

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, AUGUST 7, 2006

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

At 6:00 p.m., an Anticipated Non-Public Session was held regarding Personnel Matters - RSA 91-A II (a).

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:15 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 Raynolds led in the Pledge of Allegiance to the Flag.

PROCLAMATION

1. USS Hartford Portsmouth

Mayor Marchand presented the Proclamation to Captain Cattani welcoming the USS Hartford to the City of Portsmouth. Captain Cattani accepted the Proclamation with thanks and appreciation.

V. ACCEPTANCE OF MINUTES - JUNE 19, 2006, JULY 10, 2006 AND JULY 17, 2006

Councilor Pantelakos moved to approve and accept the minutes of the June 19, 2006, July 10, 2006 and July 17, 2006 City Council meetings. Seconded by Councilor Smith and voted.

VI. PUBLIC COMMENT SESSION

Christine Mayeux spoke to the four rezoning requests by HarborCorp. She said that HarborCorp fears the Zoning Board of Adjustment not Ocean Properties. She urged the City Council to vote opposed to the rezoning requests.

Sean Rafferty asked the City Council if the rezoning requests are in the best interest of the City. He said that the rezoning proposals do not follow the master plan. He expressed concern with the size and height of the proposed conference center. He advised the City Council that the building would affect the quality of life for years to come.

George Carlisle spoke in favor of all four proposed rezoning requests. He advised the City Council that he is in complete support of moving the project forward. He said it offers tremendous benefits and that is what the City Council should be considering, there are no negative aspects with this project.

Sean Tenant spoke in support of the conference center and all four rezoning requests. He advised the City Council that this would add a new dimension to the City.

Steve Griswold spoke in favor of the amendments and thanked the City for the process that they have followed. He spoke to the consultants that have provided the City Council with information and said he would like to continue working together with the City. He asked the City Council for their support.

Lisa Rundlett-Groux spoke concern with losing the City scape from the proposed conference center. She expressed concern with parking problems that may arise from this development. He advised the City Council that this project is not in the best interest of the City.

Marylou McElwain asked for a delay on the vote of the rezoning requests. She said the City Council has the responsibility to answer the questions of the public and there are still questions that have not been answered relative to this proposal. She expressed concern with the impact on City services and infrastructure. She said that these decisions would affect Portsmouth and the seacoast for a long period of time.

Didi Wallace spoke concern with the rezoning requests. She said that residents in the area should have their taxes lowered if this development goes through. She advised the City Council that the development would impact the City street scape and expressed concern with an increase in traffic.

Allen Nelson said that the process troubles him and it has become personal. The zoning changes have only been on the table since April. He said that the residents have not had the time to investigate the proposal. He expressed concern with the number of spaces in the garage. He urged the City Council to table this matter and remember that this project should move forward only if it is in the best interest of the City.

Kara LaSalle spoke in support of the rezoning changes.

Paul Young spoke in support of the project. He said that a great deal of information has been provided to the public and the amount of information submitted is unprecedented. He said that the process has been followed and the City Council should approve the rezoning requests as presented.

Attorney Thomas Keane, representing Ocean Properties, said a great deal of questions have been asked and no answers given. He asked why the taxpayers are subsidizing this project. He spoke concern regarding the increase in height for the building and that HarborCorp is not required to build the hotel under the Joint Development Agreement. He said that there is no public benefit to allow for the building of 21 condominium units.

Jane James said the intent of the Public Art Ordinance is putting forward parts of the master plan. She said the State has had such an ordinance for 30 years. She said that this proposal is not something that will be tacked onto a project but it would be planned into the project. She requested approval of the ordinance by the City Council.

Elaine Krasker said this type of ordinance has been enacted across the country. She said that the Public Art Ordinance is a great opportunity for the City and urged the City Council to support the ordinance. She said that this takes art out of the museum and puts it into the City. She advised the City Council that this ordinance is not to subsidize artists. She spoke to the selection process that is followed by UNH and the State and its guidelines. She advised the City Council that this ordinance would preserve our heritage.

Peter Bresciano said he hopes that there are 5 City Council members to vote down second reading of this proposed Public Art Ordinance. He said that there are areas in the ordinance that are not clear and are vague. He questioned the bid process or negotiated price. He said that the City Council should not pass second reading of the ordinance.

Russ Grazier spoke in favor of the Public Art Ordinance. He said that there are 17 pieces of art in this room and the building is incomplete without the art. He urged the City Council to endorse the ordinance and follow the guidelines in the master plan.

Ellen Fineberg spoke in favor of the Public Art Ordinance. She said it is important to have this ordinance. She advised the City Council that the public buildings are important to the public fabric and the amount of money used to buy the art is relatively small considering the price of the overall project.

Joel Carp spoke to the problems that are ongoing with the scrap metal operation on Market Street.

Tom Carroll said that the scrap metal contractor is making Market Street a dangerous place to drive. He said that the City Council has liabilities and responsibility to take care of the City and the area. He said that there is a major problem with this operation. He advised the City Council that the street is not being cleaned on a daily basis as they agreed upon. He asked the City Council to write a letter to the PDA and Governor Lynch and create a lawsuit to get the property back to the City.

Dennett Page spoke to the recent ban against dogs being off leashed on Peirce Island. She said that she is mindful that people are hesitant of large dogs. She said that all dog owners should pick up the waste created by their dog. She urged the City Council to support the mechanisms that are in place currently and allow dogs to be off leashed on Peirce Island.

Attorney Doug Macdonald, representing 62 Deer Street, spoke to the letter he submitted regarding the application for a driveway permit. He said if the City Council denies the application, you would be denying adequate use of his client's property. He urged the City Council to grant the application as submitted.

VII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donations to the Coalition Legal Fund from the Town of Sugar Hill in the amount of \$500.00 and the Town of Bridgewater in the amount of \$1,000.00

Councilor Whitehouse moved to accept the \$500.00 contribution from the Town of Sugar Hill and \$1,000.00 from the Town of Bridgewater to be placed in the Coalition Legal Fund. Seconded by Councilor Grasso and voted.

- B. Acceptance of Grant from NiSource Charitable Foundation for the Firefighter's Monument in the amount of \$35,000.00

Councilor Hynes moved to accept the NiSource Charitable Foundation grant award in the amount of \$35,000.00 for the firefighter's monument. Seconded by Councilor Pantelakos and voted.

- C. Acceptance of Grant to the Police Department from the New Hampshire Department of Justice on the Enforcement for Under Age Drinking Laws in the amount of \$7,379.00

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

- D. Acceptance of Donation to the New Library Building Fund from Peter M. & Catherine C. Okhuysen for the naming of the Community Wall in the amount of \$200.00 (*Total Pledge will be \$500.00 to be paid over 2 years*)

Councilor Grasso moved to approve and accept the donation to the New Library Fund as listed. Seconded by Councilor Dwyer and voted.

- E. Acceptance of Donation to the New Library Building Fund from Dietrich E. Frank & Marie P. Frank in the amount of \$1,000.00

Councilor Grasso move to approve and accept the donation to the New Library Building Fund as listed. Seconded by Assistant Mayor Ferrini and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 - No Parking sub-section A
- Jenkins Avenue: Northerly and Southerly sides. Westerly end between the hours of 7:00 a.m. - 3:00 p.m. Monday through Friday

Councilor Smith moved to pass first reading of the ordinance, as submitted, and hold a public hearing and second reading at the August 21, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

- B. Second reading of Ordinance amending Chapter 1, by the creation of Article XVII - Funding of Public Art (*Continued from the April 3, 2006 City Council meeting*)

Councilor Dwyer said based on the discussions she would like to proposed two amendments to the ordinance.

Councilor Dwyer moved to amend the ordinance that determination of public access of space would be up to the City Council whether a building was accessible to determine the applicability of the ordinance. This motion received no second. City Attorney Sullivan said in order to deal with an amendment we should have language. Councilor Dwyer said the City Council would have authority to make the determination of the public access of the space for the applicability of the ordinance. City Attorney Sullivan said he does not feel the amendment is necessary and the ordinance gives the authority requested by Councilor Dwyer. Councilor Dwyer withdrew her suggested amendment.

Councilor Dwyer move to amend Section 1.1702 by the addition of "*up to fifteen million dollars*" after the phrase two million dollars. Seconded by Councilor Whitehouse.

Councilor Dwyer advised the City Council that fifteen million dollars is the same cap used by the State and is reasonable to use. She said that this amendment responds to concerns expressed.

Councilor Whitehouse said he seconded the motion for discussion only as a matter of courtesy.

Councilor Hynes said that this is an issue that leaves its print on Portsmouth for what it really is. He said if we move ahead on this issue this year he does not know where it would go but it should be kept alive. He suggested considering this ordinance next year.

Councilor Raynolds spoke in support of the amendment. He said that the amendment is being sensitive to the concerns expressed.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand spoke in support of the amendment.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

On a roll call 8-1, voted to amend Section 1.1702 by the addition of "*up to fifteen million dollars*" after the phrase two million dollars. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Smith, Hynes and Mayor Marchand voted in favor. Councilor Whitehouse voted opposed.

Councilor Pantelakos advised the City Council that she could not support the ordinance. She said that she would consider supporting the ordinance if it was limited to new projects.

Councilor Dwyer moved to pass second reading of the ordinance, as submitted, and hold third and final reading at the August 21, 2006 City Council meeting. Seconded by Assistant Mayor Ferrini.

Councilor Grasso moved to table the ordinance. Seconded by Councilor Pantelakos.

Councilor Grasso advised the City Council that she has received comments from individuals expressing their opposition to the ordinance. She said she does not feel that this is the time to consider this ordinance. She did indicate that if there was an ordinance adopted that she would not want it to be restricted to public buildings.

Councilor Hynes said he would like to add a time certain for the tabling motion.

Councilor Grasso said that she is not in favor of adding a time certain to her motion.

Councilor Whitehouse said he would not support the ordinance or the tabling motion. He said the City Council should dispose of the ordinance this evening.

Councilor Dwyer said the issue of the master plan needs to come into the discussion. The City Council adopted the master plan and this ordinance was a product of the plan. She advised the City Council that this ordinance would move forward a piece of the master plan. She also advised the City Council that the ordinance is not a line item part of the budget and should remain separate from the budget process.

Councilor Raynolds said he would vote opposed to the tabling motion. He advised the City Council that this is an important topic and part of the master plan. He spoke in support of passing second reading this evening.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand said he would vote opposed to tabling the ordinance. He said there is public support for art. He said that most communities with this type of ordinance are larger than Portsmouth. He advised the City Council that this ordinance would make a positive statement. He spoke in support of the ordinance.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

Councilor Grasso said that she would withdraw her motion to table and Councilor Pantelakos withdrew her second to the motion.

Councilor Grasso moved that this ordinance shall take effect on August 21, 2007. Seconded by Councilor Whitehouse.

On a roll call vote 6-3, motion passed. Councilors Grasso, Dwyer, Raynolds, Pantelakos, Smith and Hynes voted in favor. Assistant Mayor Ferrini, Councilor Whitehouse and Mayor Marchand voted opposed.

Councilor Whitehouse spoke opposed to adopting the ordinance and addressed the number of projects coming forward in the future for the City.

Assistant Mayor Ferrini spoke in favor of the ordinance.

Councilor Dwyer advised the City Council that a number of communities our size do have this type of ordinance.

Councilor Smith said that artists have brought the color to Portsmouth. He spoke in support of the ordinance. He said with the amendment passed the City Council will have the authority to say yes or no to a project.

Discussion followed on the percent of money required for a project.

Councilor Smith said it is important that the City Council be allowed the ability to not have this ordinance apply to a water and sewer plant because of the lack of public access. City Manager Bohenko said that this would be a policy issue. He said when we go to bond for a water and sewer plant there may be some things that may or may not be able to be done with this type of work. He said that bond counsel advice will be given to the City Attorney and we may be able to handle this through the opinion of bond counsel.

City Attorney Sullivan said it is possible to include a provision in the ordinance that may be overridden by two-thirds of the City Council.

Assistant Mayor Ferrini said he is comfortable with the two-thirds provision. He said it is possible to call bond counsel for an opinion on the hypothetical and have answers for third reading. City Manager Bohenko advised the City Council that we would need to spend money for such an opinion from bond counsel.

Councilor Dwyer suggested adding language that the City Council would have the authority to determine the applicability based on accessibility of the space. City Attorney Sullivan said you need specific language drafted for the suggestion of Councilor Dwyer.

Assistant Mayor Ferrini moved to recess second reading to allow Councilor Dwyer to meet with the City Attorney for drafting of amendments to the ordinance for the August 21, 2006 City Council meeting. Seconded by Councilor Grasso.

Councilor Pantelakos said that she would like to limit the 1% to new projects and not renovated buildings. Assistant Mayor Ferrini suggested that Councilor Pantelakos bring her suggested amendment forward at the next City Council meeting.

Assistant Mayor Ferrini withdrew his motion and Councilor Grasso her second to the motion.

Councilor Pantelakos moved to delete from Section 1.1702 the phrase "*for the renovation of existing municipal buildings*" failed to pass. Seconded by Councilor Grasso.

Councilor Hynes advised the City Council that he would abstain from voting on this amendment.

