

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 17, 2014

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

At 5:45 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 Lister called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan, Spear and Thorsen

III. INVOCATION

Mayor Lister 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. Proposed Interim Space for Senior Programming – Recreation Director Rus Wilson and Senior Services Coordinator Brinn Chute

City Manager Bohenko said that Recreation Director Wilson and Senior Services Coordinator Chute will present the Interim Senior Programming Space.

Recreation Director Wilson reported in January of this year the City was notified by the Mark Wentworth Home that they would be closing the senior space at the Community Campus.

Senior Services Coordinator Chute provided a description of the space at the Community Campus located at 100 Campus Drive. She reported it is 2,400 square feet with 2 program rooms with connecting kitchenette and a front lobby, 2 offices are on site with restrooms and the furniture will be included which consists of tables, chairs, kitchenette appliances, 2 TV's, piano, onsite storage cabinets (not including office furniture, washer and dryer). She discussed the amenity list which is as follows:

- Outdoor walking trails, Courtyard Patio
- Tennis Courts, Outdoor Basketball Court, Softball Field, Multipurpose field
- Greenhouse, Raised flower gardens
- Gym, Art Room, Test kitchen, Game room with ping pong & pool tables
- Intergenerational opportunities with childcare center and New Heights
- Health & wellness connection with Families First

- Green Bean Café (in-house catering & public café)
- Senior Transportation and COAST bus both go to Community Campus

Ms. Chute indicated that the proposed start date for a soft opening is May 6th with a grand opening July 7th. She also reviewed a sample of the programming which would be provided.

Assistant Mayor Splaine moved that the Sub-Committee request the City Manager be authorized to enter into negotiations with Mark Wentworth Home and/or the Foundation for Seacoast Health for an interim senior programming space at the Community Campus location. Seconded by Councilor Lown.

Councilor Dwyer inquired about the transportation. Ms. Chute indicated that the transportation already goes to the Community Campus and COAST has a stop there as well.

Motion passed.

V. ACCEPTANCE OF MINUTES – JANUARY 6, 2014

Councilor Kennedy moved to approve and accept the minutes of the January 6, 2014 City Council meeting. Seconded by Councilor Shaheen and voted.

VI. PUBLIC COMMENT SESSION

Tom Carroll thanked the City Council for taking interest in the scrap metal operation. He said that the scrap metal is dangerous and spoke to the web page he has created entitled “Save our Working Port” and urged people to review the page.

Rich DiPentima thanked Mayor Lister for sending a letter to the Town of Newington last week regarding the Sea-3 project. He also thanked City staff and City Manager for attending the meeting in Newington last week. Mr. DiPentima addressed the dangers of this project and if there was a derailment how that would impact the City.

Bob Shouse spoke regarding the Conditional Use Permit and said the permit should remain. He said in some areas there may be a 60 foot height limit that would be appropriate. He further stated there is no ability to have a penalty in place currently for ignoring our regulations.

Bob Gibbons thanked the City Council for their participation in relation to the Sea-3 project. He spoke to the economic and quality of life impact this project would have on the City and said the City needs to strongly consider installing new crossing gates. He indicated that the cross gates would cost any where from \$185,000.00 to \$400,000.00 each.

Barbara DeStefano said only 4,000+ resident voted at the last election and that is out of 15,000 residents. She said it is not a mandate against development that is not all residents. The City Council needs to vote what is in the best interest for the entire City. She said she would caution against Assistant Mayor Splaine’s recommendation for a fee penalty for violation of land use boards.

Arthur Clough said residents that choose to challenge land use boards the, City staff are ignoring or having hostile treatment. The land use boards have too many long term members and notices are not being sent on time and the leadership of the City no longer serves the residents of the City.

Mark Brighton spoke regarding the incentives for the retirement of teachers and administrators recommended by the School Board. He said we lose experience with the retirements and we should not offer incentives for retiring early.

Clare Kittredge stated residents are concerned the City is not enforcing regulations and there is a civility issue with HDC members. She said the government needs to be transparent.

