

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, DECEMBER 5, 2016

PORTSMOUTH, NH
TIME: 7:00PM

At 6:00 p.m. the City Council held a Work Session regarding Food Vendor Trucks.

I. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Councilor Dwyer led in the Pledge of Allegiance to the Flag.

PRESENTATIONS

1. Update Re: Pease Tradeport PFC's

Andrea Amico provided an updated for the community regarding the Pease Tradeport PFC's. She addressed the Air Force putting together their Restoration Advisory Board to focus on the cleanup of the wells. She said the meetings are taking place quarterly and a great deal of information is exchanged. She also spoke regarding the CAP which met 3 times but phone calls are held monthly that take approximately 1 hour. Ms. Amico said that people are in need of more streamlined information for their health care providers. She said that there is a comprehensive website available on these matters and brings all the resources together. She urged residents to refer to the website for additional in-depth information.

Assistant Mayor Splaine asked if they can define better the needs for the future. Ms. Amico said there will possibly be decades of research taking place.

Councilor Spear said the State and National Government could do a better job in preventing this. Ms. Amico said they should be regulating on the front end.

2. Update from Deputy Public Works Director Brian Goetz Re: Haven Well

Deputy Director Goetz explained the Pease Tradeport Water System that is made of 3 wells and 2 storage tanks. He reviewed the chronology of events of the Haven Well shutdown. He stated that ongoing monitoring continues on the wells. He spoke to the EPA update for regulating advisory on the PFC's and said they are lowering the levels of PFOA & PFO's to 70 parts per trillion.

He addressed the filters of the wells and the consideration in final design on the new treatment system. Deputy Director Goetz stated that all sample results are on the City's website and we will continue the sampling and assessment of the filter performance.

City Manager Bohenko said that we are going to keep trying to get the Air Force to pay for the entire cost of the system and all water will come through totally treated.

3. Zagster – Bike Share for Portsmouth – Juliet Walker, Deputy Planning Director

Deputy Planning Director Walker said that Zagster provides bike sharing for small and medium size communities. The bikes are designed to get you from point to point.

Dave Reed of Zagster provided an overview of Zagster and the impact of bike share for the community. He said people love to get around via a bicycle. He reported that bike sharing brings business which is an economic benefit, it also impacts public health and bike share drives mode shifts which benefits the transportation aspect for the City. He stated that Zagster has the most bike-share programs in the United States with over 150 programs. Mr. Reed advised the City Council that coming in 2017 will be Manchester, NH; Lexington, MA; Salem, MA; and New Bedford, MA. Deputy Planning Director Walker reported that Portsmouth will launch this program in the summer of 2017.

Councilor Denton asked if this would affect current bike racks in the City. City Manager Bohenko said it would not.

Councilor Cyr said the West End is an ideal location for a bike station. Councilor Spear said he would like to have seasonal stations.

Deputy Planning Director Walker said that the City will also look into program incentives.

Councilor Dwyer asked what does liability insurance cover. Mr. Reed said he would get back to the City with that information.

V. ACCEPTANCE OF MINUTES – OCTOBER 17, 2016 & NOVEMBER 21, 2016

Councilor Lown moved to accept and approve the minutes of the October 17, 2016 and November 21, 2016 City Council meetings. Seconded by Councilor Pearson and voted.

VI. PUBLIC COMMENT SESSION

Zelita Morgan – said she would like to know when the ethics complaint will come to the public. She asked when the meeting will be held by the City Attorney and the Mayor on the ethics complaint.

Marylou McElwain – spoke to the recent event Tote around Town that was held by Tonya Hart. She said 30 business were involved in the shop locally day where you received a sticker or a tote bag and could receive discounts in those stores that participated. She said the recent \$20,000.00 grant to the Chamber of Commerce should include those small businesses owners that are not part of the Chamber.

Mark Brighton spoke regarding the City Council being ethical with the recent ethics complaint made.

John Palreiro asked the City Council to table the first reading of the Taxi Ordinance because the taxi companies have not had the opportunity to look at the Ordinance.

Jerry Zelin said he supports Assistant Mayor Splaine's policy for non-meetings that he will be bringing forward this evening. He spoke between the difference of a Non Public Session and a Non-Meeting. He said if the City Council engages with discussion between City Manager and the City Council during the non-meetings it is a violation.

Jeffrey Cooper spoke on the Accessory Dwelling Units proposed Ordinance and said you cannot use the Zoning Ordinance to restrict accessory dwellings. He said he opposes the proposed Ordinance and said he understands the City Council's concern of over density and setbacks. He said the new State Law provides home owners a way to keep their homes and we should welcome these changes. He said the City Council should do nothing on the accessory dwelling matter.

