

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: TUESDAY, SEPTEMBER 8, 2015 TIME: 6:30PM

AGENDA

- 6:30PM - ANTICIPATED "NON-MEETING" WITH COUNSEL RE: PROPERTY NEGOTIATIONS – RSA 91-A:2, I (b).

I. CALL TO ORDER (6:30PM)

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

PRESENTATION

1. Update of Gateway and Islington Street Project – Nancy Carmer, Economic Development Manager and Peter Rice, Director of Public Works

V. ACCEPTANCE OF MINUTES *(There are no minutes on for acceptance this evening)*

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARING

A. ORDINANCE AMENDING CHAPTER 10 AS FOLLOWS:

- (1) AMEND SECTION 10.440, TABLE OF USES, BY ADDING A NEW USE #10.30 – SHORT-TERM VACATION RENTAL”, MODIFYING THE STANDARDS FOR USE #10.50 – “HOTEL OR MOTEL”, AND COMBINING “CONFERENCE HOTEL” AND “CONFERENCE CENTER” INTO A SINGLE USE;
- (2) INSERT A NEW SECTION 10.837.20 – SHORT-TERM VACATION RENTALS;
- (3) AMEND ARTICLE II – SITE DEVELOPMENT STANDARDS TO ESTABLISH AN OFF-STREET PARKING REQUIREMENT FOR SHORT-TERM VACATION RENTAL; AND
- (4) AMEND ARTICLE 15 – DEFINITIONS, BY REVISING THE DEFINITIONS OF “BED AND BREAKFAST” AND ADDING NEW DEFINITIONS FOR “SHORT-TERM VACATION RENTAL” AND “TRANSIENT”

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant for Household Hazardous Waste Collection (***Sample motion – move to accept and expend a \$5,801.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manger to execute any documents which may be necessary for this grant contract***)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Annual Omnibus Ordinance Change, Parking and Traffic
- B. Second reading of Ordinance amending Chapter 10 as follows:
 - (1) Amend Section 10.440, Table of Uses, by adding a new use #10.30 – Short-term vacation rental”, modifying the standards for use #10.50 – “Hotel or motel”, and combining “conference hotel” and “conference center” into a single use;
 - (2) Insert a new Section 10.837.20 – Short-Term Vacation Rentals;
 - (3) Amend Article II – Site Development Standards to establish an off-street parking requirement for short-term vacation rental; and
 - (4) Amend Article 15 – Definitions, by revising the definitions of “Bed and Breakfast” and adding new definitions for “Short-term vacation rental” and “Transient”

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Zhana Morris, The Music Hall, regarding Parking Meter Permit Requests for the Music Hall’s 2015-2016 Season (***Anticipated action – move to refer to the City Manager with power***)

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Attorney Francis Bruton, III of Bruton, LLC, regarding Nathan Aviezri Revocable Trust’s request to unmerge lots at 75 Monroe Street (***Sample motion – move to refer to the Planning Director for report back***)
- B. Letter from Gerald Zelin regarding Proposed Zoning Amendments Regulating Short Term Rentals, hotels, and motels by adding a prohibition on gambling at hotels and motels
- C. Letter from James and Catherine Lamond regarding Short-term Vacation Rentals and Bed and Breakfasts Proposed Amendments to the Zoning Ordinance
- D. Letter from Attorney Bernard Pelech regarding Restroatioin of involuntarily merged lots – RSA 674:39aa – 65 Mendum Avenue

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

- 1. Consideration of First Reading of Proposed Ordinance:
 - 1.1 First Reading of Annual Omnibus Ordinance Change, Parking and Traffic (***Action on this item should take place under IX of the Agenda***)

2. Public Hearing/Second Reading of Proposed Resolutions and Ordinances:

- 2.1 Public Hearing/Second Reading of Proposed Ordinance amending Chapter 10, Section 10.440, Table of Uses – Short-Term Vacation Rentals and Other Lodging Uses (**Action on this item should take place under IX of the Agenda**)

City Manager's Items Which Require Action:

1. Request to Refer to the Planning Board Proposed Easements for a Bicycle/Pedestrian Path Along North Mill Pond
2. Report Back Re: Request from Patricia L. Russell and Burton J. Russell for Restoration of Involuntarily Merged Lots at 65 Mendum Avenue under RSA 674:39-aa

Informational items

1. Events Listing
2. Update on Haven School Playground
3. Master Plan Update
4. Report Back Re: Police Department Recommendations
5. Report Back Re: Whistleblower

