

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, MAY 2, 2005

PORTSMOUTH, NH  
TIME: 7:00PM

### **I. CALL TO ORDER**

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

### **II. ROLL CALL**

Present: Mayor Sirrell, Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, Raynolds, Whitehouse and St. Laurent

### **III. INVOCATION**

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

### **IV. PLEDGE OF ALLEGIANCE**

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

### **PROCLAMATIONS**

1. National Police Week – May 15 – 21, 2005

Councilor Ferrini read the Proclamation declaring May 15 – May 21, 2005 as National Police Week. Mayor Sirrell presented the Proclamation to Lieutenant Earl Case who accepted it on behalf of the entire Police Department with thanks and appreciation.

2. Saverio Giambalvo in Recognition of his 42 years of service to the Portsmouth Housing Authority

Assistant Mayor Grasso read the Proclamation in recognition of Mr. Giambalvo's 42 years of service to the Portsmouth Housing Authority. Mayor Sirrell presented Mr. Giambalvo with the Proclamation and a gift in honor of his years of service to the Portsmouth Housing Authority who accepted it with thanks and appreciation. Ruth Griffin of behalf on the Housing Authority thanked Mr. Giambalvo's for his commitment and years of service to the board.

### **MAYOR'S AWARDS**

1. The Planning Board
2. Portsmouth Listens

Mayor Sirrell presented Mayor's Awards to the members of the Planning Board and Portsmouth Listens in recognition of their efforts and work in preparing the Master Plan. John Tabor, Jim Nocas and Dave Cohen presented Mayor Sirrell and the City Council with a gift on behalf of Portsmouth Listens.

## **V. ACCEPTANCE OF MINUTES – APRIL 18, 2005**

Councilor Whitehouse moved to accept and approve the minutes of the April 18, 2005 City Council meeting. Seconded by Councilor St. Laurent and voted.

## **VI. PUBLIC COMMENT SESSION**

Steve Durgin said he would like the City Council to hold a public hearing on the recommendation of the African Burial Ground Committee for the closure of Chestnut Street.

Donald Green spoke in support of the request to hold a “Bioblitz” at the Great Bog on June 4<sup>th</sup>. He said the project will identify various plants and species located within the bog.

Tom Carroll asked the City Council to express their opinion to the Pease Development Authority regarding the scrap metal business at the Port. He said that the Port should be a profitable item for the City and the scrap metal business is not. He suggested that the City contact the Scotia Prince for consideration of locating at the Port.

Joel Carp spoke in support of the proposed letter the City Council will consider this evening under Councilor Raynold’s name to the Pease Development Authority. He said that the Pease Development Authority should not renew the scrap metal business contract. He urged the City Council to address this matter before the Pease Development Authority at their meeting on May 20, 2005. He said it is the responsibility of the City Council to protect the residents of Portsmouth.

Bernie Pelech requested that the City Council reconsider their vote regarding Avanti Development. He advised the City Council that his client has changed their request to create 11 public parking spaces for use by the City. He said Avanti wants to work with the City and neighborhood on this matter. He urged the City Council to consider the new proposal as submitted.

Joshua Cyr thanked the City for an excellent Children’s Day. He spoke in support of the request from Pro Portsmouth for the summer street closure plan.

Bryan Pappas said that he lives directly across the street from the scrap metal operations and it is unacceptable. He said that the noise and dust has effected his quality of life. He said that the City could get another business to locate at the Port, which would be more profitable and better for the residents.

Kiarna Boyd said she is requesting use of Haven Park for her wedding ceremony in October. She advised the City Council that there would be no confetti or rice thrown therefore, no clean up would be required.

## VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 6, ARTICLE VII – DOG ORDINANCE BE DELETED IN ITS ENTIRETY AND REPLACED WITH NEW SECTIONS 6.701 – 6.715; CHAPTER 8, ARTICLE II, SECTION 8.202(D) – DOGS IN PARK; CHAPTER 9, ARTICLE IV – REMOVAL OF DOG EXCREMENT DELETED IN ITS ENTIRETY

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

City Attorney Sullivan advised the City Council that there were ordinances located in various sections of the ordinance book relative to dogs, which have now been consolidated in a more comprehensive ordinance. He said that this ordinance also addresses exotic animals and replaces the Vicious Dog Committee with an Animal Control Committee.

Esther Kennedy, Portsmouth resident, addressed the process of the Dog Committee and asked what is driving the need to change the ordinance. She said some questions were not answered during the public hearing held by the Dog Committee regarding the ordinance. She said there should have been data provided to justify the need to amend this ordinance. She urged the City Council to look at the process followed by the Dog Committee in the creation of this ordinance.

