

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 5, 2015

PORTSMOUTH, NH
TIME: 6:00PM

At 6:00 p.m., an Anticipated “Non-Meeting” with Counsel was held in accordance with RSA 91-A:2, I (b).

I. CALL TO ORDER

At 7:10 p.m., Mayor Lister called the regular City Council meeting to order.

II. ROLL CALL

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Kennedy (7:15 p.m.), Lown, Dwyer, Morgan and Thorsen

Absent: Councilors Shaheen and Spear

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Former City Councilor Harold Whitehouse led in the Pledge of Allegiance to the Flag.

V. ACCEPTANCE OF MINUTES – AUGUST 17, 2015; SEPTEMBER 8, 2015 AND SEPTEMBER 21, 2015

Councilor Lown moved to approve and accept the minutes of the August 17, 2015; September 8, 2015 and September 21, 2015 City Council meetings. Seconded by Councilor Thorsen and voted.

VI. PUBLIC COMMENT SESSION

Gibson “Mike” Kennedy – spoke regarding whistle blowing matters concerning Mr. Connors and the idea of setting up an ethics hotline. The hotline would be for individuals to express matters of concern and address those matters sooner. He said if investigation is required this is an important capability and said the City Manager and City Attorney should investigate these matters and report back.

Jameson French spoke regarding Prescott Park Arts Festival and said he served as a Trustee of the Trust Funds for 17 years and supports the live entertainment at the Festival. He urged the City Council to not take any further actions regarding Prescott Park Arts Festival and not move forward with the suggested motion by Councilor Thorsen outlined in his memorandum. Mr. French said there will be a consultant hired to work with Prescott Park Arts Festival and asked the City Council to give the Festival a chance.

Bess Mosley said the separation agreement benefits Chief Dubois and that he has no more ability to move the Police Department forward.

Joe Plaia asked the City Council to reject the separation agreement with Chief Dubois and give the residents time to appear at Police Commission meetings to address them.

John Palreiro spoke regarding the transportation services ordinance. He said his business is losing money everyday because UBER is not complying with the Ordinance. He said the Police Department should be issuing summons to stop the illegal operations.

Nancy Pearson, Director of Art-Speak, said the Prescott Park Arts Festival is more about growth and change and that the City is becoming a destination place.

Mark Brighton said the separation agreement for Chief Dubois appears to reward bad behavior and it is time for the Police Department to move forward.

Justin Nadeau said our residents deserve to have confidence in our Police Department. He spoke regarding the separation agreement with Chief Dubois and that the residents want quick results.

William Downey said it is unreasonable to expect the same players to get us out of what we are in right now with the Police Department. He asked the City Council to reject the separation agreement with Chief Dubois.

Jane Zill said the Police Department has been strongly criticized for the Webber Goodwin case and this is damaging to our Chief. She feels that the Chief should be let go but wants the separation agreement to be rejected and to let the Chief leave now.

Marylou McElwain spoke to the amount of money it is expected to cost to update Haven Playground. She said it is extremely high to pay that kind of money for a playground being used by 2 to 3 children. She said it is completely unreasonable.

Arthur Clough spoke to the separation agreement with the Chief and asked the City Council to reject it. He said the City Council has learned that several police officers allowed matters to take place in the Webber Goodwin case. He asked the City Council not to approve the agreement and to have the Chief leave office immediately.

Rick Becksted said there needs to be more transparency and the Chief needs to leave now. He asked the City Council not to approve the separation agreement with the Chief.

Dick Bagley said the City Council should not support the separation agreement with the Chief. He said there is a lack of leadership in the City right now and the City needs to stop having so many non-meetings.

Paul Mannle asked the City to consider bringing in the former Police Chief of Manchester, NH because it seems to be a thoughtful step forward. He asked the City Council to reject the separation agreement with Chief Dubois.

David Noard spoke regarding comments made by various speakers regarding Chief Dubois and that they're a concern to him.

Mayor Lister said the City Council had a "Non-Meeting" with Counsel to discuss the separation agreement. He asked someone to make a motion to go back into "Non-Meeting" with Counsel on the matter of the separation agreement at the request of our Negotiator Tom Closson to further discuss this matter.

