

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, DECEMBER 17, 2012

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

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

Mayor Spear called the meeting to order at 7:00 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 in memory of the Sandy Hook Elementary School victims.

IV. PLEDGE OF ALLEGIANCE

Councilor Lown led the Pledge of Allegiance to the Flag.

PRESENTATIONS

1. 2012 Portsmouth High School Football Division III State Champions
2. Portsmouth High School Holiday Brass Ensemble

Due to the inclement weather and the cancellation of school, the High School Football Team and Holiday Brass Ensemble were unable to attend the meeting. Mayor Spear recognized the Division III State Football Championship Team congratulating them on their winning season and the Thanksgiving Day victory over Dover High School.

V. ACCEPTANCE OF MINUTES – OCTOBER 1, 2012, OCTOBER 22, 2012 AND NOVEMBER 13, 2012

Councilor Kennedy moved to accept the Minutes of October, 1, 2012, October 22, 2012 and November 13, 2012 City Council Meetings. Seconded by Assistant Mayor Lister and voted.

VI. PUBLIC COMMENT SESSION

Tom Carroll, business owner at 500 Market Street – stated he is speaking his own opinion and is not representing anyone else. He stated that a scrapmetal ship came into the port last week and he was disappointed not to see any of the City Councilors there. He stated that the tall ships will no longer come into the Port because of the filth from the metal fragments and the noise. He then shook a box than contained metal fragments that he collected from Market Street stating that these are located on city property and although the city may not be able to do anything on the Port property, the street is city property and this type of debris is on the street. He stated this debris is dangerous to motorists, and especially motorcyclists, and the city should have someone collecting this metal.

Julie Ross, Islington Creek Neighborhood Association – addressed the packet of information that was provided to the Council regarding the issue at 21 Brewster Street which includes newspaper articles, police reports, city ordinances, etc. She stated the group has been working for the last 6 years and have met with the City Attorney, Councilors Lown, Coviello and Novelline Clayburgh over the last 4 months and appreciates their time, but feels that it is time to do something about it now. She urged the Council to address this issue before another license is issued to this business.

Arthur Clough, discussed the change in the city hall hours of operation and the contractual obligations of the employees stating that there is nothing in the contracts for tracking time by hours worked, only days and ½ days. He stated that being closed on Friday afternoons is inconvenient to people who get paid on Friday and come to city hall to do their business. He stated he does like the later hours on Mondays, but feels that this can be accomplished every day by having employees start later in the day.

VII. PUBLIC HEARING

- A. ORDINANCE AMENDMENTS TO CHAPTER 10 – ZONING ORDINANCE, ARTICLE 6 – OVERLAY DISTRICTS, SECTION 10.633.20 – EXEMPTIONS FROM CERTIFICATE OF APPROVAL IN THE HISTORIC DISTRICT; AND TO ARTICLE 15 – DEFINITIONS, SECTION 10.1530 – TERMS OF GENERAL APPLICABILITY, DEFINING THE TERM “CONTRIBUTING STRUCTURE”

City Planner Nick Cracknell gave a brief overview of the changes being made to Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District and to Section 10.1530, defining the Term “Contributing Structure. He explained that this will help to alleviate the workload of the Historic District Commission by removing minor issues from their responsibilities allowing them to focus on larger projects. He stated this was a result of reviewing past practices of the city that were institutionalized but not necessarily in the ordinances and this updates the ordinance to current performance standards.

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. Seeing none, Mayor Spear closed the public hearing.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant for Art-Speak - \$500.00

Councilor Smith moved to accept a grant to Art-Speak to be used for operational support of Art-Speak, as presented. Seconded by Councilor Novelline Clayburgh and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts (*Voted to postpone at the December 3, 2012 City Council meeting for revisions to the ordinance and bring back for first reading at the December 17, 2012 City Council meeting*)

Planning Director Rick Taintor reviewed the changes from the first proposed ordinance change to this current version. He explained that after concerns were raised from several downtown developers on potential impacts of the first proposal, the staff revised the initial proposal and met with a group of architects and designers to discuss the revised draft. The amendments are as follow:

- a) Require that within 25 feet of a street line, no portion of a building be higher than 50 feet above the street in the CBA district or 60 feet above the street in the CBB district. The "street line" is the edge of the municipal right of way, which in the downtown area is approximately at the back of the sidewalk.
- b) Exempt from this requirement parapet walls, railings, fences and roof appurtenances (such as HVAC equipment or antennas) that are no more than 2 feet above the roof surface.