Joe Caldarola stated the process on when the City found out the land use violations by Portwalk is in question. He stated that Portwalk said they notified the City in December of changes. City Attorney Sullivan said he learned of the violations in late February. The City staff received the changes on February 14th. He stated residents need to be better informed. He spoke on the Sea-3 project.

Rick Becksted said he would like to serve the City on a Board/Commission. He said Portwalk broke a rule and there are consequences. He asked if there are any other bonds on the property other than the \$500,000.00 one being requested by the City for the violations. He said he feels that the \$500,000.00 bond is a bribe.

Paul Mannle spoke regarding process. He said Portwalk has put the City in a difficult place. Improving the design is not absolution, the penalty should be enforced.

Peter Loughlin said the City is experiencing significant development from residents and everyone would not like to see everything going forward in the City. He spoke to the hard work by the staff and boards for the City. He said there is a thorough in-depth review and process of developments in the City and this is the best in the State of New Hampshire.

Anthony DiLorenzo said he agrees with Attorney Loughlin and would not support the ordinance to eliminate the Conditional Use Permit.

Cate Jones spoke regarding the Conditional Use Permit and supports the ordinance for elimination. Buildings over 45 feet will affect the City and is in favor of good development. She does not feel the Portwalk project will be good for the City. The City Council needs to ask what Dorothy Vaughn would want for the historic preservation of the City.

Erik Anderson spoke in support of Assistant Mayor Splaine's item on derelict buildings in the City.

VII. PUBLIC HEARINGS

A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, SECTION 10.535 – EXCEPTIONS TO DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICT, WHICH WOULD ELIMINATE A CONDITIONAL USE PERMIT UNDER SECTION 10.535.13

Mayor Lister read the legal notice, declared the Public Hearing open and called for speakers. Planning Director Taintor spoke to a map and its affect of Character Base Zoning with Conditional Use Permit with the red boundaries for Character Based Zoning District. He spoke to the current height requirements for districts. He said the Planning Board is recommending amendments to the Conditional Use Permits.

Ralph DiBernardo spoke in support of the Ordinance and said he feels that there is a missing concept with Character Base Zoning. If Conditional Use Permit remains it would be outside the Form Based Zoning. The maximum height would become the norm over the two years of projects coming forward which is a partial list. Are any concessions worth the height of buildings? We need to be careful to maintain what we have.

Margaret O'Rourke spoke in favor of the Ordinance. She said that this is what the residents in the City want. The development in the City is enough and we need to be thoughtful with deciding what we want in the future.

Rick Chellman asked for caution, you are not voting for 45 feet or 60 feet. The City Council established the 45 feet limit. If the process needs to be rescinded you need to let designers know. He said the downtown all being 45 feet is not what we want for our downtown.

Doug Bates, Chamber of Commerce, said they are comprised of 80% small businesses and support the City. He said the Chamber wants to retain the Conditional Use Permit. There is a potential for a bad outcome if the Conditional Use Permit is eliminated. We would exclude many projects with the passing of the ordinance. He said the Conditional Use Permit needs to be a tool in our tool box.

Shari Donnermeyer thanked the City Council for their service and said the City Council is here to do what is best for the City. She spoke in opposition to the ordinance and the Conditional Use Permit needs to be allowed to work and there are many people that feel this way.

Kim Rogers said he owns Gary's Beverage and is looking at a redevelopment for the property. He said possibly for a parking garage. A restriction on building heights will have a negative impact on the City. In 2011 our downtown was voted best in the US. He stated this ordinance punishes developers for future properties.

Chris Thompson, HarborCorp developer, he read a letter to the City Council and discussed the development that HarborCorp is looking to do. He said they would like to build a conference center, parking garage, supermarket and 4 condos. The City supports the HarborCorp concept and HarborCorp feels the Conditional Use Permit is an excellent tool for projects. If the 45 feet is required there project cannot be built.

He said height is not a key concern but the quality of the building is more of a concern and HarborCorp has worked transparently with their project and they want to make this a great project. Mr. Thompson stated a vote in favor of the ordinance is a vote against the project.

Bob Marchewka, Economic Development Commission, submitted a letter from Chair Everett Eaton of the EDC, which indicates the EDC is in favor of keeping the Conditional Use Permit. The permit will allow for better design, higher quality buildings with potential for new parking. The EDC urged the City Council to keep the Conditional Use Permit. A great deal of discussion took place by the EDC on this matter and it was decided that the permit was in the best interest of the City.