On a roll call vote 2-6, motion to delete from Section 1.1702 the phrase "*for the renovation of existing municipal buildings*" failed to pass. Councilors Grasso and Pantelakos voted in favor. Assistant Mayor Ferrini, Councilors Dwyer, Raynolds, Whitehouse, Smith and Mayor Marchand voted opposed. Councilor Hynes abstained from voting.

Assistant Mayor Ferrini moved to recess second reading of the ordinance until the August 21, 2006 City Council meeting to allow the City Attorney to draft the amendments made this evening. Seconded by Councilor Grasso. On unanimous roll call 9-0, motion passed.

At 9:25 p.m., Mayor Marchand declared a brief recess. Mayor Marchand called the meeting back to order at 9:43 p.m.

- C. Third and final reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location of the Zoning Ordinance and Zoning Map be amended by rezoning the properties located off Hanover Street and Maplewood Avenue at Assessors Map 124, Lot 12, Map 118, Lot 28, Map 125, Lot 21 from Central Business A (CBA) to Central Business B (CBB)

Councilor Pantelakos moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Grasso.

Councilor Whitehouse said he would vote opposed and expressed concern regarding the height of the conference center.

Councilor Raynolds move to table the ordinance until the August 21, 2006 meeting. Seconded by Councilor Whitehouse.

Councilor Reynolds said it is a matter of public record the discussions held on the ordinance and he voted in favor of each of the proposed ordinances. He said that he believes that this is a good project for the City. He stated that the City Council should do everything they can to be beyond reproach and accusations that they ignored questions brought forward. He advised the City Council the reason for tabling until August 21st meeting is to give the time for those distinct questions to be answered in writing and two additional weeks will not harm the project.

Councilor Hynes stated that there is a dedicated minority that is trying to keep the issue on the table as long as they can. He said we have gone over board on providing information, holding public hearings and answering questions.

Councilor Smith stated that all questions have been answered.

Councilor Pantelakos said she feels that the motion to table is out of line. She said that the City Council needs to have faith in our City Manager and staff with the figures and information that has been provided on this matter. She said she has received two calls in opposition to this project. The questions have been answered and the information is available.

Councilor Reynolds said the motion is not because he does not have confidence in the answers provided by the City Manager and staff. He said the motion was made so that the City Manager and staff would not be put on the spot to answer questions this evening.

Councilor Pantelakos said that there are certain people that will challenge anything we do.

On a roll call 2-7, motion to table the ordinance until the August 21, 2006 meeting failed to pass. Councilors Reynolds and Whitehouse voted in favor. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Pantelakos, Smith, Hynes and Mayor Marchand voted opposed.

Councilor Reynolds asked the City Manager or staff to explain why the rezoning of this property from CBA to CBB is a necessary part of the project. City Manager Bohenko said we can answer questions this evening however, we had our consultant here at the last meeting and they are not present this evening. He said answering this question in five minutes does a disservice to the project. He spoke to the information provided relative to this matter. He said that our consultant has indicated that the 21 condominium units are necessary to make this project financially viable.

Councilor Whitehouse expressed concern with the view of the North Church being obstructed from this project. He said he would vote opposed to the ordinance for that reason.

On a roll call 7-2, voted to pass third and final reading of the amended ordinance, as submitted. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Pantelakos, Smith, Hynes and Mayor Marchand voted in favor. Councilors Reynolds and Whitehouse voted opposed.

- D. Third and final reading of Ordinance amending Chapter 10, Article XII, Section 10-1201 – Off-Street Parking – to allow Off-Street Parking Facilities to be Located on Lots other than the Same Lot as the Principle Use where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project

Councilor Hynes moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Pantelakos.

Assistant Mayor Ferrini asked City Manager Bohenko about the capacity of the parking and the ability to provide parking for others. City Manager Bohenko said that there would be approximately 740 spaces and on the days when there are overages they would have 332 spaces available. He said that 10% of the time those would be available and if they are not being used the City can resell the spaces for additional revenue. He also spoke to the over 900 spaces available at the High Hanover Parking Garage. He advised the City Council that the staff believes that this partnership will add the much needed parking spaces in the Northern Tier.

Councilor Reynolds said that a question has been raised on the number of employees and how many may be expected to be working at the same time. City Manager Bohenko said he would defer that question to Mr. Griswold.

Councilor Reynolds moved to suspend the rules in order to allow Mr. Griswold to answer the question. Seconded by Councilor Whitehouse and voted.

Mr. Griswold said that there are three shifts and limitations to allow parking during certain times under the Joint Development Agreement. He said employees have a program on ride share, and shuttle service would be provided to employees from other locations. He advised the City Council that customers would come first with parking. He also advised the City Council that the 10 additional feet has nothing to do with the 21 condominiums and that the change in zone allows for the additional 70 to 80 parking spaces for the garage.

On a unanimous roll call 9-0, voted to pass third and final reading of the amended ordinance, as submitted.

- E. Third and final reading of Ordinance amending Chapter 10, Article XII, Section 10-1202 – Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B District – to allow the inter Modal Parking Credit to be applicable when the applicant and the City agree on the terms and conditions under which a new, municipally owned covered parking facility shall be constructed as part of the overall development project

Councilor Hynes moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Pantelakos.

Discussion followed relative to the parking credit and how it is applied. Councilor Raynolds spoke to the calculation used relative to the parking impact fee. He said if an impact exists you get a 3 to 1 credit. Planning Director Hoden said the 3 to 1 comes when it is attached to a dominant structure, if it is separate it would be 2 to 1.

On a unanimous roll call 9-0, voted to pass third and final reading of the amended ordinance, as submitted.

- F. Third and final reading of Ordinance amending Chapter 10, Article II, Section 10.208 – Table 4, Paragraph 16, Uses in Business District, Central Business B Zone, to allow said uses as Permitted Uses rather than as a Special Exception

Councilor Hynes moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Pantelakos.

Councilor Whitehouse said that this issue must still go before a land use board. City Attorney Sullivan said if the ordinance passed then the issue becomes permitted as opposed to permitted by special exception.

Councilor Dwyer said she would not support the ordinance because it does not have to go before the land use board.

Councilor Pantelakos said that this should be a policy issue of the City Council and not a decision of the Zoning Board of Adjustment. She said that the City Council is the policy making board of the City.

Councilor Raynolds said the issue would allow the use as permitted rather than special exception. Planning Director Holden said it allows the hotel to be the principle use. He said the accessory use must exceed 500 occupancy not the hotel or motel. It would be unlikely to assemble another parcel that size in the downtown. Councilor Raynolds asked if another project exceeding the 500 occupancy would be required to provide the parking or pay the impact fee. Planning Director Holden said that is correct.

On a roll call 7-2, voted to pass third and final reading of the amended ordinance, as submitted. Councilors Grasso, Raynolds, Pantelakos, Whitehouse, Smith, Hynes and Mayor Marchand voted in favor. Assistant Mayor Ferrini and Councilor Dwyer voted opposed.

Councilor Smith moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Seconded by Councilor Whitehouse and voted.

- G. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Tanner Court
 - northerly side from Parker Street to a point 78' westerly of Tanner Street
 - southerly side from Parker Street to a point 78' westerly of Tanner Street

Councilor Grasso moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Whitehouse and voted.

H. Adoption of Resolution Regarding Acceptance, Negotiation and Liquidation of Donated Securities

Councilor Smith moved to adopt a Resolution Regarding Acceptance, Negotiation and Liquidation of Donated Securities. Seconded by Councilor Pantelakos.

Councilor Whitehouse asked if this resolution would come back to the City Council for adoption. City Attorney Sullivan advised Councilor Whitehouse that the resolution would be adopted this evening by the City Council.

Councilor Whitehouse expressed concern with Item 2 and the City Manager having the authority and not the City Council.

City Attorney Sullivan advised the City Council that Item 2 is the most important part of this resolution. The City Manager would be authorized and instructed to take whatever action is necessary to accept any donation of securities which might be offered to the City and to take whatever steps are necessary or desirable to sell, assign and/or endorse for transfer certificates representing stocks, bonds mutual funds or any other security received by the City, or the actual securities, as soon as practical after receipt. He said this is important because the City Council only meets twice a month and sometimes once a month and this provision allows the City Manager to take action that is in the best interest of the City.

Councilor Whitehouse said we have a capable City Manager now but he is thinking towards the future.

City Manager Bohenko advised Councilor Whitehouse that this resolution will show up every year in the budget process and every year the City Council will vote on this resolution. He advised the City Council that once securities are received they will be sold.

Councilor Dwyer advised the City Council that this resolution is consistent with regulations for the IRS with non-profit organizations.

Mayor Marchand said that the resolution ensures that the securities will be sold and there is a policy in place.

Councilor Whitehouse questioned why under Item 3 all actions taken by the City Manager under this resolution shall be reported to the City Council at a subsequent meeting of the Council. City Attorney Sullivan advised Councilor Whitehouse that it may not be possible to make it as an agenda item depending upon when the item is received.

Motion passed.

IX. CONSENT AGENDA

- A. Acceptance of Donations to the New Library Building Fund
- RB Cole - \$25.00
 - Maryellen Hurley & Gerald Kelly - \$50.00
 - Janice Gallinger - \$50.00
 - Doris Bradshaw - \$100.00
 - Atlantic Management Company, Inc. - \$200.00
 - Helen L. Astle - \$250.00

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

- B. Acceptance of Donations to the Cemetery Committee
- Jackson Gillman - \$54.00
 - Meg Gilman - \$17.00
 - Ben Franklin - \$41.00
 - G. Quessaie Presutti - \$28.96
 - Kate Carney - \$50.00
 - Glenn Knoblock - \$46.35
 - The Lincolns - \$52.22
 - Jeff Warner - \$90.25
 - Anonymous - \$128.02

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

- C. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting permission to hold First Night Portsmouth 2007 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Janet Bourne, Arthritis Foundation, requesting permission to hold the annual Jingle Bell Run on Saturday, November 18, 2006 at 10:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***

Councilor Pantelakos moved to adopt the Consent Agenda as presented. Seconded by Councilor Hynes and voted.

X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Bill St. Laurent, President Association of Portsmouth Taxpayers, opposing the creation of a forgiveness ticket program

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

Councilor Smith moved to suspend the rules in order to take up Item XI. E.2. – Parking Committee Action Sheet and Minutes of the July 13, 2006 meeting. Seconded by Councilor Whitehouse and voted.

XI. E. Parking Committee Action Sheet and Minutes of the July 13, 2006 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the July 13, 2006 Parking Committee meeting. Seconded by Councilor Whitehouse.

Councilor Smith advised the City Council that the Parking Committee has discussed and reviewed the forgiveness ticket program and that is all that has been done relative to this matter. He said that the Parking Committee will meet with the Downtown Business Association and proceed forward. The numbers have been reviewed and that is where the matter stands at this point.

City Manager Bohenko said that the Parking Committee received the information, staff was brought together and numbers were put to the proposal. He advised the City Council that there was never an endorsement of the project.

Councilor Smith said the report back from the Parking Committee will not come back until the fall or winter.

Councilor Grasso said that people are very much opposed to this program.

Motion passed.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Listing of Players' Ring on the NH State Register of Historic Places

City Manager Bohenko advised the City Council in order to list the building on the State Register, the City of Portsmouth, as owner of the building, must officially request that the building be listed. He said that the owners of the property listed on the State Register are free to maintain, manage or dispose of their property as they choose, without oversight or comment from the NHDHR; the listing is essentially an honorary designation.

Councilor Pantelakos moved to authorize the City Manager to list the Players' Ring Building (Portsmouth Marine Railway) on the NH State Register of Historic Places. Seconded by Councilor Smith and voted.

2. Acceptance of Easement from South Common Condominium Association and Easement from Elizabeth Brunelle

City Manager Bohenko spoke to the importance of the area and the easement is necessary for the project to move forward.

Assistant Mayor Ferrini moved to authorize the City Manager to accept an easement from South Common Condominium Association and an easement from Elizabeth Brunelle. Seconded by Councilor Pantelakos and voted.

3. Polling Hours for September 12, 2006 State Primary Election

Councilor Whitehouse moved to set the polling hours from 8:00 a.m. to 7:00 p.m. for the State Primary Election on Tuesday, September 12, 2006. Seconded by Councilor Smith and voted.

4. Proposed Revision to City Council Meeting Schedule

City Manager Bohenko advised the City Council that October 2, 2006 is the Jewish Holiday of Yom Kippur which falls on the first Monday of the month, and this is the same day as the City Council meeting. In light of this, the City Council may wish to reschedule the meeting from October 2nd. He spoke to the attached draft of the schedule of City Council meetings and work sessions from September through December 2006 for their review and consideration.

Councilor Dwyer said she agrees that the City Council should not hold a meeting on the Jewish Holiday and that she would not be available on the suggested date of October 3rd.

Councilor Whitehouse moved to reschedule the October 2, 2006 City Council meeting to Thursday, October 5, 2006. The City Council also agreed to the following dates and topics for work sessions. Seconded by Councilor Smith and voted.

- September 25th Regarding Water Rate Ordinance at 6:30 p.m. in the Council Chambers
- October 23rd Regarding Affordable Housing at 6:30 p.m. in the Council Chambers
- November 20th Regarding Cable Commission at 6:30 p.m. in the Council Chambers

5. Acceptance of Easement from K & S Energy Group

City Manager Bohenko advised the City Council that K & S Energy Group are making improvements to 1400 Lafayette Road and as part of the approvals received by the local land use boards, K & S is required to grant the City a sidewalk easement.

Councilor Pantelakos moved to authorize the City Manager to accept a sidewalk easement from K & S Energy Group. Seconded by Councilor Grasso and voted.

6. Request by Pro Portsmouth to Reschedule Street Closure

City Manager Bohenko advised the City Council because of the emergency situation with the North Church Steeple Pro Portsmouth had to cancel the event that was scheduled for July 20th. He said that Barbara Massar of Pro Portsmouth has requested that the City Council allow them to reschedule the street closure for Saturday, August 19th from 5:00 p.m. to 9:30 p.m., with the same conditions which existed in the original approval by the City Council which took place on April 3rd.

Councilor Grasso moved to approve the rescheduling of the Street Closure which was cancelled on Saturday, July 29, 2006 to Saturday, August 19, 2006 from 5:00 p.m. to 9:30 p.m., with the same conditions which existed in the original approval by the City Council which took place on April 3, 2006. Seconded by Councilor Smith and voted.

7. Report Back Re: Driveway Permit Application for 62 Deer Street

City Attorney Sullivan advised the City Council that the Planning Board considered a motion for a re-hearing on the request and denied the driveway permit request. He said that the property does not have a driveway and because of that cars need to back into the street which creates a traffic and safety issue. He said in addition, the driveway would need to cross the sidewalk.

Councilor Whitehouse said he does not appreciate receiving documents from the applicant's attorney at the last minute because it does not allow the City Council the opportunity to review the information thoroughly.

Councilor Whitehouse moved to accept the recommendation of the Planning Board to deny the request for a driveway permit application for 62 Deer Street. Seconded by Councilor Hynes.

Councilor Grasso said backing the recommendation of the Planning Board is advisable. She said that all of the safety issues will be doubled or tripled with the development of HarborCorp.

Motion passed.

8. Request for Approval of Pole License #63-431, #63-432, #63-433

Councilor Pantelakos moved to approve the request from PSNH for Pole License Agreements #63-431, #63-432, #63-433 as recommended by the Public Works Department. Seconded by Councilor Grasso and voted.

City Manager's Informational Item

1. *Report Back Regarding Additional Signage on Peirce Island*

City Manager Bohenko referred to his comments regarding this matter. He advised the City Council that additional signage will be installed in approximately two weeks and dog waste bag dispensers will be installed after they arrive.

B. MAYOR MARCHAND

1. Resignation – Cable Television and Communications Commission

Councilor Hynes moved to accept with regret the resignation of Gene Fisk from the Cable Television and Communications Commission. Seconded by Councilor Pantelakos and voted.

2. Appointments

Mayor Marchand requested that the City Council suspend the rules in order to take action on the appointment of Carol Eaton this evening due to the need for this member to serve on the Zoning Board of Adjustment.

Councilor Whitehouse moved to suspend the rules in order to take action on the approval of the appointment of Carol Eaton to the Zoning Board of Adjustment. Seconded by Councilor Grasso and voted.

Assistant Mayor Ferrini moved to appoint Carol Eaton as an alternate to the Zoning Board of Adjustment filling the unexpired term of Duncan MacCallum until December 1, 2007. Mr. MacCallum has been appointed as a regular member to the Zoning Board of Adjustment. Seconded by Councilor Smith and voted.

Councilor Grasso moved to appointment Nancy Beach as a regular member to the Cable Television and Communications Commission filling the unexpired term of Gene Fisk until April 1, 2008. Seconded by Councilor Whitehouse and voted.

Councilor Whitehouse moved to appoint Duncan MacCallum as a regular member of the Zoning Board of Adjustment until December 1, 2006. Mr. MacCallum is filling the unexpired term of Nathaniel Holloway who recently resigned from the Zoning Board of Adjustment. Seconded by Councilor Grasso and voted.

3. Appointment of Building Reuse Committee (Not on agenda)

Mayor Marchand announced the appointment of the Mayor's Blue Ribbon Committee on Building Re-use. The members are as follows:

Heather Hurtt, Chair, Councilor Dwyer, Councilor Pantelakos, Councilor Smith, Senator Martha Fuller Clark, Beth Shepard-Rabadam, Richard Cyr, and Tom Heany. City staff members are John P. Bohenko, City Manager and Nancy Carmer, Economic Development Program Manager.

Councilor Dwyer spoke to the importance of the Building Re-Use Committee having a clear mission.

4. Reports

Mayor Marchand announced that last Monday the City Council hosted a family dinner held at the Community Campus for Families First. He thanked the Meat House for their generous donation of food and the City Council for volunteering their time and attending the dinner.

Mayor Marchand also announced that Strawberry Banke will be providing free admission to members of the USS Hartford.

5. Joint School Advisory Committee Meeting (Not on agenda)

Mayor Marchand announced that the Joint School Advisory Committee will meet on Wednesday, August 16, 2006 at 5:30 p.m. in the City Council Chambers. Mayor Marchand also announced that Councilor Grasso will serve as the chair of the Joint School Advisory Committee. Assistant Mayor Ferrini said that the Committee should define focus and mission to bring back to the City Council.

C. ASSISTANT MAYOR FERRINI

1. City Manager's Evaluation

Assistant Mayor Ferrini reported that City Manager Bohenko's performance continues to be excellent to exceptional in all areas.

Councilor Grasso moved to accept the report of the City Manager's Evaluation as presented. Seconded by Councilor Pantelakos and voted.

D. COUNCILOR WHITEHOUSE

1. Peirce Island/Dogs/Walking Paths

Councilor Whitehouse said he is not concern with purchasing dog waste receptacles but is concern with the easterly end of Peirce Island and dogs being allowed off-leash. He advised the City Council that he has received calls from people that are frightened by off-leash dogs coming up to them on the walking paths. He said that he does not feel that dogs should be allowed on the walking paths off-leash. He spoke to the rare vegetation on these paths that need to be protected. He requested that signage be placed at the head of the path prohibiting dogs.

Assistant Mayor Ferrini moved to have signs posted at the head of the path prohibiting dogs. Seconded by Councilor Whitehouse.

Councilor Dwyer said that dogs should not be allowed to run through the other areas of Peirce Island.

Councilor Pantelakos said that there have been other complaints and she will have a Dog Committee meeting in September.

Assistant Mayor Ferrini withdrew his motion and requested that this matter be referred to the Dog Committee for report back.

Assistant Mayor Ferrini moved to refer this matter to the Dog Committee for report back. Seconded by Councilor Smith.

Councilor Whitehouse said he would like to have something enacted immediately. He suggested temporary signs be posted now prohibiting dogs on the easterly side of Peirce Island with permanent signage later.

City Attorney Sullivan advised the City Council that they have the authority to regulate dogs in any way they see fit. He also advised the City Council that an ordinance is not necessary.

Councilor Hynes said that we should take immediate action relative to this matter.

Councilor Grasso suggested placing signs that all dogs must be on a leash.

Mayor Marchand said that this matter should be reviewed by the Dog Committee before any action is taken by the City Council. He suggested that the Dog Committee meet prior to September to discuss this matter.

Councilor Pantelakos suggested bringing this matter back at the next meeting.

Councilor Whitehouse said he does not want to restrict dogs all together.

Councilor Smith moved that effective immediately all dogs at Peirce Island must be leashed and to refer this matter to the Dog Committee for report back. Seconded by Councilor Grasso.

Mayor Marchand said that this could be controversial and suggested not taking action this evening.

Councilor Smith said his dogs remain on leash at all times and there are issues out at Peirce Island and that signs will not have an effect on the issues. He said that we need to address public safety now, and stop the situation. He said that we will require dogs on leash until the Dog Committee can review the matter and provide a report back to the City Council.

City Attorney Sullivan advised the City Council by way of this motion all dogs will need to be on leash at all times at Peirce Island.

Councilor Raynolds said he would support the motion and feels it is the right thing to do. He said it is important that the City Council take quick action.

Councilor Whitehouse said he would like to table this matter.

Mayor Marchand said he would vote opposed to the motion and he does not feel this is the time.

Motion passed with Mayor Marchand voting opposed.

City Manager Bohenko advised the City Council that immediately tomorrow dogs must be on leash at Peirce Island and the policy will be enforced. He said that signs will be posted prohibiting dog's off-leash on Peirce Island.

E. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the July 13, 2006 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the July 13, 2006 Traffic & Safety Committee meeting. Seconded by Councilor Whitehouse and voted.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

1. Letter from Keith Wilkinson regarding Recycling Center Operation Hours (Not on agenda)

Councilor Pantelakos requested that City Manager Bohenko review the letter and look into this matter.

Assistant Mayor Ferrini said he would like the hours extended at the recycling center.

XIII. ADJOURNMENT

At 12:00 a.m., Councilor Pantelakos moved to adjourn. Seconded and voted.



Kelli L. Barnaby, CMC
City Clerk