

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, SEPTEMBER 4, 2012

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

At 6:00 p.m., an Anticipated "Non-Meeting" with Counsel was held regarding Litigation RSA: 91-A:2, I (c).

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

Mayor Spear called the meeting to order at 7:20 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 to the Flag.

### **PRESENTATION**

1. Presentation to Retiring Police Chief David "Lou" Ferland

City Manager Bohenko presented Retired Police Chief David "Lou" Ferland with a City of Portsmouth Chair in recognition of his years of service to the City and his retirement. Retired Chief Ferland accepted the Chair with thanks and appreciation.

### **V. ACCEPTANCE OF MINUTES** *(There are no minutes on for action this evening)*

### **VI. PUBLIC COMMENT SESSION**

Bob Hassold asked the City Council to reconsider changing the parking fee back to a \$1.00. He said the City is not being friendly to its visitors. He recommended raising the parking ticket fine from \$10.00 to \$15.00 rather than increasing the meter rates.

Mary Lou McElwain said that Corey MacDonald is a well qualified candidate for Deputy Police Chief but expressed concern with his second profession as a lawyer. She questioned the potential effects that it could pose on Mr. MacDonald and the department and the time he would be able to devote.

## VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING – TANNER COURT

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Spear declared the public hearing closed.

## VIII. APPROVAL OF GRANTS/DONATIONS

*(There are no items under this section of the agenda)*

## IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Acceptance of Petition and First reading of Resolution Authorizing a Bond Issue of up to One Million Six Hundred Thousand Dollars (\$1,600,000.00) to Pay for the Reconstructing of Commerce Way, and to Pay for all Costs Incidental and Related Thereto.

**Councilor Novelline Clayburgh moved to accept the Petition from Commerce Way LLC for a Conditional Road Layout and Betterment Assessment as presented at the August 20, 2012 City Council meeting. Seconded by Assistant Mayor Lister and voted. Councilor Coviello abstained from voting.**

City Manager Bohenko stated by voting on this the City Council does not commit to the total expenditure of funds until all documents have been executed.

**Assistant Mayor Lister moved to pass first reading and schedule a public hearing and adoption of the proposed bonding resolution as presented at the September 17, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted. Councilor Coviello abstained from voting.**

- B. Second reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Tanner Court

**Assistant Mayor Lister moved to pass second reading and schedule third and final reading of the proposed Ordinance amendment, as presented, at the September 17, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh.**

Councilor Kennedy inquired if we are losing any parking spaces with this change. Councilor Smith stated he did not believe we were but if so, possibly one.

**Motion passed.**

## X. CONSENT AGENDA

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

- A Request for License from Jessica Todd owner of Jessica Todd Salon, for property located at 33 Deer Street for a projecting sign on a new bracket ***(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Jessica Todd owner of Jessica Todd Salon for a projecting sign at property located at 33 Deer Street on a new bracket and, further, authorize the City Manager to execute License Agreements for this request)***

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- B. Request for License from Carla Kienzle owner of Ten Thousand Villages, for property located at 87 Congress Street for a projecting sign on an existing bracket ***(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Carla Kienzle owner of Ten Thousand Villages for a projecting sign at property located at 87 Congress Street on an existing bracket and, further, authorize the City Manager to execute License Agreements for this request)***

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and***

- **Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works**

- C. Request for License from Ed Szczepanik owner of Alex & Ani, for property located at 104 Congress Street for a projecting sign on an existing bracket **(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Ed Szczepanik owner of Alex & Ani for a projecting sign at property located at 104 Congress Street on an existing bracket and, further, authorize the City Manager to execute License Agreements for this request)**

