

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: AUGUST 21, 2023

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, Bagley, Lombardi, Blalock, and Cook

V. INVOCATION

Mayor McEachern extended get well wishes and warm thoughts to Joanna Diemer who is recovering from a procedure she had this morning.

VI. PLEDGE OF ALLEGIANCE

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

VII. ACCEPTANCE OF MINUTES – JULY 17, 2023 AND AUGUST 7, 2023

Assistant Mayor Kelley moved to accept and approve the minutes of the July 17, 2023 and August 7, 2023 City Council meetings. Seconded by Councilor Tabor and voted.

VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

1. Peirce Island Wastewater Facility Plant of the Year Award

John Adie, NHDES Wastewater Engineering Bureau, Operations Technical Specialist and Rene Pelletier, NHDES Water Division Director presented the City of Portsmouth with the Plant of the Year Award for the Peirce Island Wastewater Facility. Mr. Pelletier said that Portsmouth is a shining star and the model to follow in the State of New Hampshire.

X. PUBLIC COMMENT SESSION

Tom Kaufhold spoke in support of the Arts and Culture Ordinance which is before you for first reading this evening. He reported that the Arts and Culture Commission are working on a new cultural plan and spoke to a survey that they are conducting and urged the public to participate in it up through August 29th.

Lenore Bronson said she is upset by developers getting more attention than residents. She stated that resident's opinions are important and spoke in support of resident advocates.

Francis Cormier spoke regarding the many projects in the city and the funding of projects that are not necessary. He said the city needs to stop flushing money away and lower taxes.

John Kudlich spoke regarding the fires in Maui and asked for some community outreach and that Portsmouth raise its voice to support the tragedy Maui is facing.

Roy Helse said he would like to see houses being built at Pease and asked what our stand for housing at Pease is.

Tom Nies spoke to the ordinance amendments on Code of Ethics. He said he feels there should be some additional work done to the ordinance. He asked why the gifts level has increased from \$100.00 to \$350.00.

Petra Huda spoke opposed to the McNabb project and said the Council needs to remember that this is all taxpayer's property. She asked why we would spend money on a project that is benefiting one developer. She also stated no ordinances should be amended to benefit a developer.

Esther Kennedy said the City Council needs to start thinking about the people. She said that there were no children at the StreetLife Dinner and hopes that the October 1st event includes children. She spoke opposed to the city entering into any agreement with McNabb.

Paige Trace said the City Council has created a sequel of the McIntyre with this McNabb project and expressed her opposition to giving away the right to govern to the City Manager. She asked where the CMMP for the McNabb project is. She also said the city budget has increased over \$20 million which has made it unaffordable for residents to live here.

Sue Polidura urged the City Council to slow down on the agreement with McNabb project. She also spoke to the Code of Ethics Ordinance before the City Council this evening and asked if the Legal Department has cross checked the ordinance with first amendment rights.

Irish Mike spoke on what is "hate" and the hate crimes that happened here in Portsmouth. He asked why the Police Department waited so long to release the name of the person that committed the crime.

Barbara Massar (via Zoom) Pro Portsmouth & Co-Chair of Arts and Non-profits Committee, spoke in support of the ordinance creating an Arts and Cultural Commission. She said the Committee is looking forward to passage of first reading of the new ordinance which will create the commission.

Rick Becksted thanked everyone for the ordinance on Arts and Cultural Commission and making that a permanent committee. He expressed his opposition to the McNabb project and said that the city has not been successful when it comes to agreements.

Peter Gilligan, East Kingston, spoke in support of saving the love locks at Prescott Park.

Mark from the Park, Eliot, Maine, played the song Small Town by Jason Aldean.

Zelita Morgan, spoke regarding the Ethics Ordinance that is before the Council for first reading. She said she is concerned with Item J and said it will create more problems. She stated it is not your right to take away people's first amendment rights. She asked the City Council to send the ordinance back to the Governance Committee for further review.

X. PUBLIC HEARING AND VOTE ON ORDINANCES AND/OR RESOLUTIONS

First Reading of Ordinances:

- A. First reading of Ordinance amending Chapter 1, Article IV, addition of new section – Section 1.413 – ARTS AND CULTURAL COMMISSION

Councilor Cook moved to pass first reading and schedule a public hearing and second reading at the September 5, 2023 City Council meeting. Seconded by Councilor Tabor and voted.

