

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 2, 2015

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER (7:00PM)

At 7:00 p.m., Mayor Lister called the regular City Council meeting to order.

II. ROLL CALL

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer (7:07 p.m.), Morgan, Spear and Thorsen

III. INVOCATION

Mayor Lister asked everyone to join in a moment of silent prayer in memory of Bob Hopley who recently passed away.

IV. PLEDGE OF ALLEGIANCE

Peter Bresciano led in the Pledge of Allegiance to the Flag.

Councilor Shaheen on behalf of the City Council would like to wish former Mayor Eileen Foley Happy 97th Birthday.

PRESENTATION

1. Taxi Commission Re: Proposed Ordinance – Peter Bresciano, Chair and Lawrence Cataldo, Taxi Commissioner

Peter Bresciano, Taxi Chair and Lawrence Cataldo, Taxi Commissioner provided a brief presentation on the proposed new Taxi Ordinance to be known as Transportation Services Ordinance. Commissioner Cataldo stated that the new definition under Transportation Services would include taxi, limousines and ride share vehicles. He said it was important to have a level playing field. He addressed the various transportation services that can be used for hire. Chair Bresciano said that this could be a win-win for Portsmouth by reducing regulations, identifying all for-hire drivers and less enforcement after startup is complete.

Assistant Mayor Splaine said that this ordinance is a way of regulating ride sharing services. He is concerned with the elderly and making sure that they are treated fairly with the deregulation of the fare structure.

Councilor Shaheen thanked the Commission for addressing this issue. She is concerned with the market pressures. Councilor Shaheen said the Council might want to set a maximum limit for pricing.

Councilor Thorsen spoke regarding the placement of the placard and whether it would be visible. Chair Bresciano said the placard would be visible.

Councilor Morgan asked how someone would file a complaint. Chair Bresciano said that has not changed. The person would write a letter to the Taxi Commission and submit the letter to the City Clerk's office for inclusion on the Taxi Commission Agenda.

V. ACCEPTANCE OF MINUTES – FEBRUARY 17, 2015

Councilor Spear moved to approve and accept the minutes of the February 17, 2015 City Council meeting. Seconded by Councilor Morgan.

Councilor Dwyer moved to correct the bottom of Page 8 to change her comment to read as follow: *“there is a well known social physiology strategy that you can make problems so large that we can't solve them and she is afraid we are in danger of doing that.”* Seconded by Councilor Spear and voted.

Main motion passed as amended.

VI. PUBLIC COMMENT SESSION

John Palreiro said do we need a business so arrogant that they need to have our ordinance amended to meet their needs. He expressed his opposition to the ordinance and suggested amending the ordinance to allow ride sharing and having companies comply with the existing ordinance as amended. He said he would support the use of a decal versus a placard on the vehicles.

Jerry Zelin requested the Council create a covenant for the Harborcorp project requiring that there would not be a casino put in place with the development.

Ryan Fallon, Somersworth, NH said that he worked during the recent snow storm and the surge price charged by UBER was \$2.17. He said that UBER would create a free market.

Merle White, Rye, NH and Anchor Taxi, said that UBER is not operating on a regular basis. He said an open playing field does not include the taxi owners having to pay \$6,000.00 for insurance.

Councilor Spear moved to suspend the rules in order to take up Item IX. A. – First reading of Ordinance amending Chapter 7, Article II – Taxicabs to be deleted in its entirety and replaced with a new Article II entitled – Transportation Services. Seconded by Councilor Kennedy and voted.

- IX. A. First reading of Ordinance amending Chapter 7, Article II – Taxicabs to be deleted in its entirety and replaced with a new Article II entitled – Transportation Services

Councilor Spear moved to accept the recommendation of the Taxi Commission, and further, authorize the City Manager to bring back for public hearing and second reading the proposed Ordinance at the March 16, 2015 City Council meeting, as presented. Seconded by Councilor Lown.

Assistant Mayor Splaine said that the city will make sure there is proper insurance, background checks are run, and that vehicles are properly inspected. He said between now and the public hearing there should be a way to protect residents and seniors.

Councilor Kennedy said the taxi owners brought up good points and she would like to see a decal on the outside of the vehicle. She said UBER is having difficulty with commercial insurance. She also stated the vehicles should have displayed passenger's rights.

Councilor Morgan said maybe we could put a mechanism in place to review the ordinance in a year to see how it is working.

City Attorney Sullivan said a stand by amendment could be created and he could have something available for the next Council meeting for the Council to consider at second reading.

Councilors discussed various amendments to the ordinance such as:

- Rights of individuals be posted inside the taxi
- Replace a placard with a decal
- 1 year review of ordinance by the City Council

Motion passed.

VII. PUBLIC HEARING

- A. RESOLUTION AUTHORIZING THE ISSUANCE OF REFUNDING BONDS TO REFINANCE CERTAIN OUTSTANDING BONDS OF THE CITY SO AS TO REDUCE INTERESTS COSTS, AND TO PAY ALL COSTS INCIDENTAL AND RELATED THERETO ASSOCIATED WITH THE OUTSTANDING PORTION OF THE CITY'S \$6,960,000.00 GENERAL OBLIGATION BONDS DATED AUGUST 1, 2005 (THE "REFUNDED BONDS"), THE CITY IS AUTHORIZED TO ISSUE REFUNDING BONDS IN THE AMOUNT OF UP TO THREE MILLION FOUR HUNDRED SIXTY THOUSAND DOLLARS (\$3,460,000.00) TO REFINANCE ALL OR ANY PORTION OF THE REFUNDED BONDS, AND TO PAY ASSOCIATED INTEREST COSTS, REDEMPTION PREMIUM AND ALL ISSUANCE EXPENSES ASSOCIATED THEREWITH, SUCH REFUNDING BONDS TO BE ISSUED BY THE CITY TREASURER, WITH THE APPROVAL OF THE CITY MANAGER, AND OTHERWISE IN ACCORDANCE WITH THE MUNICIPAL FINANCE ACT

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

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Police Department Grant and Donation:
- Acceptance of Grant from the NH Department of Justice to provide funding for the Police Department part-time Domestic Violence & Sexual Assault Victim Advocate - \$30,000.00

Councilor Kennedy moved to approve and accept the grant to the Portsmouth Police Department. Seconded by Councilor Morgan and voted.

Councilor Thorsen said we need to know what is attached to the grant when we accept them. Councilor Kennedy said we should know what the cost is of accepting these grants when they come before the Council.

- Acceptance of Donation from Mr. Richard Grossman in support of Police Explorer Cadets - \$20.00

Councilor Kennedy moved to approve and accept the donation to the Portsmouth Police Department. Seconded by Councilor Morgan and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- B. Adoption of Proposed Resolution Authorizing the Issuance of Refunding Bonds to Refinance Certain Outstanding Bonds of the City so as to Reduce Interests Costs, and to Pay all Costs Incidental and related thereto associated with the outstanding portion of the City's \$6,960,000.00 General Obligation Bonds dated August 1, 2005 (the "Refunded Bonds"), the City is authorized to issue refunding bonds in the amount of up to Three Million Four Hundred Sixty Thousand Dollars (\$3,460,000.00) to refinance all or any portion of the Refunded Bonds, and to pay associated interest costs, redemption premium and all issuance expenses associated therewith, such refunding bonds to be issued by the City Treasurer, with the approval of the City Manager, and otherwise in accordance with the Municipal Finance Act ***(Sample motion – move to adopt the proposed Bond Resolution of up to Three Million Four Hundred Sixty Thousand Dollars (\$3,460,000.00) to refinance the remaining portion of a callable bond issued August 1, 2005 and all related costs)*** *(The Refunding Resolution requires two readings and a public hearing with two-thirds vote of the City Council)*

Councilor Shaheen moved to adopt the proposed Bond Resolution of up to Three Million Four Hundred Sixty Thousand Dollars (\$3,460,000.00) to refinance the remaining portion of a callable bond issued August 1, 2005 and all related costs. Seconded by Councilor Lown and voted on a unanimous voice vote.