B. MAYOR LISTER

1. Appointments to be Considered:
 - Appointment of Richard Winstanley to the Cable Television and Communications Committee
 - Appointment of Jolanda Fannin to the Library Board of Trustees filling the expired term of Jody Record until October 1, 2015
 - Reappointment of Ernie Greenslade to the Library Board of Trustees
 - Reappointment of Ronald Cypher to the Parking & Traffic Safety Committee
 - Reappointment of Frederick (Ted) Gray, Jr. to the Parking & Traffic Safety Committee
 - Reappointment of Harold Whitehouse to the Parking & Traffic Safety Committee
2. Appointments to be Voted:
 - Kathleen Bergeron to the Citywide Neighborhood Steering Committee
3. *Topics for Work Sessions:
 - September 14th – Options Re: Irrigation Meters
 - November 23rd – Solid Waste & Recycling
4. *Request to Change Retreat Date from October 3, 2015 to January, 2016
5. Discuss Letter from Attorney General – Charter Questions

C. ASSISTANT MAYOR SPLAINE

1. *Proposal for An Elected Charter Commission (**Postponed from August 17, 2015 City Council meeting**)
2. *Mayors For Peace – Presentation (**Postponed from August 17, 2015 City Council meeting**)

D. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the July 9, 2015 meeting (***Postponed from August 17, 2015 City Council meeting***) (***Sample motion – move to approve and accept the minutes of the July 9, 2015 Parking & Traffic Safety Committee meeting***)

E. COUNCILOR SPEAR

1. Prescott Park Stage Relocation (***Sample motion – move to authorize the City Manager to proceed with the land use reviews regarding the Prescott Park Arts Festival’s proposed stage relocation and concurrently conduct a strategic plan for the long-term use of Prescott Park to include all appropriate stakeholders***)
2. Request to Extend Report Back from Blue Ribbon Committee on Sagamore Creek Land until December 21, 2015

F. COUNCILOR THORSEN

1. Short Term Rental

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

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

**Indicates Verbal Report*


INFORMATIONAL ITEMS

1. *Notification that the minutes of the July 21, 2015 and July 28, 2015 meetings of the Board of Adjustment are now available on the City’s website
2. *Notification that the minutes of the July 8, 2015 meeting of the Conservation Commission are now available on the City’s website
3. *Notification that the minutes of the June 10, 2015 and July 1, 2015 meetings of the Historic District Commission are now available on the City’s website
4. *Notification that the minutes of the July 16, 2015 meeting of the Planning Board are now available on the City’s website
5. *Notification that the minutes of the August 4, 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: September 3, 2015
To: Honorable Mayor Robert J. Lister and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on September 8, 2015 City Council Agenda

6:30 p.m. Non-meeting with counsel regarding property negotiations in accordance with RSA 91-A:2,I (b).

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Presentation:

1. **Update of Gateway and Islington Street Project.** As requested by the City Council, on Tuesday evening, Nancy Carmer, Economic Development Program Manager and Peter Rice, Public Works Director, will give an update on the Market Street Gateway and the Islington Street Project.

Acceptance of Grants and Donations:

1. **Acceptance of Grant for Household Hazardous Waste Collection.** As you are aware, \$40,000 has been committed from the Water & Sewer Enterprise Fund for two household hazardous waste collection events in the FY '16 budget.

Household hazardous waste collection events help protect our water supply and reduce the potential of hazardous waste being dumped or inappropriately disposed of. In the interest of protecting public health and ensuring household hazardous waste and unwanted household hazardous products are disposed of in an environmentally sound manner, the City has been hosting the collection event for more than thirteen years. Over 200,000 gallons of hazardous waste have been properly disposed of during this time. An average of 675 families take advantage of the collection events every year.

In the spirit of being a good neighbor, the City also offers the services to residents of Newington and Greenland. The expenses are shared between the communities on a prorated basis - per vehicle per community.

A grant in the amount of \$5,801.00 from the Department of Environmental Services (DES) has been applied for and is available to the City to assist in managing the cost of these events. This grant would supplement the City funds proposed in the FY '16 budget ([see attached grant agreement](#)).

I would recommend the City Council move to accept and expend a \$5,801.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Action on this matter should take place under Section VIII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. First Reading of Proposed Ordinances.

1.1 First Reading of Annual Omnibus Ordinance Change, Parking and Traffic.

As a result of the August 17th City Council meeting, under Section IX of the Agenda, I am bringing back for first reading the [attached proposed annual omnibus set of ordinances recommended by the Parking and Traffic Safety Committee](#). This year's omnibus changes are detailed on the [attached sheets](#), and address changes to on-street spaces and update wording to reflect current conditions.

By way of background, On March 29, 2000, the City Council adopted Ordinance #4-2000 under Chapter 7, Article 1, Section 7.103 of the Vehicles, Traffic and Parking Ordinance. This ordinance was adopted in order to be more responsive to the changing parking needs of the downtown. Before its adoption, it often took three readings of the City Council to simply change a parking space from a two-hour time restriction to a 15-minute one. This process would often take four to six months to complete.