**Planning Director's Stipulations:**

- **The licenses shall be approved by the Legal Department as to content and form;**
  - **Any removal or relocation of the projecting signs, for any reason, will be done at no cost to the City; and**
  - **Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works**
- D. Request for Approval of Pole License to install/replace 1 pole located on Maplewood Avenue **(Anticipated action – move to approve the aforementioned Pole License Agreement 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)**
- E. \*Acceptance of Donation to the Coalition Legal Fund
- Town of Rye - \$5,000.00
- (Anticipated action – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)**
- F. Letter from Barbara Massar, Pro Portsmouth, requesting permission to hold First Night Portsmouth 2013 on Monday, December 31, 2012 **(Anticipated action – move to refer to the City Manager with power)**

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

- A. Request from Deborah Bouchard-Smith, Scarecrows of the Port, seeking permission to install 30 scarecrows downtown on Friday, October 12, 2012 through Thursday, November 1, 2012

**Councilor Novelline Clayburgh moved to refer to the City Manager with power. Seconded by Councilor Kennedy and voted. Councilor Smith abstained from voting.**

## **XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Approval of Proposed Employment Agreement for Deputy Chief of Police Corey MacDonald

City Manager Bohenko advised the City Council that the Police Commission is recommending approval of the Employment Agreement for Corey MacDonald as Deputy Police Chief.

**Councilor Smith moved to approve the Employment Agreement between Corey MacDonald and the Portsmouth Board of Police Commissioners for a 5-year term commencing on September 1, 2012 and ending on August 31, 2017. Seconded by Assistant Mayor Lister.**

Councilor Smith stated that the issue of Deputy Chief MacDonald having a law practice has been addressed.

Assistant Mayor Lister spoke regarding the length of time he has known Deputy Chief MacDonald and said he is pleased to welcome him as our new Deputy Police Chief.

Police Commissioner Howe reported that Deputy Chief MacDonald has been practicing law for the last 7 years and only takes civil cases. He also stated that Deputy Chief MacDonald has consulted with City Attorney Sullivan and if an issue arises with a case, it would be handled by one of his partners.

Councilor Coviello said he is separating his concerns from the person. He feels that Corey is an excellent candidate but his concern is with bringing him in at a Step C on the pay scale. He questioned whether the City would ever bring someone in at a Step A. Councilor Coviello said he is concerned with Corey having another profession and the level of commitment. He also stated it has the potential for a conflict of interest.

Councilor Lown said Corey MacDonald went to the Police Chief 10 years ago and stated that he wanted to become an attorney. He said he feels it has made Corey a better Officer, Captain, and now Deputy Chief. He said Corey has not been detracted from his former positions while practicing law.

Councilor Kennedy said she agrees with Councilor Lown. She said we have teachers, fire, police and other employees doing second jobs. She stated it is nice to see people stay in the community and work up the ladder. Councilor Kennedy also stated that the salary is comparable to other communities.

Councilor Thorsen said he is also concerned with Deputy Chief MacDonald having a second profession. He said people want leaders that are all-in committed. He stated that he does not agree with guaranteed raises, and on that basis he would not support the motion.

Councilor Dwyer stated that good issues have been raised. She said that the Police Commission has addressed the conflict of interest concerns. Councilor Dwyer also stated that the conflict of interest issues also extend to other attorneys in the firm as well.

Councilor Novelline Clayburgh said she would support the contract. She said it is a great advantage to have an attorney as Deputy Chief. She also said if a conflict is found there is a process to be followed by the Police Commission. Councilor Novelline Clayburgh reminded the Council that contract negotiations will be taking place in 2014 and she would like to address COLA and insurance.

**Motion passed. Councilors Coviello and Thorsen voted opposed.**

2. Proposed Agreement between Trustees of the Trust Fund and Prescott Park Arts Festival

City Attorney Sullivan addressed the proposed agreement. He spoke to the unique relationship between the Trustees of the Trust Fund, Prescott Park Arts Festival and the City of Portsmouth. He stated that this document is an annual update of the prior version. He indicated that buildings have been added and there is a provision to allow the Prescott Park Arts Festival and the Trustees of the Trust Fund to share expenses in the park and a requirement for an annual meeting of the Board of Directors. City Attorney Sullivan stated that the changes will not affect the operations of the park.