X. CONSENT AGENDA

- A. Letter from Cynthia Rybczyk, American Heart/Stroke Association, requesting permission to hold the Heart/Stroke Walk on Saturday, May 30, 2015 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Ken La Valley, American Foundation for Suicide Prevention, requesting permission to hold the Out of the Darkness Community Walk on Saturday, September 19, 2015 from 10:00 a.m. – Noon ***(Anticipated action – move to refer to the City Manager with power)***

Councilor Lown moved to adopt the Consent Agenda. Seconded by Councilor Kennedy and voted.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Nancy Elwell regarding the city leasing a portion of the Fairpoint Parking Lot on State Street/Islington Street for the residents of The Keefe House

Councilor Kennedy moved to refer to the City Manager for report back. Seconded by Councilor Shaheen.

City Manager Bohenko said we have been working with Fairpoint on this issue but it has been difficult while they were on strike.

The Council agreed that we need to help the residents of The Keefe House.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

1. Request from the Portsmouth School Department for First Reading of a Proposed Bond Resolution of up to Five Million Dollars (\$5,000,000.00) for Elementary School Improvements (Little Harbour School)

City Manager Bohenko said that these funds are for improvements to the Little Harbour School.

Assistant Mayor Splaine move to authorize the City Manager to bring back for first reading the proposed Bond Resolution, as presented at the March 16, 2015 City Council meeting. Seconded by Councilor Dwyer.

Councilor Spear said that there is concern with investing funds into this structure with the long term needs that also need to be addressed.

City Manager Bohenko said that the School Board will be available at the future meetings on this matter.

Motion passed.

2. Request to Renew Lease Agreement for Sons of Italy

Councilor Kennedy moved to extend the Lease Agreement with the Sons of Italy at One Plains Avenue, for a period of one year from April 1, 2015 through March 31, 2016. Seconded by Councilor Shaheen and voted.

3. Proposed Request for Public Hearing and Adoption of Resolutions for Use of Bond Premiums (*Resolution requires a Public Hearing and Adoption with two-thirds vote of the City Council*)

City Manager Bohenko said he provided in his memorandum what the premiums were and what we would be looking for, we could use bonds on the same project. He is proposing some work at City Hall, replacement of windows throughout the building and work to the brick façade.

Councilor Spear moved to authorize the City Manager to bring back for public hearing and action at the March 16, 2015 City Council meeting the aforementioned three Bond Premium Resolutions. Seconded by Councilor Shaheen and voted.

4. Work Session Re: Abandoned/Derelict Buildings

City Manager Bohenko said he would like to have the Work Session on March 16th prior to the next City Council meeting.

Councilor Shaheen moved to establish a Work Session on March 16, 2015 regarding abandoned/derelict buildings, as requested by Mayor Lister. Seconded by Councilor Spear and voted.

Informational items

1. Events Listing
2. Programmatic Needs Assessment Re: Municipal Complex
3. Bicycle Friendly Communities Application

Councilor Lown said 2½ years ago he suggested the City apply to be a bicycle friend community and was told we should take things step by step and now we just submitted the applications. He said Concord and Keene are bronze communities and we could be ranked higher which is exciting to him.

4. Reschedule of Planning Board Work Session Re: Master Plan Kick-off Process

City Manager said the Master Plan Kick-off meeting will be held on March 12, 2015 versus March 5, 2015 as originally planned.

Councilor Kennedy asked how the public would be involved in the Master Plan Kick-off and if they do not have involvement when it would be. City Manager Bohenko he would get that information back to the City Council.

5. Use of Restrictive Covenant to Prevent Development of HarborCorp Lot for Use as a Casino

Councilor Kennedy asked where we are at with the bill to possibly allow Keano. She said they are not prohibited in the zoning ordinance.

