

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JULY 20, 2009 TIME: 7:00PM

AGENDA

- **5:30PM – 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**

PROCLAMATION

1. The 26th Annual National Night Out in Portsmouth – August 4, 2009

PRESENTATIONS

1. Presentation to Police Chief Michael Magnant
2. Presentation to Deputy Police Chief Len DiSesa

V. ACCEPTANCE OF MINUTES – JUNE 22, 2009

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE IV, SECTION 7.402 – AREAS ESTABLISHED, DESIGNATED AND DESCRIBED OF THE ORDINANCES OF THE CITY – HANOVER-FLEET STREET OFF-STREET PARKING AREA (HIGH HANOVER PARKING GARAGE)

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donations to the Coalition Legal Fund
 - Town of Alton - \$500.00
 - Town of Carroll - \$1,000.00
- B. Acceptance of Police Department Grant from the New Hampshire Department of Justice for Enforcing Underage Drinking Laws - \$9,732.00
- C. Acceptance of Police Department Grant from the Portsmouth Sunrise Rotary Charitable Corporation for the New Hampshire statewide Explorer competition - \$1,500.00

- D. Acceptance of Donations to the PAL Summer Basketball program as follows:
- Black Dog Investigations, LLC. - \$200.00
 - Michael Conley - \$120.00
 - Mr. & Mrs. C. Salvadore - \$25.00
 - Wilkinson Law Offices, P.C. - \$150.00
 - Earl Cheney - \$100.00
- E. Acceptance of Grant from New Hampshire Coastal Program – Maplewood Avenue Bridge Upgrade - \$100,000.00
- F. Acceptance of Grant from New Hampshire Coastal Program – Mechanic Street Seawall ReConstruction - \$40,000.00
- G. Acceptance of Community Development Block Grant - \$657,267.00

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City – Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage)

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

There are no items under this section of the Agenda

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

There are no items under this section of the Agenda

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

1. Public Hearing/Second Reading of Proposed Ordinance Amendments and Resolutions:
- 1.1 Public Hearing/Second Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City - Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage) (***Action on this matter should take place under Section IX of the Agenda***)

City Manager's Items Which Require Action

1. Request for Proposed of Tentative Six (6)-Year Agreement between Portsmouth School Board and the Non-Supervisory Cafeteria Personnel
2. Adoption of Policy Re: Public Gatherings in Market Square
3. Report Back Re: Market Square Informational Kiosk
4. Request for a License from Mike Bristow, owner of Roly's English Fudge for property located at 10 Commercial Alley to install a projecting sign
5. Request for a License from Alessandra Domina, owner of Sandy Domina Associates for property located at 10 Ladd Street to install a projecting sign
6. Request for a License from Philip Thanas, owner of Thanas Galleries for property located at 39 Ceres Street to install a projecting sign
7. Request for a License from Stuart Tulchinsky, owner of Headlines for property located at 103 Vaughan Mall to install a projecting sign
8. Request for a License from Alex Rogers and Jane Derry, owners of J. Covington for property located at 185 High Street to install a projecting sign

Informational Items

1. Events Listing
2. Police Commission Meeting

B. MAYOR FERRINI

1. Appointments to be Voted:
 - Dennis Moulton – Reappointment to the Building Code Board of Appeals
 - Ron Zolla – Appointment to the Economic Development Commission
 - Robert Pollard – Appointment to the Peirce Island Committee
2. Resignation
 - Amy Brnger – Library Board of Trustees
3. Portsmouth Middle School Request for Special City Council Meeting (***Sample motion – moved to Establish a Special City Council meeting for Monday, August 10, 2009 at 6:30 p.m. for the purpose of conducting a Presentation and Public Hearing Re: Resolution Authorizing a Bond Issue of up to Thirty Eight Million Three Hundred Thousand Dollars (\$38,300,000.00) for School Improvements***)
4. *Reports

C. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the June 11, 2009 and July 9, 2009 meetings
2. Parking Committee Action Sheet and Minutes of the July 9, 2009 meeting
3. *Request to Rename the Northern End of Woodbury Avenue

D. COUNCILOR SPEAR

1. Articles on Pedestrian Malls

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

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

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Executive Council of New Hampshire minutes of the June 30, 2009 meeting
2. Historic District Commission minutes of the June 3, 2009 meeting
3. Planning Board minutes of the April 16, 2009; April 30, 2009; May 14, 2009 and May 21, 2009 meetings
4. Site Review Technical Advisory Committee minutes of the June 2, 2009 and June 30, 2009 meeting
5. Zoning Board of Adjustment minutes of the April 21, 2009 meeting

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: July 17, 2009
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on July 20, 2009 City Council Agenda

5:30 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.