**Councilor Lown moved to ratify the operating Agreement between the Trustees of the Trust Fund and the Prescott Park Arts Festival, as presented. Seconded by Councilor Smith.**

Councilor Smith said he was a Trustee of the Trust Fund when this matter came forward. He stated it was brought forward because of the success of the Prescott Park Arts Festival. He said they were addressing issues of commercialism and cost sharing. This agreement is in its early stages and he will support it.

**Motion passed.**

3. Request for First Reading of Proposed Bonding Resolutions Re: Citywide and School Facilities Improvements
  - a) Resolution for Bond Authorization of up to \$2,267,000.00 for FY13 Citywide, Bridge, Street and Sidewalk Improvements
  - b) Resolution for Bond Authorization of up to \$500,000.00 for FY13 for School Facilities Improvements

City Manager Bohenko stated that this is a request for first reading to come forward. He advised the Council that the first Resolution is for the FY13 Citywide, Bridge, Street and Sidewalk Improvements. The second Resolution is for FY13 School Facilities Improvements. He indicated that these Resolutions require two readings with a two-thirds vote of the Council for adoption.

**Councilor Lown moved to authorize the City Manager to bring back for first reading a Bond Resolution for Citywide Improvements in the amount of up to \$2,267,000.00 at the September 17, 2012 City Council meeting. Seconded by Assistant Mayor Lister and voted.**

**Councilor Lown moved to authorize the City Manager to bring back for first reading a Bond Resolution for School Facilities improvements in the amount of up to \$500,000.00 at the September 17, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.**

4. Proposed Expansion of the Downtown Overlay District

City Manager Bohenko said this would expand the downtown Overlay District and stated additional staff time is needed. He recommended postponing consideration of this matter until after action has been taken on the separate proposal for rezoning of 143 Daniel Street.

**Assistant Mayor Lister moved to postpone consideration of this matter until after action has been taken on the separate proposal for rezoning of 143 Daniel Street. Seconded by Councilor Novelline Clayburgh.**

Councilor Lown said by delaying the vote on other areas he does not want someone coming forward taking advantage with an application for development under the current Zoning Ordinance. City Manager Bohenko said anything is possible. If someone is in the pipeline they would get the permit in before second reading.

**Motion passed.**

Councilor Smith asked City Manager Bohenko to bring the City Council up to date on the Presidential visit. City Manager Bohenko said a meeting was held regarding the upcoming visit. He said there will be multiple street closures and he was notified today that Superintendent McDonough will be closing schools.

Councilor Novelline Clayburgh asked what the cost would be for this visit. City Manager Bohenko advised that staff will be keeping track of the costs involved with the visit.

Councilor Lown said it is wonderful that the President is coming and asked if it is necessary for the street closures and the closing of schools. City Manager Bohenko said he does not have the expertise as to whether it is necessary or not, street closures are a secret service matter and schools are a decision made by the Superintendent.

Councilor Smith asked if we would be submitting a bill for this visit.

**Councilor Smith moved to suspend the rules in order to take up this matter that is not on the agenda. Seconded by Councilor Lown and voted. Councilor Coviello voted opposed.**

Discussion followed regarding this matter on whether to submit a bill for the costs involved as well as logistics involved in a Presidential visit.

**Councilor Smith voted to direct the City Manager to bill for any expenses incurred by the Presidential visit to the campaign as well as any other Presidential candidates that come to the City before November 6, 2012. Seconded by Assistant Mayor Lister.**

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear stated that people are looking at the Presidential visit as a monetary issue. He said we will benefit by seeing the candidates. He stated that we have been in an aggressive posture to protect the first in the nation Presidential Primary and invite them all to our community. When the President is a candidate there will be a great deal of costs associated with that and the benefits far outweigh the costs, in his opinion.

Assistant Mayor Lister returned the gavel to Mayor Spear.

Councilor Smith said he has invited all candidates to come into his place of business at no cost to the campaigns.

Assistant Mayor Lister stated that we all want to protect the budget. He said he is not pleased with the conversation. He said we are talking about money, and not how proud we are of our City.