He continued that in order to accommodate two identified development projects that have initiated a formal process with the City's land use boards, and thereby demonstrated significant investment in project design, the proposed ordinance also exempts applications which have been the subject of legal notice for a hearing before the Zoning Board of Adjustment.

Assistant Mayor Lister moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the January 7, 2013 City Council meeting, seconded by Councilor Novelline Clayburgh.

Discussion ensued regarding the two projects that will be exempt (111 Maplewood Avenue and Rosa's parking lot) as it is deemed a fairness issue as they have already started their processes with the original zoning regulations in place. Planning Director Taintor clarified that there are other projects in the pipeline that will not be exempt from the new regulations.

Motion voted.

- B. Second Reading of Proposed Amendments to Chapter 10 - Zoning Ordinance, Article 6 – Overlay Districts, Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District; and to Article 15 - Definitions, Section 10.1530 – Terms of General Applicability, Defining the term "Contributing Structure"

Councilor Kennedy moved to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the January 7, 2013 City Council meeting, seconded by Assistant Mayor Lister.

Councilor Kennedy stated that the Historic District Commission is in favor of this ordinance change which will simplify procedures for homeowners when making simple changes to their property.

Motion voted.

X. CONSENT AGENDA

- A. Letter from Donald Allison, Eastern States 20 Mile, requesting permission to hold the annual Eastern States 20 Mile Road Race on Sunday, March 30, 2013
(Anticipated action – move to refer to the City Manager with power)
- B. *Acceptance of Donation to the Coalition Legal Fund
- Town of Center Harbor - \$500.00
- (Anticipated action – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)***
- C. Letter from Doug Bates, President of Greater Portsmouth Chamber of Commerce requesting permission to hold the Portsmouth Community Road Race Series 5K Races for 2013 and January of 2014:
- Thursday, August 1st at 6:00 p.m. – Portsmouth Rotary Club Thunder Chicken – Peirce Island - Prescott Park Course
 - Saturday, September 21st at 9:00 a.m. – BreastCancerStories.org – Little Harbour School Course
 - Saturday, October 12th at 9:00 a.m. – Community Child Care – West Road-Banfield Course
 - Thursday, November 28th at 8:30 a.m. – Seacoast Rotary Club Turkey Trot – Peirce Island – Prescott Park Course
 - Wednesday, January 1, 2014 – Great Bay Services – Little Harbour School Course
- (Anticipated action – move to refer to the City Manager with power)***

Councilor Coviello moved to adopt the Consent Agenda as presented. Seconded by Assistant Mayor Lister and voted.

Councilor Smith asked the City Manager to work with the organizations using the Little Harbour School Course and use the Middle School route instead if the Middle School construction is completed when these events take place.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Aphrodite Georgopoulos & Louis Georgopoulos regarding zoning of property located at 1900 Lafayette Road

Assistant Mayor Lister moved to refer to the Planning Board for report back, seconded by Councilor Novelline Clayburgh and voted 8-1, Councilor Lown abstained.

- B. Letter from Attorney John E. Lyons, Jr., regarding commercial water deduct meters

Councilor Novelline Clayburgh moved to refer to staff for review as part of water/sewer rate study. Seconded by Councilor Kennedy and voted.

- C. Letter and Petition from Islington Creek Neighborhood Association Re: 21 Brewster Street. *(Full packet of information is available in the City Clerk's Office)*

Councilor Kennedy moved to refer to City Manager for a report back, seconded by Councilor Novelline Clayburgh.

Councilor Lown complimented the booklet of information that was presented to the Council on this issue stating it gave a good summary, was interesting and well done.

Assistant Mayor Lister agreed with the quality of the document and asked City Manager Bohenko when a report back may be expected. City Manager Bohenko stated that he will meet with the departments and staff involved with the issue. He stated that it will need to be addressed before the renewal of the next license for the boarding house and feels that it may need to be discussed at a City Council Work Session.

Motion voted.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Spinnaker Point Field House Management Agreement

Councilor Novelline Clayburgh moved to authorize the City Manager to negotiate and execute an amendment to the Spinnaker Point Field House Management Agreement which will have the effect of extending indefinitely the period of time under which up to 300 non-residents may be added to the membership of the Spinnaker Point Recreation Center or the total number of members of the Spinnaker Point Recreation Center equals 1,900 members, whichever occurs first, seconded by Councilor Coviello.

Councilor Thorsen asked if this facility is generally underutilized. City Manager Bohenko stated no and explained that because of the diversified activities provided, there are different age groups and varying times of the day that the facility is used i.e., pool, walking track, basketball hoops etc.