Jeff Cassell said the younger generations are in favor of the Conditional Use Permit and developments. He said the northern tier is under utilized and bringing building heights under 45 feet will not help the City. He said the permit gives development opportunities for design.

Susan Denenberg asked developers to look at small projects. She spoke in support of eliminating the permit and said residents feel enough is enough. She stated that this is bidding wealthy residents against ordinary citizens.

Chris Hackett said he does not address the Council often and not all residents want to limit buildings to 45 feet. He would like to move closer to downtown this is not a majority of residents requesting the height limitation.

Jeff Mountjoy agrees with Mr. Hackett and Attorney Loughlin. He said land use boards in the City are second to none. He also supports comments made by Rick Chellman and owner of Gary's Beverages. The City Council and residents need to pay great attention to Chris Thompson of HarborCorp. Mr. Mountjoy said he is the type of developer we should work with. He said repeal the 45 foot limit and empower our land use boards. He feels we should jump on the train as there are people in other areas that would love to have the kind of development we have in the City.

Clare Kittredge spoke in support of the ordinance. She said that this would allow for a more pedestrian and bicycle friendly development in the City. The City is having trouble enforcing its own rules and she understands the Planning Board is recommending changes but feels it is too confusing.

Paul McEachern echoes comments of Attorney Loughlin and said he is here speaking for himself. He has lived here his entire life and the City is a place where people grow up and can come back to. He spent 40 years working downtown in the City and saw developments and changes throughout the years. He spoke to buildings in the City built years ago that are over 60 feet. He stated that this is not what majority of the City residents want.

Diane Gilbert would like to know more regarding the HarborCrop project. She would like to see a 3-D model of the project and feels it seems natural to want to limit height that could affect scale.

Joe Caldarola addressed HarborCorp and their vesting for the building the maximum out in all dimensions. HarborCorp has been vested with the design review process but there is a small possibility that it may not be vested. He spoke to the target number for a conference center and its potential impact on parking.

Jonathan Gilbert said he is shocked and horrified with the Portwalk project there is no comparison with the Popovers building. He stated he is in favor of the ordinance to repeal the Conditional Use Permit.

Dick Bagley said he has attended the last 2 Historic District Commission meetings and there are many opinions. He said the City Council needs to decide what they feel are right for the City of Portsmouth. He called into question the process not allowing input by residents before the land use boards or City Council members make decisions.

George Carlisle spoke strongly opposed to the ordinance and people are very concerned with development in the City. Residents are looking for buildings developed to look good, fit with the character of the City and increase the value for growth. He expressed concern of residents that some buildings might not be able to be built due to limiting the height to 45 feet. Mr. Carlisle indicated in the last 20 years every building built in downtown has brought tremendous public benefit to the City.

Kerry Vautrot said the problem is not height and repealing the Conditional Use Permit is not the solution. She supports the recommendation of the Planning Board and said significant scale items should be required. She feels that the Historic District Commission works hard and additional guidance is warranted.

Rick Becksted said the Conditional Use Permit will seriously close off 10 lots. The Central Business zone will change the City. We should extend the Central Business Zone outside what we have now. The City Council set in place 45 feet and Central Business Zone which began because of Portwalk. He feels the Conditional Use Permit is being taken advantage of.

Drew Shultis said the Conditional Use Permit should be retained limiting to 45 feet. He said 45 feet limits someone's creativity ability.

Steve Sanger – said height is irrational. McHenry Architects provided buildings can be higher than 45 feet with the development of Popovers. We could build something 75 feet that meets the vision of the City.

Gerry Zelin said there are many elements to the Conditional Use Permit. He feels the impact of the Conditional Use Permit has been over minimized. The current law defaults height in CBA and CBB districts. He spoke in support of the ordinance to eliminate the permit. He feels that the City is flying without instruments. The City Council should abolish the Conditional Use Permit with the understanding we would revisit after a reasonable period of time to address the Master Plan and come up with a vision for the northern tier and criteria to steer development in the north end.