Councilor Novelline Clayburgh suggested that the City Council create a policy on how to deal with these types of visits and the expenses involved.

**On a roll call 5-4, motion passed. Councilors Kennedy, Novelline Clayburgh, Lown, Smith and Thorsen voted in favor. Assistant Mayor Lister, Councilors Coviello, Dwyer and Mayor Spear voted opposed.**



**B. MAYOR SPEAR**

1. Appointment to be Voted:

**Trees and Public Greenery Blue Ribbon Committee**

- Dennis Souto to the Trees and Public Greenery Blue Ribbon Committee

**Councilor Smith moved to appoint Dennis Souto to the Trees and Public Greenery Blue Ribbon Committee. Seconded by Councilor Coviello and voted.**

**C. COUNCILOR LOWN**

1. Housekeeping Ordinance Amendments

Councilor Lown said this is regarding outdated ordinances and having them brought forward for first reading at the September 17<sup>th</sup> meeting to decide whether to delete them from the ordinance book.

**Councilor Lown moved to authorize the City Manager to bring back for first reading the amendments outlined in Councilor Lown's memorandum dated August 30, 2012 to the City's Code Ordinances at the September 17, 2012 meeting. Seconded by Councilor Smith and voted.**

**D. COUNCILOR DWYER**

1. Request for First Reading of Ordinance Re: Downtown High Occupancy Meter Zones

Councilor Dwyer said that this memorandum follows up the discussion from the last meeting. She said that this is a proposal for a second adjustment to the Parking Ordinance which restores most meters to \$1.00 per hour with the exception of the high occupancy rate meters. She stated that this is consistent with the parking consultants recommendations.

**Councilor Dwyer move to authorize the City Manager to bring back for first reading the attached proposed Ordinance at the September 17, 2012 City Council meeting. Seconded by Councilor Lown and voted.**

2. \*Middle School Update

Councilor Dwyer reported that the Middle School opened on time and the Joint Building Committee was thrilled. Students and parents came in the Friday before school opened to view the school. Councilor Dwyer stated that there are still items that need to be done. She informed the Council that the lockers have been installed and teachers were given keys today. She also said the gym floor will be in use Monday and that getting the buses off the street has worked well. Councilor Dwyer advised the City Council that work has been moved into the old section of the building and the Joint Building Committee will be meeting regularly to address any issues.

Mayor Spear congratulated Councilor Dwyer and the Joint Building Committee for the work they have done on this project.

**E. COUNCILOR SMITH**

1. Parking and Traffic Safety Committee – Shari Donnermeyer

**Councilor Smith moved to suspend the rules in order to bring forward Shari Donnermeyer for appointment to the Parking and Traffic Safety Committee. Seconded by Assistant Mayor Lister.**

Councilor Smith stated that the Council needs to vote on this appointment today for the new Parking and Traffic Safety Committee to move forward. He also stated that Ms. Donnermeyer is a great candidate for the Committee.

Mayor Spear said she is qualified, but he has not met her, and he makes that a practice. Therefore, he would like to meet her before acting upon this application. Mayor Spear asked City Attorney Sullivan what happens if there are only 8 members of the Parking and Traffic Safety Committee. City Attorney Sullivan stated until the civilians are appointed, the new Parking and Traffic Safety Committee does not take affect.

**Motion passed.**

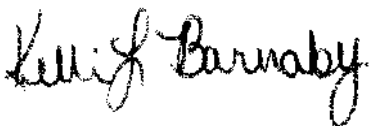
*Councilor Smith moved to have Shari Donnermeyer appointed to the Parking and Traffic Safety Committee.*

*Motion to appoint Shari Donnermeyer to the Parking and Traffic Safety Committee was ruled out of order by Mayor Spear.*

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIV. ADJOURNMENT**

At 9:10 p.m., Councilor Coviello moved to adjourn. Seconded and voted.



Kelli L. Barnaby, CMC/CNHMC  
City Clerk