Ronald Poulin – spoke on the Comcast contract which expires in 2018. He said the Cable Television Communication Commission is conducting a survey and urged everyone to take part in it which is located on the City's website for the public to access.

Esther Kennedy said Assistant Mayor Splaine's policy is supported by many individuals. She said the Council should adopt the policy and be more transparent.

Barbara Ward spoke in favor of the City taking action on the 400th Anniversary that will be coming up in 2023 for the City. She feels everyone should provide content on this matter. She would like there to be a method where organizations could apply and produce content.

Councilor Spear said the grant to the Chamber of Commerce is to benefit all businesses.

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from Wilcox Industries, Corp. - \$40,000.00

Mayor Blalock said the Wilcox Industries will provide the funding on an annual basis.

City Manager Bohenko said Mr. Teetzel approached him to provide this annual donation for the next 10 years and that the funding also go towards entertainment prior to the fireworks. He also spoke to Mr. Teetzel's request to have the event theme for Veteran's Count. He said we are very excited and looking forward to the event and are very thankful for his generosity.

Councilor Spear moved to accept Wilcox's donation and ongoing sponsorship through July 4, 2027. Seconded by Councilor Cyr.

Councilor Spear said he would like to look at having the fireworks on July 4th. City Manager Bohenko said there are a limited number of certified technicians and we have held the fireworks for the last 40 years on July 3rd. He said he does not suggest rebranding the event.

Councilor Cyr asked what we budget for the event presently. City Manager Bohenko said funding is currently \$25,000.00 to \$30,000.00.

Motion passed.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Articles 2, 3, 11 and 15, to implement housekeeping changes relative to conformance with state law, nonconforming buildings and structures, setback requirements for parking areas, and the definition of “structure”

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Dwyer and voted.

- B. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Articles 5 and 15, to revise and clarify provisions related to yards (i.e., setbacks), exceptions to yard requirements, and projections into required yards; and to clarify the definition of “building coverage”

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear and voted.

- C. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5, Section 10,521, to reduce the maximum building height from 35 feet to 30 feet in the Residential districts, and from 40 feet to 35 feet in the Mixed Residential districts

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear.

Councilor Spear said he would like to limit this to flat top roofs. City Manager Bohenko said we could look into that.

Councilor Dwyer said she would like a sense of common heights in some of these zones.

Motion passed.

- D. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Articles 4, 8 and 15, to allow accessory dwelling units and garden cottages by conditional use permit from the Planning Board, and to establish standards and procedures for such uses, in order to comply with a new State law

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Cyr.

Councilor Dwyer asked if there is a definition of accessory use. Planning Director Taintor said there is no definition. Councilor Dwyer said there should be a definition and other legislation should come forward for this. She said this provides more flexibility in the City.

Councilor Cyr spoke to the item in accessory dwelling requiring an interior door. Planning Director Taintor said it is a part of state law. Councilor Cyr said in garden cottages he would like to see them larger and to the size of a two car garage. He expressed concern with everything going through the Planning Department for a decision. Planning Director Taintor said the Planning Board decided they wanted everything to go through them and if things needed to change they would make a change.

Councilor Dwyer said she supports the Planning Board reviewing these for the first year and after the year the City Council should review the entire process.

Councilor Perkins said she would like to allow more opportunity for this and the Council should revisit this in a year.

Motion passed.

- E. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Articles 5A and 6, regarding the Historic District, to reference Design Guidelines adopted by the Historic District Commission, to revise and expand the list of activities that are exempted from HDC review and approval, and to clarify that exempted uses are subject to administrative review and approval

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear and voted.

- F. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 10, Section 10.1010 – Wetlands Protection, to expand the jurisdictional wetlands to include a portion of the Piscataqua River shorefront north of the I-95 bridge, to clarify the existing allowance for expansion of a single or two-family dwelling, and to require restoration of a vegetated buffer strip to the extent feasible

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear and voted.

- G. First reading of proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 12 – Signs, to limit the type and manner of illumination of signs using “direct illumination”, such as LED or plasma signs

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear and voted.

Councilor Spear moved to suspend the rules in order to take up Item XI. A.1. – Approval of Agreement Re: 400th Anniversary Celebration. Seconded by Councilor Lown and voted.

City Manager Bohenko reported that this would be a 9 member Committee and the first part of funding would come from UDAG and the Contingency Fund. He said in FY19 there will be a budget submitted to get money into the Trust. He recommended moving forward with his suggested motion.