City Attorney Sullivan said Mr. Zelin shared the observation with him and he said we are concerned if circumstances change over time.

Mayor Lister asked how we could speed up the process. City Attorney Sullivan said City Manager Bohenko would provide the developer with the information of concerns from the Council.

Councilor Thorsen said we should bring a motion forward for the next meeting.

- 1) The zoning ordinance needs something to prohibit gambling;
- 2) If there is a land swap, that there is a covenant in place; and
- 3) Resolution urging Harborcorp to put restrictions in its deed

Councilor Dwyer said we do not want gambling in the City. Councilor Shaheen expressed concern with a precedent in granting a covenant. City Attorney Sullivan reported that the zoning ordinance does not allow for a casino now. He further stated that Attorney Zelin does not agree with this. He said we could suggest a proposal in the ordinance to create a definition that would be not included in the table of uses.

Councilor Morgan said she supports approaching the developer. She stated that we have done a great deal for this developer over the years.

City Manager Bohenko said for the next meeting he would work on adding a definition with City Attorney Sullivan and Planning Director Taintor. Councilor Morgan said she would like to include the idea of adding a covenant.

B. ASSISTANT MAYOR SPLAINE

1. Letter requesting a Resolution to the U.S. Supreme Court In Support of Marriage Equality (*Tabled from the February 17, 2015 City Council meeting*)

Assistant Mayor Splaine said he would come forward on April 6th with a Resolution for the City Council to act on.

C. COUNCILOR KENNEDY

1. How can the City of Portsmouth be more supportive of Small Business in our Community?

As we review the Budget I would like to be able to answer the following questions for my fellow residents:

Questions to Answer:

- What is the current number of small businesses in our Portsmouth Community?
- How does the City of Portsmouth communicate with our small business owners?
- Should the City be staffing the Visitor Kiosk on Market Street?
- Should the City's economic development supports set up a small business group to gather information about their current needs?
- How the City's economic development does supports work with organizations like Buy Local?
- Given that you can find Small Business in most of our neighborhoods. Has the Mayor's Blue Ribbon Neighborhood community discussed small business and the neighborhood's needs?

Councilor Kennedy said she would like to look at this for a budgetary need. She said she would like to know what we could do for small businesses. She said the Chamber of Commerce is doing a great job for the bigger businesses. Councilor Kennedy asked City Manager Bohenko to report back on these areas and should we put funds in the budget to support small businesses in the City.

Councilor Spear said in reading the questions the body that would be better equipped to answer the questions would be the Economic Development Commission (EDC).

City Manager Bohenko said the EDC does set goals and objectives annually and he would work with staff and the EDC and provide a report back to the City Council on this matter. City Manager Bohenko said to define small businesses would be 50 people or less. Councilor Kennedy said she feels small businesses would be 10 people or less. City Manager Bohenko said that there are probably 1,000 businesses with 10 or less employees.

Councilor Lown said the best thing we could do for businesses downtown is build a new parking garage.

Councilor Thorsen said the EDC is looking at small businesses on their agenda for Monday morning. City Manager Bohenko said that we could provide a comprehensive report back on this matter.

D. COUNCILOR LOWN

1. Parking and Traffic Safety Committee Action Sheet of February 12, 2015 meeting

Councilor Lown spoke to the handicap parking policy and the change is only for high occupancy spaces downtown. Councilor Kennedy said there is no way to tell where the spaces are located. City Manager Bohenko said we would work on publicizing this.

Councilor Lown moved to approve and accept the Action Sheet of the February 12, 2015 Parking and Traffic Safety Committee meeting. Seconded by Councilor Spear and voted. Assistant Mayor Splaine and Councilor Kennedy voted opposed.

