

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, SEPTEMBER 3, 2013 TIME: 7:00PM

AGENDA

- 6:15PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS AND PERSONNEL MATTERS 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 – AUGUST 19, 2013

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS
 - A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS ARE HERE BY AMENDED AS FOLLOWS:
 - SECTION 10.531 – TABLE OF DIMENSIONAL STANDARDS – BUSINESS AND INDUSTRIAL DISTRICTS, MAXIMUM STRUCTURE DIMENSIONS – STRUCTURE HEIGHT, CBA 45’ OR 3 ½ STORIES, WHICHEVER IS LESS; CBB 45’ OR 3 ½ STORIES, WHICHEVER IS LESS;
 - SECTION 10.535 – EXCEPTION TO DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICTS, BY INSERTING A NEW SECTION 10.535.13: INCREASED BUILDING HEIGHT BY CONDITIONAL USE PERMIT
 - SECTION 10.1530 – TERMS OF GENERAL APPLICABILITY, ADD NEW TERMS AND DEFINITIONS
 - B. ORDINANCE AMENDING CHAPTER 7, VEHICLES, TRAFFIC AND PARKING – OMNIBUS ORDINANCE:
 1. AMEND: CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES, SECTION 7.601 TRUCK LOADING/UNLOADING ZONES ESTABLISHED

2. AMEND: CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES, SECTION 7.602 TRUCK LOADING/UNLOADING ZONES (24 HOURS)
3. AMEND: CHAPTER 7, ARTICLE II – TAXICABS, SECTION 7.224 TAXICAB STANDS
4. ADD: CHAPTER 7, ARTICLE III, SECTION 7.328 UTILIZATION OF MULTIPLE PARKING SPACES
5. AMEND: CHAPTER 7, ARTICLE IV: SECTION 7A.408 TAXICAB STANDS DESIGNATED
6. ADD: CHAPTER 7, ARTICLE III, LIMITED PARKING – THREE HOURS: SECTION 7.328: LIMITED PARKING – THREE HOURS
7. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS
8. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, LIMITED TIME PARKING, SECTION 7.327: LIMITED PARKING – TWO HOURS
9. AMEND: CHAPTER 7, ARTICLE IVA, BUS STOPS, TAXICAB STANDS AND HORSE DRAWN CARRIAGE AND ARTICLE IV, OFF-STREET PARKING AREAS
10. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS
11. AMEND: CHAPTER 7, ARTICLE IX, PENALTIES, FORFEITURES AND SEPARABILITY, SECTION 7.901: PENALTIES
12. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.321: SNOW EMERGENCY PARKING BAN
13. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.326: LIMITED PARKING – FIFTEEN MINUTES
14. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS, SECTION 7.401, DEFINITIONS

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from Novel Iron Works, Inc to the Police Department for the purchase of a new canine - \$7,500.00 (***Sample motion – move to approve and accept the donation from Novel Iron Works, Inc. to the Police Department, as presented***)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, are here by Amended as follows:
- Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45' or 3 ½ Stories, which ever is less; CBB 45' or 3 ½ Stories, which ever is less;
 - Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by Inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit
 - Section 10.1530 – Terms of General Applicability, add new Terms and Definitions
- B. Second reading of Proposed Ordinance amending various sections of Chapter 7, Vehicles, Traffic Parking Omnibus Ordinance

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A Letter from Alyssa Salmon, Big Brothers Big Sisters of the Greater Seacoast, requesting permission to close Pleasant Street on Saturday, June 21, 2014 from 3:00 p.m. – 6:00 pm. for the 4th Annual Stiletto Race (*Rain Date of Sunday, June 22, 2014*) ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Ellen Fisher, Pan Mass Challenge (PMC), requesting permission to hold the 7th Annual PMC Seacoast Kids Ride on Sunday, September 29, 2013 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Barbara Massar, Pro Portsmouth, requesting permission to hold the following 2014 Events:
- First Night Portsmouth 2014 – Tuesday, December 31, 2013
 - Children's Day 2014 – Sunday, May 4, 2014 from Noon – 4:00 p.m.
 - 37th Annual Market Square Day Festival & 10K Road Race – Saturday, June 14, 2014 from 9:00 a.m. – 4:00 p.m.
 - 12th Annual Summer in the Street – Saturday evenings – June 28, 2014; July 5, 2014; July 12, 2014; July 19, 2014; July 26, 2014; August 2, 2014 from 5:00 p.m. – 9:30 pm.
- (Anticipated action – move to refer to the City Manager with power)***