Motion voted 8-0, Councilor Lown abstained.

2. Connie Bean Trust

City Manager Bohenko explained that the property consists of three adjacent parcels which the City acquired in a series of transfers from the Army and Navy Association which were encumbered by certain charitable restrictions relative to use of the property for recreational, educational, civic and military support purposes. He continued to review various Council actions to clear the charitable restrictions on the property to facilitate sale or lease of the property which were lifted by Probate Court order dated May 29, 2012 subject to further order regarding the disposition of any proceeds from the sale of the property. He further explained a public hearing was held on November 27, 2012 to take comment regarding the use of the proceeds and at that time, city staff proposed establishing a trust to serve as a repository for the sale proceeds. The trust would have two purposes; to provide funds for commemorative and celebratory purposes

for events recognizing service men and women; and secondly, to develop or improve a facility(ies) and its associated programs for recreation and other community purposes; such facilities and programs to serve a multi-generational population. He concluded by stating that the Attorney General and Intervenor have approve this form of Trust.

Assistant Mayor Lister moved to authorize the City Manager to submit the trust to the Rockingham County Probate Court and execute this Trust instrument if the form of the Trust is approved by the Rockingham County Probate Court, seconded by Councilor Lown.

Councilor Lown stated he has received e-mails from taxpayers who feel that the proceeds should be applied in a manner to pay for the new center. He stated as the City Manager explained, this money will be in a trust and the new Connie Bean Center has already been funded.

Motion voted.

B. MAYOR SPEAR

1. Appointment to be Considered:
 - Elizabeth Moreau appointment as an alternate to the Planning Board
 - Karina Quintans appointment as a regular member to the Planning Board (*current alternate*)
 - Thomas Watson reappointment to the Trustees of the Trust Fund

The above mentioned appointments were considered and will be voted at the January 7, 2013 City Council meeting.

2. Appointments to be Voted:
 - Alicia Weaver appointed to the Citizens Advisory Committee
 - John Pratt appointed to the Economic Development Commission
 - Reagan Ruedig appointed to the Historic District Commission
 - Jody Record reappointment to the Board of Library Trustees
 - Philip Cohen reappointment to the Economic Development Commission
 - Charles LeMay reappointment to the Zoning Board of Adjustment
 - Patrick Moretti reappointment to the Zoning Board of Adjustment
 - David Witham reappointment to the Zoning Board of Adjustment

Assistant Mayor Lister moved to approve the appointments as presented. Seconded by Councilor Kennedy and voted.

3. Resignations
 - Skye Maher from the Blue Ribbon Committee on Sustainable Practices
 - Joe Couture from the Portsmouth Housing Endowment Fund

Councilor Novelline Clayburgh moved to accept the resignations with regret and a letter of appreciation of service be sent, seconded by Councilor Coviello.

Mayor Spear asked that M.L. Geffert also be sent a letter of appreciation as she has chosen not to be reappointed to the Planning Board when her term expires on December 31, 2012.

Motion voted.

C. COUNCILOR DWYER

1. *Update Re: African Burying Ground

Councilor Dwyer stated that the 10th anniversary of the discovery of the burial ground on Chestnut Street will occur in October 2013 and the goal of the Committee is to have the project well under way by then. She stated the State Archeologist and Attorney General have reviewed the plans and we are within the laws. She continued by stating that the fundraising committee is separate from the African Burial Ground Blue Ribbon Committee and listed the names of the members so that people could get in touch with them regarding donations. She stated that the goal is \$1.2 million and that \$600,000.00 has been raised so far. She stated that there are several large "asks" out that they are hoping will come in soon and get them much closer to the goal. She stated that they have involved students, businesses, abutters, etc. in supporting the project. She stated the one area that has not done as well as hoped is grant funding, but David Moore is doing a lot of work in that area. She concluded by stating that the model of the memorial is on display at the library and discussed various historical documents that are available for review as well.

D. COUNCILOR SMITH

1. Bow Street Parking License

Councilor Smith moved to extend the Valet Parking Contract of Atlantic Parking Services for Bow Street until June 30, 2013, seconded by Councilor Coviello.

Councilor Smith explained that Atlantic Parking Services were recently granted an additional parking space and at that time it was realized that their contract had expired. He stated that this is being extended to June 30, 2013 only so that all of the valet parking contracts will expire at the same time so that this situation can be avoided in the future.

