

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MAY 2, 2022

PORTSMOUTH, NH
TIME: 7:00PM

III. CALL TO ORDER

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

IV. ROLL CALL

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Lombardi, Blalock and Cook

ABSENT: Councilor Bagley

V. INVOCATION

Mayor McEachern asked for a moment of silent prayer in memory of Michael O'Leary and John H. Bagley, Councilor Bagley's father who recently passed away.

VI. PLEDGE OF ALLEGINANCE

Mayor McEachern led in the Pledge of Allegiance to the Flag.

PROCLAMATIONS:

1. POET LAUREATE

Former Poet Laureate Tammi Truax spoke to building bridges with the programs and being more inclusive with our Sister Cities.

Mayor McEachern read the Proclamation and proclaimed Diannely Antigua as the Portsmouth Poet Laureate for a two year term.

2. DRINKING WATER WEEK

Mayor McEachern read the Proclamation declaring May 1st through May 7th as Portsmouth Drinking Water Week.

3. PROFESSIONAL MUNICIPAL CLERKS WEEK

Mayor McEachern read the Proclamation recognizing the week of May 1 through May 7, 2022, as Professional Municipal Clerks Week and further extend appreciation to Portsmouth's Professional Municipal Clerk, Kelli L. Barnaby, Master Municipal Clerk for the vital services performed and her exemplary dedication to the community.

VII. ACCEPTANCE OF MINUTES – APRIL 18, 2022

Councilor Moreau moved to accept and approve the minutes of the April 18, 2022 City Council meeting. Seconded by Assistant Mayor Kelley and voted.

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

(There were no Recognitions and Volunteer Committee Reports this evening)

IX. PUBLIC COMMENT SESSION

Roy Helsel asked if the City will have a partnership with McIntyre or a dictatorship.

Nancy Gentile expressed concerns regarding lack of parking at 20 Islington Street and asked if the City will be addressing this matter.

Peter Whelan spoke regarding the court hearing held this morning regarding McIntyre. He said based on the citizens that are our plaintiffs against the city with the McIntyre, the Council is in violation of the settlement agreement because there is a suit pending. He recommended that the Council table the motion to expend funds to pay off SoBow Square and await the court's decision moving forward. It states in the settlement agreement the city should not have any pending lawsuits on the McIntyre property.

Mark Brighton spoke to the ethics statement signed by the City Council as candidates prior to the last election, the actions that took place at the prior meeting were anything but civil.

Esther Kennedy said that Assistant Mayor Kelley and Councilor Cook have under their name to develop a community conversation relating to diversity, equity, inclusion, and justice. She asked that Zelita Morgan be added to that committee to support you in discussions. She further stated that Ms. Morgan was the first woman on council that was an immigrant, the first woman that her first language was not English. She also asked that we include someone with disabilities to the committee.

Petra Huda asked how a supplemental request could come forward before the FY2023 budget starts and how can the Council appropriate to a future Council.

Zelita Morgan requested that the Governance Committee meetings should be held when they are accessible to the voters which are in the evenings, rather than morning meetings. She said that residents and voters should be able to bring forward items they are interested in. She said the committee cannot be as disconnected as they are. She stated that residents do not have the opportunity to speak at these meetings.

Paige Trace stated of the people, by the people, for the people, you're all the people, and have been elected by the people, and you work for the people. She spoke to the recent meeting of the Governance Committee and how not one City Councilor was present. She also stated not one City Councilor was present at the hearing on the McIntyre today.

Bill Downey spoke to the McIntyre matter and said that two attorneys have offered their services to represent the residents regarding this issue. He said that it was Redgate Kane that was not acting in good faith. He asked where Attorney Connolly is for representing the City on the McIntyre.

Peter Somssich, State Representative, said he will reserve final judgement on the McIntyre because he has not heard all the details on this issue. He said we have no agreement with Redgate Kane. He addressed the many concerns he has regarding the McIntyre settlement.

Rick Becksted said he was here asking two weeks ago about the Demolition Ordinance. He spoke to three projects that are up for demolition currently. He said demolishing a home alters the makeup of a neighborhood. He feels like anything brought forward by him is ignored. Mr. Becksted stated that the three properties scheduled for demolition will alter the neighborhood and makeup of the City.

Councilor Moreau moved to suspend the rules to bring forward Item XIII. B. – Presentation by Valerie Rochon and Susan Labrie regarding “Portsmouth’s 400th Anniversary Celebration.” Seconded by Councilor Cook and voted.

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- B. Presentation by Valerie Rochon and Susan Labrie regarding “Portsmouth’s 400th Anniversary Celebration”

Ms. Rochon and Ms. Labrie provided a detailed presentation of events that will be taking place for the Portsmouth’s 400th Anniversary Celebration. They addressed the many facets of the celebration that will be taking place along with the categories planned to be highlighted. They also spoke regarding the donations being accepted and the business partnership levels for giving and encourage everyone to become involved in the process.

Councilor Denton moved to suspend the rules to bring forward City Manager’s Informational Item 1 – McIntyre Update. Seconded by Assistant Mayor Kelley and voted.

City Manager Conard said speaking with GSA they will work with the City to extend the agreement for 8 months.

City Attorney Sullivan said a preliminary hearing was held today and he spoke to the goal in getting the settlement agreement nullified. He reported that no decisions were made today but the court will give great attention to this matter.

X. PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTION

- A. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM FUND BALANCE FOR THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF PORTSMOUTH AND SOBOW SQUARE LLC. AND COSTS ASSOCIATED WITH DESIGN AND ENGINEERING RELATED TO THE McINTYRE PROPERTY.

THAT THE CITY COUNCIL HAS DETERMINED THAT THE SUM OF NINE HUNDRED THOUSAND (\$900,000.00) DOLLARS IS TO BE APPROPRIATED FROM FUND BALANCE TO DEFRAY THE EXPENDITURES FOR THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF PORTSMOUTH AND SOBOW SQUARE LLC. AND COSTS ASSOCIATED WITH DESIGN AND ENGINEERING RELATED TO THE McINTYRE PROPERTY FOR THE FISCAL YEAR ENDING IN JUNE 30, 2022.

THAT, THE SETTLEMENT AMOUNTS TO BE MADE ON OR BEFORE JULY 15, 2022 ONE MILLION (\$1,000,000.00) DOLLARS AND ON OR BEFORE JULY 15, 2023 FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS WILL BE MADE USING FUTURE AVAILABLE REVENUES WHICH MAY INCLUDE FUND BALANCE.

THAT, TO MEET THIS APPROPRIATION, THE CITY MANAGER IS AUTHORIZED TO TRANSFER THESE FUNDS FROM COMMITTED FUND BALANCE.

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS** (*Declared public hearing closed after speakers*)
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

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

City Manager Conard said that the language for the resolution was developed by our Finance Director and Bond Counsel.

Councilor Tabor moved to adopt the proposed Supplemental Appropriation Resolution for the settlement agreement between the City of Portsmouth and SOBOW Square LLC, and costs associated with design and engineering related to the McIntyre property, as presented. Seconded by Councilor Moreau.

Councilor Denton asked City Attorney Sullivan if the Council can move forward with this Resolution as submitted, due to the comments made by former Councilor Peter Whelan this evening. City Attorney Sullivan said that the City Council is free to move forward with this matter.

City Manager Conard said the first payment date is May 15th of this year.

Councilor Moreau asked what gives the City Council authority to make decisions on this matter. City Attorney Sullivan said the settlement agreement is a contract.

Councilor Cook asked about the total of \$900,000.00. City Manager Conard said that \$400,000.00 is for design costs and our share to the developer.

Councilor Moreau said we will be provided with receipts on the estimated costs.

Rick Becksted said that comments are normally made by the public before a motion is brought forward. He expressed his displeasure with developer Michael Kane.

Greg Mahanna spoke in opposition to the resolution and moving forward with Redgate Kane.

Bill Downey said there must be an agreement with the General Services Administration and the National Park Service to move the project forward.

Petra Huda said she attended the hearing this morning and learned that the suit is still present and has not been settled. She asked why there is nothing to remove the law suit. She said she is a taxpayer and would like transparency on this matter and what the City Council knows.

Larry Booz spoke to tactics of Michael Kane during this process. He said the cost of a settlement would be on the backs of the taxpayers.

Roy Helse spoke opposed to giving Michael Kane \$2.4 million.

Paige Trace spoke opposed to the resolution and expressed concern regarding the unanimous voting pattern of the Council. She said that the City Council needs to act in the best interest of the residents and respect the taxpayers that voted to put you in office.

Peter Whelan spoke opposed to the resolution and giving Redgate Kane \$2.4 million. He said that this is an awful agreement and the Council has the option to not vote to move the agreement forward this evening.