- D. Request for License from Dana Hanson, owner of Concetta's Closet for property located at 7 Commercial Alley for a projecting sign on a existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Dana Hanson, owner of Concetta's Closet for a projecting sign at property located at 7 Commercial Alley 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***

- E. Request for License from Carl Norwood, owner of NAI Norwood Group for property located at 22-28 Deer Street for a projecting sign on a existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Carl Norwood, owner of NAI Norwood Group for a projecting sign at property located at 22-28 Deer Street 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***

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Deborah Bouchard-Smith, Scarecrows of the Port Committee, requesting permission to place scarecrows in designated locations throughout the downtown area beginning Thursday, October 10, 2013 through Friday, November 1, 2013 (***Anticipated action – move to refer to the City Manager with power***)

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

1. Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:
 - 1.1 Public Hearing/Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards are here by Amended as follows:
 - Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45’ or 3 ½ Stories, which ever is less; CBB 45’ or 3 ½ Stories, which ever is less;
 - Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by Inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit
 - Section 10.1530 – Terms of General Applicability, add new Terms and Definitions (**Action on this matter should take place under Section IX of the Agenda**)
 - 1.2 Public Hearing/Second Reading of Proposed Omnibus Ordinance (**Action on this item should take place under Section IX of the Agenda**)

City Manager’s Items Which Require Action

1. Proposed Revisions Re: City Trees & Public Greenery Ordinance
2. Request of Players’ Ring Company to Renew their Lease with the City for 105 Marcy Street
3. Proposed Amendment Re: Taxi Medallions Ordinance
4. Polling Hours for November 5, 2013 Municipal Election

Informational Items

1. Events Listing
2. Trustees of Trust Funds Annual Report

B. MAYOR SPEAR

1. Appointment to be Considered:
 - Elizabeth A. Moreau to the Planning Board as a regular member
 - T. Stephen McCarthy – Reappointment to the Building Code Board of Appeals

C. COUNCILOR SMITH

1. Establishing Time Limits for Unmetered On-Street Parking – Chapter 7, Article X, Section 7.1000-E (***Sample motion – move to bring back ordinance for first reading at the September 16, 2013 City Council meeting***)

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

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


INFORMATIONAL ITEMS

1. Notification that the Planning Board Minutes of the August 1, 2013 meeting are available on the City's website for your review
2. Notification that the Zoning Board of Adjustment Minutes of the May 28, 2013 and June 18, 2013 Excerpt of Minutes are available on the City's website for your review

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: August 29, 2013
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on September 3, 2013 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.

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Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearings/Second Readings of Proposed Resolution and Ordinance Amendments:**

1.1 **Public Hearing and Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45’ or 3½ Stories, whichever is less; CBB 45’ or 3½ Stories, whichever is less, and Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit; Section 10.1530 Terms of General Applicability Add New Terms & Definitions.** As you will recall, at the August 19th City Council meeting, the Council held a Public Hearing on a proposed amendment to the Zoning Ordinance regarding building height in the Central Business district. At that time, the Council reviewed the report of the Planning Board, including recommendations for amendments to the original proposed Ordinance. The City Council voted to amend the proposed attached Ordinance as follows:

- (1) Change the maximum allowed structure height from 45 feet or 3 stories to 45 feet or 3½ stories in both the CBA and CBB districts;

- (2) Revise proposed Section 10.535.13, regarding the findings and criteria for granting a conditional use permit for increased building height;
- (3) Designate the Zoning Board of Adjustment as the body to grant a conditional use permit for increased building height, in place of the Historic District Commission as originally proposed; and
- (4) Add definitions for the terms “story,” “half story” and “story below grade plane.”