Acceptance of Grants/Donations:

1. **Acceptance of Donations to the Coalition Legal Fund.** [Attached are copies of checks](#) from the Town of Alton in the amount of \$500.00 and the Town of Carroll 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 donations, as listed, to be placed in the Coalition Legal Fund. Action on this matter should take place under Section VIII of the Agenda.

2. **Acceptance of Police Department Grants & Donation.** [Attached under Section VIII of the Agenda](#) is a memorandum from Gerald W. Howe, Chairman of the Portsmouth Police Commissioners, and Michael J. Magnant, Police Chief, requesting that the City Council approve the following grants and donations:
 - a. A grant in the amount of \$9,732.00 from the New Hampshire Department of Justice for Enforcing Underage Drinking Laws.

- b. A grant in the amount of \$1,500.00 from the Portsmouth Sunrise Rotary Charitable Corporation to support the cost of the New Hampshire statewide Explorer Competition coming up on July 18th. By supporting the cost of the event, the individual Explorer costs are lowered, enabling more cadets from around the state to participate in this motivating and skill-building event.
- c. Donations to the PAL Summer Basketball program as follows:
 - 1. \$200.00 from Black Dog Investigations, LLC
 - 2. \$120.00 from Michael Conley
 - 3. \$25.00 from Mr. and Mrs. C. Salvadore
 - 4. \$150.00 from Wilkinson Law Offices, P.C.
 - 5. \$100.00 from Earl Cheney

The Police Commission is submitting this information pursuant to City Policy Memorandum #94-36 for City Council approval and acceptance.

I would recommend that the City Council move to approve and accept the grants and donations to the Portsmouth Police Department, as listed. Action on this matter should take place under Section VIII of the Agenda.

- 3. **Acceptance of Grant from New Hampshire Coastal Program – Maplewood Avenue Bridge Upgrade.** The large culvert under the Maplewood Avenue causeway is undersized and slowly degrading. By designing a series of three culverts under Maplewood Avenue, tidal functions will be restored to the North Mill Pond, which will lead to enhanced estuarine functions for this area. The New Hampshire Coastal Program has identified funds that can be used towards the design of this project as it will aid in restoring intertidal saltmarsh, mudflats and tidal rapid habitats. The project design work will also include the roadway and utilities located in the roadway. The total cost of this design work is \$100,000. No local match is required.

I would recommend the City Council move to authorize the City Manager to apply for, accept and expend a \$100,000 grant from the NH Department of Environmental Services' Coastal Program for the purpose of designing a new culvert inlet/outlet structure for the North Mill Pond to improve existing tidal function. Action on this matter should take place under Section VIII of the Agenda.

- 4. **Acceptance of Grant from New Hampshire Coastal Program – Mechanic Street Seawall Reconstruction.** As you may recall, at the January 12, 2009 City Council meeting, the Council voted to authorize the City Manager to apply for accept and expend a \$30,000 grant from the NH Department of Environmental Services Coastal Program for the purpose of conducting a shoreline stabilization design project. Subsequently, the City amended this grant application to the NH Coastal Program increasing the request by an additional \$10,000 in funding for this project with all funds to be used for construction rather than design.

The \$40,000 grant will be used to reconstruct the seawall along Mechanic Street on the City owned Parcel where Mechanic Street Pump Station is located. The total project cost to reconstruct the seawall is \$317,775 with \$40,000 coming from the NH Coastal Program and the balance of \$277,775 coming from the Sewer Enterprise Fund.

I would recommend the City Council move to authorize the City Manager to apply for, accept and expend a \$40,000 grant from the NH Department of Environmental Services' Coastal Program for the purpose of reconstructing the seawall on the City owned parcel where the Mechanic Street Pump Station is located. Action on this matter should take place under Section VIII of the Agenda.

- 5 **Acceptance of Community Development Block Grant.** As you may recall, in May, the City Council voted to accept and expend the annual Community Development Block Grant (CDBG) from the U.S. Department of Housing and Urban Development (HUD). Since that time, the City has learned an additional \$1,446 in CDBG funding will be granted to the City for the new fiscal year, which began on July 1, 2009. The new grant amount will be \$657,267.