Councilor Lister moved to enter into "Non-meeting" with Counsel to discuss changes to the separation agreement. Seconded by Councilor Thorsen.

Assistant Mayor Splaine said that the agreement should be rejected and the Council should ask for the Chief's resignation immediately. He said he does not feel a "Non-meeting" is necessary because it should be discussed in public.

Councilor Dwyer said she feels that we need to speak with our labor attorney on this matter.

Councilor Kennedy said she would like to discuss this matter this evening to make sure we do things the right way. She would like to guarantee a vote on this matter.

Councilor Lown said this is to discuss any changes to the agreement and we need to find out if there are changes.

On a roll call vote 6-1, motion passed. Assistant Mayor Splaine voted opposed.

Councilor Lown moved to suspend the rules in order to take up Item XI. B.1. – Separation Agreement with Chief Stephen Dubois. Seconded by Councilor Dwyer and voted.

IX. B.1. Separation Agreement with Chief Stephen Dubois

Attorney Closson explained his role in the separation agreement and the agreement would allow the Chief to remain until March, 2016. He provided background information on how we made it to the agreement. He said there are 4 options before the Council regarding this matter. One, is to do nothing; two, proceed with an arrangement and follow what the contract provides which would require a severance payment of 1 years salary; three, to proceed to terminate with cause; and four, negotiate an agreement. Attorney Closson spoke to the State Statutes for terminating a Police Chief and how difficult it can be. He said we have revisited the agreement and the Chief would remain until January, 2016 and the Chief would be paid a severance. He said the community needs to move forward and look for a new Chief and this agreement is not perfect but is a good solution. He further stated all 3 Police Commissioners approved the amended agreement and the plan would be to take up the agreement at a public meeting of the Police Commission on Wednesday at 8:15 a.m.

Councilor Kennedy said many of the residents want the Chief to leave right now so where does that play into this. She asked if we can pay him until January and have him go. Attorney Closson said the Chief is not interest in accepting that kind of agreement. He said his existing agreement goes until 2017.

Further discussion continued among the City Council.

Councilor Lown moved to approve the proposed Separation Agreement contingent upon unanimous approval by the Police Commission. Seconded by Councilor Dwyer.

Councilor Lown said the City has been tormented by this and we all want to move forward. He said we just can't get rid of the Chief immediately. He has a contract and that must be followed.

Assistant Mayor Splaine said this has everything to do with right and wrong. He feels this is a deal with a little less sugar and that the matter should not have been discussed in "Non-meeting". He said the Chief should move on and that the morale of the Department is at stake.

Councilor Kennedy said we should send this back to the Police Commission.

Councilor Thorsen said that this is no different than what the Chief has in his agreement. He asked if the Police Department would hold public comment prior to the vote on this matter.

Councilor Dwyer said this is the Police Commissions decision and we can speak to it. She said this is not appropriate for the City Council to vote on it before the Police Commission does and this allows for the Commission to do their work. She said we want to see the contract in writing with changes.

Councilor Thorsen moved to postpone action on the Separation Agreement until after the Police Commission votes on the matter. Seconded by Councilor Morgan.

Councilor Dwyer said this does not prevent people from speaking and allows for two other City Councilors to be present for the vote. She said if we really are moving forward, the majority of the City Council should vote.

Councilor Dwyer withdrew her second to the original motion. The motion did not move forward as the second to the motion was withdrawn.

On a unanimous roll call 7-0, voted to postpone action on the Separation Agreement until after the Police Commission votes on the matter.

At 8:55 p.m., Mayor Lister called a brief recess. At 9:05 p.m., Mayor Lister called the meeting back to order.

VII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda)

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Third and final reading of Annual Omnibus Ordinance Change, Parking and Traffic

Councilor Dwyer moved to pass third and final reading of the proposed Ordinance, as presented. Seconded by Councilor Lown and voted.

- B. Third and final reading of Ordinance amending Chapter 11, Article II, Section 11.216:B – Sewer User Charges/Records/Hook-Up by the Elimination of Irrigation Meters

Councilor Thorsen moved to table the aforementioned matter at this time. Seconded by Councilor Kennedy.

City Manager Bohenko said he would provide something back to the City Council at the first meeting in December.

Motion passed.