- B. First reading of Ordinance amending Chapter 1, Article IV, Section 1.402 – ECONOMIC DEVELOPMENT COMMISSION – Subsections A, B and C

Councilor Lombardi moved to pass first reading and schedule a public hearing and second reading at the September 5, 2023 City Council meeting. Seconded by Assistant Mayor Kelley and voted.

- C. First reading of Ordinance amending Chapter 1, Article VIII – CODE OF ETHICS – Preliminary, Section 1.801 – Definitions, and Section 1.802 – Conflicts of Interest

Councilor Cook moved to pass first reading and schedule a public hearing and second reading at the September 5, 2023 City Council meeting. Seconded by Councilor Tabor.

Councilor Cook said we brought forward what we could get done and all changes have been reviewed by the Legal Department with months of comments being heard by the Governance Committee regarding the ordinance. She stated that the ordinance would apply to all people that work, are elected, and those that serve on boards and commission. She said a formal presentation will be provided during the public hearing and second reading on the ordinance.

Councilor Bagley said he has concerns with Item J and feels that needs to be reviewed.

Councilor Cook said this only applies to quasi-judicial boards.

Mayor McEachern said we could have the Legal Department review this further. City Attorney Morrell said she would have the Legal Department report back on Item J in the ordinance.

Councilor Moreau said she would like to hear why this does not affect one's right to speak.

Robert Sullivan, Of Counsel, said the purpose of the ordinance is that the government is ethical. He spoke about how a city official acts as a judge. He said the purpose of the item is to bring about the same result when having an official step aside. He stated this is for people to have confidence in government.

Councilor Cook asked him to address freedom of rights and first amendment speech. Of Counsel Sullivan said it does not take rights away from anyone with free speech.

Councilor Tabor said the Governance Committee spent a great deal of time on this and the City Council decides policy. He said we tried to make sure board members are impartial.

Assistant Mayor Kelley asked why the gifts were raised from \$100.00 to \$350.00. Councilor Cook said the cost to attend a conference has increased with registration fees and that is often looked at as a gift, but it is an educational benefit for staff to attend conferences.

Councilor Moreau asked about personal interests in rights to employment.

Councilor Cook said those provisions were left alone.

Mayor McEachern asked why personal interest and pecuniary was not listed as a loss but in personal interest it mentions it as a gain. Of Counsel Sullivan said that change should be made to the ordinance.

Motion passed.

Public Hearing/Adoption of Resolution:

- D. PUBLIC HEARING/ADOPTION of Resolution Appropriating One Million Nine Hundred Thousand (\$1,900,000.00) Dollars from American Rescue Plan Act (ARPA) Grant to pay costs associated with Community Resource Network, Transportation Facilitation, Mobile Library Resources, Community Health Needs Assessment Recommendation, Community Campus Capital Improvements, and IT Infrastructure (Items listed in Exhibit A) and for the Payment of Costs Incidental and Related Thereto
- **PRESENTATION**
 - **CITY COUNCIL QUESTIONS**
 - **PUBLIC HEARING SPEAKERS**
 - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

City Manager Conard summarized the recommendation for the use of ARPA funds for six projects: Community Resource Network, Transportation Facilitation, Mobile Library Resources, Community Health Needs Assessment Recommendations, Community Campus Capital Improvements and Community Campus IT Infrastructure. Recreation Director Henley reviewed the Capital Improvements for Community Campus. City Manager Conard said we are working as a team to meet the needs of the building. She spoke regarding additional IT improvements and the funding. She said we still have 20% of ARPA funds remaining.

Councilor Denton asked about the installation of an EV charge for the city. City Manager Conard said we would need to review whether we could do a fast charger unit.

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

Peter Gilligan, East Kingston, would like to know where the money for these projects is coming from.

Mayor McEachern advised that we do not have a dialogue with speakers during a public hearing.

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

Mayor McEachern asked Library Director Friese how many school age children currently make use of the library. Library Director Friese said 8% of our population and 1/3rd of the population have library cards. He asked if the pop-up mobile library would allow for children to obtain library cards on-line. Library Director Friese said yes it would.

Assistant Mayor Kelley moved to adopt the Resolution as presented. Seconded by Councilor Bagley.