The Community Development Department, working in conjunction with the City's Citizens Advisory Committee, held a series of public hearings and meetings over the winter and spring to solicit input and prioritize projects with regard to the expenditure of these funds. Currently, the City is awaiting approval of the CDBG budget from HUD. [A copy of the new budget is attached.](#) The \$1,446 in additional funding has been applied to the contingency line item; there are no other changes to the budget.

I would recommend the City Council move to accept and expend a Community Development Block Grant (CDBG) in the amount of \$657,267 from the U.S. Department of Housing and Urban Development. Action on this matter should take place under Section VIII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Ordinance Amendments and Resolutions:**
- 1.1 **Public Hearing/Second Reading of Proposed Ordinance to Amend Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City – Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage).** As a result of the June 22nd City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance amendment](#) to Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinance of the City. As you are aware, at the June 8th City Council meeting, the Council approved the Parking Committee minutes of May 14, 2009 which

requested an ordinance change regarding the number of days a vehicle can remain in the High Hanover Parking Garage.

I would recommend the City Council move to pass second reading of the proposed Ordinance, as submitted, and schedule third and final reading at the August 3, 2009 City Council meeting. Action on this matter should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Request for Approval of Proposed Six (6)-Year Agreement between Portsmouth School Board and the Non-Supervisory Cafeteria Personnel.** Subsequent to the non-meeting with counsel, I am requesting that the City Council act on the proposed Six (6)-Year Agreement between the Portsmouth School Board and the Non-Supervisory Cafeteria Personnel.

Therefore, I would recommend that the City Council approve the Six (6)-Year Agreement commencing July 1, 2008 through June 30, 2014 with the Non-Supervisory Cafeteria Personnel.

2. **Tabled Adoption of Policy Re: Public Gatherings in Market Square.** As you will recall, at the June 22nd City Council meeting, the Council tabled the adoption of the [attached Policy regarding Public Gatherings in Market Square](#). The policy was drafted by City Attorney Robert Sullivan with input from various City departments and Council members.

I would recommend the City Council move to make the following two motions:

- 1) *Move to remove the item from the table, and*
 - 2) *Move to adopt the Policy regarding Public Gatherings in Market Square, as presented.*
3. **Report Back Re: Market Square Informational Kiosk.** As you will recall, the Greater Portsmouth Chamber of Commerce proposed some exterior changes to the information kiosk in Market Square ([see attached letter from Doug Bates, President, dated June 2, 2009](#)). At the June 8th City Council meeting, the Council referred this matter to the City Manager with power, and the City Manager referred this matter to the Planning Board for review and recommendation.

Although located on public property and owned by the City, the kiosk is operated and maintained by the Chamber. The kiosk is staffed daily from Memorial Day through Columbus Day, with some additional staffing on either end of this period depending on special events and weather conditions. During the off-season, when the kiosk is not

staffed, it is covered with advertisements and event notices that are stapled to the wood surfaces or taped to the windows. The resulting damage must be repaired at the start of each tourist season. The Chamber states that the annual cost to repair the kiosk is about \$1,000, which reduces the amount of City funding that could otherwise be used for tourism promotion activities.

The Chamber's proposal was in two parts: (a) to install 6 lockable display cases on the panels below the kiosk windows, and (b) to display in one of the kiosk windows, on a trial basis, a "digital picture frame" presenting a slide show of Portsmouth attractions. Based on the initial response, the proposal for a digital picture frame has been withdrawn.

The lockable display cases would be offered for rent to specific Portsmouth venues (e.g., the Music Hall, Prescott Park, Seacoast Rep) for listing schedules and special events. The Chamber would use the revenues from the display case rentals for ongoing maintenance of the kiosk. This proposal is in keeping with the function of the kiosk as a source of information about the City's venues and events, and could benefit the community, provided that the design of the cases and their content are appropriate both to a municipal structure and to the historic character of Market Square.

During the review of the original proposal, staff of the Planning Department and Chamber discussed the additional option of installing low-cost panels wrapping around the 8 sides of the structure between the base and the cornice. This would protect the kiosk during the off-season while letting it continue to serve its current informal use for posting of handbills.

At its meeting on June 18, 2009, the Planning Board voted to recommend the following to the City Council and City Manager:

- 1) Approve the installation of display cases for event advertising as requested in Mr. Bates' letter of June 9;
- 2) Approve the installation of off-season panels as outlined above;
- 3) Enter into an agreement with the Chamber for operation and maintenance of the kiosk, in order to formalize the City's authorization and to outline the respective roles of the two parties, including review of rental policies; and
- 4) Explore possible locations in the downtown area as alternatives to the kiosk for posting notices during the tourist season.