The Council then voted to hold a Public Hearing and Second Reading on the amended Ordinance at the September 3rd City Council meeting.

Prior to the public hearing, Rick Taintor, Planning Director, will make a presentation regarding this proposed Ordinance as amended.

The City Council may take the following actions:

- 1) *Move to make additional amendments to the Ordinance, or*
- 2) *Move to pass second reading, as presented, and schedule a third and final reading at the September 16, 2013 City Council meeting..*

Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Omnibus Ordinance.** As a result of the August 19th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the attached proposed changes to Chapter 7, Vehicles, Traffic Parking Omnibus Ordinances that were either implemented by the Parking and Traffic Safety Committee for piloting during the last year or are a part of ongoing improvements to the Vehicles, Traffic and Parking Ordinance and are forwarded to the City Council for approval as an Omnibus Ordinance annually. The changes are highlighted in red.

I would recommend that the City Council move to pass second reading and schedule a third and final reading on the proposed Ordinance, as presented, at the September 16, 2013 City Council meeting. Action on this matter should take place under Section IX of the Agenda.

Acceptance of Grants and Donations:

1. **Acceptance of Police Department Donation.** Attached under Section VIII of the Agenda is a memorandum, dated August 21, 2013 from John F. Golumb, Chairman of the Portsmouth Police Commissioners, and Police Chief Stephen J. DuBois, requesting that the City Council approve the following donation:
 1. A donation in the amount of \$7,500 from Novel Iron Works, Inc. for the purchase of a new canine.

The Police Commission is submitting this information pursuant to City Policy Memorandum #94-36 for City Council approval and acceptance.

I would recommend that the City Council move to approve and accept the donation to the Portsmouth Police Department, as listed. Action on this matter should take place under Section VIII of the Agenda.

Consent Agenda:

1. **Request for Licenses to Install Projecting Signs.** Attached under Section X of the Agenda are the following requests for projecting sign licenses (see attached memorandums from Rick Taintor, Planning Director):

- Dana Hanson, owner of Concetta's Closet for property located at 7 Commercial Alley.
- Carl Norwood, owner of NAI Norwood Group for property located at 22-28 Deer Street.

I would recommend the City Council move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director and, further, authorize the City Manager to execute the License Agreements for these requests. Action on this matter should take place under Section X of the Agenda.

City Manager's Items Which Require Action:

1. **Proposed Revisions Re: City Trees & Public Greenery Ordinance.** For your information, the Trees & Public Greenery Committee has been working with the City Attorney on revisions to the City Tree Ordinance. Peter Loughlin, Chairman of the Trees & Public Greenery Committee, is requesting that the City Council adopt this proposed Ordinance. For your information, the proposed Ordinance would replace the current Trees and Public Greenery Ordinance with the following:

1. The creation of a Trees and Public Greenery Committee consisting of nine (9) voting members primarily selected by the Mayor and City Council but with the addition of the City Manager, Tree Warden, Public Works Foreman in charge of tree maintenance or their respective designees, all ex-officio.
2. The Committee will advise and assist the City's Tree Warden (to be described below) with respect to virtually anything involving the, "City's Urban Forest". This function will include dealing with arborcultural, horticultural, aesthetic and public safety concerns as well as the preparation of an annual report summarizing all activity relating to the ordinance for the City Council.
3. The ordinance would create the position of "Tree Warden" who shall be a member of the City's administrative staff appointed by the City Manager.

