

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JUNE 15, 2015 TIME: 6:00PM

AGENDA

- **6:00 PM – WORK SESSION REGARDING SHORT-TERM VACATION RENTALS**

I. CALL TO ORDER (6:00 PM)

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

PRESENTATIONS

1. Introduction of George Bald as the new Chairman of the Pease Development Authority
2. Taxi Commission – Lawrence Cataldo

V. ACCEPTANCE OF MINUTES – MAY 18, 2015; MAY 20, 2015; JUNE 1, 2015 AND JUNE 8 2015

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

(There are no Items under this Section of the Agenda this evening)

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 7, by the addition of a new Article II – Transportation Services *(New Proposed Amended Language)*
- B. Third and final reading of Ordinance the Zoning Map by rezoning the following lots from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW):
 - Assessors Map 163, Lots 33, 34 and 37;
 - Assessors Map 165, Lots 1, 2 and 14;
 - Assessors Map 172, Lots 1 and 2;
 - Assessors Map 173, Lots 2 and 10;and including Cate Street between Hodgson’s Brook and Bartlett Street; and amending the Zoning Ordinance as follows:
 - Article 7, Section 10.730 – Gateway Planned Development:
 - Amend Section 10.734.20 – Lot Requirements, by establishing front yard standards relative to streets other than Lafayette Road;
 - Amend Section 10.734.33 by modifying the maximum building height standards;

- Insert a new Section 10.734.40 – Workforce Housing Incentives, to allow increased building height and building length, and to allow parking to be located in a required front yard or between a principal building and a street, for a Gateway Planned Development that contains 10% or greater workforce housing units.
- Article 15 – Definitions:
 - Amend Section 10.1530 – Terms of General Applicability, by inserting definitions of “workforce housing” and “workforce housing unit.”

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Approval of Donations to Portsmouth Police Explorer Cadet Post:
- Ms. Cheryl Halepis - \$19.95
 - Mr. & Mrs. Richard Salicito - \$20.00
 - Ms. Beth Wagner - \$20.00

(Anticipated action – move to approve and accept the donations to the Portsmouth Police Department, as presented)

- B. Letter from Donna Hepp, Granite State Wheelmen, Inc, requesting permission to hold the Seacoast Century Ride on Saturday, September 26, 2015 and Sunday, September 27, 2015 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Thomas Martin & Thomson Riley, Race Directors for Portsmouth Criterium, requesting permission to hold the Portsmouth Criterium event on Sunday, September 13, 2015 ***(Anticipated action – move to refer to the City Manager with power)***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

(There are no Items under this Section of the Agenda this evening)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

1. Second Reading of Proposed Ordinance:
 - 1.1 Ordinance amending Chapter 7, by the addition of a new Article II – Transportation Services ***(Action on this matter should take place under Section VIII of the Agenda)***
2. Third and Final Reading of Proposed Ordinance:
 - 2.1 Third and Final Reading of Proposed Ordinance the Zoning Map by rezoning the following lots from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW):

- Assessors Map 163, Lots 33, 34 and 37;
- Assessors Map 165, Lots 1, 2 and 14;
- Assessors Map 172, Lots 1 and 2;
- Assessors Map 173, Lots 2 and 10;

and including Cate Street between Hodgson’s Brook and Bartlett Street; and amending the Zoning Ordinance as follows:

- Article 7, Section 10.730 – Gateway Planned Development:
 - Amend Section 10.734.20 – Lot Requirements, by establishing front yard standards relative to streets other than Lafayette Road;
 - Amend Section 10.734.33 by modifying the maximum building height standards;
 - Insert a new Section 10.734.40 – Workforce Housing Incentives, to allow increased building height and building length, and to allow parking to be located in a required front yard or between a principal building and a street, for a Gateway Planned Development that contains 10% or greater workforce housing units.
- Article 15 – Definitions:
 - Amend Section 10.1530 – Terms of General Applicability, by inserting definitions of “workforce housing” and “workforce housing unit.” ***(Action on this matter should take place under Section VIII of the Agenda)***