The current ordinance authorizes the Parking Traffic and Safety Committee to recommend temporary parking and traffic regulations to the City Council for its approval in the form of its monthly meeting minutes. Once the Council approves these minutes, the temporary regulations are in effect for a period not to exceed one year. During that year the Council and the public have the benefit of seeing how a temporary regulation works before adopting it as a permanent change to the parking ordinance. These temporary regulations are presented at one time to the Council for its consideration.

The [attached amendments to Chapter 7, Vehicles, Traffic and Parking](#) for the Council's consideration summarize the temporary parking regulations implemented by the Parking and Traffic Safety Committee between June 13, 2014 and June 11, 2015, as well as updates to reflect current conditions.

In addition, [attached is a summary](#) of the number of new parking spaces created and lost by the annual proposed Omnibus Ordinance change, which lists the ordinance changes and their impact on parking spaces. Further, other changes in the downtown area that affected parking spaces, but were not part of the omnibus ordinance, are included for informational purposes.

As shown in this attachment, the Ordinance changes result in the loss of ten on-street spaces year round. This represents approximately 1 percent of the total 783 on-street spaces in the downtown area. Twenty-eight additional on-street metered spaces are lost due to development projects. However, the HarborCorp project will include the construction of a 523 space parking garage, of which 70 to 170 spaces are projected to be available to the public during typical peak demand of the HarborCorp site. These additional private spaces offset the loss of 40 on-street parking and with the exception of special events will add a net of 30 to 130 spaces.

City staff will be available to answer any questions the City Council may have regarding this matter.

I recommend the City Council move to pass first reading and schedule a public hearing and second reading of the attached proposed Ordinance, at the September 21st City Council meeting, as presented. Action on this matter should take place under Section IX of the Agenda.

2. **Public Hearing/Second Reading of Proposed Ordinance.**

2.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 10, Section 10.440, Table of Uses - Short-Term Vacation Rentals and Other Lodging Uses.** As a result of the August 17th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading [the attached proposed Ordinance regarding Short-Term Vacation Rentals and Other Lodging Uses.](#)

At the June 15th City Council Work Session, there was a general consensus that Short-Term Vacation Rentals should only be allowed in the central business district and the Islington Street corridor, and that Bed and Breakfasts should only be allowed in those areas and the immediately surrounding neighborhoods. Further, the Council indicated that annual inspection and permitting of such uses should be pursued in addition to regulation through zoning.

Based on the work session, staff prepared the [attached revised Ordinance, under Section IX of the Agenda, which maintains the existing limits on Bed and Breakfast uses with respect to zoning districts, and limits Short-Term Vacation Rentals to the central business districts \(including the CD4 and CD5 character districts\) and the Business district.](#) In addition, the revised Ordinance includes a provision (sec. 10.837.27) stating that “Noncompliance with any condition listed ... or any other

condition of the granting of a special exception for the short-term vacation rental use, shall be deemed to constitute abandonment of said use resulting in the termination of the special exception.”

I recommend that the City Council move to pass second reading and schedule third and final reading of the proposed Ordinance, as presented, at the September 21, 2015 City Council meeting.

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

City Manager’s Items Which Require Action:

1. **Request to Refer to the Planning Board Proposed Easements for a Bicycle/Pedestrian Path Along North Mill Pond.** Based on an initial conceptual plan that was an outcome of the North Mill Pond Study (1997) and recent recommendations from the City’s Bicycle and Pedestrian Plan (2014) and North End Visioning Plan (2015), the proposed North Mill Pond Multi-Use Path would be a paved path for use by bicycles and pedestrians that would extend from Market Street to Maplewood Avenue to Bartlett Street following the shoreline of the North Mill Pond with a short diversion onto Maplewood Avenue. I have requested that staff develop a [conceptual plan](#) of the proposed path, which would be a minimum of 10’ wide with 2’ of clear space on either side and would be located outside of the 25’ wetland buffer zone. On the Bartlett Street end, to avoid conflicts with access to the Ricci Lumber parking and storage areas, a boardwalk along the edge of the Pond is being considered.

Therefore, the City would need an approximate 14’ easement from each of the property owners to proceed with this proposed bicycle/pedestrian path.

I recommend the City Council move to authorize the City Manager to refer to the Planning Board the proposed request for easements for report back to the City Council.

2. **Report Back Re: Request from Patricia L. Russell and Burton J. Russell for Restoration of Involuntarily Merged Lots at 65 Mendum Avenue under RSA 674:39-aa.** As you will recall at the August 17th City Council meeting, the Council referred the attached request from Attorney Bernard Pelech on behalf of Patricia L. Russell and Burton J. Russell to restore two lots to their premerger status pursuant to RSA 674-39-aa, to the Planning Department for report back. For your review, [attached is a memorandum](#) from Rick Taintor, Planning Director, regarding this matter.