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

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Request to Establish Public Hearing for Supplemental Appropriation regarding Collective Bargaining

City Manager Conard spoke to the public hearing that would be held on September 5th on the five tentative agreements with the Fire & Police Departments. She reported that the Fire Department agreements are three-year terms, and the Police Department agreements are four-year terms. She outlined various aspects of the agreements which will be coming before the City Council for action at the September 5th City Council meeting. She reported to the City Council that the appropriation is \$890,000.00 for the five agreements.

Assistant Mayor Kelley moved to schedule a public hearing to appropriate \$890,000.00 from Unassigned Fund Balance to fund these agreements at the September 5th City Council meeting. Seconded by Councilor Blalock.

Mayor McEachern said the ability to attract, and maintain employees is important.

Motion passed.

2. Memorandum of Agreement Regarding McNabb Project at 1 Congress Street

City Manager Conard said the Memorandum of Agreement is for public realm improvements and identifies the scope of work. She said the staff agrees that any loss of parking spaces would go to the Parking & Traffic Safety Committee for action or recommendation which will come back to the City Council.

City Attorney Morrell reviewed the Memorandum of Agreement in detail. She stated that the engineering would be paid for by the developer.

Councilor Bagley spoke to the rehabilitation work to the parking garage and said the entrance is closed due to the project we are doing, not for the developer's project.

City Attorney Morrell said any changes to parking spaces would be reviewed by the Parking & Traffic Safety Committee and they would decide whether to eliminate spaces.

City Manager Conard said you could have a shared street with parking spaces.

Mayor McEachern said parking matters would go to the Parking & Traffic Safety Committee as a matter of the normal course of business and they would make a recommendation.

Councilor Bagley said this matter would be taken up at the September 7th Parking & Traffic Safety Committee meeting.

Councilor Tabor inquired about replacing sewer lines and water connections that are not part of the developer obligations. City Attorney Morrell said we addressed that in the whereas clauses.

Deputy City Manager Woodland stated the projects would need land use approvals and those items would flow from those approvals.

Mayor McEachern stated we are not obligated to create a shared trash area. City Attorney Morrell said that lies with the developer at this time.

Discussion followed regarding ADA compliance. City Attorney Morrell said we are requesting a door at the top of the garage area which the developer will pay for.

Discussion followed regarding the project manager for this project. City Attorney Morrell said that will be part of the Construction Management Mitigation Plan agreement which is coming later in the process.

Councilor Moreau asked whether the street work lies within our timetable. Public Works Director Rice said currently there is nothing scheduled for work in that area. He stated that we are anticipating the master plan would address that. He said if a developer needs utilities in front of our timetable it would be covered by the developer.

City Attorney Morrell addressed Part I #7 and stated any changes to improvements must go through the City Manager and Public Works Director. She indicated that notices would go out once a month through the Construction Management Mitigation Plan process. City Attorney Morrell said after the improvements the city would accept ownership of them at the completion of the project and we can do whatever we want with the right-of-way.

Assistant Mayor Kelley moved to authorize the City Manager to execute and deliver a Memorandum of Agreement in substantially similar form to the document contained in the agenda packet. Seconded by Councilor Moreau and voted.

Assistant Mayor Kelley moved to request a report back from the Parking & Traffic Safety Committee with a recommendation regarding the elimination of parking spaces and the loading zone. Seconded by Councilor Bagley and voted.

3. Public Art Trust Fund Update and Request for Referral

City Manager Conard said the art would be \$150,000.00 which is 1% of the project for the art piece for the Peirce Island Wastewater Treatment Facility.

Councilor Cook moved that the City Council refer this to the Public Art Review Committee for consideration of the development of art for Peirce Island. Seconded by Assistant Mayor Kelley.

Councilor Tabor said that the art does not have to be placed in one location. City Manager Conard said that is correct.

Councilor Cook thanked City Manager Conard for putting these funds in the trust and the Arts Committee will bring forward their first project.

Motion passed.

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

XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. Presentation Regarding Capital Improvement Plan Kickoff FY25 – Peter Britz, Director of Planning and Sustainability

Planning and Sustainability Director Britz provided a detailed presentation regarding the 6-year Capital Improvement Plan kickoff for FY25. He reported the 6-year plan identifies projects for upcoming years. He reviewed the public input opportunities that are available and the CIP process timeline.

- B. Letter from Valerie Rochon, Portsmouth NH 400th, Inc., requesting permission to hold a Community Picnic on Sunday, October 1, 2023 from 12:00 p.m. to 3:00 p.m. at Leary and Central Fields

Councilor Moreau moved to refer to the City Manager with Authority to Act. Seconded by Councilor Lombardi.