Eric Weinreib, Portsmouth resident, said that he lives next to a vicious dog and the City needed to create a stronger ordinance, which the Dog Committee did with the proposal before the City Council. He said he would like to see voice control remain in the ordinance because there are dogs that are controlled by voice commands.

James Horrigan, Portsmouth resident, said a vicious dog attacked him and he supports this ordinance as submitted. He said there needs to be a leash law in the City. He thanked the Dog Committee for their work and said this is a good ordinance.

Bob Bennett, Portsmouth resident, spoke in support of the Dog Ordinance and urged the City Council to adopt the ordinance.

Charles Garland, Portsmouth Business owner, spoke in support of a leash law. He said this is an important ordinance and should be approved by the City Council. He addressed the section in the ordinance which requires all dogs that enter the Dog Park must be spayed or neutered. He recommended amending the language to say dogs that are one year or older must be spayed or neutered. He said the reason for this request is that dogs are unable to be spayed or neutered until they have reached six months old and some veterinarians won't do it until the dog is a year or older.

Frank Roth, Portsmouth resident, said he served on the Dog Committee and he also is a member of the Dog Owners Group. He spoke to the importance of the Dog Park and thanked the Public Works Department for their assistance in maintaining the Park. He reported in 2004 59 dogs were reported at large and 15 of those resulted in dog bites. He said that dog owners need to have responsibility of their dog. He said some owners are able to control their dogs via voice commands and would like to have that option remain.

Mimi Clark, Portsmouth resident, said the ordinance before the City Council is excellent and urged the support of the City Council. She said that her dog is controlled via voice command but she would never leave her yard without having the dog on a leash. She said that it is her responsibility to ensure the safety of her dog, neighbors and others by keeping her dog on a leash. She said no one can predict what an animal would and could do, therefore they should be controlled by a leash.

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

Assistant Mayor Grasso moved to suspend the rules in order to take up Item IX. B. – Second reading of Ordinance amending Chapter 6, Article VII – Dog Ordinance be deleted in its entirety and replaced with new Sections 6.701 – 6.715; Chapter 8, Article II, Section 8.202(D) – Dogs in Parks; Chapter 9, Article IV – Removal of Dog Excrement deleted in its entirety. Seconded by Councilor St. Laurent and voted.

Assistant Mayor Grasso moved to pass second reading of the amended ordinances, as submitted, and including the amendments as outlined in the City Manager's comments and hold third and final reading at the May 16, 2005 City Council meeting. Seconded by Councilor Pantelakos.

*Amendments outlined in City Manager's comments:*

- *Amend Section 6.706 (a) by replacing "as defined in Section 6.701" with "as defined by this Ordinance."*
- *Amend Section 6.706 (b)(4) by adding the following sentence at the end of the first sentence: "Designated off-leash areas shall be any City property posted under the authority of the Public Works Department as an off-leash area."*

Assistant Mayor Grasso said this ordinance is to ensure the safety of dogs. She said we need to adopt the entire ordinance as submitted but suggested amending the section relative to dogs being spayed or neutered in the Dog Park to add language that states all dogs one year or older. Assistant Mayor Grasso advised the public that the following areas will be posted as off-leash areas for dogs: Haven Park; Langdon Park; Peirce Island (Playground excepted); Ward Park; South Mill Pond Area; Goodwin Park; Atlantic Heights under I-95 Bridge and the Great Bog.

Assistant Mayor Grasso moved to amend the motion under Section 6.707 (c)(4) to read as follows: *"Dogs must be spayed or neutered that are one year or older."* Seconded by Councilor St. Laurent.

Councilor Whitehouse said the easterly end of Peirce Island should be used for dogs off leash only.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Councilor Pantelakos said she is sorry that Ms. Kennedy didn't feel that enough statistics were provided during the meetings held by the Dog Committee. She said the Dog Committee tried to address everyone's concerns and suggestions.

Mayor Sirrell spoke in support of the leash law. She said dogs need to be on a leash for their safety as well as the protection of others.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

Councilor Marchand said this ordinance is needed and provides more strength and control for the Animal Control Officer. He suggested reviewing this ordinance and its enforcement after it has been in effect for a year. He said that the City Council could be provided with a report and statistics on the enforcement of the ordinance.

Assistant Mayor Grasso's amendment passed.

Councilor St. Laurent said he does not want to make more restrictions for the residents of the City. He said he does not completely agree with a leash law but would like to see the ordinance evaluated after it has been in place for a year.