Councilor Kennedy stated that she goes by that area everyday at 5:00 p.m. and notices that their signs are sometimes in the street. She stated she had wondered why they aren't using the loading zone on the other side of the street instead of the 3 spaces as she feels that would help alleviate the congestion in the area.

Councilor Smith stated that they are not supposed to have the signs on the street and the tents are only supposed to be used during downpours. He stated that when he calls the company regarding any issues, they are very responsive to correcting the situation. He stated that regarding the loading zone spaces, those are open to the public after 7:00 p.m. and they didn't want to take those spaces away from public use, but the Parking and Traffic Safety Committee could look into this further.

Councilor Coviello asked if there has been any data collected regarding usership of this service. Councilor Smith stated as many as 90 cars on weekends and 30-50 during the week. Councilor

Coviello asked if this area has been observed during high usage times by city staff. Councilor Smith stated that Parking Operations Director Tom Cocchiaro monitors these areas.

Motion voted.

2. Budget Options Re: Retirement

Councilor Smith stated that we have always been good about controlling “spiking” in the budget operations and stated that his idea is to create a stabilization fund for retirement to level out the increase due to the reduction in the State contributions.

City Manager Bohenko stated that the NH Retirement Board sets the rate on a bi-annual basis and explained that the elimination of the subsidy from the State will have an affect on the budget. He stated that a stabilization fund will not work for this because there is no funding source which is different from the other stabilization fund for insurance which does have a funding source. He stated the Council could decide to proceed with this during budget discussions and make the policy decision to use uncommitted fund balance as a one-time entry to ease the impact on the tax rate for the next year. He stated if that is done, then you would need strict standards to what could be done the following year. He stated he would like to be able to give this more thought and involve the appropriate staff. He continued that there is no silver bullet to this issue and if the Council sets a policy to spread this out over the next 5-6 years, it cannot require future Councils’ to follow that policy. He stated this issue isn’t going away and does need to be handled.

Discussion ensued.

Councilor Smith moved to request the City Manager to report back with options to handle the anticipated increases due to Retirement costs, seconded by Councilor Kennedy. Motion passed 8-1, Councilor Coviello voted opposed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Mayor Spear asked City Manager Bohenko to address the City Hall hours issue mentioned by a speaker during the public comment session.

City Manager Bohenko explained that the city does account employees time with actual hours worked and not by ½ days or whole days. He stated we are tracking the activity of the extended hours at the front reception desk and feels that people are getting used to the new hours and like the extra hours offered on Monday night. He stated that we also stay open until 6:00 p.m. on the day back after a Monday holiday. He stated department heads and staff are often in the office after 1:00 p.m. on Fridays for meetings or other business and feels that there has been mostly positive reaction to the new hours. He concluded that the city hall hours policy is a pilot program and is reviewed every six months.

Councilor Kennedy stated she also has heard positive comments and feels that people are happy with the extended Monday hours.

Assistant Mayor Lister asked for a status updated on the Local Government Center (LGC) issue.

City Manager Bohenko explained that as a part of the continuing case with LGC, they have proposed to do a "holiday" month on insurance premiums as a way to pay back owed funds to communities. He stated that he has written a letter stating that he would prefer to receive a check instead of the "holiday" which he will put in the insurance stabilization fund. He stated there are other issues coming forward which he will bring to the Council when the time comes.

Councilor Novelline Clayburgh asked for an update of the Scrap Metal issue.

City Manager Bohenko explained that he has been documenting the complaints received and is forwarding them to the PDA once several have been accumulated and feels that the PDA staff has been highly responsive. He stated he appreciates Mr. Carroll's alerting him to the issues and he will continue to work with the PDA, Port Authority Director and citizens.

Councilor Thorsen stated that he and Councilor Dwyer did actually visit the Port early Saturday morning along with Deputy City Manager Allen while the ship was in port. He stated they asked many questions and came away with the fact that there are improvements to be made and that the Port Authority is willing to make them. He stated that there needs to be a policy set in place and clean-up issues need to be addressed. He stated this is a working port and we need to know what is coming in and going out into the world from this port. He stated he agrees that it was very loud.

Councilor Dwyer added that people will be glad to know that there is a storm water management system in place there now and also feels that documentation is important to share with the legislative delegation.

Councilor Kennedy wished everyone Happy Hanukah, Happy Kwanzaa and Merry Christmas.

Assistant Mayor Lister wished Councilor Smith Happy Birthday.

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

Councilor Novelline Clayburgh moved to adjourn at 8:40 p.m., seconded by Councilor Kennedy and voted.

Respectfully submitted:



Valerie A. French
Deputy City Clerk