Paul Mannle spoke in favor of the ordinance to eliminate Conditional Use Permit. He does not feel it was ever needed. He said with CB zone the Conditional Use Permit will become mute and only apply to a few lots. The repeal of the permit does not restrict building height. The permit just shifts the process from the Zoning Board of Adjustment to the Historic District Commission. He stated no one knows what the future holds and he feels the comments from Mr. Thompson that his project won't work with 45 feet; the Council could just exempt them from the ordinance. He questioned the amendments recommended by the Planning Board.

Susan Duprey, representing HarborCorp, said they are subject to a 4 point process. She stated the plans are not available but will be in the near future. She said HarborCorp is going to give you a quality project. She said some of the recommendations are trying to make the City Council a super Planning Board. The City needs to have respect for your boards. You cannot have a conference center on this side and make it profitable on this site at 45 feet it needs to be at 60 feet.

Gerry Zelin said the City can do adjustments with plans. He said HarborCorp has been in CBA district for years but their lot was moved into the CBB district. He only knows that Historic District Commission said don't show the plans until step 1 is completed but the developer could have come forward with sketches with an outside of the envelope of the building.

After three calls and no further speakers, Mayor Lister closed the public hearing. The public hearing closed at 10:10 p.m.

- B. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, INSERTING A NEW ARTICLE 5A – CHARACTER DISTRICTS (AKA FORM-BASED ZONING) AND FURTHER TO ADOPT THE ZONING MAP FOR THE CHARACTER DISTRICTS FOR THE MAPS REFERENCE IN SECTION 10.5A14.10 OF ARTICLE 5A

Mayor Lister read the legal notice, declared the public hearing and called for speakers.

Councilor Kennedy moved to suspend the rules to continue the meeting beyond 10:00 p.m. Seconded by Councilor Shaheen. Councilor Spear moved to amend the motion to continue the meeting to 11:00 p.m. which was agreed upon by the maker of the motion and passed.

Planning Director Taintor provided an overview of the CB zone development issues which are more than height. He reviewed the CB zone area that is made up of 80 acres and the project started 1 year ago and there was a detailed survey of the area. He spoke to the changes since November 2013 draft. He reviewed the main elements of proposed ordinance and regulating plan.

Councilor Kennedy asked Planning Director Taintor about the Planning Board recommended amendments outlined in the City Manager's memorandum. She would like to know the number of other communities that use CB zone and is concerned that our current zoning ordinance is at 45 feet.

Planning Director Taintor said they would never extend this to other areas of the City. This reflects what we currently have in place. He said another study would need to be done.

Councilor Kennedy said in the MRO it is 45 feet and we are now recommending 95 percent. Planning Director Taintor said we are defining the development around the City. Planner Cracknell said the MRO is currently 40% and is being recommended to 60%. The 60% reflects most property in the MRO. He said in reference to the other communities that use the CB zone is Dover, NH, Milford, NH, Lowell, MA, etc.

Rick Becksted said the building height map – special requirement heights presented at the Library in January, all the pink areas with maximum height of 60 feet was in blue they are not now and we are talking about transparency.

Planner Cracknell said the reason the Portwalk section here as Mr. Becksted has pointed out was blue in January and is now magenta because in the Planning Board meeting there was public concern about the area that still remains magenta on Congress Street that we had in January and last November in front of the City Council a minimum height of 4 stories for that section of Congress Street and there was significant comment given both from City Council and Planning Board and even in the meeting at the Library which included Mr. Becksted. He was very concerned about having such a high floor on the number of stories one would need to have on Congress Street because there are some 2 to 3 story buildings there. There was concern that if we actually pegged it for 4 to 5 stories as was originally drafted it would some how induce developers to tear down some of these historic structures and put in other types of buildings there because we are saying we want it so we amended the magenta here in Market Square with the 2 to 4 stories, 60 feet to respond to the communities concern and as a result it equals the exact below color that was on the legend for the Portwalk project which was 2 to 4 stories with 60 feet so there was no need to have the same color represent the exact same 2 to 5 stories building so that is why it was colored on Portwalk from magenta to blue there was no changing. He stated the change was from Market Square to Congress Street to drop it down from 2 to 4 stories.