Councilor St. Laurent moved to amend the motion under Section 6.705 – Definitions – Vicious Dog by deleting the following: *“or other domestic animal”*. Seconded by Councilor Whitehouse.

Councilor Pantelakos said that Section 6.705 – Definitions for a Vicious Dog is for the protection of one dog biting another dog.

Councilor St. Laurent's amendment *failed* to pass on a voice vote. Councilor St. Laurent voted in favor. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, Raynolds, Whitehouse and Mayor Sirrell voted opposed.

Councilor Raynolds moved to amend the motion under Section 6.702 (6) by replacing it with the following: *“Barks, whines, howls or cries in an excessive and continuous fashion or during hours of the early morning or late evening as to disturb the peace and quiet of any other person. For the purposes of this ordinance, “continuous fashion” shall be defined as more than thirty (30) minutes, and “hours of the early morning or late evening” shall be defined as those used in Article IV, Section 3.404 (“Noises Prohibited – Unnecessary Noise Standard”): prior to 7:00 a.m. or after 11:00 p.m.”*. Seconded by Councilor Ferrini.

Councilor Raynolds said he supports a leash law. He advised the City Council that he worked with Assistant City Attorney Woodland on this amendment because the ordinance needed to address the early morning and late evening hours.

Councilor Whitehouse asked what would prevent a dog owner from taking their dog in the house after barking 29 minutes for 10 minutes and then put it back outside. City Attorney Sullivan said nothing would prevent a dog owner from doing that.

Councilor Reynolds amendment passed.

Main motion passed as amended.

### **VIII. APPROVAL OF GRANTS AND DONATIONS**

- A. Acceptance of Donations to the New Library Building Fund
- Peter and Meghan Rice - \$40.00
  - Vernis and Emerald Jackson - \$500.00
  - Youth Basketball Clinic Sponsorship - \$1,855.00

Councilor Reynolds moved to approve and accept the donations to the New Library Building Fund as listed. Seconded by Assistant Mayor Grasso and voted.

- B. Acceptance of Donations to the Cemetery Committee
- Bettencourt Chiropractic - \$100.00
  - Portsmouth Regional Hospital - \$150.00
  - Saint Andrew's Lodge - \$200.00

Assistant Mayor Grasso moved to approve and accept the donations to the Cemetery Committee as listed. Seconded by Councilor Ferrini and voted.

- C. Acceptance of Community Development Block Grant - \$745,656.00

Councilor Whitehouse moved to accept a Community Development Block Grant (CDBG) in the amount of \$745,656.00 from the U.S. Department of Housing and Urban Development. Seconded by Assistant Mayor Grasso and voted.

- D. Acceptance of Donations to the Police Department to purchase officer trading cards and like items - \$3,000.00

Councilor Pantelakos moved to approve and accept the donations to the Portsmouth Police Department as listed. Seconded by Councilor Reynolds and voted.

- E. Moose Plate Grant Wetland Study

Assistant Mayor Grasso moved to authorize the City Manager to enter into a grant agreement to accept and expend funds in the amount of \$16,465 from the State Conservation Commission to conduct the Portsmouth Buffer Restoration and Education Project. Seconded by Councilor Pantelakos and voted.

**IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. First reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location – to rezone the properties located off Mirona Road at Assessors Map 252, Lot 3 and Map 253, Lot 4 from Industrial (I) to General Business (GB)

Councilor Whitehouse moved to pass first reading of the amended ordinance, as submitted, and hold a public hearing and second reading at the May 16, 2005 City Council meeting. Seconded by Councilor St. Laurent and voted.

**X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITONS**

- A. Letter from James Stankiewicz, Firefighters Trans NH, requesting permission to hold the 18<sup>th</sup> annual Trans-NH Bike Ride for Muscular Dystrophy on Sunday, June 26, 2005

Councilor Raynolds moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.

- B. Letter from Danna Truslow, and Richard Adams, The Seacoast Land Trust, requesting permission to conduct a “Bioblitz” activity by which naturalists document all the plant and animal species in the Great Bog over a short period of time on Saturday, June 4, 2005

Councilor Pantelakos moved to refer to the City Manager with power. Seconded by Councilor St. Laurent and voted.

- C. Letter from Attorney Bernie Pelech requesting that the City Council reconsider their vote not to convey the land on Falkland Place and Ranger Way to Avanti Development

Assistant Mayor Grasso said that she considers this a new request from Avanti Development and the matter should be refer to the Planning Board for a report back.

