

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JULY 13, 2015

PORTSMOUTH, NH
TIME: 7:00PM

At 6:30 p.m., an Anticipated "Non-Meeting" with Counsel was held regarding the School Clericals Contract.

I. CALL TO ORDER

At 7:05 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 (via conference call), Morgan, Spear and Thorsen

III. INVOCATION

Mayor Lister asked everyone to join in a moment of silent prayer.

IV. PLEDGE OF ALLEGIANCE

Joey Giordano, Parking and Transportation Manager led in the Pledge of Allegiance to the Flag.

PRESENTATIONS

1. Edward McDonough, Superintendent of Schools

Superintendent of Schools McDonough was presented by Mayor Lister, City Manager Bohenko and City Council with a City of Portsmouth chair in recognition for his years of service to the City with well wishes in his new endeavor. Superintendent of Schools McDonough accepted the chair and well wishes with thanks and appreciation.

V. ACCEPTANCE OF MINUTES – JUNE 15, 2015

Councilor Shaheen moved to accept and approve the minutes of the June 15, 2015 City Council meeting. Seconded by Councilor Lown.

On a unanimous roll call vote 9-0, motion passed.

VI. PUBLIC COMMENT SESSION

Mayor Lister announced he would allow 2 minutes per speaker.

Joseph Toolan, Andover, MA, brought forward a petition to bring consumer testing corporation in Portsmouth. He explained the process of testing vendors and would like the City to establish a consumer testing corporation.

Bob Shouse spoke on making some of the major streets 2-way in the City and feels this is a waste of funds. He stated that the City is already pedestrian friendly and making 2-way streets is not what the City needs.

Bess Mosley spoke opposed to the elimination of a Police Commission and would favor the increase of 5 members of the Police Commission with the Mayor and City Manager. She also expressed her opposition to a civilian review board.

Alain Jousse spoke opposed to the elimination of the Police Commission. He supports a 5 member Police Commission that would elect its members.

Becky McBeath spoke in support of amendment #4 proposed by Assistant Mayor Splaine to expand the Police Commission to 5 members to include the Mayor and City Manager and a civilian review board.

Michael Frandzel said he supports Assistant Mayor Splaine's amendment. He said the Police Commission is there to represent the Police Department.

Steve Little spoke in support of AirBNB and short term vacation rentals in the City. He spoke to the funds that come into the City to boost the economy with the short term vacation rentals. He said we all are living in a different City because that is Portsmouth now.

Anthony DiLorenzo spoke regarding the west end zoning and how nothing has happened in many years. He said we need to recognize the City Council makes a decision on how it is zoned. He would like the City Council to recognize the ideas brought forward through the charrettes.

Peter Somssich thanked Mayor Lister for the petition he signed for the Mayor's for Peace. He said it has been signed by 7,000 cities and the only other City in New Hampshire to sign is Concord, NH. The petition is to put an end to nuclear weapons.

Bill St. Laurent spoke on purchasing property on Banfield Road by the City for recreation. He said it would cost \$270,000.00 and the City should not spend the money to purchase this property.

George Dempsey said the Roberts Report is a real concern and asked why criminal charges have not been filed as of yet.

Leonore Weiss Bronson spoke regarding the expansion of Lonza at the Tradeport. She said the expansion is for pharmaceuticals which mean chemicals and that is a concern for the City. She said the City needs to look into this before Lonza is allowed to make the expansion. She also addressed the large amount of traffic on Woodbury Avenue.

Joe Onosko a letter was read by Mr. Onosko in support of Assistant Mayor Splaine's amendment for the Police Commission.

Jeffrey Cooper spoke in favor of AirBNB and said his home should be permitted as a second residential property to allow for short term vacation rentals. He said he and his wife would like to get out from under the cease and desist order on their property which is preventing them from having short term vacation rentals in their home. He further asked the Zoning Board of Adjustment allow for AirBNB as a secondary use.

Michele Duval read a letter from her neighbors supporting her property being used as an AirBNB – short term vacation rental. She is concern what impact this would have on her if the use is no longer allowed.

Joann Lepure said she owns her home and does rent her home to nice people on AirBNB. She said without the AirBNB she would not be able to keep her home.

Arthur Clough said he submitted a letter via email to the City Council and wanted it to be on the agenda which it is not. He said he would be resubmitting his letter for the August 3rd City Council meeting.

Erik Anderson spoke regarding derelict buildings and that they continue to be a problem with some properties. He said that this is blight issue and would like the City Council to address the matter and property in his neighborhood.

Paul Mandle asked the City Council to postpone third reading of the Frank Jones property. He would like the City Manager to look into purchasing the property. He said there is no reason for the City to not purchase the parcel.

Rick Becksted said he concurs with Mr. Mandle's comments. He spoke to the charrettes held on that end of the City and the City could solve problems if it were to purchase this land. The City Council will receive a bond premium which is money we can use towards CIP projects. He spoke in support of voting on the CIP projects this evening.

Tammy Gewehr spoke in support of AirBNB which has been a positive experience for her. She said the AirBNB's are wonderful and allow others that may not be able to come to the City the ability to come and visit.

VII. PUBLIC HEARINGS

[NOTE: Public Hearings A, B, C and D each concern proposed Charter Amendments on which the City Council will vote whether or not to place the question on the ballot for referendum vote on November 3, 2015. Per RSA 49-B: 5, alternative statements of single amendments are prohibited from referendum vote. For any Charter Amendment to be adopted it must pass by at least 3/5 of the ballots cast at the municipal election.]

- A. PROPOSED CHARTER AMENDMENT #1 WHICH WOULD ALLOW FOR THE MAYOR TO BE AN ELECTED POSITION WITH THE CANDIDATES FOR MAYOR BEING LIMITED TO THOSE PERSONS WHO ARE ALSO CANDIDATES FOR THE CITY COUNCIL

Mayor Lister read the legal notice, declared the public hearing open and called for speakers. He announced he would allow individuals 2 minutes to speak the first round and 5 minutes for the second round of speakers.

The following individuals spoke in favor to the amendment:

Harold Whitehouse
Beth Margeson

The following individuals spoke opposed to the amendment:

Paul Mannle
Ralph DiBernardo (opposed to all items considered for the ballot)
Rick Becksted
Bill St. Laurent (spoke twice)
Ruth Griffin (opposed to any amendments to the Charter)
Martha Fuller Clark
Erik Anderson

With no further speakers, Mayor Lister closed the public hearing.

Councilor Spear moved that subject to state review required by RSA 49-B:5 proposed Charter Amendment #1 to be placed on the ballot for the November 3, 2015 elected. Seconded by Councilor Lown.

Councilor Spear said he heard from many voters that are frustrated with the current system. He explained his reason for bringing this forward.

Councilor Kennedy said she has heard from people that are not in favor of this change. She said both former Executive Councilor Griffin and State Senator Clark are not in favor of the change. She said she would not support the proposal as the people have spoken and are against the change.

Councilor Lown said there is no better way to find out what people want then to let the people decide and this matter should be on the ballot.

Assistant Mayor Splaine said he is conflicted on this matter. The advantage of this is being on the City Council. He said he never wanted to be the Mayor he is a legislator first and there is nothing better than being a City Councilor.

Councilor Thorsen said he enjoys being on the City Council and the sense of community. The City Council works and runs as a team when the City Council becomes elected. He said he supports a Charter Commission.

Councilor Dwyer said this is an issue of neutrality. She said the speakers said that this comes up in our history that the voters want to weigh in on. She said it is something voters ask themselves about the election process.

Councilor Morgan said she agrees with many of the points raised. She said a change in the way we elect our City Council will bring partisanship and more interest groups. She said we need to let the public be heard and not once did she hear that this change was needed.

Councilor Shaheen asked the City Attorney if any of this would call into question our form of government and the dynamic between Mayor and City Manager. City Attorney Sullivan said it states the Mayor functions would not change. She said there is a fundamental difference between being Mayor and being a City Councilor. She said she would like to hear from the people.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said he respects everyone's voice on this matter. He said we are only talking about what would be placed on the ballot.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

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.

- B. PROPOSED CHARTER AMENDMENT #2 WHICH WOULD EXPAND THE MEMBERSHIP OF THE POLICE COMMISSION FROM THREE (3) MEMBERS TO FIVE (5) MEMBERS BY THE ADDITION OF THE MAYOR AND THE CITY MANAGER OR THEIR RESPECTIVE DESIGNEES

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

The following individuals spoke in favor to the amendment:

George Remick
Bill Downy
Harold Whitehouse (spoke twice)
Ralph DiBernardo
Paul McEachern (spoke twice)
Joe Plaia

The following individuals spoke opposed to the amendment:

Paul Mandle
Rick Becksted (spoke twice)
Arthur Clough (spoke twice)
Ruth Griffin
Jane Zill (spoke twice)
Erik Anderson
Bill St. Laurent

With no further speakers, Mayor Lister closed the public hearing.

- C. PROPOSED CHARTER AMENDMENT #3 WHICH WOULD ELIMINATE THE POLICE COMMISSION SO THAT THE POLICE DEPARTMENT WOULD BE ADMINISTERED UNDER THE COUNCIL/MANAGER FORM OF GOVERNMENT IN THE SAME MANNER AS ANY REGULAR CITY DEPARTMENT AND WHICH WOULD PROVIDE THE CITY COUNCIL WITH AUTHORITY TO CREATE A CIVILIAN POLICE REVIEW BOARD BY ORDINANCE TO INVESTIGATE COMPLAINTS BY MEMBERS OF THE PUBLIC CONCERNING MISCONDUCT OF POLICE OFFICERS

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

Assistant Mayor Splaine said that this amendment would abolish the Police Commission and put the Police Department under the City Manager and create an ordinance for a civilian review board. City Attorney Sullivan said that is correct.

The following individuals spoke in favor to the amendment:

Jane Zill

The following individuals spoke opposed to the amendment:

Martha Fuller Clark
Joe Plaia
Richard Katz
Arthur Clough

With no further speakers, Mayor Lister closed the public hearing.

- D. PROPOSED CHARTER AMENDMENT #4 WHICH WOULD EXPAND THE MEMBERSHIP OF THE THREE (3) MEMBER POLICE COMMISSION TO FIVE (5) MEMBERS BY THE ADDITION OF THE CITY MANAGER AND A MEMBER TO BE SELECTED BY THE CITY COUNCIL AND WHICH WOULD PROVIDE THE CITY COUNCIL WITH AUTHORITY TO CREATE A CIVILIAN POLICE REVIEW BOARD BY ORDINANCE TO INVESTIGATE COMPLAINTS BY MEMBERS OF THE PUBLIC CONCERNING MISCONDUCT OF POLICE OFFICERS

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

Assistant Mayor Splaine said this amendment differs from the first amendment consider and allows for the City Council to select a 4th member with the City Manager and a civilian board.

The following individuals spoke in favor to the amendment:

Jane Zill (spoke twice)
Martha Fuller Clark
Arthur Clough
Bill Downy
Richard Katz

The following individuals spoke opposed to the amendment:

Joe Plaia
George Remick
Bess Mosley
Rick Becksted

With no further speakers, Mayor Lister closed the public hearing.

Councilor Lown moved that subject to state review required by RSA 49-B: 5 proposed Charter Amendment #3 be placed on the ballot for the November 3, 2015 election. Seconded by Councilor Spear.

Councilor Lown said most people do not want to move any amendments forward. He said amendment #3 eliminates the Police Commission and the solution is not to increase the size of the Commission the solution is to eliminate the Commission. The system is structurally unsound.

Assistant Mayor Splaine said this is the worst step to take because it is eliminating the Police Commission and places it under the City Manager. The Manager should be 1 of 5 and that is what this would do. He said we need more civilian oversight.

Councilor Kennedy asked City Attorney Sullivan if the City Council or Mayor Lister have a right to put anyone on administrative leave. City Attorney Sullivan said no the City Council does not have that authority.

Councilor Kennedy said she believes there needs to be some citizen oversight. She said she does not agree with items B & C and questions whether she can vote for any of these proposals.

Councilor Dwyer spoke to the idea of a citizen review board and their responsibilities. She said she has brought this forward for the last 10 years which show there is something structurally wrong and we need to change the procedures and structure.

Councilor Thorsen asked City Attorney Sullivan if the Police Commission fall under the same right to know laws for the creation of non-meetings and agenda's. City Attorney Sullivan responded affirmatively. Councilor Thorsen said he would like to see a 5 member Commission. He asked if City Attorney Sullivan attends all Police Commission meetings. City Attorney Sullivan said he attends Police Commission meetings when he is asked to be there.

Councilor Spear spoke to the Roberts Report. He said removing the Police Commission would increase oversight. He said if the City Council was in charge you would see the Council being active and increasing citizen oversight would allow for review by the Council. He said he would like to support item C, there is no leash on the Police Commission at this time. If this does not pass he would reserve the right to act on the other suggested amendments.

Councilor Morgan provided a spreadsheet to City Clerk Barnaby of people that have sent emails on Assistant Mayor Splaine's items. She does not support the ability to remove the rights of voting for the residents. She feels the City Manager should have a seat at the table.

On a roll call vote 3-6, motion failed to pass. Councilors Lown, Dwyer and Spear voted in favor. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Morgan, Thorsen and Mayor Lister voted opposed.

Mayor Lister called a brief recess at 10:45 p.m. Mayor Lister called the meeting back to order at 10:55 p.m. He said we would complete the public hearings and votes on the charter amendments and then recess until next Monday, July 20th at 7:00 p.m. Councilor Kennedy said she would like there to be a public comment session at the July 20th City Council meeting.

Assistant Mayor Splaine moved that subject to state review required by RSA 49-B:5 proposed Charter Amendment #4 be placed on the ballot for the November 3, 2015 election. Seconded by Councilor Morgan.

Assistant Mayor Splaine spoke in favor of this amendment.

Councilor Lown said he prefers item 2 over item 4.

Councilor Spear said he would vote opposed.

Councilor Shaheen said she would vote in favor to have this as an option. She said the residents need a way to respond as this is the most egregious act of mistrust and we need to fix what is structurally wrong with the Police Department.

Councilor Kennedy asked what the role of the City Manager would be with this amendment. City Attorney Sullivan said the City Manager would be a regular voting member of the Commission and the City Council would vote on a person to serve if this was 5 elected members and the City Council would have 2 votes.

Councilor Thorsen said City Manager Bohenko and the City Council would have full voting rights. He said the investigation of police officers is narrow.

Assistant Mayor Splaine said when we are creating the ordinance for a civilian review board in making changes could they be amended at that time.

Councilor Kennedy said if this motion loses she would bring forward a motion to create a Charter Commission.

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

Councilor Spear moved that subject to state review required by RSA 49-B:5 proposed Charter Amendment #2 be placed on the ballot for the November 3, 2015 election. Seconded by Councilor Shaheen.

Councilor Spear feels this moves the City Council in the right direction.

Assistant Mayor Splaine said he was afraid this would happen if the last vote failed he would need to vote on this motion. He stated he does not like the provision for the City Manager or designee to serve. He said he would rather see the City Manager and not a designee. Assistant Mayor Splaine said he feels the same way when it comes to the Mayor serving. He said he would like to see a term limit and that could be amended and done later. He said we need change in the Police Commission and the Police Department.

Councilor Morgan said she could not support this because there is not a civilian review board and the terms of service are very vague.

Councilor Thorsen said he would support the motion with the flaws. He said he feels we need a Charter Commission to deal with changes.

Councilor Kennedy said she is in a debate mode and feels this is a great stop gate and we need to have a Charter Commission.

Councilor Shaheen said she is comfortable moving forwarding and voting on this matter. She said she feels we need to take action now and we need a Charter Commission. Councilor Shaheen said she would like to work with Councilor Kennedy on bringing a Charter Commission forward.

Councilor Dwyer said this is not perfect but we need to take action.

Assistant Mayor Splaine said he would like to see a strong vote on this matter and that we accept the best we can get.

On a roll call vote 8-1, motion passed. Assistant Mayor Splaine, Councilor Shaheen, Kennedy, Lown, Dwyer, Spear, Thorsen and Mayor Lister voted in favor. Councilor Morgan voted opposed.

At 11:25 p.m., Councilor Kennedy moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Seconded by Councilor Shaheen.

On a unanimous roll call vote 9-0, motion passed.

- E. ORDINANCE AMENDING CHAPTER 7, ARTICLE II – TAXICABS BY DELETING ARTICLE II IN ITS ENTIRETY AND REPLACE WITH A NEW ARTICLE II ENTITLED TRANSPORTATION SERVICES (NEW PROPOSED AMENDED LANGUAGE) (*Tabled from the June 15th City Council meeting*)

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

Individuals who spoke in favor of the Ordinance:

Joanne Pipkin (spoke twice)
Jim Merrill, UBER Representative (spoke twice)
Paul Kennedy (spoke twice)

Individuals who spoke opposed to the Ordinance:

Merle White, Anchor Taxi (spoke twice)
John Palerlio, Great Bay Taxi (spoke twice)
Joe Plaia, One Sky Community
Rick Szilagyi, NE Livery Association
Peter Bresciano

With no further speakers, Mayor Lister closed the public hearing.

Assistant Mayor Splaine moved to amend the motion and request the Taxi Commission report back by November 15, 2015, on the status of the ordinance and any changes that may be necessary. Seconded by Councilor Spear.

Assistant Mayor Splaine said the Taxi Commission has tried to get this to allow for ride sharing. He said he would not vote for UBER as an employee. He said this is a safety issue as well. Assistant Mayor Splaine said ride sharing is the technology of the future.

Councilor Kennedy said that this is an important matter and asked if the Police Department would have a copy of the background checks. City Attorney Sullivan answered affirmatively. She expressed concern regarding insurance and that UBER be required to have insurance and provide proof of insurance acceptable by the City Attorney before UBER is allowed to operate.

Councilor Morgan said she agrees with Councilor Kennedy's concerns on this matter. She clarified that taxi cabs would be the only vehicles allowed in a taxi stand. City Attorney Sullivan said that is correct. City Attorney Sullivan said the way to determine taxi cabs from UBER vehicles in taxi stands would be that the taxi cabs would keep the medallions for 1 year and then we would develop another mechanism to distinguish the difference between the two vehicles.

Councilor Thorsen feels there needs to be various definitions as part of the ordinance.

Councilor Dwyer said she would support the ordinance but there's still a great deal of questions that need answers. She said we should treat this as a pilot allowed for 1 year and trigger a review at the 1 year mark.

Councilor Shaheen asked what process the Council would need to place this for an automatic review and the City Council could bring that up with the new Council in the New Year. City Attorney Sullivan said the ordinance could be amended with the ordinary process. Councilor Shaheen said she is comfortable bringing forward a request for a review by the Council in 3 – 4 months.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said a great deal of time was spent getting people to follow the rules. He said this is a difficult business to be in. He said he is concerned with public safety of all residents. Mayor Lister said it seems that the Police Department and with all of the Taxi Commission meetings, that the City is doing all the heavy lifting, not UBER. He said we have rules and we need to follow the rules. He is not trying to keep UBER out of the City and does not feel that UBER is meeting the City half way.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

On a roll call vote 6-3, amendment passed. Assistant Mayor Splaine, Councilors Shaheen, Lown, Dwyer, Spear and Thorsen voted in favor. Councilors Kennedy, Morgan and Mayor Lister voted opposed.

On a roll call 6-3, voted to pass second reading with the new proposed amended language of the ordinance with third and final reading at the August 3, 2015 City Council meeting, as amended. Assistant Mayor Splaine, Councilors Shaheen, Lown, Dwyer, Spear and Thorsen voted in favor. Councilors Kennedy, Morgan and Mayor Lister voted opposed.

At 12:45 a.m., Councilor Kennedy moved to reconvene the City Council meeting on Monday, July 20, 2015 at 7:00 p.m. Seconded by Councilor Shaheen.

On a unanimous voice vote 9-0, motion passed.



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