E. COUNCILOR DWYER

1. Formal request for the Planning Board to prepare proposed amendments to the zoning ordinance to address short-term rentals by home owners. Based on the Council-Planning Board work session discussion of February 17th, the Planning Board could take into account discussion points that emerged, including at least:
 - a) Creating a definition that captures the short-term rental, perhaps a bed-breakfast 3 rather than attempting to force-fit one of current definitions;
 - b) Addressing in the definition the requirements for number of rooms, parking, length of stay, life safety plan, health-food inspections, registration with the City
 - c) Considering which current zoning districts can allow the rental by special exemption

Councilor Dwyer said the Work Session covered a great deal of material but we did not bring it to the next step. She said for clarity we need the Planning Board to take it to the next step with proposed amendments for the BNB and short term rentals. She said her suggestions are outlined above.

Councilor Dwyer moved to send these items as outlined to the Planning Board for response and prepare the necessary amendments to the zoning ordinance. Seconded by Councilor Spear.

Councilor Thorsen said he supports sending this to the Planning Board to get things started.

Motion passed.

F. COUNCILOR MORGAN

1. Impact Fees (*Tabled from the February 17, 2015 City Council meeting*)

City Manager Bohenko said that we will have a Work Session on this matter and we will bring in Mr. Mayberry as requested by Councilor Morgan.

G. COUNCILOR SPEAR

1. Election of Mayor and Council Candidates Proposed Charter Amendment
Request the following Information:

Ask the City Attorney to Report Back with the proper language for a Referendum allowing for Election of Mayor;

- Candidates would choose either to run for Mayor or run for Council;
- The statutory authority and responsibility of Mayor would remain unchanged and,
- This would take effect 2017

Councilor Spear moved to have the City Attorney report back with the proper language for a Referendum allowing for Election of Mayor; (1) Candidate would choose either to run for Mayor or run for Council; (2) The statutory authority and responsibility of Mayor would remain unchanged and, (3) this would take effect 2017. Seconded by Councilor Lown.

City Attorney Sullivan said he would prepare the Charter amendment and a public hearing on the amendment will need to be held by the City Council and then the Council could vote to place the question on the ballot.

Councilor Spear said that people want to see us elect our Mayor in this way. Councilor Thorsen said we could lose good people by this change to the election process. Councilor Kennedy said in some communities the Council selects who will be Mayor and she would like to see us do that. Assistant Mayor Splaine said he would oppose the motion and feels the City Council is the wrong venue for this. He said a Charter Commission should be created. Councilor Lown said all we are doing is moving the issue forward and holding a public hearing on the matter. He said the voters would make the decision on this question. Councilor Shaheen said she would support the motion and the voters would decide; the question is when the time would be right. Councilor Morgan said she would not support the motion. She feels we have a good system in place and is concerned that this could lead into a lot of money for candidates. She also stated that there needs to be a process to allow public dialogue on this matter.

On a roll call vote 5-4, motion passed. Councilors Shaheen, Lown, Dwyer, Spear and Mayor Lister voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Morgan and Thorsen voted opposed.

H. COUNCILOR THORSEN

1. Criteria for Measuring the Appropriateness of Council Resolutions (*See Attached Memorandum*)

Councilor Thorsen said he feels next time we have a Resolution come forward he offers his memorandum as a tool for others to follow.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Shaheen asked if we have a responsibility to have a protocol from the CDC in place regarding the detection of exceeded water standards for Total Trihalomethanes (TTHMs) in our water system.

Councilor Morgan would like the City Council to be informed on bills that the City will be taking a stance on at the State level on behalf of the Council. Councilor Morgan said she would like City Manager Bohenko to report back to the Council on how the bills would be handled in the future. Councilor Dwyer said she serves on the subcommittee for the legislative delegation and when there is a need to build consensus the committee approaches the entire City Council and there has been nothing that has risen to that level this year.

Councilor Kennedy requested a report back on the water situation. City Manager Bohenko said that we could try to get the State here to report on this matter.

Councilor Kennedy suggested that residents assist the City with cleaning out storm drains near their homes due to the upcoming weather forecast of rain.

XIV. ADJOURNMENT

At 10:00 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Lown and voted.

A handwritten signature in cursive script that reads "Kelli L. Barnaby".

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk