

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, APRIL 6, 2009 TIME: 7:00PM

AGENDA

- 6:00PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS – RSA 91-A:2, I (b-c)

- I. CALL TO ORDER [7:00PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

MAYOR’S AWARD

1. 2009 Portsmouth High School Boys Class I Championship Basketball Team

PROCLAMATION

1. Announcement of new Poet Laureate – Lesley Kimball Program Co-Chair

PRESENTATION

1. Quarterly Update of Wastewater Treatment Plant – Dave Allen, Deputy Public Works Director

V. ACCEPTANCE OF MINUTES – MARCH 16, 2009

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donations to the Coalition Legal Fund
 - Town of Hebron- \$1,000.00
- B. New Hampshire Public Health Network Grant RFP

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs)

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Renewal of Sidewalk Obstruction Licenses with no changes from last year
- Colby's Breakfast & Lunch – 1 A-frame sign
 - Helen Marks – 1 A-frame sign
 - Helen Marks #2 – 1 A-frame sign
 - Pesce Blue Restaurant – 1 A-frame sign
 - Prudential Rush Realty – 1 A-frame sign
 - Rudi's Portsmouth – 1 A-frame sign
 - Springers Jewelers – 1 A-frame sign
 - The First National Bank of Ipswich – 1 A-frame sign
 - Upscale Nails – 1 A-frame sign

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

- B. Letter from Aerial Sillanpaa, Deer Street Merchants, requesting permission to display their "Deer Street" flags for another year ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Deborah Bouchard-Smith, Scarecrows of the Port, requesting permission to place scarecrows in designated locations throughout the Portsmouth Downtown Area from October 15, 2009 through November 2, 2009 ***(Anticipated action – move to refer to the City Manager with power)***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Barbara Massar, Pro Portsmouth, regarding Points of Clarification for Financial Assistance
- B. Letter from Zeke Gumprecht requesting the installation of a traffic light in front of New Franklin School
- C. Letter from Ann Bliss and Jenny Isler, Portsmouth Listens 2nd Annual Sustainability Fair, requesting approval for the use of a horse drawn hay wagon on the day of the Sustainability Fair, May 9, 2009
- D. Letter from Jim Nocas and John Tabor, Portsmouth Listens, requesting a waiver on vendor fees for food vendors at the Sustainability Fair on May 9, 2009
- E. Letter from Scott Segee, Fa La Lo of Portsmouth LLC, requesting permission to install a projecting sign at 51 Ceres Street ***(Sample motion – move to refer to the Planning Board for report back)***

- F. Letter from Alex Vandermark, The Juicery, requesting permission to install a projecting sign at 51 Hanover Street (**Sample motion – move to refer to the Planning Board for report back**)
- G. Request from Kenneth Smith, Maine-ly New Hampshire, requesting permission 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. Letter from Erin Mack regarding revised skateboard ordinance
- I. Request from George Carlisle, Olde Port Properties, requesting permission 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**)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action Under Other Sections of the Agenda

- 1. Consideration of First Reading of Proposed Ordinance Amendments and Resolutions:
 - 1.1 First Reading of proposed Ordinance to amend Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs) (**Action on this matter should take place under Section VIII of the Agenda**)

City Manager's Items Which Require Action

- 1. Proposed Donation of Arborist Services for Improvements to Haven Park
- 2. Acceptance of Chase Quitclaim Deed
- 3. Report Back Re: Pro Portsmouth Request for Financial Assistance to Reduce Their Debt to the City
- 4. Private Street Agreement between Portwalk and the City of Portsmouth
- 5. Request to Authorize a Temporary Public Art Exhibit on Peirce Island and Donation Acceptance

Informational Items

- 1. Events Listing
- 2. Business Week Names Portsmouth as the Best Place for Starting a Business in NH
- 3. Update on Zoning Revision Project

B. MAYOR FERRINI

1. * Portsmouth Middle School
2. Proposed Policy for Open Space Committee
3. *Update on Stimulus Package

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet & Minutes of the March 12, 2009 meeting
2. Parking Committee Action Sheet & Minutes of the March 12, 2009 meeting
3. Report Back Re: Use of Roller Skates, Coasters and Skate Boards Ordinance

D. COUNCILOR PANTELAKOS

1. *Request to change Budget Meeting

XII. MISCELLANEOUS/UNFINISHED BUSINESS

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

**KELLI L. BARNABY, CMC/CNHMC
CITY CLERK**

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Conservation Commission minutes of the February 11, 2009 meeting
2. Zoning Board of Adjustment minutes of the January 27, 2009 and February 17, 2009 meetings
3. Planning Board minutes of the February 12, 2009; February 19, 2009 and February 26, 2009 meetings
4. Letter from Johannes Frank in support of the Portsmouth public pool
5. Letter from Bill St. Laurent, President of the Association of Portsmouth Taxpayers, regarding the contract for the new Superintendent of Schools
6. Letter from Nancy Pollard, President of Friends of the South End, regarding Peirce Island Committee

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: April 2, 2009
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on April 6, 2009 City Council Agenda

6:00 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Proclamation:

1. **Announcement of new Poet Laureate.** On Monday evening, the Poet Laureate Program Co-Chair Lesley Kimball will announce the new Poet Laureate.

Presentation:

1. **Quarterly Update on Wastewater Treatment Plant.** On Monday evening, David Allen, Deputy Public Works Director, will be presenting a quarterly update on the progress of the wastewater treatment plant.

Acceptance of Grants/Donations:

1. **Acceptance of Donation to the Coalition Legal Fund.** Attached is a copy of a check from the Town of Hebron in the amount of \$1,000.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

I would recommend the City Council move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund. Action on this matter should take place under Section VII of the Agenda.

2. **New Hampshire Public Health Network Grant RFP.** In 2005, the City began to receive grant funding from the NH Department of Health and Human Services (DHHS) to develop the Greater Portsmouth Public Health Network (GPPHN). The network was formed to improve emergency response capability and planning for large-scale emergencies such as pandemics, natural disasters, and chemical/biological emergencies.

The City has received a total of \$343,500 in funding to work with its partner towns of Greenland, Rye, Newington, North Hampton, and New Castle. The network's grant-funded Public Health Network Coordinator has undertaken various emergency response planning activities, which include drafting emergency response plans/annexes, coordinating emergency planning meetings with the Portsmouth Area Emergency Planning Team, developing and recruiting medical volunteers for the Greater Portsmouth Medical Reserve Corps Unit, emergency planning outreach to special needs communities, and administering various emergency response grants.

Currently, the program is funded through June 30, 2009. The City now has the opportunity to apply for a Public Health Network Grant for FY 2010 (July 1, 2009 through June 30, 2010). The amount of DHHS funding sought by the City is \$75,000 and no local match is required.

I would recommend that the City Council move to authorize the City Manager to apply for, accept and expend a grant from the New Hampshire Department of Health and Human Services for the purpose of funding the ongoing public health and emergency planning work of the Greater Portsmouth Public Health Network. Action on this matter should take place under Section VII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. **Consideration of First Reading of Proposed Ordinance Amendments and Resolutions:**

- 1.1 **First Reading of proposed Ordinance to amend Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs).** At the March 16th City Council meeting, under Councilor Clayburgh's name, the City Council approved and accepted the Fee Study Committee's Report regarding Taxi Rates and authorized the City Manager to bring back for first reading the [attached proposed ordinance](#) amendment to Chapter 7, Article II, Section 7.213 – Fees and Terms for Permits/Licenses (Taxicabs).

I would recommend that the City Council move to pass first reading and schedule a public hearing and second reading at the April 20th City Council meeting. Action on this matter should take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Proposed Donation of Arbor Day Services for Improvements to Haven Park.** Attached is a copy of a request from a number of owner-operated arborist tree companies located in the seacoast proposing to do tree work at Haven Park on Arbor Day on April 24th. The group made a presentation at the Trees & Greenery Committee. The Trees & Greenery Committee recommended that the City accept this proposal as an appropriate Arbor Day recognition. If approved, the City's Public Works Department will work with them on this project.

Therefore, I would recommend the City Council move to accept this pro bono work at Haven Park as recommended by the Trees & Greenery Committee.

2. **Acceptance of Chase Quitclaim Deed.** Attached is a copy of a Quitclaim Deed from Acquila & Marcia N. Chase for property located on Baycliff Road, which the City Council needs to formally accept. This deed means that the City has now secured permanent public access to the water at the end of Baycliff Road. The Planning Board recommended the conveyance of this property as part of the final subdivision approval on November 20, 2008.

I would recommend the City Council move to accept the Chase Quitclaim Deed, as recommended by the Planning Board.

3. **Report Back Re: Pro Portsmouth Request for Financial Assistance to Reduce Their Debt to the City.** At your March 16th City Council meeting, there was a letter from Pro Portsmouth Executive Director, Barbara Massar, requesting that the City Council reduce by 50% the \$35,661.00 balance it owes to the City as it relates to police details for their various events dating back to 2006. Presently, Pro Portsmouth is making payments towards this balance on a monthly basis. Unfortunately, it is their belief that they will be unable to overcome the entire debt owed to the City. In her letter, Barbara Massar proposed that the City reduce their debt by 50% or approximately \$17,830.00. They felt that this would enable them to move forward in the future to keep current.

The City Council requested that I bring back a report and recommendation at the April 6th meeting. Subsequent to the March 16th meeting, many non-profits contacted me and indicated that they would like us to consider waiving private detail fees if Pro Portsmouth was able to get a reduction in their debt. The primary premise was that they as non-profits had to raise the money in order to put their events forward and felt that any reduction in Pro Portsmouth's debt should be equally provided to other non-profits. After receiving these telephone calls, I took the opportunity to research the number of non-profits that purchased police detail services for their events. Since January 1, 2007, there have been over 45 non-profits that have retained police services for their events. The total amount for those services was approximately \$84,000.00 with all non-profits paying their bills and keeping current.

Given this information and the feedback that I have received from the non-profit community, I would recommend that the City Council continue Pro Portsmouth's payment schedule to reduce their debt to the City and in the meantime, work to develop a

comprehensive policy dealing with all non-profits and the use of private detail. I would like to work on this proposed policy over the next few months with City Staff to determine what we might be able to do if anything.

Therefore, it would be my recommendation not to proceed with the forgiveness of Pro Portsmouth's debt at this time and continue their repayment schedule in order to allow me the opportunity to work on a proposed policy for the City Council's review.

4. **Private Street Agreement between Portwalk and the City of Portsmouth.** As you are aware, Parade Office, LLC, owner of property formerly known as the Parade Mall, desires to subdivide its property into three (3) lots and complete a mixed-use development which would include, among other things, a hotel, office space, commercial space and associated parking. Collectively the development would be called Portwalk.

Planning Board subdivision approval for Portwalk expressly contemplates that the main thoroughfare connecting Deer Street to Hanover Street will be a private street. [See attached aerial map.](#) However, because to the eye of the average person the private street will appear to be a City street, the Planning Board conditioned its approval on the negotiation and execution of a private street agreement to define the respective rights and obligations of the City and Parade with regard to that thoroughfare.

[Attached is a proposed private street agreement](#) suitable for City Council's review and approval. This draft agreement is the subject of considerable negotiation between the City and Parade. In general, the draft agreement would accomplish the following:

1. Establish clearly and as a matter of record at the Rockingham County Registry of Deeds that the thoroughfare is a private street owned by Parade and its successors.
2. Provide the Portsmouth Police Department with broad authority to provide law enforcement services on the thoroughfare, "as if such private street were a public street..."
3. Establish that the Public Works Department has, "no legal obligation or other responsibility to provide public works services on the Lots." The private street is located on the Lots, therefore, the Public Works Department would not be obligated to maintain the private street.
4. However, because the thoroughfare will appear to be a City street the agreement gives the Public Works Department the right, but not the obligation, to maintain the private street as necessary and bill the costs to the Owner of the private street, plus 15%.
5. Because the thoroughfare will appear to be a public street the Owner is obligated to maintain the street, "in a manner consistent with the City's adjacent streets in the Central Business District", so that the City will not bear the blame if the private street is not well maintained.

6. The Owner would be obligated to post signage that is, “satisfactory to the City notifying the public that the Lots are private property and that the Private Street is a private way.
7. Because it is likely that the private street will become one of the main traveled areas in the downtown, the Owner is obligated to keep the street open for travel, except for, “four (4) days per calendar year provided that the Owner has first obtained the City Manager’s written approval”, otherwise the street closure process for the private street will be the same as the street closure process which the City Council utilizes for public streets.
8. The Developer will name the private street in the first instance, thereafter if the street name is to be changed the City’s Planning Board will name the street.
9. The initial term of the private street agreement will be thirty-five (35) years from the date of its recording at the Rockingham County Registry of Deeds. On the expiration of that term the City and Parade Office or its successor agree to negotiate in good-faith regarding the future of the private street.

I would recommend that the City Council move to authorize the City Manager to negotiate and execute a private street agreement with Parade Office, LLC in substantial conformance with the draft agreement which has been presented to the City Council.

5. **Request to Authorize a Temporary Public Art Exhibit on Peirce Island and Donation Acceptance.** Dale Rogers, a Haverhill MA sculptor, has asked for permission to install a temporary public art exhibit on Peirce Island. The entire process including setup and disassembly will occur from August 12 through 19, 2009. The City Manager, the DPW Director, the City’s Legal Department, and the Peirce Island Committee have all reviewed the artist's proposal and agree that the proposal is feasible and would be a beneficial community public art exhibit.

The exhibit consists of up to twenty, eight-foot high, dog sculptures constructed of steel and placed at various locations on the island to be determined by the Public Works Director, the Peirce Island Committee and Mr. Rogers. The artist will be responsible for all costs associated with the installation, un-installation, insurance, site restoration, etc. and will provide a check held in escrow to ensure that the City will bear no cost for restoration. These and other conditions, including a \$1,000.00 donation from the artist are included in the [attached Memorandum of Understanding \(MOU\) between the City and the artist.](#)

I would recommend that the City Council move to authorize the City Manager to negotiate and enter into a memorandum of understanding with Dale Rogers for purposes of a temporary public art exhibit and to accept the donation of \$1,000.00 from Mr. Rogers for the benefit of Peirce Island.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on March 16, 2009. As you can see on the listing, I have highlighted those dates that will have two events going on at the same time.
2. **Business Week Names Portsmouth as the Best Place for Starting a Business in New Hampshire.** For your information, [attached is a copy of an article](#) from Business Week naming Portsmouth as the best place for starting a business in New Hampshire.
3. **Update on Zoning Revision Project.** The Planning Board and City staff have made substantial progress in their comprehensive overhaul of the City's Site Review Regulations and Zoning Ordinance. Key to the zoning revision project has been the desire to make the City's land use regulations more user friendly and to implement the resource protection, sustainability, economic development, land use and housing goals in the City's 2005 Master Plan.

In an effort to accomplish this, the Planning Board has held dozens of its own sessions and worked to incorporate the very valuable input of local boards through meetings with the Historic District Commission, Conservation Commission, Committee on Sustainable Practices, Economic Development Commission and various neighborhood groups. While this has made for a lengthy process, City staff believes this has been essential to developing creative, well designed solutions targeted to the complex range of planning, development and resource protection issues we face, as well as insuring high quality development and redevelopment.

A final draft of the revised Site Review Regulations was completed last year. The new site review regulations incorporate sustainability principles, traffic calming measures, water resource protection standards, dark sky friendly provisions, improved landscaping standards and regulatory approaches that seek to create transit infrastructure and improve pedestrian and bike circulation.

A final draft of the Zoning Ordinance is nearing completion. The next step will invite the public to provide feedback on the draft zoning ordinance and site review regulations. Public hearings at the Planning Board level are expected to begin early this summer, followed by public hearings before the City Council.