Councilor Thorsen moved to postpone indefinitely appointing the Advisory Committee for Wastewater Treatment Facility Improvements, seconded by Councilor Novelline Clayburgh. Motion passed on a 7-2 roll call vote. Assistant Mayor Lister, Councilors Coviello, Novelline Clayburgh, Dwyer, Smith, Thorsen and Mayor Spear voted in favor. Councilors Kennedy and Lown voted opposed.

2. *Update on Senior Services

Councilor Kennedy stated she continues to get questions from seniors regarding the status of the services no longer provided by the Senior Center.

City Manager Bohenko stated he has contacted the Portsmouth Housing Authority and received information today regarding the Purchase and Sales Agreement which is 2 volumes. He stated that City Attorney Sullivan will review the documents and provide a summary to the Council. He briefly reviewed the background of the non-profit group, 127 Parrott Avenue Place, which sold the property to the Mark Wentworth Home in 2008, which included a verbal commitment to provide senior services, but not a written commitment. He explained that the City was not involved with the sale of this property. He concluded by stating that the Portsmouth Housing Authority will be discussing the issue at their meeting on Wednesday, February 8th at noon.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer stated that the Soweto Gospel Choir will be performing on Monday, February 13, 2012 at the African Burying Ground Fund-raiser at The Music Hall.

Councilor Smith wished Councilor Kennedy a Happy Birthday.

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

Councilor Coviello moved to adjourn at 11:55 p.m. Seconded and voted unanimously.

Respectfully submitted:
Valerie A. French, Deputy City Clerk