4. The stated purpose of the ordinance is based upon the finding that, “the value of urban trees can hardly be overstated”.
5. An explicit responsibility of the City under the ordinance will be to:
 - a. Establish on public lands and public rights of way, as many trees as can be maintained in a suitable and aesthetically pleasing way.
 - b. Encourage the planting of trees that will represent a diversity of species and age classes and which are not invasive.
 - c. Regulate and enforce the planting and maintenance of trees on City property.
 - d. Establish limits on the amount of disturbance of trees that may take place on public property.
6. The Tree Warden created by the ordinance will be provided with, “responsibility for the enforcement of this ordinance and all applicable provisions of state law” this authority will include the authority to institute legal proceedings operating through the City’s Legal Department.
7. The Tree Warden will have both the authority and the duty to order, “trimming, spraying, preservation and/or removal of trees upon property owned or controlled by the City, or in any City right-of-way” in a manner consistent with the ordinance.
8. The ordinance will expressly prohibit planting, cutting, pruning or taking virtually any action with respect to trees located in any public right-of-way, public park or other public property without approval of the Tree Warden.
9. The ordinance will authorize persons to remove trees in the public right-of-way or public places, however, the action cannot be taken absent a permit issued by the Tree Warden after a public hearing to be held by the Committee.
10. An important new provision in the ordinance would be to authorize the Committee to enforce tree related provisions which may be placed on private property site plans or the public rights-of-way by the Planning Board.
11. Violations of the proposed ordinance would subject the violator to a fine of up to \$1,000.00 per violation and make that person liable to the City for all costs of replacing any damages to City property or any other damages allowable by law.

Attached is a copy of the proposed Ordinance which I would request the City Council bring forward for first reading at the September 16, 2013 meeting.

I would recommend the City Council move to bring back for first reading the aforementioned Ordinance, as presented, at the September 16, 2013 City Council meeting.

2. **Request of Players' Ring Company to Renew Their Lease with the City for 99-105 Marcy Street.** As you are aware, the City has leased the building at 99-105 Marcy Street to the Players' Ring Company for over 20 years. During that time, the City and the Players' Ring Company have entered into a series of leases, typically with a three-year term. As with many non-profits seeking funding through grants and donations, the Players' Ring approached the City requesting a longer term lease, in this case 10 years. The attached Agreement is similar to previous agreements in form with the exception of the 10-year term and inclusion of the requirement for a series of capital improvements to be made to the facility by the Player's Ring Company.

For consideration of a longer term lease, I have had my office work with the Public Works Department, the City Attorney and with the Players' Ring Company to develop a program of long-term capital improvements to be completed by the Players' Ring Company over the term of the lease. The total present estimated cost of the improvements is \$168,840. A list of the improvements, their estimated costs and completion dates is attached in the Agreement under Schedule A.

The City and Players' Ring Company have had a strong relationship over the years and this agreement will allow for a continued mutually beneficial relationship. Barbara Newton, the Executive Director of the Company will be attending the meeting and available to answer any questions regarding the agreement or their operation.

I would recommend that the City Council move to authorize the City Manager to execute a proposed ten-year lease renewal between Players' Ring Company and the City of Portsmouth for the use of 99-105 Marcy Street.

3. **Proposed Amendment Re: Taxi Medallions Ordinance.** Attached is a proposed Ordinance amending Chapter 7, Article II, Section 7.222 – Maximum Number of Taxicabs. At the Taxi Commission meeting of August 19, 2013, the Commission voted to request that the City Council consider an Ordinance amendment which would increase the number of available taxi medallions from 25 to 28. The rationale behind the request is:

- 1) That the demand for medallions either exceeds, or soon will exceed, the supply; and,
- 2) That citizens have been having difficulty locating a taxicab when needed particularly in the downtown.

I would recommend the City Council move to schedule first reading of the proposed Ordinance, as presented, at the September 16, 2013 City Council meeting.

4. **Polling Hours for November 5, 2013 Municipal Election.** Attached is a memorandum from Kelli L. Barnaby, City Clerk, recommending that the polling hours for the Municipal Election be set from 8:00 a.m. to 7:00 p.m.

I would recommend the City Council move to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Municipal Election on Tuesday, November 5, 2013.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on August 19, 2013. In addition, this now can be found on the City's website.
2. **Trustees of Trust Funds Annual Report.** Attached for your information is a copy of the Trustees of Trust Funds Annual Report, MS-9 and MS-10 for fiscal year 2013 ending June 30, 2013.