IX. CONSENT AGENDA

- A. Acceptance of Donation to the Coalition Legal Fund:
• Town of Rye - \$5,000.00

(Anticipated action – move to approve and accept the donation as listed, to be placed in the Coalition Legal Fund)

- B. Letter from Jenelle Dolan, March of Dimes, requesting permission to hold the 2016 Seacoast March for Babies on Saturday, May 7, 2016 ***(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.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Tabitha McElroy, Thompson School UNH, requesting permission for Portsmouth to host the New England GIFT box in Market Square in front of the North Church for a three day event in mid November

City Manager Bohenko said he would like to move the event to the Vaughan Mall.

Councilor Lown moved to refer to the City Manager with power. Seconded by Councilor Dwyer and voted.

- B. Letter from Bert Cohen, Mayor's Blue Ribbon Committee on Sustainable Practices Re: City's Irrigation Meter Ordinance

Councilor Kennedy moved to include the letter on the December 7, 2015 City Council Agenda. Seconded by Councilor Dwyer and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Request for Approval of Proposed Tentative Agreements for the School custodial Supervisors Union and the Association of Portsmouth School Administrators

City Manager Bohenko recommended approval of the contracts.

Councilor Lown moved to accept the proposed contracts with the School Custodial Supervisors Union and Association of Portsmouth School Administrators to expire on June 30, 2018. Seconded by Councilor Dwyer.

Human Resources Director Fogarty spoke to the contracts advising the City Council they're three year terms with the 10 year COLA for the groups. She spoke to the insurance and that the groups are going to a higher deductible plan.

Motion passed.

- 2. Request for Approval of Proposed Tentative Agreement between the City of Portsmouth and the Portsmouth City Employees Local #1386-B

Human Resources Director Fogarty explained that this is a new unit that separates the clerical staff from the Public Works Department staff. She reviewed the contract and stated it is also a three year contract with a COLA adjustment effective October 1, 2015 and they will also receive the 10 year rolling COLA. She said the group has also changed to a higher prescription plan.

Councilor Lown expressed concern that the unit did not agree to go to the consumer driven health plan. Human Resources Director Fogarty said the group will look at other plans in 2016 and would go with a plan that is below the threshold of the cadillac tax.

Councilor Thorsen moved to accept the proposed contract with Portsmouth City Employees Local #1386-B to expire on June 30, 2017. Seconded by Councilor Dwyer. Councilor Lown voted opposed.

- 3. Report Back Re: Proposed Easements for North Mill Pond Multi-Use Path

City Manager Bohenko said this was referred to Planning Board to get an easement from the north end to the west end. The Planning Board recommends the City Manager be authorized to begin negotiations acquiring property for easements for the North Mill Pond Bike/Walk Path.

Assistant Mayor Splaine moved to accept the Planning Board's recommendation, and, further, authorize the City Manager to begin negotiations acquiring property for easements for the North Mill Pond Bike/Walk Path. Seconded by Councilor Lown.

Councilor Kennedy asked if we should negotiate for a walk path at the same time. City Manager Bohenko said it is a bike and walk path connecting downtown to the west end. Councilor Kennedy asked if we should negotiate the road at the same time. City Manager Bohenko said he could look at that and see if there is enough room to do that.

Assistant Mayor Splaine thanked the City Manager and Planning Board for working on this matter and feels it is a great step and supports the motion.

Motion passed.

City Manager's Informational Items

- *Household Hazardous Waste Day*

City Manager Bohenko announced that Household Hazardous Waste Day is schedule for Saturday, October 24, 2015 from 8:00 a.m. – Noon at the Public Works facility at 680 Pevery Hill Road.

- *Update Re: Transportation Services Ordinance*

City Attorney Sullivan said we are several weeks into the ordinance and the results have been pretty good. He said some areas are not an issue; the one area that has generated concern is UBER. He reported on a conference call held with UBER between himself, Chief Dubois and City Clerk Barnaby where UBER indicated they would send the ordinance and their application to their corporate office for review and then forward onto the City. He stated however, it appears that UBER drivers are operating without getting approval as a Transportation Service Provider and this is a police enforcement matter and he has spoken with Chief Dubois relative to this issue.