Councilor Moreau said the intention of this event is to make it friendly and open to all.

Mayor McEachern spoke to the various children events that have been held for the 400th.

Councilor Moreau announced that the Lantern Festival will be held during the evening on September 30th.

Mayor McEachern thanked Valerie Rochon and all the volunteers for their work in bringing forward these events.

Motion passed.

- C. Email Correspondence

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

XIV. MAYOR McEACHERN

1. Appointments to be Voted:
 - Paul Messier to the Building Code Board of Appeals
 - Meganne Fabrega to the Library Board of Trustees
 - Jennifer Mandelbaum to the Library Board of Trustees
 - William Bowen to the Planning Board as an Alternate
 - Ivy Robichaud to the Sustainable Practices Blue Ribbon Committee

Councilor Moreau moved to appoint Paul Messier to the Building Code Board of Appeals until July 1, 2028, Meganne Fabrega to the Library Board of Trustees until October 1, 2026; Jennifer Mandelbaum to the Library Board of Trustees filling the unexpired term of Jan Fonseka until October 1, 2025; William Bowen to the Planning Board as an Alternate filling the unexpired term of Ernest Carrier until December 31, 2024 and Ivy Robichaud appointed to the Sustainable Practices Blue Ribbon Committee. Seconded by Assistant Mayor Kelley and voted.

2. Acceptance of Resignations:
 - Johanna Landis from the Historic District Commission

Councilor Blalock moved to accept with regret the resignation of Johanna Landis and to send a letter of thanks for her service to the city. Seconded by Assistant Mayor Kelley and voted.

- Harold Whitehouse from the Parking and Traffic Safety Committee

Councilor Blalock moved to accept with regret the resignation of Harold Whitehouse and to send a letter of thanks for his service to the city. Seconded by Councilor Moreau and voted.

Various members of the City Council spoke to the length of service that Harold has provided to the city in many capacities and cited his dedication to the community.

Motion passed.

XV. CITY COUNCIL MEMBERS

A. COUNCILOR BAGLEY

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the August 3, 2023 meeting

Councilor Bagley moved to accept and approve the action sheet and minutes of the August 3, 2023 Parking & Traffic Safety Committee meeting. Seconded by Assistant Mayor Kelley and voted.

XVI. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Fire Department from Lloyd Woodruff for the department's discretion - \$200.00

Assistant Mayor Kelley moved to approve and accept the donation for the Fire Department as presented. Seconded by Councilor Lombardi and voted.

- B. Acceptance of Donation to the Recreation Department from BRGR Bar for Skatepark Fundraising - \$1,049.00

Councilor Blalock moved to approve and accept the donation for the Recreation Department as presented. Seconded by Councilor Lombardi and voted.

XVII. CITY MANAGER'S INFORMATIONAL ITEMS

- 1. Pease Development Authority Update

City Manager Conard announced that Captain Geno Marconi was awarded the Lifetime Achievement Award by the International Association of Maritime and Port Executives and that he is one of only five people to receive this award. She reported that the PDA voted to create an overlay district at the parking lot in front of the Tradeport operated by C&J Bus Lines. City Manager Conard reported that the unaudited FY23 financials for Pease revenues was \$19.5 million, which is an increase of over a million from what was projected. She also reported an increase of 2½ million gallons being dispensed in fuel flowage fees than what was budgeted. She advised the Council that PDA agreed to commit to an energy consulting services contract with the same firm being used by the State of New Hampshire.

- 2. Update on Coakley Executive Committee

City Manager Conard reported that Chairman Eric Spear has resigned from the Coakley Executive Committee, and she has appointed Glenn Normandeau to fill the vacancy. She thanked former Mayor Spear for his work as chairman of the Committee.

XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Assistant Mayor Kelley extended an invitation to everyone for the BIPOC Fest on September 24th from Noon to 5:00 p.m. at Vida Cantina. She said that this is a free event that is open for all to enjoy.

Councilor Cook announced that the Seacoast Jazz Festival will be held in Prescott Park on Saturday, August 26th with a rain date of Sunday, August 27th.

City Manager Conard encouraged everyone to participate in the library's on-line survey.

XIX. ADJOURNMENT

At 10:05 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Blalock and voted.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK