

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JULY 21, 2008

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

At 5:30 p.m., an Anticipated "Non-Meeting" with Counsel was held regarding Negotiations.

At 6:15 p.m., a Work Session was held regarding Consolidation of Committees.

I. CALL TO ORDER

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

II. ROLL CALL

Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear and Pantelakos

Absent: Councilor Raynolds

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

PROCLAMATION

1. National Night Out

Councilor Spear read a Proclamation declaring August 5, 2008 as National Night Out. Mayor Ferrini advised the City Council that the Proclamation will be presented to the Police Department during National Night Out events.

V. ACCEPTANCE OF MINUTES – JUNE 16, 2008

Councilor Smith moved to approve and accept the minutes of the June 16, 2008 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

VI. PUBLIC COMMENT SESSION

Erik Anderson asked the City Council if there would be a process for public input regarding City contracts as they make up 85% of the City budget and residents are concerned relative to the rising cost of taxes.

Steve Miller, Conservation Commission Chair thanked the City Council for considering this evening the reappointment of 4 members to the Conservation Commission. He said that these 4 members represent the core of the Conservation Commission and look forward to continue serving the City.

Bill Devine spoke regarding the flooding of his basement during the recent storms. He advised the City Council that he has had to pump his basement 5 times over the last 6 days and there are issues with storm water that the City needs to address.

Bill St. Laurent said his family and many others are finding ways to save money and having to do without some things in order to do so. He expressed strong concerns relative to the cost of renovating the middle school.

Allen Nelson urged the City Council to use their judgment to bring a realistic approach for the new middle school. He said it is important that the Council consider all aspects of the costs involved and its effect on the residents.

VII. PUBLIC HEARING

A. RESOLUTION PROPOSED BY GRANITE STATE FAIR TAX COALITION

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

Bill St. Laurent, Portsmouth resident and President of Association of Portsmouth Taxpayers, said the resolution does not meet the constitutional rights of individuals, rather it takes rights away. He asked the City Council to oppose such a resolution.

Erik Anderson, Portsmouth resident, said he agrees with comments made by Mr. St. Laurent. He said it is a major issue that the City Council would make a statement on and he would like the City Council to let this remain at the option of each individual.

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

VIII. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of 2008 Business United for Water Security Grant

Councilor Smith moved to accept funds and enter into and approve a grant agreement with New Hampshire Department of Environmental Services in the amount of \$4,500.00 to the City of Portsmouth and to authorize the City Manager to execute this grant agreement and any documents, which may be necessary, on behalf of the City. Seconded by Councilor Pantelakos and voted.

- B. Acceptance of Donations to the Coalition Legal Fund
- Town of Sugar Hill - \$500.00
 - Town of Carroll - \$1,000.00
 - Town of Tuftonboro - \$5,000.00

Councilor Novelline Clayburgh moved to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund. Seconded by Councilor Dwyer and voted.

- C. Acceptance of NHCF Funding for Art-Speak FY09 and release of UDAG matching funds

Councilor Smith moved to approve and accept the NHCF Funding in the amount of \$20,000.00 for Art-Speak FY09 and release \$10,000.00 of the UDAG matching funds. Seconded by Councilor Spear and voted.

- D. Acceptance of Police Department Grants and Donations
- 1) NH Highway Safety Agency for DWI Hunter Patrols & Sobriety Checkpoints Grant - \$10,513.80
 - 2) NH Highway Safety Agency for Portsmouth DWI Patrols Grant - \$4,870.10
 - 3) PAL Basketball Program from the Portsmouth Police Ranking Officers' Association - \$100.00
 - 4) PAL Basketball Program from Boynton, Waldron, Doleac, Woodman & Scott, P.A. Donation - \$400.00
 - 5) Police Explorer Cadets Donations:
 - Fuller Foundation, Inc. - \$2,000.00
 - Charitable Division of the Rotary Club of Portsmouth - \$1,300.00
 - Piscataqua Savings Bank - \$250.00
 - Portsmouth Auxiliary Police Association - \$250.00
 - Nancy Novelline Clayburgh - \$50.00
 - 6) Sergeant Cory MacDonald's participation in Harvard University's "Driving Government Performance" Donations:
 - J.P. Nadeau - \$2,900.00
 - AXL, Inc. - \$1,000.00
 - J.P. Nadeau, Jr. - \$750.00
 - G.A. Caldicott - \$250.00
 - Mutualink, Inc. - \$100.00