Although the kiosk is located in the Historic District, it is not subject to Historic District Commission approval because it is in the public right-of-way.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations.

4. **Request for a License from Mike Bristow, owner of Roly's English Fudge for property located at 10 Commercial Alley to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Mike Bristow, owner of Roly's English Fudge for property located at 10 Commercial Alley, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on May 21, 2009, and reviewed by the Planning Board on June 18, 2009. The Planning Board found that the proposed sign location is similar to others on this street. Accordingly, the Board voted to recommend a favorable approval subject to the following conditions:

1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and
2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Mike Bristow, owner of Roly's English Fudge to install a projecting sign at 10 Commercial Alley and further authorize the City Manager to execute a License Agreement for this request.

5. **Request for a License from Alessandra Domina, owner of Sandy Domina Associates for property located at 10 Ladd Street to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Alessandra Domina, owner of Sandy Domina Associates for property located at 10 Ladd Street, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on May 20, 2009, and reviewed by the Planning Board on June 18, 2009. The Planning Board found that the proposed sign location is similar to others on this street. Accordingly, the Board voted to recommend a favorable approval subject to the following conditions (along with a finding that the sign shall meet the height requirement):

1. That no sign is authorized to be placed, unless, it is at least 7' above the sidewalk surface;
2. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the

City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and

3. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

Please be advised that since the Planning Board took its vote on this matter, the Planning Department has determined that the proposed sign does comply with the minimum height requirement.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Alessandra Domina, owner of Sandy Domina Associates to install a projecting sign at 10 Ladd Street and further authorize the City Manager to execute a License Agreement for this request.

6. **Request for a License from Philip Thanas, owner of Thanas Galleries for property located at 39 Ceres Street to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Philip Thanas, owner of Thanas Galleries for property located at 39 Ceres Street, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on May 12, 2009, and reviewed by the Planning Board on June 18, 2009. The Planning Board found that the proposed sign location is similar to others on this street. Accordingly, the Board voted to recommend a favorable approval subject to the following conditions (along with a finding that the sign shall meet the height requirement):

1. That no sign is authorized to be placed, unless, it is at least 7' above the sidewalk surface;
2. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and
3. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

Please be advised that since the Planning Board took its vote on this matter, the Planning Department has determined that the proposed sign does comply with the minimum height requirement.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Philip Thanas, owner of Thanas Galleries to install a projecting sign at 39 Ceres Street and further authorize the City Manager to execute a License Agreement for this request.

7. **Request for a License from Stuart Tulchinsky, owner of Headlines for property located at 103 Vaughan Mall to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Stuart Tulchinsky, owner of Headlines for property located at 103 Vaughan Mall, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on May 19, 2009, and reviewed by the Planning Board on June 18, 2009. The Planning Board found that the proposed sign location is similar to others on this street. Accordingly, the Board voted to recommend a favorable approval subject to the following conditions:

1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and
2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Stuart Tulchinsky, owner of Headlines to install a projecting sign at 103 Vaughan Mall and further authorize the City Manager to execute a License Agreement for this request.

8. **Request for a License from Alex Rogers and Jane Derry, owners of J. Covington for property located at 185 High Street to install a projecting sign.** Attached is a copy of a memorandum from Rick Taintor, Planning Director, outlining the Planning Board's recommendation regarding a request from Alex Rogers and Jane Derry, owners of J. Covington for property located at 185 High Street, to install a projecting sign (see attached photographs).

This request was received by the Planning Department on May 26, 2009, and reviewed by the Planning Board on June 18, 2009. The Planning Board found that the proposed sign location is similar to others on this street. Accordingly, the Board voted to recommend a favorable approval with the following conditions:

1. That the sign to be removed is removed either before or at the same time as the proposed sign is placed and the one removed shall not be replaced unless all approvals are secured;

2. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and

3. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works.

I would recommend the City Council move to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Alex Rogers and Jane Derry, owners of J. Covington to install a projecting sign at 185 High Street and further authorize the City Manager to execute a License Agreement for this request.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on June 22, 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. **Police Commission Meeting.** For your information, the Police Commission will be conducting a meeting on Wednesday, July 22, 2009 at 6:30 p.m., in the Levenson Room at the Library, to introduce the new Police Chief David Lou Ferland to the community. The meeting will include a presentation by the chief designee, as well as opening a question and answer period.