Councilor Lown said the public should know that the people should direct comments to UBER. He said we are not trying to stop UBER and we have worked with them.

City Attorney Sullivan said an UBER driver individually could provide insurance and background checks and become a Transportation Service Provider in the City.

Assistant Mayor Splaine stated that the Taxi Commission worked a great deal to have UBER operate in the City. He spoke to the ordinance and its regulations.

Councilor Kennedy said the Police Department needs to start enforcing the ordinance. She requested a report back at the next meeting on this matter.

B. MAYOR LISTER

2. Appointments to be Considered:
 - Appointment of Jonathan Sandberg to the Citizens Advisory Committee of the CDBG Program
 - Appointment of Lawrence J. Lariviere to the Sustainable Practices Committee

The City Council considered the appointments listed above which will be acted upon at the October 19, 2015 City Council meeting.

3. Appointments to be Voted:
 - Reappointment of Shari Donnermeyer to the Parking & Traffic Safety Committee
 - Appointment of Jennifer Pyke to the Portsmouth Housing Authority

Councilor Lown moved to reappoint Shari Donnermeyer to the Parking & Traffic Safety Committee until September 17, 2018 and the appointment of Jennifer Pyke to the Portsmouth Housing Authority until April 1, 2020. Seconded by Councilor Kennedy and voted.

C. ASSISTANT MAYOR SPLAINE

1. Concepts for an Ethics Ombudsman / Ethics Officer

Assistant Mayor Splaine said he wanted to pass on this information to the City Council which is the idea that Gibson Kennedy came forward with that would make sure whistle blowers are protected. He said an Ethics Officer could be created and they would stream line concerns on ethics in the City. He asked that the information be passed along to the City Manager and City Attorney. He said if there is a way to embed this into a principle for City government and have the City Manager and City Attorney report back to the City Council in late fall or early winter.

Councilor Morgan requested that City Manager Bohenko bring back his thoughts on how a program would be implemented to City staff and Board and Commission members.

D. COUNCILOR THORSEN

1. Arts Festival in Prescott Park

Councilor Thorsen said he provided the City Council with a memorandum on this matter. He spoke to the rescinding of a vote by the City Council which created a leadership void. He said we need a good negotiator and an understanding of what we want to see.

Councilor Morgan said the working group is doing some work on the matter but she needs to hear about the master plan for the park. She said everything should be dependent upon the master plan for the park and there needs to be dialogue on this matter.

At 9:50 p.m. Councilor Lown left the meeting.

Councilor Dwyer said that Prescott Park Arts Festival agreed to come forward with a plan but something always happens to set the committee back. She said the next meeting is on October 30th with the Trustees of the Trust Fund and Prescott Park Arts Festival and the Working Group.

Mayor Lister said Councilor Shaheen reported back with a list of items and we will be doing that again.

Councilor Morgan said we are not seeing the public involved in the process.

Councilor Dwyer said both processes involve the public and we are working to coordinate the processes. She said we are calling for someone to manage the process and that is not happening.

Councilor Morgan expressed concern with a 10 year contract. She said there is a great deal to work out and feels a 10 year contract is too long.

City Manager Bohenko said the City Council gave authority to move forward and the land issue process will go before Historic District Commission. He said the land use boards will be analytical on the process and it will go through the Planning Board and the Site Review Technical Advisory Committee. He said the first step needs to happen and we are on parallel paths.

Councilor Dwyer said people may go to the Planning Board, Historic District Commission or Site Review Technical Advisory Committee to speak on these matters.

Councilor Morgan said she is concerned with the placement of the stage.

Councilor Dwyer said the City Council did not approve a stage but to move forward with a design. She said it will come back to the City Council. She said there is a conceptual design and that will move forward. She further stated the design needs to be worked out and discussed at the land use boards.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

City Manager Bohenko announced that Assessor Maurice-Lentz will be holding a meeting regarding assessments at the end of October.

Councilor Morgan asked when the City Council will be conducting a Work Session with our legislature and Senator Fuller-Clark on AIRBNB. City Manager Bohenko said we really need their State law in place.

XIII. ADJOURNMENT

At 10:15 p.m., Councilor Thorsen moved to adjourn. Seconded by Councilor Kennedy and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

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