Esther Kennedy said the McIntyre has been around for a long time. She said on November 18, 2021 the former Council gave this new Council a gift with their vote on the McIntyre. She said that the Council has time before making a decision on this matter and asked that be considered before voting this evening.

Zelita Morgan said this situation is disturbing and the Council needs to honor the community when making a decision this evening. She said history with the developer has not been good and the City Council has a choice to make tonight.

Michael Simchik, Rye, NH said that this is a difficult project but he heard this evening that the agreement was vetted by the financial team and the city's advisors. He spoke to the terms of the agreement and cautioned the Council from moving forward. He said the City Council must have the courage to have a financial analysis of the agreement before moving forward.

After three calls and no further speakers, Mayor McEachern declared the public hearing closed.

Councilor Denton said the City Council has been acting in good faith and not approving the funds would be a breach of the agreement. City Attorney Sullivan said it would not be wise to speculate on what the future might hold.

Councilor Cook asked if the GSA would give us an extension without the agreement. City Attorney Sullivan said the City is working diligently and that will be a factor in the decision making of the GSA.

Discussion followed regarding the monument process.

Councilor Tabor said this binds future City Council is but we must enter into a partnership. He said he feels this is the right course of action.

Councilor Blalock said these decisions are very difficult and he considers all options before voting and feels that this is the best option for the City.

Mayor McEachern said he would like to speak on why he did not want people to applaud. He said there is a time when we are all unified and applauds would be appropriate. He said he would support the agreement this evening and stated this is more about the settlement agreement than the costs. He said former Councilor Huda stated this would hold future City Councils to this vote but that is the essence of contracts. He stated every action is one member of nine and this is in the best interest to building the community plan.

On a roll call vote 7-1, motion passed. Councilors Tabor, Denton, Moreau, Lombardi, Blalock, Cook and Mayor McEachern voted in favor. Assistant Mayor Kelley voted opposed.

At 9:30 p.m., Mayor McEachern called for a brief recess. At 9:40 p.m., Mayor McEachern called the meeting back to order.

Councilor Moreau moved to suspend the rules in order to bring Item XIII. E. – Letter from Attorney Sherilyn Burnett Young, Rath, Young and Pignatelli, P.C., regarding Application for Urbanized Shoreland Exemption – RSA 483-B:12, Subject Property: 57 Salter Street. Seconded by Assistant Mayor Kelley and voted.

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- E. Letter from Attorney Sherilyn Burnett Young, Rath, Young and Pignatelli, P.C., regarding Application for Urbanized Shoreland Exemption – RSA 483-B:12, Subject Property: 57 Salter Street

Councilor Moreau moved to refer to the Planning Board for report back. Seconded by Councilor Blalock and voted.

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

- 1. One Year Lease Extension of Portsmouth Public Media, Inc., (PPMtv) Lease of the South Meeting House

City Manager Conard said that PPMtv is required to spend funds for capital improvements to the South Meeting House.

Councilor Cook said she would be recusing from the vote.

Councilor Lombardi moved to approve the one year extension of PPMtv's Lease of the South Meeting House with the City. Seconded by Councilor Tabor and voted. Councilor Cook abstained from the vote.

XII. CONSENT AGENDA

Councilor Moreau moved to adopt the Consent Agenda. Seconded by Assistant Mayor Kelley and voted.

- A. Eversource Petitions and Pole License Requests:
- Installation of 1 pole on Banfield Road #63-0684
 - Installation of 2 poles on Borthwick Avenue #63-0699
 - Installation of 1 pole on Boyan Place #63-0681
 - Installation of 1 pole on McKinley Road #63-0711
 - Installation of 2 poles on Middle Street #63-0713
 - Installation of 1 pole on Sagamore Avenue #63-0707
 - Installation of 1 pole on Vine Street #63-0668
- (Anticipated action – move to refer to the City Manager with Authority to Act)***
- B. Letter from David Grilk, Conventures, Inc., requesting permission to hold the 2022 Seacoast Cancer Community Celebration and 5K on Saturday, September 24, 2022 and Sunday, September 25, 2022 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Request from Barton & Gray Mariners Club, of Port City Realty Group, LLC to install a Projecting Sign at 20 Ladd Street ***(Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request)***

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

A. Email Correspondence

Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Cook and voted.

C. Letter from the Town of Rye Selectmen to PDA regarding Proposed Cargo Facilities

Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Lombardi and voted.

D. Letter from Jim Teetzel, Wilcox Industries regarding Portsmouth 400 Year Concept Plan

Councilor Lombardi moved to refer to the Arts and Culture Committee for review. Seconded by Councilor Denton.

Councilor Cook said this is a difficult situation when art comes to the City Council because the process we have in place no longer works. She stated that she will bring this before the Governance Committee to look at the current practice. She said it is reasonable to refer this to Arts & Culture but we don't have a process at this stage. She stated that the Arts and Non-Profit Committee could review this in the interim until we change the policy.

City Manager Conard said we have had to create an Ad Hoc and that could be done again or work with the Arts and Non-Profit Committee.

Councilor Lombardi said he spoke with Russ Grazier and Barbara Massar and they thought the committee could look at the request if the City Council would prefer to have an Ad Hoc Committee something needs to be done in the long run to deal with public art. He said we need to have things given to the City reviewed.

Councilor Moreau recommended that this be done in conjunction with the Portsmouth 400th NH within the legacy projects section.

Councilor Cook said she has been working with local organizations on local art projects to make recommended changes and the arts have a connection to their role in the community.

Councilor Lombardi withdrew his motion and Councilor Denton the second to the motion.

Councilor Tabor moved to refer to the City Manager to coordinate the public art process in conjunction with the Arts and Non-Profit Committee and the Portsmouth 400th Committee for a report back to the City Council for final approval. Seconded by Councilor Lombardi and voted.

XIV. MAYOR McEACHERN

1. Appointments to be Voted:
 - Appointment of Michael Griffin to the Portsmouth Housing Authority
 - Reappointment of Robert Bogardus to the Recreation Board
 - Reappointment of Kory Sirmaian to the Recreation Board

Councilor Moreau moved to appoint Michael Griffin to the Portsmouth Housing Authority until April 1, 2027; the reappointments of Robert Bogardus and Kory Sirmaian to the Recreation Board until April 1, 2025. Seconded by Councilor Blalock and voted.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR DENTON & COUNCILOR COOK

1. Electric Vehicle Charging Station Zoning Amendments

Councilor Denton moved to approve and send the draft Zoning Ordinance amendments regarding Electric Vehicle Charging Stations to the Planning Board for review and recommendation back to the City Council for first reading. Seconded by Councilor Blalock.

Councilor Denton spoke to the funding for public infrastructure needs. He reviewed the suggested amendments in detail with the City Council. He stated the goal is to send these recommended amendments to the Planning Board and have them report back on a version of this to have private industry development.

Councilor Moreau said she is concerned with putting a lot on to the Planning Board and overworking both the Planning Board and Planning Department.

Councilor Denton said the City Manager could tell us what makes the most sense in terms of timing.

Mayor McEachern said the Planning Board would need to decide when this would come back to the City Council.

Councilor Moreau said May 13th we would incorporate this into the Planning Board Phase 2. She said it would make sense to see what works and would agree that the City Manager speak with the Planning Director regarding when it is appropriate to review this.

On a unanimous roll call 8-0, motion passed.

B. COUNCILOR BAGLEY

1. **Action Item Needing Approval by City Council:**
 - Request for ADA Parking Space on Cass Street, by Connections Peer Support Center

Councilor Moreau moved to approve HP (Handicap Parking) parking space 30 feet from crosswalk on north side of Cass Street, east of Islington Street. Seconded by Assistant Mayor Kelley and voted.

2. Parking and Traffic Safety Committee Action Sheet and Minutes of April 7, 2022

Councilor Moreau moved to accept and approve the action sheet and minutes of the April 7, 2022 Parking and Traffic Safety Committee meeting. Seconded by Assistant Mayor Kelley and voted.

C. COUNCILOR COOK & ASSISTANT MAYOR KELLEY

1. Community Conversations

Councilor Cook moved to request that the City Manager develop a series of Community Conversations starting in June 2022 around issues of Diversity, Equity, Inclusion, and Justice. Seconded by Assistant Mayor Kelley.

Councilor Cook said they're making this request of City Manager Conard with the support of the City Council.

Assistant Mayor Kelley said there is a gap from City Hall to the community. She said we are talking about many things in DEI and Justice. She said these discussions should not be held at City Hall but facilitate conversations outside in the community.

Councilor Cook said the next step is for the City Manager to determine when staff was available for scheduling these discussions.

Assistant Mayor Kelley said this is not limited to what is here.

Motion passed.

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Approval of Homeland Security Grant Award from the US Department of Safety for the Seacoast Emergency Response Team (SERT) to purchase search and rescue equipment - \$29,024.39

Assistant Mayor Kelley moved to approve and accept the grant for the Police Department as presented. Seconded by Councilor Moreau and voted.

- B. Approval of Donation from Wilcox Industries Corp. for the Portsmouth Police Honor Guard to attend specialized training as well as attend the Police Memorial in Washington, DC. This year, Portsmouth Police K9 Max will be added to the memorial, following his 2019 line-of-duty death - \$5,000.00

Councilor Moreau moved to approve and accept the donation for the Police Department as presented. Seconded by Councilor Blalock.

Councilor Cook said she found the donation left some questions on the trip to Washington, DC and whether the trip is already budgeted and if they would be able to go without the donation.

City Manager Conard said she would like to coordinate with Acting Chief Maloney and report back on this.

Mayor McEachern asked if we want a process for departments accepting donations.

Councilor Cook said she would like to know if funding is supplemental or is the donation. She said she does not want to delay the trip with these questions.

Mayor McEachern said we need a separate conversation around this from the Governance Committee. He said the conversation should address when donations are received and if they're budgeted or not.

Motion passed.

- C. Acceptance of Donation in the form of five (5) \$20.00 gift certificates from JL Nails & Spa on Woodbury Avenue for the Portsmouth Police Department

Councilor Moreau moved to approve and accept the donation for the Police Department as presented. Seconded by Councilor Denton.

Councilor Lombardi said he feels this is a strange donation for a personal gift. He stated he would not like to see such a gift accepted for the use by an employee of the Police Department.

Councilor Moreau said she has seen these types of donations, which are given to the department to provide to someone in need of help.

Assistant Mayor Kelley asked what is the internal policy for such donations?

Councilor Moreau moved to table for report back on donations. Seconded by Councilor Cook.

Mayor McEachern said we need to understand gift policies for departments. He would like to put rules in place and have a conversation around on this matter.

Councilor Moreau withdrew the motion to table and Councilor Cook her second to the motion.

Motion passed.

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

1. McIntyre Update

This matter was reviewed earlier in the meeting.

2. FY 2023 City Council Budget Meeting Schedule

City Manager reported that the City Council will be holding Public Dialogue Budget Sessions at the Portsmouth Middle School, the Senior Activity Center and Fire Station 2 on May 19, 2022 with the City Council breaking into groups of three. She indicated that Deputy City Manager/Deputy City Attorney Woodland and Finance Director Belanger would each be at one of the locations and she would attend the session at the Middle School because she needs to attend the Planning Board meeting.

Councilor Moreau requested to be at the Portsmouth Middle School because she has Planning Board that evening.

3. Household Hazardous Waste Collection Day – May 21, 2022

City Manager Conard reported that the Household Hazardous Waste Collection Day will be held on May 21, 2022 at the Public Works Facility.

4. Report Back on Fee Waivers for Peirce Island Outdoor Pool and Boat Launch for Military, Military Dependents, Veterans and Veteran Caregivers

Councilor Denton moved to adopt a Military discount at the Peirce Island Outdoor Pool (free for children, \$2.00 per adult), the Peirce Island Boat Launch, a Military discount of 50% of all fees:

- **Non-motorized water craft - \$5.00**
- **Motorized craft - \$10.00**
- **Commercial boats - \$15.00**
- **Season pass - \$75.00**

Also, hosting a “Military Appreciation Day” during the summer, with free admission for military members and their families, with the potential of making this an annual event. Seconded by Assistant Mayor Kelley and voted.

5. Report Back on the Feasibility of Locating a COAST Bus Stop on Greenleaf Woods Drive

City Manager Conard reported that COAST has indicated that this would be a significant change to the route and something they would need to coordinate and plan into the route when future updates and refinements are proposed to the system.

6. Draft National Pollutant Discharge Elimination System Wastewater Permits

City Manager Conard reported that staff is preparing comments to the permits and need to submit them by May 16, 2022 for the Draft Pease WWTF NPDES permit and May 23, 2022 for the Draft Peirce Island WWTF NPDES permit.

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor Moreau moved that the City Manager report back on individual department policies and city standard policies on the acceptance of donations and gifts. Seconded by Councilor Cook and voted.

XIX. ADJOURNMENT

At 10:30 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Cook and voted.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK