

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, MARCH 6, 2006

PORTSMOUTH, NH  
TIME: 7:00PM [or thereafter]

At 6:00 p.m., an Anticipated Non-Meeting with Counsel was held regarding Negotiations and Litigation.

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

Mayor Marchand called the meeting to order at 7:30 p.m.

### **II. ROLL CALL**

Present: Mayor Marchand, Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Whitehouse, Smith and Hynes

### **III. INVOCATION**

Mayor Marchand 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.

### **MAYOR'S AWARDS**

1. Ralph A. DiBernardo, Sr.

Mayor Marchand presented a Mayor's Award to Ralph A. DiBernardo, Sr. recognizing his years of service to the Traffic & Safety Committee. Ralph accepted the award with thanks and appreciation.

2. Ronald E. Cypher

Mayor Marchand presented a Mayor's Award to Ronald E. Cypher recognizing his years of service to the Traffic & Safety Committee. Ronald accepted the award with thanks and appreciation.

3. St. Patrick's Girls Basketball Team

Mayor Marchand presented Mayor's Awards to the players and coaches of the Girls' Fifth Grade Basketball Team in recognition of their League Championship for the second year in a row. On behalf of the team coaches Mark Antaya and Kim Hubby accepted the award with thanks and appreciation.

4. Dondero Fifth Grade Boys Basketball Team

Mayor Marchand presented Mayor's Awards to the players and coaches of the Dondero Fifth Grade Boys' Basketball Team in recognition of their perfect 10-0 season and winning the League Championship. On behalf of the team coaches Joe Johnson and Dan Main accepted the award with thanks and appreciation.

**PROCLAMATIONS**

1. Music in the Schools Month

Councilor Grasso read the Proclamation declaring March as Music in the Schools Month. Mayor Marchand presented the Proclamation to Wendell Purrington who accepted it with thanks and appreciation.

2. Youth Art Month

Councilor Dwyer read the Proclamation declaring March as Youth Art Month. Mayor Marchand presented the Proclamation to Wendell Purrington who accepted it with thanks and appreciation.

**PRESENTATION**

1. Update on Library Project – John O'Leary, Chair of the Library Building Committee

John O'Leary, Chair of the Library Building Committee, Mary Ann List, Library Director and David Allen, Deputy Public Works Director provided an update on the Library Project. Library Director List reported on the installation of the foundation, metal decking, and roofing, the pouring of concrete and the erection of the steel. Deputy Public Works Director Allen addressed the construction schedule with occupancy planned for November. He also reported on the project teams working on the construction of the library. Mr. O'Leary said the New Library Building Committee is pleased with the process that has taken place and the staff has done a great job on shepherding this project. He said the Committee is working to get the best value for its dollar.

Councilor Whitehouse asked how the budget looks at this time. Mr. O'Leary advised Councilor Whitehouse that they are on budget and expect to stay on budget. He said that this includes the funding in this Capital Improvement Plan budget. Councilor Whitehouse asked what the \$350,000.00 figure in the Capital Improvement Plan would be used for. Mr. O'Leary advised Councilor Whitehouse that the funding would be used for furnishings. Councilor Whitehouse spoke to an earlier report that indicated furnishings and shelving would be moved from the existing library. Mr. O'Leary reported that the library would utilize what they can from the existing library.

City Manager Bohenko advised the City Council that the staff and New Library Building Committee have done value engineering on the library project.

Councilor Pantelakos thanked the New Library Building Committee and staff members for their hard work on the project.

Councilor Reynolds spoke to having the new library lead certified and asked Mr. O'Leary to address the certification process. Mr. O'Leary advised the City Council that we would not know if we would achieve the certification until the project is complete. He said the primary goal is to make the library functional. He said we have worked hard with energy modeling and have worked with our contractors on these issues.

#### **V. ACCEPTANCE OF MINUTES – FEBRUARY 13, 2006**

Councilor Pantelakos moved to accept and approve the minutes of the February 13, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

#### **VI. PUBLIC COMMENT SESSION**

Harold Ecker spoke opposed to the City funding the construction of a parking facility at the Sheraton Conference Center. He said that taxpayers should not be funding this project.

Tom Carroll spoke to the problems created by the Port. He said the scrap metal operations have effected the quality of life in the area. He spoke to the position opening for the Port Director this year. He said that the Governor makes the appointment of the director and requested that the City Council send a letter to the Governor regarding a review of the position and its current director.

Joel Carp spoke to the need for the Governor to open the process for the appointment of the Port Director. He urged the City Council to contact the Governor to express the need to open up the process for the appointment of the Port Director.

Walter Allen spoke regarding the School Department budget and that the education system must be run with the taxpayers' ability to pay.

Ralph DiBernardo spoke to the Islington Woods project. He said that they would be seeking zoning changes to accommodate the project. He said we need to continue the best use of the land for the City not the developer. He urged the City Council to remember the concerns of the residents expressed regarding over development, the strain on our infrastructure and the lasting impact this project would have on the City.

#### **VII. ACCEPTANCE OF GRANTS/DONATIONS**

- A. Acceptance of New Hampshire Estuaries Project (NHEP) Grant for Pleasant Point Sewer Extension - \$30,000.00

Councilor Whitehouse moved to approve and accept the grant for \$30,000.00 from the New Hampshire Estuaries Project for the Pleasant Point Sewer Extension. Seconded by Councilor Grasso.

City Manager Bohenko spoke to the grant and advised the City Council that we have worked with the neighborhood on this matter. He advised the City Council that sewer service would be provided to property owners.

Deputy Public Works Director Allen spoke to the low-pressure system, which would be installed for the property owners.

Motion passed.

### **VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. First reading of Ordinance amending Chapter 1, by the creation of Article XVII – Funding of Public Art

City Attorney Sullivan reported that this ordinance would create a system where the City would allocate a portion of the expense of public building construction and significant building renovation projects. The funds would be spent on works of art, which shall be available for the benefit of all without additional cost to those persons. He advised the City Council that the funds would be put into a trust that would be administered by the Trustees of the Trust Fund. He said that no less than 90% of the principal amount of public art contribution generated by any particular building project shall be expended on the site of that project.

City Manager Bohenko reported that the public art commitment would not be triggered unless the bid price or negotiated price shall be in excess of \$2,000,000.00.

Councilor Dwyer addressed the need for the recreation of a trust as a repository for the funds. She said that the money would be generated far in advance of a sculpture or the work of art being commissioned so that the money would be within the trust fund during that time.

Councilor Dwyer moved to pass first reading, as submitted, and hold a public hearing and second reading at the March 20<sup>th</sup> City Council meeting accompanied by the Public Art Trust. Seconded by Councilor Grasso.

Councilor Grasso said that this ordinance is a great idea and she would like to encourage private developers to contribute towards the trust.

Motion passed.

- B. First reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location – Rezoning properties located off Banfield Road and Constitution Avenue from Office Research (OR) to Industrial (I)

City Manager Bohenko spoke to the map provided to the City Council outlining the area.

Planning Director Holden advised the City Council that the ordinance is implementing a portion of the master plan.

Councilor Whitehouse moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the March 20<sup>th</sup> City Council meeting. Seconded by Councilor Grasso and voted.

- C. First reading of Ordinance amending Chapter 7, Article III, Section 7.330, Sub-section A – No Parking – Church Street: both sides from State Street to Court Street

City Manager Bohenko advised the City Council that this ordinance amendment is a recommendation from the Traffic & Safety Committee.

Councilor Grasso moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the March 20<sup>th</sup> City Council meeting. Seconded by Assistant Mayor Ferrini.

Councilor Whitehouse requested that the City notify the abutters of the public hearing via registered mail with return receipt requested. Councilor Grasso accepted this as part of her motion.

Councilor Smith spoke opposed to the motion and the ordinance because it would take away 3 parking spaces. He said that the 3 parking spaces should be preserved and possibly metered.

Councilor Pantelakos spoke opposed to the ordinance and that we should not remove any parking spaces. She expressed concern for the safety of the owners leaving their businesses in the evening and not having the parking spaces available to them near their establishments.

Councilor Hynes advised the City Council that this ordinance was suggested to address safety issues in the area to allow clear access down the street.

Public Works Director Parkinson provided the City Council with the history of this request. He reported that the Traffic & Safety Committee reviewed the request and there has been a difference of opinion among the members of the Committee. He said there were issues with parking and the dumpsters in the area. He reported that the dumpster owners have been notified that they are required to obtain license agreements from the City for the placement of the dumpsters. He advised the City Council that the Traffic & Safety Committee felt that there were safety issues that needed to be addressed and therefore, reaffirmed its vote proposing this ordinance for no parking.

Councilor Grasso said the purpose of the motion was to allow for a public hearing on the ordinance.

Councilor Raynolds said that this issue has existed for some time and asked if there was any documentation of the safety issues described by the Traffic & Safety Committee. Public Works Director Parkinson advised Councilor Raynolds that there are no sidewalks in this area, which requires individuals to walk in the street. He also reported that when individuals park vehicles along the street, the street becomes narrow and there are times when vehicles cannot gain access to the street because of this situation.

Councilor Whitehouse said he would not approve the ordinance, but would allow for a public hearing on the matter.

City Manager Bohenko advised the City Council that he will request City Attorney Sullivan notify the owners of the dumpsters that they must be licensed or the dumpsters will be removed.

Motion passed.

## IX. CONSENT AGENDA

### A. Acceptance of Donations to the New Library Building Fund

- Jeffrey Morgan - \$100.00
- Mark S. Anderson & Robin M. Silva - \$250.00
- Sylvia Thayer Trust - \$500.00

***(Anticipated action – move to approve and accept the donations to the New Library Building Fund as listed)***

### B. Acceptance of Donation from Ocean National Bank for the Firefighter Monument in the amount of \$1,500.00 ***(Anticipated action – move to approve and accept the donation to the Firefighter Monument as listed)***

### C. Acceptance of Donations to the Cemetery Committee

- Michael Griffin - \$20.00
- Janet Marx - \$20.00
- Deborah Richards - \$20.00
- Robert & Janet Simmonds - \$25.00
- Robert & Nackey Scagliotti - \$30.00
- John Goyette - \$40.00
- Helmar & Marsha Herman - \$40.00
- A. & M. McGee - \$40.00
- Louise & Basil Richardson - \$40.00
- Michelle Saidel, M.D. - \$40.00
- Joyce Volk - \$40.00
- Ross & Paula Warner - \$40.00
- John & Sharon Churchill - \$50.00
- Mary Christine Dwyer - \$50.00
- Wendy Lull- \$80.00

***(Anticipated action – move to approve and accept the donations to the Cemetery Committee as listed)***

- D. Acceptance of Donations to the Cemetery Committee/Programs
- JCM Management Co., Inc. - \$20.00
  - JCM Management Co., Inc. - \$80.00
  - J. Verne Wood Funeral Home, Inc. - \$400.00

***(Anticipated action – move to approve and accept the donations to the Cemetery Committee/Programs as listed)***

- E. Renewal Requests for Sidewalk Obstruction Licenses from the following businesses with no changes from last year

- Ambrosia Gardens, Inc. – 1 A-frame sign
- Attrezzi LLC – 1 A-frame sign
- Bagel Works – 4 Tables, 12 Chairs and 1 A-frame sign
- Belle Peppers – 2 Tables and 4 Chairs
- Breaking New Grounds, Inc. – 15 Tables, and 42 Chairs
- Café Kilim – 1 Bench
- Ceres Bakery – 4 Benches
- Chamber of Commerce – 1 A-frame sign
- Choozy Shooz – 1 Bench and 1 A-frame sign
- Colby's Breakfast & Lunch – 1 A-frame sign
- Dos Amigos Burritos – 1 Bench
- Geno's Coffee Shop – 1 A-frame sign
- Izzy's Frozen Yogurt – 1 Bench
- Leo Auger Real Estate – 1 A-frame sign
- Lucky 7 Gallery – 1 A-frame sign
- Me & Ollies Café – 6 Tables, 18 Chairs and 1 A-frame sign
- Muddy River Smokehouse – 1 A-frame sign
- 02 Yoga Studios – 1 A-frame sign
- Portsmouth Brewery – 1 A-frame sign
- Portsmouth Provisions – 1 A-frame sign
- Prudential Rush Realty – 1 A-frame sign
- Rosa's Restaurant – 2 A-frame signs
- Seacoast Hearing Center – 1 A-frame sign
- Serendipity – 2 A-frame signs
- Starbucks Coffee – 4 Tables and 8 Chairs
- Stonewall Kitchen – 1 A-frame sign
- The One Hundred Restaurant – 1 A-frame sign
- Tugboat Alley – 1 Bench
- Water Monkey – 2 A-frame signs

***(Anticipated action – move to refer to the City Manager with power)***

- F. Letter from Michael and Jacqui Bryan, 2006 New Hampshire Seacoast Run Pedal Paddle, requesting permission to hold the third annual Seacoast Run Pedal Paddle on Saturday, October 21, 2006 (***Anticipated action – move to refer to the City Manager with power***)

Assistant Mayor Ferrini moved to adopt the Consent Agenda as presented. Seconded by Councilor Pantelakos.

Councilor Whitehouse requested that the establishments with tables and chairs be notified to ensure that individuals are provided a pedestrian right of way on the sidewalk for safe passage.

Councilor Raynolds requested that the establishments with tables and chairs be notified that the City Council expressed concern and revisited the issue of debris and cigarette butts left behind by patrons utilizing the tables and chairs in front to their establishment. City Manager Bohenko suggested making the tables and chairs a non-smoking area. Councilor Raynolds spoke opposed to banning smoking because it may be problematic to enforce. He suggested requiring establishments with tables and chairs to install cigarette receptacles. City Manager Bohenko said that the establishments would need to maintain the receptacles and the City would purchase these and seek reimbursement.

Assistant Mayor Ferrini said that these receptacles may encourage smoking and he would rather see no smoking allowed.

Councilor Grasso said if we revoke a license that no refund be issued for the licensing fee.

The City Council agreed to require establishments with tables and chairs to install cigarette receptacles. The City will purchase the receptacles for placement in front of these establishments and seek reimbursement.

Motion passed.

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

- A. Letter from Vernis Jackson, Seacoast African American Cultural Center, withdrawing request for use of South Meeting House (Children's Museum)

Assistant Mayor Ferrini moved to accept and place the letter on file. Seconded by Councilor Whitehouse and voted.

- B. Letter from Vernis Jackson, Seacoast African American Cultural Center, requesting to serve as a representative to the proposed committee that will study vacant (or soon to be vacant) city owned buildings

Assistant Mayor Ferrini moved to accept and place the letter on file. Seconded by Councilor Raynolds and voted.



- C. Letter from Attorney Michael Donahue requesting the City grant an access easement to property located on Bedford Way

City Manager Bohenko recommended referring this request to the Planning Board for a report back.

Councilor Pantelakos moved to refer this matter to the Planning Board for report back. Seconded by Councilor Smith and voted.

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

### **A. CITY MANAGER**

- 1. Acceptance of Water Easement

City Manager Bohenko spoke to the memorandum from Assistant City Attorney Woodland addressing this matter. He advised the City Council that the property is located in Newington and the easement allows the City to have access to the water meters and shut off valves that will be installed as part of the development.

Councilor Grasso moved to authorize the City Manager to accept a water easement from Shattuck Way Associates, LLC. Seconded by Assistant Mayor Ferrini and voted.

#### *City Manager's Informational Item – Report Back Re: Elderly Exemptions Survey*

City Manager Bohenko spoke to the survey provided to the City Council regarding elderly exemptions. He advised the City Council that there were 148 elderly exemptions issued last year with a total exemption amount of \$23,419,600.00 which equates to approximately \$412,000.00 in tax value or 14 cents on the tax rate.

Councilor Whitehouse spoke to increasing the income limits allowed under the elderly exemption. City Manager suggested making any increases incremental and to proceed slowly on this matter. Councilor Whitehouse suggested increasing the limits by 10% to 15%.

Councilor Dwyer asked how we determine the amounts. City Manager Bohenko advised Councilor Dwyer that there is no basis for creating these amounts.

The City Council requested that City Manager Bohenko bring first reading of a Resolution amending the income limits for the elderly exemption for the March 20<sup>th</sup> City Council meeting.

#### *City Manager's Informational Item – Report Back Re: Balloons for Auto Dealerships*

Councilor Pantelakos requested that this item be placed under her name for the March 20<sup>th</sup> City Council meeting.

#### *City Manager's Informational Item – Report Back Re: Atlantic Heights*

Councilor Whitehouse requested that a copy of the memorandum from the Technical Advisory Committee be forwarded to Stephanie Krenn, Chair of the Atlantic Heights Neighborhood Committee.

**B. MAYOR MARCHAND**

1. Establish Blue Ribbon Committee on Sustainable Practices

Mayor Marchand announced that he has created a Blue Ribbon Committee on Sustainable Practices. The following individuals will serve on this Committee: Bert Cohen, Gary Epler, Sandi Hennequin, Skye Maher, Tom Rooney, Councilor Raynolds and a School Board Representative. He reported that the Committee would be holding a meeting tomorrow evening at 7:00 p.m. He advised the City Council that he would like the Committee to look at how we procure energy, how much we spend and how many units we use.

City Manager Bohenko said that the staff would be providing Blue Ribbon Committee's with a packet of information on right to know law and their advisory requirements.

2. Appointments

The City Council considered the appointment of Anthony Coviello as a regular member to the Planning Board filling John Sullivan's unexpired term. The appointment of Eric Spear to the Traffic & Safety Committee, Eric is filling Ralph DiBernardo's expired term. The appointment of Christina Westfall to the Traffic & Safety Committee, Christina is filling Ronald Cypher's expired term. The appointment of Elias Abelson to the Board of Library Trustees, Elias is filling Maria Sillari's unexpired term. The City Council will vote on these appointments at the March 20, 2006 City Council meeting.

Councilor Hynes moved to reappoint Jonathan Bailey to the Traffic & Safety Committee until January 1, 2008. Seconded by Councilor Smith and voted.

Councilor Whitehouse moved to appoint Paige Roberts as an alternate to the Planning Board filling Jerry Hejmanek's unexpired term until December 31, 2006. Seconded by Councilor Raynolds and voted.

3. Resignation of member from Conservation Commission

Assistant Mayor Ferrini moved to accept with regret the resignation of Donald Green from the Conservation Commission. Seconded by Councilor Whitehouse and voted.

**C. COUNCILOR DWYER****1. Request for Discussion of Regulations Re: Public Performance**

Councilor Dwyer advised the City Council that this is a request to discuss the regulatory issues surrounding public performance, e.g. street performances, including the desirability of clarifying existing relevant ordinances and/or developing a new ordinance. She said that first amendment issues would need to be taken in account first and foremost. She said issues to clarify include:

- Who street performers are and what street performances can include
- Whether or not permits or fees are required for street performance
- Where performers should be encouraged to perform as well as where performers would be discouraged from performing along with time limits and other regulations
- Applicable restrictions on street performers re: electricity, dangerous objects, animals, etc

City Manager Bohenko suggested inviting the Police Department and the City Attorney to give a presentation regarding this matter in a work session at the April 3<sup>rd</sup> City Council meeting. He advised the City Council that there are many issues to address regarding this matter. He said that a broad overview would be provided at the work session.

Councilor Grasso said that 30 minutes may not be adequate time to discuss this matter. She requested receiving information from other communities that may regulate this process.

Councilor Whitehouse said he feels the current process is working and that there is no need for an ordinance.

The City Council agreed to hold a work session on April 3<sup>rd</sup> at 6:15 p.m. in the City Council Chambers to discuss regulations regarding public performance.

**2. Governor's Arts Awards Press Release**

Councilor Dwyer announced that the City of Portsmouth has been selected as The Community Spirit Award winner for 2005. She advised the City Council in addition to the City being honored, other local nominees for awards include:

- Peter Randall, photographer,
- Nancy Hill, Portsmouth Poet Laureate Program
- Richard Adams, President of Portsmouth Athenaeum
- Eric Gagnon, Gwen Baker, Steve Cirillo, Portsmouth Public Schools Music Department

She announced that the NH State Council on Arts awards ceremony will be held on Thursday, April 13<sup>th</sup> at 7:30 p.m. at the Capitol Center for the Arts.

**D. COUNCILOR SMITH**

1. Traffic & Safety Committee Action Sheet and Minutes of the February 9, 2006 meeting

Councilor Smith moved to approve and accept the Traffic & Safety Committee action sheet and minutes of the February 9, 2006 meeting. Seconded by Councilor Whitehouse.

Councilor Smith spoke to the Martingale redevelopment that was approved with three stipulations as follows:

- Placement of jersey barriers
- Barriers be curved
- Placement of crosswalk

Motion passed.

**XIII. ADJOURNMENT**

At 9:45 p.m., Councilor Smith moved to adjourn. Seconded by Councilor Pantelakos and voted.



Kelli L. Barnaby, CMC  
City Clerk