Councilor Spear moved to approve the Agreement for the 400th Anniversary Celebration, and further, request the use of \$50,000.00 from Urban Development Action Grant (UDAG) and \$50,000.00 from the Contingency Account to fund the Agreement. Seconded by Assistant Mayor Splaine and voted.

- H. First reading of proposed Ordinance amending Chapter 7, Article II – Taxis, Section 7.201 – 7.217

Councilor Perkins moved to pass first reading and schedule a public hearing and second reading at the December 19, 2016 City Council meeting. Seconded by Councilor Spear.

Assistant Mayor Splaine asked if the Commission reviewed the Ordinance. Councilor Cyr said there was feedback from the Commission at their last meeting. Deputy City Attorney Woodland said that a different draft was provided to the Commission but the Ordinance was posted on the website and feedback was received.

Councilor Dwyer said it was helpful to have the side by side comparison of the Ordinance. She would like to make it easier for taxis at second reading.

Councilor Denton suggested making the background checks similar to the checks by the State of New Hampshire.

Assistant Mayor Splaine said amendments to the Ordinance can be made at second reading but they should be made in writing.

Motion passed.

At 9:00 p.m., Mayor Blalock called a brief recess. Mayor Blalock called the meeting back to order at 9:15 p.m.

IX. CONSENT AGENDA

- A. Letter from Jennie Halstead, Celebrate Pink, requesting permission to hold the 9th Annual 5k Walk & Run on Sunday, September 17, 2017 at 9:00 a.m. at Portsmouth Middle School
- B. Letter from Lilia Potter-Schwartz requesting permission to hold a triathlon beginning at Portsmouth High School on Sunday, May 18, 2017
- C. Letter from Donald Allison, Eastern States 20 Mile, requesting permission to hold the Eastern States 20 Mile Road Race on Sunday, March 26, 2017

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Cyr and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

2. Renewal of New Hampshire Public Radio Lease for Rooftop Antenna

City Manager Bohenko said this is a renewal of the lease and maintenance to the antenna on the top of the City Hall building.

Councilor Spear moved to authorize the City Manager to enter into a Lease with New Hampshire Public Radio for a rooftop antenna and other equipment. Seconded by Councilor Cyr and voted.

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Appointment of Robin Pickering to the Portsmouth Housing Authority – Resident Representative
 - Reappointment of Chris Mulligan to the Zoning Board of Adjustment
 - Reappointment of David Rheaume to the Zoning Board of Adjustment

The City Council considered the appointments brought forward by Mayor Blalock and action will take place at the December 19, 2016 City Council meeting.

2. Appointments to be Voted

Councilor Spear moved to reappoint Robert Marchewka to the Economic Development Commission until October 1, 2020; appointment of Richard Shea to the Historic District Commission until June 1, 2019 and appointment of Martin Ryan as Alternate to Historic District Commission until June 1, 2018. Seconded by Councilor Cyr and voted.

C. ASSISTANT MAYOR SPLAINE

1. Portsmouth City Council Policy, Re: “Non-Meetings with Legal Counsel,” and request for Ethics and Conflicts of Interest Training Workshop

Assistant Mayor Splaine moved “The City Council shall not hold a “Non-Meeting” as provided for under the New Hampshire Right-to-Know law, “91-A-2(b) Consultation with Legal Counsel” unless it is conducted in full compliance with the N.H. Attorney General Right-To-Know Law guidelines Memorandum dated March 20, 2015, which states:

“Everyone except members of the public body should be excluded from the room when any consultation with legal counsel occurs. Minutes are not required or appropriate for consultation with legal counsel. Consultation with legal counsel should be limited to discussion of legal issues. Deliberation about the matter on which advice is sought may not occur during consultation with legal counsel. The public body must reconvene and, unless a statutory exemption allowing deliberation in non-public session exists, conduct deliberation in a public session.” Seconded by Councilor Denton.

Assistant Mayor Splaine said that this is the right thing to do and guarantees transparency.

Councilor Denton said he agrees with the intent but disagrees with the wording of the motion. He said the control group for Non-Meetings includes the City Manager and City Clerk.

Councilor Denton moved to amend the motion to read as follows: “The City Council shall not hold a “Non-Meeting” as provided for under the New Hampshire Right-To-Know, “91-A-2(b) Consultation with Legal Counsel” unless the City Attorney initiates and defines the scope of the meeting”. Seconded by Councilor Spear.

Councilor Denton said that this would do what the motion is intended and would lend to the discussion between the City Attorney and City Council.

Councilor Lown said currently the City Manager defines the content and scope of the “Non-Meeting” and asked if Councilor Denton is saying that the City Attorney would set the scope at the time the City Council wants to enter into “Non-Meeting”.

Councilor Dwyer said she read the Attorney Generals guidance and there is one mention of who should be in “Non-Meeting”. She said it does speak to the town meeting, but in nowhere does it say to exclude the City Manager from “Non-Meeting”

Councilor Lown said we need to have “Non-Meetings” and we do not seek to make decisions in “Non-Meetings”, we received advice, we follow the law, and do not violate the law in any way.

Councilor Spear asked City Attorney Sullivan on who can attend the “Non-Meetings.” City Attorney said the statute does not say who can be present at “Non-Meetings.” He spoke to the recent guide he provided on transparency and urged the City Councilors to review it.

Councilor Denton said in a ruling in the case Porter vs. Town of Sandwich the judge ruled that the City Manager is part of the control group in “Non-Meetings.” He further stated that the City Manager and the City Clerk were allowed to be part of the “Non-Meetings.”

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said in accordance with our Charter the City Manager shall have the right to take part in discussion of all matters coming before the City Council, but the City Manager shall not be a voting member of the Council. Mayor Blalock said he would support the amendment by Councilor Denton.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said the Council has done things wrong. He said we have had “Non-Meetings” and not involved the City Attorney and there have been no comments by the City Council in a “Non-Meeting.” He said he would take the matter to court and former City Councilors will testify to us not following the rules of a “Non-Meeting”.

Much discussion followed.

Councilor Cyr said he would like to table the discussion until the next City Council meeting. Councilor Cyr moved to table until the December 19, 2016 City Council meeting. Motion received no second.

Assistant Mayor Splaine asked who could attend the “Non-Meeting” with the City Council. City Attorney Sullivan said any one allowed by State law.

On a Roll Call vote 8-1, amendment to the motion passed. Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton, Mayor Blalock voted in favor. Assistant Mayor Splaine voted opposed.

Assistant Mayor Splaine said he would be watching the Council very closely. He feels there are other ways of the Council doing business without having “Non-Meetings”.

Councilor Pearson said that the comments made by Assistant Mayor Splaine are accusatory and she would not support the motion as she does not feel the Council has done anything wrong.

Councilor Spear indicated he would vote against the motion as well. He said that Non Public Sessions do not include collective bargaining matters.

On a roll call vote 5-4, voted to pass main motion as amended. Motion to read as follows: “The City Council shall not hold a “Non-Meeting” as provided for under the New Hampshire Right-To-Know, “91-A-2(b) Consultation with Legal Counsel” unless the City Attorney initiates and defines the scope of the meeting. Assistant Mayor Splaine, Dwyer, Cyr, Denton and Mayor Blalock voted in favor. Councilors Perkins, Lown, Pearson and Spear voted opposed.

1 A. Request for Ethics & Conflicts of Interest Training Workshop

Assistant Mayor Splaine moved to hold a work session on Ethics & Conflicts of Interest Training in 60 days. Seconded by Councilor Denton.

Councilor Spear said he would not support the motion.

Mayor Blalock said we will schedule a work session but most likely in March.

On a roll call 1-8, motion to hold a work session on Ethics & Conflicts of Interest Training in 60 days failed to pass. Assistant Mayor Splaine voted in favor. Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton and Mayor Blalock voted opposed.

City Manager Bohenko announced that the Council will have tentatively two collective bargaining agreements coming before them for the next Council meeting and will ask City Attorney Sullivan on scheduling a "Non-Meeting".

D. COUNCILOR DENTON

1. Capital Improvement Plan - Anaerobic Digesters

Councilor Denton moved to have City staff complete a Capital Improvement Plan form and be prepared to brief when necessary inclusion of an Anaerobic Digester at the Pease Wastewater Treatment Facility. Seconded by Councilor Lown and voted.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Mayor Blalock said he received a letter regarding an ethics complaint and has done his independent review and City Attorney Sullivan is conducting his independent review.

Assistant Mayor Splaine said he is on the Board of Ethics and in January new members are chosen by lot. He asked that City Attorney Sullivan ensure that the School Board, Fire and Police Commissions do their votes by lot and follow proper conditions.

Councilor Dwyer said the Prescott Park Master Plan Committee will provide a physical Master Plan in a Work Session at the next Council meeting. City Manager Bohenko said the presentation will be held at 6:00 p.m.

Assistant Mayor Splaine said his legal counsel may be asking for a declaratory judgement against the City regarding the holding of "Non-Meetings."

XIII. ADJOURNMENT

At 10:30 p.m., Councilor Lown moved to adjourn. Seconded by Councilor Spear 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