Action is required on this matter.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on August 17 2015. In addition, this can be found on the City’s website.

2. **Update Re: Haven School Playground.** For your information, the Haven School Playground Improvement project is scheduled to begin this fall.

The City is preparing to move forward with the planned upgrades to the park, which is located at the corner of South and School Streets. A neighborhood meeting to review plans and the construction schedule is planned for late September. A neighborhood mailing and announcement via the newsletter will be sent out.

The project plans, which were developed in coordination with the neighborhood, call for the reuse of the existing play structures along with the replacement of several play panels on the structures. In addition, swings will be installed.

Current paved areas will be reduced and replaced with planted and grass areas. Existing wood fencing will be replaced on the playground's easterly edge. There will be tree removal and the site will be partially regraded to eliminate the need for retaining walls in some areas, creating more usable space in the park and reducing project costs. A brick and concrete walk, new trees, benches and picnic tables will also be installed.

3. **Master Plan Update.** For your information, [attached is a memorandum from Rick Taintor](#), Planning Director, as well as an [updated timetable](#) for completion of the Master Plan.
4. **Report Back Re: Police Department Recommendations.** As requested by Assistant Mayor Splaine at the August 17, 2015 City Council meeting, [attached is a memorandum](#) regarding Police Department recommendations.
5. **Report Back Re: Whistleblower.** In light of the recent issues involving the Police Department and the media policy issue regarding John Connors, the City Council instructed the City staff to review the Whistleblower Protection Act and to come back with a recommendation.

The state of New Hampshire has a Whistleblowers' Protection Act in N.H. RSA 275-E, which provides protection for employees that are discriminated against because of their decision to report, decision to refuse to participate in wrongful activity, or decision to participate in an investigation regarding their employer's activity, or decision to participate in an investigation regarding their employer's activity. N.H. Rev. Stat. Ann. 275-E:2 (LexisNexis 2015). The state also requires employers to post the employee's rights and remedies. N.H. RSA 275-E:7 (please note that this notice is posted in a conspicuous place in each public facility).

Further the law provides Additional Rights And Remedies For Public Employees Only - RSA 275-E:8 and 9

Public employees can issue complaints to the New Hampshire Department of Labor, who has the authority to investigate complaints or information concerning the possible existence of any activity constituting fraud, waste, or abuse in the expenditure of any public funds,

whether state or local, or relating to programs and operations involving the procurement of any supplies, services, or construction by governmental entities within the state.

The identity of the person who filed the complaint shall not be disclosed without his or her written consent, unless such disclosure is to a law enforcement agency that is conducting a criminal investigation.

No governmental entity shall take any retaliatory action against a public employee who, in good faith, files a complaint under this section and the public employee shall be afforded all protections under RSA 275-E:2.

No governmental entity shall threaten, discipline, demote, fire, transfer, reassign, or discriminate against a public employee who files a complaint with the department of labor under RSA 275-E:8 or otherwise discloses or threatens to disclose activities or information that the employee reasonably believes violates RSA 275-E:2, represents a gross mismanagement or waste of public funds, property, or manpower, or evidences an abuse of authority or a danger to the public health and safety.

The City currently has a “Reporting of Illegal Conduct Involving City Employees and Officials” policy, which was issued by the City Manager ([policy attached](#)). However, in accordance with the City Charter, “the commission shall assume all administrative responsibilities, which would otherwise be vested in the City Manager relating to the administration of the Department.” Therefore, this policy was issued by the City Manager and does not apply to the Fire Department or the Police Department. Neither the Fire Department nor the Police Department currently have such a policy.

Currently, there is no City of Portsmouth ordinance regarding whistleblower protection and no information on the City’s website that encourages reporting or explains employee protection. Instead, the City relies on the State statute, the State Department of Labor, and the City’s Code of Ethics.

In order to best evaluate the City’s needs regarding whistleblower protection, the following key issues require consideration:

1. Whether the City should adopt either:
 - a. A policy and process regarding whistleblower protection. This policy would have to be adopted by the City Manager, Fire Commission and Police Commission.
 - b. A City ordinance providing whistleblower protection and a complaint process.
2. Whether the reporting process applies to :
 - a. Only City employees; or
 - b. Should be expanded to taxpayers as well
3. Whether the City should adopt a mandatory duty for its City employees to report wrongdoing.

4. Which department or individual should be responsible for investigating whistleblower complaints?

These are areas that need to be vetted to determine which direction the City Council would like to take. Once a direction is determined, staff could develop a policy/ordinance for City Council consideration and or adoption.

In conclusion, establishing a policy/ordinance is just the first step. Communicating the policy/ordinance to employees is equally crucial. Training regarding the policy and process to report a complaint should be provided to all staff. Additional training should be provided to those with whistleblowing responsibilities, such as managers or designated contacts, so they are able to provide guidance confidently to workers.