City Manager’s Items Which Require Action:

1. Approval of Superintendent-Elect Steve Zadavec’s Employment Agreement
2. Request for First Reading Re: Proposed Ordinance for Eliminate Irrigation Meters from City Ordinance
3. Establish Work Session Re: Wastewater Treatment Facility Permit Compliance
4. Request for Sale of Surplus Water Meters
5. Request of Eversource Energy (fka PSNH) for Easements and Licenses on Hanover and High Streets and City Property
6. Renewal of Boarding House Permit Re: 21 Brewster Street
7. Land Donation to City of Portsmouth

Informational items

1. Events Listing
2. Project Update Re: Lafayette Road/Middle Street Bicycle Route
3. Report Back Re: Traffic Enforcement Initiatives in the City

B. MAYOR LISTER

1. Appointments to be Considered:
 - Vincent Lombardi to the Historic District Commission as a regular member
 - John Mayer to the Historic District Commission as an alternate member

C. ASSISTANT MAYOR SPLAINE

1. Consideration of Matters Relating to the Roberts Investigatory Panel Report
 - Police Commission Structure
 - Attorney General Monitoring
 - Whistleblowing Protections
 - Legal Options and Obligations Re: Roberts Investigatory Panel Report
(Sample motion – move that the City Council request City Attorney Bob Sullivan or an independent counsel to determine the legal options, rights, remedies and obligations that we have concerning the findings of the Roberts Investigatory Panel Report, and that such information be provided prior to the City Council meeting of Monday, July 13, 2015)

D. COUNCILOR SHAHEEN

1. *Doble Center

E. COUNCILOR LOWN & COUNCILOR DWYER

1. Report Back Fee Committee Re: Parking Rates ***(Sample motion – move to bring back for first reading at the July 13, 2015 City Council meeting a Proposed Ordinance amending Chapter 7, Article I, Section 7.1)***

F. COUNCILOR MORGAN & ASSISTANT MAYOR SPLAINE

1. Proposed Resolution Re: Civility

G. COUNCILOR SPEAR

1. Election of Mayor
2. *Charter Amendment Re: Police Commission
 - The Police Commission would cease
 - The Police Department would become a department under the City Manager
 - The Charter Amendment would become effective January 1, 2016
3. *Schedule a Special City Council meeting between June 29, 2015 – July 1, 2015 Re: Police Commission Charter Amendment

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

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

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. *Notification that the minutes of the April 16, 2015 and April 30, 2015 meetings of the Planning Board are now available on the City's website
2. *Notification that the minutes of the May 5, 2015 meeting of the Site Review Technical Advisory Committee are now available on the City's website


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: June 11, 2015

To: Honorable Mayor Robert J. Lister and City Council Members

From: John P. Bohenko, City Manager 

Re: City Manager's Comments on June 15, 2015 City Council Agenda

Work Session:

6:00 p.m.

1. **Short-Term Vacation Rentals.** As a result of the June 1, 2015 City Council meeting, on Monday evening there will be a Work Session on the proposed Ordinance regarding Short-Term Vacation Rentals. The discussion will look at the proposed Ordinance and make adjustments that deem appropriate by the City Council to bring back for first reading.

To assist with this discussion, staff have prepared the following attached materials:

1. The June 1, 2015, draft amendments to the Zoning Ordinance Table of Uses regarding Bed and Breakfasts and Short-Term Vacation Rentals, and an alternative draft dated June 15, 2015;
2. A one-page table summarizing the differences between the June 1 and June 15 draft amendments;
3. A set of maps showing the areas in which Bed and Breakfasts and Short-Term Vacation Rentals would be permitted under each draft amendment.

Presentations:

1. **Introduction of George Bald as the new Chairman of the Pease Development Authority.** On Monday evening, George Bald, the new Chairman of the Pease Development Authority, will introduce himself to the City Council.
2. **Proposed Transportation Services Ordinance.** Lawrence Cataldo, Member of the Taxi Commission, will make a presentation to the City Council on Monday evening, regarding the Proposed Transportation Services Ordinance.

Items Which Require Action Under Other Sections of the Agenda:

1. Second Reading of Proposed Ordinance.

- 1.1 **Second Reading of Proposed Ordinance Amending Chapter 7, by the addition of a new Article II - Transportation Services (New Proposed Amended Language).** Attached, under Section VIII of the Agenda, is a proposed [Transportation Services Ordinance](#) that has been brought forward for second reading by Assistant Mayor Jim Splaine also serving as Member of the Taxi Commission.

On Monday evening, Lawrence Cataldo, Member of the Taxi Commission, will make a presentation regarding the proposed Ordinance changes. It should be noted that there are substantive changes to this Ordinance from the original proposal.

Therefore, before passage of second reading, the City Council should establish a public hearing on this matter for your July 13, 2015 meeting. Further, second reading should be tabled until that time.

Move to amend the original Transportation Services Ordinance, and, further, to establish a public hearing on this matter at the July 13, 2015 City Council meeting. Action on this matter should take place under Section VIII of the Agenda.

2. Third and Final Reading for Proposed Ordinance.

- 2.1 **Third and Final Reading of Proposed Ordinance Amending the Zoning Map by Rezoning Lots Outlined in the Ordinance from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW) and including Cate Street Between Hodgson's Brook and Bartlett Street; and Amending the Zoning Ordinance Article 7, Section 10.730 Gateway Planned Development and Article 15 – Definitions.** As a result of the June 1st City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final reading the [attached proposed Ordinance](#) amending the Zoning Map by Rezoning Lots Outlined in the Ordinance from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW) and including Cate Street Between Hodgson's Brook and Bartlett Street; and Amending the Zoning Ordinance Article 7, Section 10.730 Gateway Planned Development and Article 15 – Definitions.

As you are aware, the Planning Board recommended the following amendments, which were voted on by the City Council at the June 1st City Council meeting:

- (1) The “workforce housing incentives” in the previous draft has been replaced by the new “modification of standards” language (item 2.C on page 2 of both versions) as discussed above; and

(2) A stand-alone definition of the term “affordable” has been added, where previously it was embedded in the definition of “workforce housing unit” (item 2.D on pages 2-3).

I recommend that the City Council move to pass third and final reading on the proposed Ordinance amendment, as presented. Action on this matter should take place under Section VIII of the Agenda.

Consent Agenda:

1. **Acceptance of Police Department Donations.** [Attached under Section IX of the Agenda is a memorandum](#), dated May 21, 2015, from John F. Golomb, Chairman of the Portsmouth Police Commissioners, and Police Chief Stephen J. DuBois, requesting that the City Council approve the following donations:
 - a) Donations: At the request of retired Chief David “Lou” Ferland, the following people have donated money equivalent to the purchase price of his book, “Historic Crimes & Justice in Portsmouth, New Hampshire,” to the Portsmouth Police Explorer Cadet Post:
 - \$19.95 from Ms. Cheryl Halepis
 - \$20 from Mr. and Mrs. Richard Salicito
 - \$20 from Ms. Beth Wagner

I recommend the City Council move to approve and accept the donations to the Portsmouth Police Department. Action on this matter should take place under Section IX of the Agenda.

City Manager’s Items Which Require Action:

1. **Approval of Superintendent-Elect Steve Zadavec’s Employment Agreement.** [Attached is a letter from Thomas Closson, City Negotiator, regarding the proposed Employment Agreement](#) between the Portsmouth School Board and Superintendent-Elect Steve Zadavec for a 34 month term running from September 1, 2015 and ending June 30, 2018 (see attached [Employment Agreement](#)).

Therefore, I recommend that the City Council approve the Employment Agreement between the Portsmouth School Board and Superintendent-Elect Steve Zadavec for a 34 month term running from September 1, 2015 through June 30, 2018.

2. **Request for First Reading Re: Proposed Ordinance to Eliminate Irrigation Meters from City Ordinance.** Chapter 11 Section 11.216:B of the City's Ordinance currently allows single-family residential water customers on the City's water and sewer system to have separate irrigation meters which are only billed for water usage:

Sewer user charges shall be based upon water use whenever possible. No allowance shall be made for watering lawns, watering gardens or washing cars, except for single residential customers who have installed at their cost a second meter, meeting the specifications determined by the Water Department to measure water use which is reasonably calculated not to be discharged into the sewer system. Where such second meters have been installed, a separate account will be established and no sewer charges will be applied to this usage. (Amended 11/17/97)

As part of the recent Water and Sewer Rate Study, the City's rate consultant, Municipal and Financial Services Group, Inc. (MFSG) reviewed various policy options for changing the City's rate structure. One of the options explored and brought forward to City Council would allow for the expansion of irrigation meters to other customer categories. The consultant recommended that the City not expand irrigation meter availability to multi-family and commercial customers as this would be inconsistent with the City's sustainability goals. This would also be contradictory to the City's recent implementation of water efficiency rebate programs. In addition, the City has recently been contacted by legal counsel representing a number of businesses that feel that the current ordinance treats them unfairly as it allows for second meters for single family residential properties only. Therefore, they may litigate to be able to have second meters installed for irrigation the same as our residential customers.

MFSG's analysis showed that if second meters were allowed to be expanded to multi-family and commercial properties, sewer rates would have to be increased anywhere from 10 to 15% due to the potential loss of metered sewer revenue (\$1.4 to \$2.1 million/year). This could result in an annual increase of \$117.00 for an average residential customer using 5 units of water per month.

The current high demand of water in our water supply system has also highlighted the impact that irrigation is having on the City's water system. Recent water demands show that irrigation can increase our water demand by 50%. Expanding irrigation meters to a larger customer base would likely increase this demand more. Again, this is inconsistent with the City's sustainability goals.

There are currently 300 irrigation meters in our water system. These customers paid the cost to re-plumb their irrigation systems from their existing water plumbing to provide a separate water line for this usage. They also paid the City for the meter, radio and labor to install the meter, at a total cost of \$258.00 (based on a 5/8 inch meter) per customer. If Council votes to eliminate irrigation meters from the system, it would be recommended to reimburse each customer \$300.00 for the cost they paid to the City for the installation and not remove the meter from the property, however, charge both meters for water and sewer usage and charge only one monthly service fee.

Therefore, City staff recommend that the City Ordinance allowing for second meters for irrigation be eliminated.

I recommend the City Council move to authorize the City Manager to bring back for first reading a proposed Ordinance to eliminate irrigation meters at the July 13, 2015 City Council meeting.

3. **Establish a Work Session Re: Wastewater Treatment Facility Permit Compliance and a Special City Council Meeting.** As a result of the June 1, 2015 City Council meeting, I am requesting the City Council establish a Work Session for Monday, June 29, 2015 at 6:00 p.m., in the Eileen Dondero Foley Council Chambers, regarding the Wastewater Treatment Facility Permit Compliance and a Special City Council Meeting, if needed.

I recommend the City Council move to establish a Work Session at 6:00 p.m. on Monday, June 29, 2015 regarding the Wastewater Treatment Facility Permit Compliance and a Special City Council meeting, if needed..

4. **Request for Sale of Surplus Water Meters.** The City currently has 5/8” to 6” in size, old water meters with a total weight of 6,560 pounds. These water meters were removed from service beginning in December 2013 up to the current date.

These water meters are outdated, and it is the opinion of the Water Department that their only value is as scrap metal. The bundled value is believed to be of more than \$500.00.

According to City Ordinance Section 1.505, any sale of property valued at or over \$500.00 must be authorized by the City Council and may be conducted by competitive bidding, public auction, or any other means authorized by a 2/3 vote of the City Council.

As in the past, we have disposed of the surplus equipment through a sealed bid process in which the equipment is sold to the highest bidder.

I would recommend the City Council authorize the City Manager to proceed with the sale of the surplus water meters, as recommended.

5. **Request of Eversource Energy (fka PSNH) for Easements and Licenses on Hanover and High Streets and City Property.** At its meeting on May 4, 2015, the City Council voted to refer to the Planning Board for report back the [attached request from Eversource Energy](#) for easements and licenses for a proposed Hanover/High Street Underground Improvement Project. Also, [attached are aerials provided by the Department of Public Works](#).

The proposed project includes relocating existing overhead utility lines along Hanover and High Streets and the alleyway between Hanover and Ladd Streets, and placing the utilities underground. In addition, the project will include placement of transformers and switchgear in front of the parking garage along Hanover Street and in the alley beside the garage. This project will increase reliability of the electric distribution system in this area of the downtown, and will also enhance aesthetics. The Planning Board reviewed this request at its meeting on May 21, 2015,

and voted unanimously to recommend in favor of granting the required easements and licenses, subject to final project design approval by the Department of Public Works.

The Department of Public Works has reviewed this request and recommends granting the required easements and licenses.

I recommend the City Council move to grant the easements and licenses to Eversource Energy as recommend by the Planning Board and Department of Public Works, and, further, authorize the City Manager to execute all necessary documents.

6. **Renewal of Boarding House Permit Re: 21 Brewster Street.** Pursuant to Chapter 9, Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit for the boarding house located at 21 Brewster Street, along with a Consent Decree, Rental Agreement, Code of Conduct and Certificate](#) regarding summary eviction which were approved by Judge Marguerite L. Wageling on May 28, 2015 in the matter of the City of Portsmouth v. Brian D. Hogan, Trustee, The Brian D. Hogan Revocable Trust of 2008 and Bach Realty, LLC, Rockingham County Superior Court Docket No. 218-2014-CV-0035.

As you may recall, the City Council did not renew the permit for 21 Brewster Street in March of 2014 and the City brought a Complaint for Permanent Injunctive Relief to Abate a Public Nuisance against the Brian D. Hogan Revocable Trust of 2008, Brian D. Hogan Trustee and Bach Realty, LLC on March 21, 2014.

The lawsuit was filed to address health and building code violations and the effect of residents' behavior on the neighbors. After the lawsuit was filed, the City, through its Building, Health and Fire Departments, conducted several inspections of the property. These inspections revealed the need for improved pest control treatment for bed bugs, fire safety code violations and problems with the electrical service. The City's Building, Fire and Health Departments worked with the Legal Department to negotiate with the Owner to resolve these issues as set forth in the [attached Consent Decree](#). The Owner's failure to comply with the terms of the Consent Decree will result in a finding of contempt.

The City and the Owner also reached agreement on a summary eviction process which will enable the Owner to immediately remove tenants who violate the [revised Rental Agreement and Code of Conduct attached hereto](#). The Rental Agreement was reviewed by the Islington Creek Neighborhood Association. The Owner will complete the [attached Certificate to document the ground for summary eviction under 353:3-c](#). A copy of the Certificate will be given or shown to the Portsmouth Police Department before the resident is removed from the property.

I recommend the City Council move to approve the Boarding House Permit for 21 Brewster Street from the date of issuance until March 31, 2016, incorporating the Consent Decree and accompanying documents approved by the Court.

7. **Land Donation to City of Portsmouth.** Attached please find a letter from Michael J. Decristofaro, Trustee of the Michael J. Decristofaro Revocable Trust 2015, requesting the City accept a piece of land located along the abandoned PanAm rail corridor near the Rye Town line. This property, known as Map 296 Lot 2, is 6.6 acres in size. The parcel is a mix of upland and wetland and is adjacent to other City owned parcels (see attached plan).

I recommend the City Council move to refer this request to the Planning Board for a report back to the City Council.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on June 1, 2015. In addition, this can be found on the City's website.
2. **Project Update Re: Lafayette Road/Middle Street Bicycle Route.** For your information, attached is a memorandum from Juliet Walker, Transportation Planner, regarding the Lafayette Road/Middle street Bicycle Route Project Update.
3. **Report Back Re: Traffic Enforcement Initiatives in the City.** For your information, attached is a letter from Chief Stephen DuBois, regarding traffic enforcement initiatives in the City as requested by Councilor Morgan.