Councilor Smith moved to approve and accept the grants and donations to the Portsmouth Police Department, as listed. Seconded by Councilor Dwyer and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article VII, Section 7.702 – Truck Traffic Prohibited – Maplewood Avenue: from Central Avenue to Woodbury Avenue

Councilor Smith moved to pass first reading and hold a public hearing and second reading of the proposed ordinance, as submitted, at the August 4, 2008 City Council meeting. Seconded by Councilor Pantelakos.

Councilor Smith informed the City Council that this ordinance came from the Traffic & Safety Committee. The purpose of the ordinance is to remove tractor trailer traffic out of the neighborhoods and off these streets to the Bypass.

Motion passed.

- B. Third and final reading of Ordinance amending Chapter 1 by the creation of an Article XVIII entitled Payment by Credit Card Pursuant RSA 80:52-c

Councilor Smith moved to pass third and final reading on the proposed ordinance that would authorize these credit card payments in accordance with state law. Seconded by Councilor Novelline Clayburgh and voted.

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Acceptance of Donations to Art-Speak for Overnight Art Event
- McHenry Architecture - \$500.00
 - McLane Law Firm - \$100.00

(Anticipated action – move to approve and accept the donations to Art-Speak for the Overnight Art Event, as listed)

- B. Acceptance of Donations to Art-Speak
- Flat Bread Pizza - \$500.00
 - Anonymous cash donations - \$124.00

(Anticipated action – move to approve and accept the donations to Art-Speak, as presented, and any remaining funds are restricted for use to the general Overnight Art category of Art-Speak's operating budget.)

- C. Letter from Eric Weinrieb, Portsmouth Rotary Club, requesting permission to hold the Annual Thunder Chicken 5k Road Race on Thursday, August 7, 2008
(Anticipated action – move to refer to the City Manager with power)

- D. Letter from G.S. Mouflouze requesting permission to place a plate/plaque on the second of the city owned bench in Market Square (***Anticipated action – move to refer to the City Manager with power***)
- E. Letter from Jay Diener, Seacoast Half Marathon, requesting permission to hold the 3rd Annual Seacoast Half Marathon on Sunday, November 9, 2008 (***Anticipated action – move to refer to the City Manager with power***)
- F. Request from Lauren Mensinger, L Studio, for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment (***Anticipated action – move to refer to the City Manager with power***)
- G. Request from Meredith Stolper, Loaf and Ladel, for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment (***Anticipated action – move to refer to the City Manager with power***)
- H. Request from Barbara Theodore, Olde Port Properties, for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment (***Anticipated action – move to refer to the City Manager with power***)
- I. Request from Cliffe Arrand, Pesce Blue Restaurant and Bar, for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment (***Anticipated action – move to refer to the City Manager with power***)
- J. Letter from Cori and Bob McGrath requesting permission to install a bench in memory of James Walden in the downtown area (***Anticipated action – move to refer to the City Manager with power***)

Councilor Pantelakos requested that the Letter from G.S. Mouflouze be read.

Councilor Kennedy spoke to the need of creating an outlet for residents of the south end when events are held in the area.

Councilor Smith moved to adopt the Consent Agenda. Seconded by Assistant Mayor Blalock and voted.

Assistant Mayor Blalock moved to suspend the rules in order to take up Item XII. A.8. - Request for USS New Hampshire Commissioning Celebration. Seconded by Councilor Smith and voted.

XII. A.8. Request for USS New Hampshire Commissioning Celebration

City Manager Bohenko spoke to the several letters received from Doug Bates, President of the Chamber of Commerce outlining their request for activities associated with the event. He informed the City Council that he would be meeting with the Committee members to review their requests and gather more information.

Councilor Pantelakos moved to refer to the City Manager for a report back at the August 4, 2008 City Council meeting. Seconded by Councilor Smith.

Councilor Smith said he would like the Peirce Island Committee and Trustees of the Trust Fund to have meetings prior to the event.

Assistant Mayor Blalock asked that City Manager Bohenko review the request to hang banners on the poles in the City especially with the streetscape improvements recently made to Market Street. He also asked how long the banners would be on display. Doug Bates, President of the Chamber of Commerce said the banners would be displayed for 60 days.

Motion passed.

Assistant Mayor Blalock moved to suspend the rules in order to take up Item XII. A.1. - Renewal of Memorandum of Understanding between Art-Speak and City of Portsmouth. Seconded by Councilor Dwyer and voted.

XII. A.1. Renewal of Memorandum of Understanding between Art-Speak and City of Portsmouth

City Manager Bohenko said that Art-Speak is requesting renewal of the Memorandum of Understanding with the City of Portsmouth. He spoke to the annual report given by Art-Speak on arts and culture in the City. This report addressed the requirements that Art-Speak must satisfy as outlined in the MOU such as:

- Promote appreciation, awareness, participation, and dialogue in the support of arts and culture in the City of Portsmouth;
- Serve in an advisory capacity for all City government departments;
- Provide an annual state-of-the-City cultural report;
- Convene an annual arts and cultural forum;
- Provide business and cultural exchanges; and
- Provide regional and state cultural collaboration opportunities.

Councilor Smith moved to authorize the City Manager to renew the MOU between Art-Speak and the City of Portsmouth from July 1, 2008 through June 30, 2009. Seconded by Councilor Spear and voted.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Dr. Mitchell Shuldman, School Board Chair, requesting the City Council refer the issue of developing a timeline for acquiring the property to the left of the Portsmouth Middle School to City Attorney Sullivan for report back

City Manager Bohenko said before any additional work is done there needs to be an evaluation for a time line from City Attorney Sullivan.

City Attorney Sullivan spoke to the need of developing a time line to move forward. He said the City Council needs to decide if they want to begin with the process of eminent domain.

Councilor Spear moved to refer the issue of developing a timeline for acquiring the property to the left of the Portsmouth Middle School to City Attorney Sullivan for report back. Seconded by Councilor Novelline Clayburgh.

Councilor Pantelakos expressed concern relative to taking of the land by eminent domain and said she would vote opposed to the motion.

Councilor Dwyer said she thought we would begin the action of taking the land not have a time line set for a report back from the City Attorney

City Attorney Sullivan said that this is an important decision of the City Council and it is up to the Council to make the decision to commence the process.

Assistant Mayor Blalock said he agrees with Councilor Pantelakos and he is opposed to eminent domain in this case.

Councilor Smith also indicated that he does not believe in eminent domain.

Councilor Novelline Clayburgh suggested speaking with the decedents of the Peirce Trust regarding the land for the middle school and recommended we consider naming a field after the family in exchange for the land.

City Attorney Sullivan informed the City Council that early in the process there would be a public hearing of the City Council on eminent domain.

Councilor Spear said he wished to withdraw his motion. Councilor Novelline Clayburgh said she would not withdraw her second to the motion; therefore the motion remained on the floor. Councilor Spear said any configuration will require compromise and he feels the area is the best site and best move for the City.

Councilor Smith said he does not believe that in order to construct the middle school at the current site we would need alumni field. He said there is always another way to do a project. He said the land was given to the City with deed restrictions for recreational use only and he feels it is wrong to take that away.

Councilor Dwyer said geometric changes to the field would need to be made if it was used by children versus adults and does not understand why the City would privilege the use of the field by adults over children.

Assistant Mayor Blalock said his opposition is not with the design or the direction of the building. He said there is available land that does not require any of the legal techniques to taking by eminent domain. He said he opposes the concept and would oppose the motion.

Councilor Pantelakos spoke opposed to the estimated costs related to the renovation of the middle school.

Councilor Spear advised the City Council that the City paid more than the assessed value for the land and going across Rogers Street is a better design.

Councilor Kennedy said it is important that we have a design that we can fiscally and responsibly afford.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini said the Council needs to look at the motion in front of them at this time; it is not a discussion on the cost of a new middle school. He said voting for the report back from City Attorney Sullivan is not voting for eminent domain; it allows the process to move forward.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

Assistant Mayor Blalock said he would vote for the report back from City Attorney Sullivan but is opposed to eminent domain.

Councilor Novelline Clayburgh said she would not support the motion unless we have a conversation with the family of the Peirce Trust. She said she feels the family is open to discussing the matter. Mayor Ferrini said that it could be part of the report back from the City Attorney. Councilor Spear said the issue came up in 1974 and at that time the City Attorney contacted the heirs and they had no problem with the use of the property for the middle school. City Manager Bohenko said the time line would include the City speaking with the family regarding this matter.

On a roll call vote 5-3, motion passed. Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Spear and Mayor Ferrini voted in favor. Councilors Smith, Kennedy and Pantelakos voted opposed.

- B. Letter from Nick Diana, City Puppies, requesting permission to set up a small pop-up tent for a photo shoot for a new book, City Puppies: Portsmouth Edition in Vaughan Mall on August 2nd, 3rd, 9th and 10th between 8:00 a.m. – 3:00 p.m.

City Manager Bohenko advised the City Council that originally Mr. Diana wanted to be in Market Square and staff asked him to relocate to the Vaughan Mall. He informed the City Council that Mr. Diana will be providing 5% of his proceeds to the Dog Park.

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

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

2. Proposed Revised Joint Development Agreement Re: Westin Project

City Attorney Sullivan advised the City Council that in accordance with the several Superior Court determinations which have been made in the aforementioned matter, and in order to implement City Council policies with respect to the HarborCorp project, it is now necessary to:

- A) Eliminate all legal obligations of the City to either purchase or operate the parking garage which will be constructed by HarborCorp on its Deer Street property and;
- B) Rescind the borrowing resolution which would have enabled purchase of that garage for Fifteen Million Dollars (\$15,000,000.00).

Councilor Smith moved to authorize the City Manager to negotiate and execute an amendment to the Joint Development Agreement dated December 14, 2005, between the City and HarborCorp LLC so as to remove from that Joint Development Agreement any obligation of the City to build, purchase or operate the parking facility to be constructed pursuant to that Agreement, while still retaining the obligation of HarborCorp to construct and operate the conference center contemplated by that Agreement. Seconded by Assistant Mayor Blalock.

Councilor Smith said that this is a clean and clear way to remove the obligation from the Joint Development Agreement and allows the development of the conference center to move forward.

Councilor Kennedy said she would like to know what this project would do for the average home owner. She asked if there is a percentage of taxes that the homeowner would see a reduction from the construction of the conference center. City Manager Bohenko said that the project would reduce the tax burden throughout the City. He said individuals that attend the conference center will utilize businesses in the downtown which adds fuel to the engine to keep the downtown vibrant.

Councilor Kennedy said she feels it all comes down to quality of life for residents. She said she would like to see the projected reduction in the tax rate from this development.

Councilor Dwyer said we are voting this evening on taking away the obligation of the City to build a parking facility from the Joint Development Agreement not voting on building the conference center that vote happened a long time ago.

Motion passed and Councilor Kennedy abstained from voting.

3. Resolution Re: Rescission of the Fifteen Million Dollars (\$15,000,000.00) Borrowing Authorization for the Westin Project

City Manager Bohenko advised the City Council that this is a straightforward rescission of the borrowing authority created by the City Council on December 19, 2005 for the purpose of purchasing the parking garage. He said the Resolution may be adopted by a single vote of the Council without public hearing.

In addition, adoption of this Resolution in the manner described would have the effect of eliminating any authority for the City administration to borrow the money to buy the parking garage and would also remove Fifteen Million Dollars (\$15,000,000.00) of authorized debt from the financial records of the City.

Councilor Smith moved to approve the Resolution rescinding certain borrowing authority with regard to Resolution #13-2005 adopted by the City Council on December 19, 2005. Councilor Kennedy abstained from voting. Seconded by Councilor Dwyer.

On a roll call vote 7-0, motion passed. Councilor Kennedy abstained from voting.

4. Request from Town of New Castle Re: Fuel Depot

City Manager Bohenko informed the City Council that Public Works Director Parkinson has reviewed a request from the Town of New Castle to purchase fuel from the City of Portsmouth at the Public Works Department fueling facility. At the present time, the Public Works Department supplies fuel, both gasoline and bio-diesel, to all City agencies including Police, Fire, School and the Portsmouth Housing Authority. Approximately, 78,000 gallons of bio-diesel and 99,000 gallons of gasoline are distributed on an annual basis. Each agency is billed on a monthly basis for usage based upon the computer system that dispenses the fuel to their respective vehicles. Each vehicle is issued a unique key, which activates the pump for the type of fuel required and documents the total gallons dispensed to the vehicle.

City Manager Bohenko said cost is based upon the average delivery price for the month and Public Works Director Parkinson does not believe that the amount of usage by the Town of New Castle vehicles will impact the City of Portsmouth operations and recommend approval. Billing to the Town of New Castle should include an additional charge of \$.10 per gallon, above and beyond the cost of the fuel, to cover operating costs of the City of Portsmouth in providing the 24 hour/day fueling facility.

Councilor Pantelakos moved to authorize the City Manager to enter into a memorandum of understanding with the Town of New Castle to allow for the use of the Fuel Depot. Seconded by Councilor Smith and voted.

5. Report Back Re: Request of Portsmouth City Soccer Club to Hang Banners at Leary Field

Planning Director Holden advised the City Council that the Planning Board is recommending this proposal as a pilot program with conditions.

Councilor Smith moved to accept the Planning Board's report back regarding this matter and approve the request with the following conditions recommended by the Planning Board:

- *That this proposal should be considered as a pilot type program;*
- *That it should be authorized for no longer than one season;*
- *That the trial period should commence in the 2008 season;*
- *That as part of this trial, there will be no "tagging" activities conducted by this club;*
- *That no more than 5 sign blanks shall be erected on the outfield fence, each with the dimension of 3 feet by 5 feet and with the height and location of each to be determined by the City;*
- *That the Club shall place no signs earlier than August 15th and these signs shall be removed no later than November 15th;*
- *All sign facings shall be in or towards the playing field; and,*
- *All sign backings shall be white in color, all lettering/logos shall be of a dark green color, and any lettering shall share the same style and font)*

Seconded by Councilor Pantelakos and voted.

6. Report Back Re: New Adventure Entertainment, LLC's (John Dussi) Request for Approval of Lighting and Awnings at 172 Hanover Street

Planning Director Holden the Planning Board considered the request and recommends granting the license agreement.

Councilor Novelline Clayburgh moved to accept the Planning Board's report back regarding this matter and authorize the City Manager to enter into a license agreement with Northern Tier Real Estate Acquisition and Development, LLC (formerly New Adventure Entertainment, LLC) for the purposes of installing the requested lighting fixtures and awnings. Seconded by Councilor Dwyer and voted.

7. Request to Exempt City-Owned Land from Shoreland Protection Act

Deputy City Manager Hayden informed the City Council that the State Comprehensive Shoreland Protection Act has recently been amended. The new amendments, went into effect as of July 1st, require that a new Shoreland Permit be secured for work within the 250-foot shoreland buffer. While the intent of these amendments is to enhance shoreland protection, there is the potential for projects to be held up while permits are secured. This Act has a provision in it which allows for municipalities to exempt all or part of the protected shoreland if the municipality finds that "special local urbanization conditions exist in the protected shoreland for which the exemption is sought". Since Portsmouth has been developed for such a long time, the rights-of-ways and existing uses on City owned parcels will often be in conflict with the requirements of this Act. Therefore, staff believes an exemption for all rights-of-way and City-owned parcels that fall within the 250-foot jurisdiction of the Shoreland Protection Act should be sought. The purpose of this request is to reduce the administrative burden on the City and the State and insure that municipal projects are executed in a timely manner.

She said it is anticipated that normal road maintenance projects, sewer and water infrastructure upgrades and other unanticipated municipal operations will regularly require work in the 250' protected shoreland. The area for which an exemption is sought includes portions of the developed shoreline along the Piscataqua River, the two tidal Mill Ponds (North and South) the Back Channel, Little Harbor, and Sagamore Creek. These areas include municipally owned lots and City rights-of-way. If the City Council wishes to move forward in this manner, the City will submit a formal exemption request to the Commissioner of the NH Department of Environmental Services.

Councilor Dwyer moved to authorize the Mayor to make a formal request to the NH Department of Environmental Services seeking exemption from the Comprehensive Shoreland Protection Act for City rights-of-way and City-owned parcels, and authorize the City Manager to take any further action, which may be necessary to secure the exemption. Seconded by Councilor Pantelakos and voted.

9. Proposed Date Re: Boards and Commissions Annual Recognition Night

Councilor Novelline Clayburgh moved to establish the Boards and Commission Annual Recognition Night for Monday, December 8, 2008. Seconded by Councilor Dwyer and voted.

B. MAYOR FERRINI

1. Appointment to be Voted:

- Christine Woodman Casa to the Safe Routes to School Committee as the Dondero School Representative

Councilor Novelline Clayburgh moved to appoint Christine Woodman Casa to the Safe Routes to School Committee as the Dondero School Representative. Seconded by Councilor Smith and voted.

2. Resignations

- Mike Murray – Economic Development Commission
- Robin McIntosh – Economic Development Commission
- Thomas Bolko – Peirce Island Committee
- Charles Oxford – Portsmouth Housing Authority

Councilor Smith moved to accept with regret the resignations of Mike Murray and Robin McIntosh from the Economic Development Commission; Thomas Bolko from the Peirce Island Committee and Charles Oxford from the Portsmouth Housing Authority. Seconded by Councilor Kennedy and voted.

Councilor Smith requested that Mayor Ferrini send a letter thanking the individuals for their service to the City.

3. Appointments to be Considered:
 - Steve Miller – Reappointment to the Conservation Commission
 - Barbara McMillan – Reappointment to the Conservation Commission
 - Allison Tanner – Reappointment to the Conservation Commission
 - Brian Wazlaw – Reappointment to the Conservation Commission
 - Nancy Beach – Reappointment to the Cable Commission
 - Richard Katz – Reappointment to the Historic District Commission

The City Council considered the reappointments which will be voted on by the City Council at the August 4, 2008 meeting.

C. COUNCILOR PANTELAKOS

1. Granite State Fair Tax Coalition Resolution


Councilor Pantelakos said she did not intend for the City Council to take a vote on this matter she just wanted to provide the resolution for informational purposes only.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Smith informed the City Council that Greta McCallister of Foster's Daily Democrat will be leaving the paper and the City wishes her well in her new endeavor.

XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]

At 9:15 p.m., Councilor Novelline Clayburgh moved to adjourn. Seconded and voted.



Kelli L. Barnaby, CMC/CNHMC
City Clerk