Assistant Mayor Grasso moved to refer to the Planning Board for a report back. Seconded by Councilor Ferrini.

Councilor Whitehouse said he supported the recommendation of the Planning Board relative to this request and supports referring this new request back to the Planning Board for a report back to the City Council.

Councilor Raynolds asked if conveyance of the land means to sell the property at fair market value. City Attorney Sullivan said conveyance means to sell the property but doesn't have to be at fair market value.

Councilor Ferrini urged residents to come forward to address this request at the Planning Board level.

Motion passed.

- D. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting the City consider a plan for Street Closures during the summer months

Councilor Raynolds move to refer to the City Manager with power. Seconded by Councilor Ferrini.

Councilor Whitehouse spoke concern with allowing amplification for this event. He said that it has always been a policy of the City Council to not allow amplification. He said we do not need that type of atmosphere in the central business district.

City Manager Bohenko said that Pro Portsmouth has indicated that the amplification would be measured. He said he would like to try it, and if it doesn't work he would prohibit it for all other dates. He said that we allow amplification for Market Square Day and other events therefore we should at least try it to see if it will work.

Councilor St. Laurent asked if the events and amplification would be monitored. City Manager Bohenko responded affirmatively.

Councilor Ferrini said it is important that we achieve a mutual balance.

Assistant Mayor Grasso requested that City Manager Bohenko evaluate each event on a weekly basis.

Motion passed with Councilor Whitehouse voting opposed.

- E. Letter from Kiarna Boyd requesting permission to hold a wedding ceremony on Saturday, October 29, 2005 at Haven Park

Councilor Pantelakos moved to refer to the City Manager with power. Seconded by Councilor St. Laurent and voted.

- F. Letter from Drika Overton, Portsmouth Percussive Dance Festival, requesting permission to close Pleasant Street between Market Square and Porter Street for street performances on Friday, July 1, 2005 at 7:30 p.m. – 8:30 p.m.

Councilor Ferrini moved to refer to the City Manager with power. Seconded by Assistant Mayor Grasso and voted.



## **XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Report Back Re: Proposal by Wenberry Associates, LLC Re: Fleet Street Property

City Manager Bohenko said that Planning Director Holden has provided the City Council with a memorandum outlining the recommendation of the Planning Board. He advised the City Council that the Planning Board has stipulated that the alleyway not be used by pedestrian traffic until such time as it has been improved.

Assistant Mayor Grasso moved to accept the Planning Board's recommendation to accept conveyance of the property being offered by Wenberry Associates, LLC and to negotiate and execute whatever documents necessary for that purpose. Seconded by Councilor Ferrini and voted.

2. Request for the Authorization to Enter into an Annual Operating Agreement with Art-Speak and to Establish a Trust for Arts and Culture

City Manager Bohenko said this request is to enter into an operating agreement and to establish a trust for Arts and Culture. He said this agreement would outline, among other things, funding commitments and in-kind support on behalf of the City and services delivered to the City by Art-Speak.

Chris Dwyer, of Art-Speak said that the documents would formalize their relationship with the City. She said that the trust would allow the funds to be managed and expended as part of the City Trust Funds.

Assistant Mayor Grasso moved to approve the proposed agreement and authorize the establishment of the trust. Seconded by Councilor Ferrini.

Councilor Whitehouse said there is nothing in the trust documents regarding yearly audits. City Manager Bohenko advised Councilor Whitehouse that all City Trust Funds are audited on a yearly basis.

Motion passed.

3. Maxam Property Appropriation

City Manager Bohenko said this appropriation is to purchase 27 acres off Coach Road for conservation purposes. He said that The Seacoast Land Trust is making this request with the funds coming from the Conservation Fund to protect and preserve this land. He requested the City Council ratify the recommendation of the Conservation Commission.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Councilor St. Laurent moved to approve the appropriation of \$25,000 towards the acquisition of the Maxam Properties for Conservation purposes using funds from the City's Conservation Fund also known as Fund 10. The lots are all shown on Assessor plans Map 297 as lots 0004-0000, 0004-003A and 0000-0003. Seconded by Councilor Ferrini.

Mayor Sirrell urged the City Council to approve this request as submitted. She said it is important to preserve conservation land.

Motion passed.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

4. Request for Approval of Pole License Agreement #63-421

City Manager Bohenko asked the City Council to approve the request as recommended by the Public Works Department.

Councilor Whitehouse moved to approve the request from PSNH for pole license agreement #63-421 as recommended by the Public Works Department. Seconded by Councilor St. Laurent and voted.

5. Proposed Easement Agreement 6-16 Congress Street (Former Eagle Photo)

City Manager Bohenko said that this is a similar easement that was granted to the Hilton Gardens Hotel. He said the easement is needed for construction purposes. He requested that the City Council authorize him to negotiate and execute any easement or licenses necessary.

Councilor Whitehouse moved to authorize the City Manager to negotiate and execute any easement or licenses as necessary to allow the construction of a building at 6-16 Congress Street in accordance with approvals issued by the Planning Board and the HDC. Seconded by Councilor Ferrini.

Councilor Whitehouse questioned the language in the easement agreement that indicates the property line on the southerly side of Congress Street a distance of sixteen inches (16"). City Attorney Sullivan said that the agreement reflects the southerly side in error and that will be addressed and corrected in the final agreement.

Motion passed.

6. Letter from David Engel, Chair of Old State House, requesting permission to hold the dedication of the Old State House Plaque in Market Square on Sunday, May 15, 2005 at Noon (Not on agenda)

Councilor Ferrini moved to refer to the City Manager with power. Seconded by Assistant Mayor Grasso and voted.

City Manager Bohenko announced that the FY06 Budget Public Hearing will be held on Tuesday, May 3, 2005 at 7:00 p.m. in the Council Chambers.

**B. MAYOR SIRRELL**

1. Appointments

Councilor Whitehouse moved to reappoint John Gregg to the Cable Television and Communications Commission until April 1, 2008. Seconded by Councilor St. Laurent and voted.

Assistant Mayor Grasso moved to reappoint Donald Green to the Conservation Commission until April 1, 2008. Seconded by Councilor Pantelakos and voted.

2. Resignation – Portsmouth Housing Authority

Assistant Mayor Grasso moved to accept with regret the resignation of Saverio Giambalvo from the Portsmouth Housing Authority. Seconded by Councilor Whitehouse and voted.

Mayor Sirrell announced that she has established a Subcommittee to review appointments and make recommendations for the Boards and Commissions. She advised the City Council that she has appointed Assistant Mayor Joanne Grasso, Councilor Thomas Ferrini, Councilor Laura Pantelakos to serve on this subcommittee and she will serve as an Advisory member.

**C. COUNCILOR HYNES**

1. Traffic & Safety Committee Action Sheet and Minutes of the April 14, 2005 meeting

Councilor Hynes moved to approve and accept the Traffic & Safety Committee Action Sheet and Minutes of the April 14, 2005 meeting. Seconded by Councilor Pantelakos and voted.

2. Parking Committee Action Sheet and Minutes of the April 14, 2005 meeting

Councilor Hynes moved to approve and accept the Parking Committee Action Sheet and Minutes of the April 14, 2005 meeting. Seconded by Assistant Mayor Grasso and voted.

**D. COUNCILOR RAYNOLDS**

1. Letter to PDA Executive Director Re: Port of NH

Councilor Raynolds moved to send a letter to the PDA Executive Director with copies to the PDA Board of Directors and Governor Lynch expressing the opinion of the City Council regarding the Port of NH. Seconded by Councilor Pantelakos.

Mayor Sirrell requested that all members of the City Council sign the letter.

City Manager Bohenko requested in the letter where it makes reference to City of Portsmouth Economic Development Director that the City of Portsmouth staff be inserted in its place.

Councilor Pantelakos said the scrap metal operations at the Port are terrible and this matter needs to be addressed.

Councilor St. Laurent spoke in support of the letter. He said he hears about the clouds of rust dust going into residents homes and into the Piscataqua River.

Councilor Ferrini spoke in support of the letter and the Pease Development Authority should be glad the City is not looking for an injunction.

Mayor Sirrell passed her gavel to Assistant Mayor Grasso.

Mayor Sirrell thanked Mr. Carroll and Mr. Carp for addressing this issue and that the City Council will attempt to express their opinion to the Pease Development Authority.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

Councilor Whitehouse thanked City Manager Bohenko for his representation at the Pease Development Authority on this and other issues.

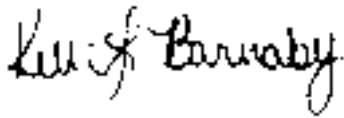
Councilor Pantelakos encouraged Peter Loughlin, Representative to the Pease Development Authority to also vote against the scrap metal operations.

Assistant Mayor Grasso thanked Councilor Reynolds for preparing this letter.

Motion passed.

### **XIII. ADJOURNMENT**

At 9:50 p.m., Councilor Pantelakos moved to adjourn. Seconded and voted.



Kelli L. Barnaby, City Clerk