Mr. Becksted said he is in favor of the ordinance.

Bob Marchewka submitted a letter from Economic Development Commission from Chair Everett Eaton. He read the letter into the record.

Joe Caldarola spoke in support of the ordinance. He said he is concerned with Congress Street and uncomfortable with that being 60 feet. He said it works because there is a large sidewalk in front of the building. The other side of the street on Congress Street from Popovers the sidewalk is much narrower and he would not be uncomfortable with that side being 60 feet.

Paul Mannle said the Planning Department has done yeoman's work on this matter. He said it would give a great deal of information. He said Market Square has two separate heights which concerned him. He feels that a Kline's situation could happen on the 55 Congress Street. He feels all of Market Square should be orange.

Dick Bagley said congratulations the public hearing is having a dialogue. He said Planner Cracknell did a great job presenting. He said some changes were made on State Street from the discussions. He spoke in favor of the ordinance and a big step forward. He said the City Council needs to move forward on this ordinance with design qualities that are in place.

Susan Denenberg said she is concern that we only spent 30 minutes on this ordinance. She does not feel that you have had adequate public discussion input because it is St. Patrick's Day. She urged the City Council to oppose the ordinance.

Gerry Zelin said he would like to have a change made to the wood siding on page 5A0-4. He said he feels wood siding would need to be used on the waterfront area. He does not feel we have received duly notice of other communities using CB zone. He said the list of communities was placed on the website on Friday. He said between now and third reading the public should be able to provide input on the ordinance.

Clare Kittredge spoke in favor of adopting amendments for areas losing special requirements.

After three calls and no further speakers Mayor Lister declared the public hearing closed.

Councilor Spear moved to suspend the rules in order to continue the meeting beyond 11:00 p.m. with action on the following agenda items and any other items that may require immediate action by the Council. The remaining items to be postponed to the April 7, 2014 City Council meeting:

- **VII. C. – Public Hearing on Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning;**
- **VIII. A. - Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13;**
- **VIII. B. - Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps reference in Section 10.5A14.10 of Article 5A;**
- **VIII. C. - Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning;**
- **IX. – Consent Agenda Items A-E:**
 - A. Request for Approval of Pole License to install 1 pole and 40' of underground conduit on Livermore Street for an electrical service to 32 Livermore Street;
 - B. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold the 5k "Out of Hibernation" Road Race on Saturday, April 12, 2014 at 8:00 a.m.;
 - C. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold a march for the observance of St. John's Sunday, June 22, 2014 at 9:00 a.m.;

- D. **2014 Omnibus Sidewalk Obstruction Renewals – See Attached Listings**
- E. **Letter from Matthew Raffio, Arthritis Foundation requesting permission to hold the Annual Jingle Bell Run on Saturday, December 13, 2014 at 10:00 a.m.**
- **X. - Letter from Chris Thompson, HarborCorp, LLC regarding Second Reading of Ordinance to Eliminate Conditional Use Permit**
- **XI. – City Manager’s Action Items:**
 - 1) **Proposed Release of Funds for African Burying Ground**
 - 2) **Proposed Borrowing Re: New Franklin School Energy Project**
 - 3) **Establish a Date and Time for Pan Am Railways to make a Presentation to the City Council**
 - 4) **Request for Approval on Teacher’s/Administrator’s Retirement Incentive**
 - 5) **Proposed Easement Re: Hill Street**
 - 6) **Request for Encumbrance License Re: 10 State Street**

Seconded by Assistant Mayor Splaine and voted.

- C. **ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, MISCELLANEOUS CONFORMING AMENDMENTS TO IMPLEMENT CHARACTER-BASED ZONING**

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

Mayor Lister passed the gavel to Assistant Mayor Splaine.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. **Second Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13.**

Mayor Lister moved to approve the Zoning Ordinance as proposed, by deleting Section 10.535.13, and schedule third and final reading for the April 7, 2014 City Council meeting. Seconded by Councilor Kennedy.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Councilor Dwyer said comments this evening were that the City cares about the peripheral areas as much as we care about the Form Based Zoning. In the mean time we protect the design and quality of the peripheral area. She said in other areas we continue the dialogue on design and quality.

Councilor Thorsen asked the City Manager if we will begin in other areas for Form Based Zoning after Form Based Zoning ordinance presented is adopted to get to the end point of the next process will end sooner. He asked what the time frame would be. Planning Director Taintor said approximately 9 months.

Councilor Thorsen said a 9 month period after we adopt Form Based Zoning. He said he was never in favor of the Conditional Use Permit from the beginning. He would like to develop the area with Form Based Zoning after the ordinance is in place. He would like to take away the Conditional Use Permit until we can get it better. He said he likes the idea for HarborCorp but does not want it developed under a height issue. Councilor Thorsen said he will vote in favor of the motion.

Councilor Lown thanked everyone that came forward to speak. In the end the City Council needs to do what is best for the City. He supports the Conditional Use Permit and provides discretion for land use boards. He said HarborCorp project will be a good thing for the City and feels we have not given the Conditional Use Permit a chance.

Councilor Shaheen said she would vote against the motion. She said we have a height limit for these areas already in place. The Conditional Use Permit is a tool to be used with great discretion. This is not about scale it is about a purpose and a tool for leverage of what is put in these places. She said this is not about HarborCorp or Gary's Beverage this tool allows us to work on a project and shape a purpose to benefit the entire City. A conference center has been part of the master plan for the last 10 years and we are risking turning a conference center into condos. She asked if we were willing to fight another 9 months for a location of a parking garage in the downtown.

Councilor Spear said we have right now a 45 foot building height. One speaker this evening said we need 45 foot buildings in the City with the occasional 60 foot building.

Councilor Morgan said the zoning ordinance should provide clarity and vision. She does not feel it has been qualified or quantified correctly or a strong criteria coming forward. She said repealing the Conditional Use Permit allows the dialogue of vision for the City. We need to move forward with a plan for the north area of the City.

Assistant Mayor Splaine said the dialogue has been great with discussions on the future of the City. He said we want to move forward and continue discuss over the next several months. He will support the motion with the intent to move forward with what kind of vision we want for the north end.

On a roll call 5-4, voted to approve the Zoning Ordinance as proposed, by deleting Section 10.535.13, and schedule third and final reading for the April 7, 2014 City Council meeting. Assistant Mayor Splaine, Councilors Kennedy, Morgan, Thorsen and Mayor Lister voted in favor. Councilors Shaheen, Lown, Dwyer and Spear voted opposed.

- B. Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps reference in Section 10.5A14.10 of Article 5A

Assistant Mayor Splaine moved to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the April 7, 2014 City Council meeting. Seconded by Councilor Morgan.

Councilor Dwyer said we have discussed this ordinance and the concepts are there. She said there are changes that should be discussed and we are at that time.

Councilor Shaheen said she will stay here until 3:00 a.m. or 4:00 a.m. She said she does not want to postpone this ordinance until April 17th.

Councilor Kennedy feels this is the most important matter being voted on this evening. She asked how the change brought forward by Attorney Zelin on the south side of Congress Street. She is concerned with the change in color on the map.

City Attorney Sullivan said Attorney Zelin's suggestion would require an amendment but Planning Director Taintor and Planner Cracknell need to review the proposal on the suggestions made.

Councilor Kennedy said she is uncomfortable moving forward on this ordinance. Councilor Spear said that this would not be the first time to allow the suspension of rules at third reading to make amendments.

Councilor Dwyer said if Attorney Zelin's change is really housekeeping the change could be made at third reading. She said she does not feel the documents were hard to find.

Councilor Lown said he agrees with Councilor Dwyer. We have debated the ordinance for a year and we know how we feel on this ordinance. He feels we should pass this tonight.

Assistant Mayor Splaine agrees Form Based Zoning should be passed. If we have support to suspend the rules to allow for an amendment at third reading he would withdraw his motion to post pone until April 17th we need to move forward.

Assistant Mayor Splaine withdrew the motion and Councilor Morgan the second to the motion.

Councilor Morgan said if Form Based Zoning is adopted could you tell how enforcement would be done.

Planner Cracknell said it is a different frame work. The process is similar as now. The Historic District Commission does not change. Planning Board and Site Review will continue. Staff will need to train land use board members and parking requirements remain but it will speed things up.

Councilor Morgan asked how much time it would take to train land use boards. Planner Cracknell said he does not have a training schedule now.

Councilor Kennedy moved to amend Map 10.5A21B – Special Requirements: Special Building Height Requirement Areas from Congress Street to Market Square on the northerly side from the color magenta that allows 2-4 stories with a maximum building height of 60' to the color orange that allows 2-3 stories with a maximum building height of 50'. Seconded by Assistant Mayor Splaine.

City Attorney Sullivan said he does not feel the motion is significant and amendments can be made.

Councilor Spear said that this is a low risk option to proceed with the Form Based Ordinance. He will vote against the motion.

Councilor Shaheen said she will vote opposed to the motion by Councilor Kennedy because she feels the amendment is significant.

Councilor Kennedy feels that this is enough of a concern and only effects one side of Congress Street and feels it is appropriate.

On a voice vote 2-7, motion to amend Map 10.5A21B – Special Requirements: Special Building Height Requirement Areas from Congress Street to Market Square on the northerly side from the color magenta that allows 2-4 stories with a maximum building height of 60’ to the color orange that allows 2-3 stories with a maximum building height of 50’ failed to pass. Councilors Kennedy and Morgan voted in favor. Assistant Mayor Splaine, Councilors Shaheen, Lown, Dwyer, Spear, Thorsen and Mayor Lister voted opposed.

On a unanimous roll call 9-0, voted to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the April 7, 2014 City Council meeting.

- C. Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning

Councilor Spear moved to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the April 7, 2014 City Council meeting. Seconded by Councilor Shaheen and voted.

Councilor Thorsen moved to suspend the rules in order to take up Items XI. A.2. – Proposed Borrowing Re: New Franklin School Energy Project and XI. A.4. – Request for Approval of Teacher’s/Administrator’s Retirement Incentive. Seconded by Councilor Shaheen and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 2. Proposed Borrowing Re: New Franklin School Energy Project

City Manager Bohenko said this would allow to bring back a Resolution for bonding New Franklin School Energy Project. The Resolution allows the borrowing and first reading would take place on April 7th.

School Business Administrator Bartlett said the School Department had \$90,000.00 left to replace a failed boiler at the New Franklin School this would allow complete energy improvement for the New Franklin School.

Councilor Lown moved to bring back for first reading the borrowing Resolution in an amount not to exceed \$400,000.00 for the New Franklin School Energy Project, as presented in the correspondence from Edward McDonough, Superintendent of Schools, dated March 5, 2014, at the April 7, 2014 City Council meeting. Seconded by Councilor Thorsen and voted.

4. Request for Approval on Teacher's/Administrator's Retirement Incentive

City Manager Bohenko said this is a retirement incentive for teachers and administrators and this has been done in the past.

Councilor Lown moved to approve the request to offer a retirement incentive to teacher's/administrator's, as presented. Seconded by Councilor Shaheen.

Councilor Thorsen said he is concerned with the program as to whether the individual would have retired anyway and if this is really an incentive.

Councilor Morgan said we heard from speakers on the loss of experienced teachers and we can not leave the students out of the equation.

Councilor Shaheen said we should trust the recommendation of the School Board and if someone is ready to retire should we keep them in the classroom.

Motion passed.

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Request for Approval of Pole License to install 1 pole and 40' of underground conduit on Livermore Street for an electrical service to 32 Livermore Street ***(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)***
- B. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold the 5k "Out of Hibernation" Road Race on Saturday, April 12, 2014 at 8:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold a march for the observance of St. John's Sunday, June 22, 2014 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- D. 2014 Omnibus Sidewalk Obstruction Renewals – See Attached Listings ***(Anticipated action – move to refer to the City Manager with power)***

- E. Letter from Matthew Raffia, Arthritis Foundation requesting permission to hold the Annual Jingle Bell Run on Saturday, December 13, 2014 at 10:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Lawn and voted.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Chris Thompson, HarborCorp, LLC regarding Second Reading of Ordinance to Eliminate Conditional Use Permit

Councilor Spear moved to accept and place the letter on file. Seconded by Councilor Kennedy and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Proposed Release of Funds for African Burying Ground

City Manager Bohenko said this is for funding of \$1.2 million for construction of the African Burying Ground Park.

David Moore said the trust requires the City Manager to authorize the spending.

Councilor Lown moved to authorize the City Manager to expend funds from the Trust up to \$1,200,000.00 for the construction of the African Burying Ground Memorial Park. Seconded by Councilor Spear and voted.

3. Establish a Date and Time for Pan Am Railways to make a Presentation to the City Council

Councilor Kennedy moved to authorize the City Manager to schedule a date for this presentation. Seconded by Councilor Lown and voted.

5. Proposed Easement Re: Hill Street

City Manager Bohenko outlined the request for the easement for utility on Hill Street.

Councilor Lown moved to authorize the City Manager to accept a utility easement from Hill-Hanover Group LLC. Seconded by Assistant Mayor Splaine and voted.

6. Request for Encumbrance License Re: 10 State Street

City Manager Bohenko asked the City Council to refer to the map. The City Manager outlined his comments and that there are 3 areas for the encumbrance.

Councilor Lown moved to authorize the City Manager to enter into a license with Ten State Street, LLC to facilitate construction activities at 10 State Street, which will include improvements to City land by Owner after completion of the project. Seconded by Councilor Spear and voted.

B. MAYOR LISTER

1. Appointments to be Considered:

- Judith Bunnell appointed to the Citizens Advisory Committee
- Steve Miller reappointment to the Conservation Commission
- Elissa Hill Stone reappointment to the Conservation Commission
- Allison Tanner reappointment to the Conservation Commission
- Amy Schwartz reappointment to the Portsmouth Housing Authority
- Stephen Philp reappointment to the Peirce Island Committee
- John Simon reappointment to the Peirce Island Committee
- Jackie Cali-Pitts reappointment to the Recreation Board
- Jason Boucher appointment to the Recreation Board
- Kathryn Lynch appointment to the Recreation Board

The City Council considered the appointment listed above and action will be taken at the April 7, 2014 City Council meeting.

2. Appointments to be Voted:

Councilor Spear moved to appoint R. Bruce Boley to the Library Board of Trustees until October 1, 2016 and appoint Jack Jamison to the Library Board of Trustees until October 1, 2016. Seconded by Assistant Mayor Splaine and voted.

Councilor Morgan requested the City Manager's Informational Item 3 – Informational Memorandum from Robert Sullivan, City Attorney Re: Portwalk be brought back for the April 7, 2014 City Council meeting.

The following items were postponed until the April 7, 2014 City Council meeting:

Assistant Mayor Splaine:

- Sea-3 Propone Proposal Update
- Creating A Fee Penalty Guideline for Violations of Land Use Board Approvals
- Status of Abandoned or Derelict Buildings

Councilor Morgan:

- Master Plan – Update of our Master Plan's Implementation Plan section, in anticipation of the 2015 Master Plan Review
- Portwalk – Request for Work Session to review:
 - a) enforcement
 - b) penalties
 - c) process and path forward: how we got here and what is the plan/process to prevent this from happening again
- Civility by City Officials

Councilor Thorsen

2. Legal Analysis regarding Financial Disclosures received from NHMA and suggested amendment language to Administrative Code The following items were postponed until the April 7, 2014 City Council meeting:

Assistant Mayor Splaine:

- Sea-3 Propone Proposal Update
- Creating A Fee Penalty Guideline for Violations of Land Use Board Approvals
- Status of Abandoned or Derelict Buildings

Councilor Morgan:

- Master Plan – Update of our Master Plan’s Implementation Plan section, in anticipation of the 2015 Master Plan Review
- Portwalk – Request for Work Session to review:
 - a) enforcement
 - b) penalties
 - c) process and path forward: how we got here and what is the plan/process to prevent this from happening again
- Civility by City Officials

Councilor Thorsen

- Legal Analysis regarding Financial Disclosures received from NHMA and suggested amendment language to Administrative Code

XII. MISCELLANEOUS/UNFINISHED BUSINESS

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

At 12:35 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Shaheen and voted.

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