

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 19, 2009

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

At 6:00 p.m. an Anticipated "Non-Meeting" with Counsel was held regarding Personnel – RSA 91-A: II (a).

At 6:30 p.m. a Work Session was held with the Trustees of Trust Funds.

I. CALL TO ORDER

Mayor Ferrini called the meeting to order at 7:10 p.m.

II. ROLL CALL

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

Absent: Councilor Hejtmanek

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Assistant Mayor Blalock led in the Pledge of Allegiance to the Flag.

PROCLAMATIONS

1. Share the Road – Seacoast Area Bicycle Routes

Councilor Spear read the Proclamation in recognition of the City of Portsmouth support for the idea of "Sharing the Road" between bicyclists and motor vehicles, and encouraging all citizens to work together to create a positive environment between drivers and bicyclists. Mayor Ferrini presented the Proclamation to Josh Pierce, of Seacoast Area Bicycle Routes who accepted it with thanks and appreciation.

2. Amedisys Home Health and Hospice

Councilor Smith read the Proclamation declaring November as National Home Care and Hospice Month. Mayor Ferrini presented the Proclamation to members of Amedisys who accepted it with thanks and appreciation.

PRESENTATIONS

1. Fishing Fleet Blue Ribbon Committee Update

Erik Anderson, Chair, reviewed the summary of the Committees activities with the City Council. He reported since the committee was formed 11 months ago, over 40 entities or individuals representing education, the fishing industry, restaurants, buy local initiatives, the chamber, government and others have contributed in a variety of its activities and success. The committee's first deliverable to the City Council established a baseline from which they could chart their success and growth. He spoke regarding the committee initiated "NH Seafood – Fresh & Local" brand that is now recognized with local distributors and restaurants. He said they were instrumental in the September Fishtival in Prescott Park. Mr. Anderson said 4,000 people attended and enjoyed our local seafood while learning about the local industry, the ocean, local fish, and the people and boats that supply these seafood products. In closing, he said that there are significant challenges facing the NH fishing industry and they will continue to explore other initiatives to ensure long-term success.

Councilors Kennedy and Spear spoke in support of the Committee and its success.

2. Cultural Exchange – Jeffrey Cooper, NH Furniture Masters

Mr. Cooper requested that the City Council consider the authorization of a \$2,500.00 expenditure from the Ambassador Trust for the NH Furniture Masters Cultural Exchange in order to promote cross cultural exchange between American and Japanese woodworkers with a traveling exhibition in both the US and Japan.

Assistant Mayor Blalock moved to suspend the rules in order to take up Item X.B. – Letter from Jeffrey Cooper requesting the authorization of the expenditure of \$2,500.00 from the Ambassador Trust for NH Furniture Masters Cultural Exchange. Seconded by Councilor Pantelakos and voted.

Assistant Mayor Blalock moved to authorize the expenditure of \$2,500.00 from the Ambassador Trust for NH Furniture Masters Cultural Exchange. Seconded by Councilor Novelline Clayburgh.

Councilor Dwyer spoke in support of this activity and the request of the expenditure.

Assistant Mayor Blalock thanked Mr. Cooper for bringing this request forward to the City Council.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock. Mayor Ferrini spoke in support of the request. Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

Motion passed.

V. ACCEPTANCE OF MINUTES *(There are no minutes on for acceptance this evening)*

VI. PUBLIC COMMENT SESSION

Barbara Newton, Players' Ring, said that the Players' Ring was founded in 1992 and spoke in support of the lease and said over 30 local art companies have been a part of the Players' Ring. She spoke to the work that has been done to the building and requested the approval of the lease.

Lee Frank, The Music Hall, said the name change was requested to eliminate the confusion on how to find The Music Hall. The request was made in August and they are looking to do a number of improvements to the area to enhance the aesthetics of the street.

Bill St. Laurent said that a number of political signs have been disappearing and said it concerns him. He requested that the City consider placing an article in the newspaper as to the consequences of removing and/or damaging a sign.

Harold Whitehouse said he is surprised by the request to change the name of Chestnut Street to Music Hall Way. He said that this is taking away from the history of the City. He urged the City Council to consider all issues before granting this request.

Councilor Dwyer said the request is not to eliminate the street it is only to change the name of a portion of the street.

Assistant Mayor Blalock moved to suspend the rules in order take up Item XI. A.6. – Request of Players' Ring, Inc. to Renew Their Lease with the City for 105 Marcy Street. Seconded by Councilor Pantelakos and voted.

XI. A.6. Request of Players' Ring, Inc. to Renew Their Lease with the City for 105 Marcy Street

Assistant Mayor Blalock moved to authorize the City Manager to execute a proposed three year lease renewal between Players' Ring, Inc. and the City of Portsmouth for the use of 105 Marcy Street. Seconded by Councilor Pantelakos.

Assistant Mayor Blalock said that the Players' Ring has been a great steward of the building and urged the renewal of the lease.

City Manager Bohenko informed the City Council that the Players' Ring has done tremendous work in the up keeping of the building. He said that local dollars were used for the improvements through donations and grants.

Motion passed.

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Coalition Legal Fund
- Town of Holderness - \$350.00

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

- B. Acceptance of Public Emergency Response Grant for H1N1 Planning

Councilor Smith moved to authorize the City Manager to accept and expend two grants from the New Hampshire Department of Health and Human Services for the purpose of funding the ongoing H1N1 planning and preparedness activities of the Greater Portsmouth Public Health Network (GPPHN). These two grants which total \$83,456.00 include Phase 2 of the Public Health Emergency Response grant in the amount of \$50,000.00 and Phase 3 of the Public Health Emergency Response grant in the amount of \$33,456.00. Seconded by Councilor Pantelakos and voted.

- C. Acceptance Grant from Primex

Councilor Smith moved to approve and accept the grant to the City of Portsmouth. Seconded by Councilor Pantelakos and voted.

City Manager Bohenko informed the City Council that Primex is our worker's compensation carrier and through an evaluation it was recommended that we have a rhino post driver.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.336 – One Way Streets – Parker Street – Northerly from Tanner Court to Hanover Street

Councilor Smith moved to pass first reading of the Ordinance and schedule a public hearing and second reading at the November 16, 2009 City Council meeting. Seconded by Councilor Dwyer and voted.

- B. Third and final reading of Ordinance amending Chapter 7, Article II – Taxicabs - Section 7.210 – Permits and Inspections Required by the addition of Item C – Each taxi permitted in the City shall be inspected in the month of June each year for compliance with the requirements in this Ordinance

Councilor Novelline Clayburgh moved to pass third and final reading of the proposed Ordinance, as submitted. Seconded by Councilor Smith and voted.

- C. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Washington Street – both sides from Hancock Street to Howard Street

Councilor Smith moved to pass third and final reading of the proposed Ordinance, as submitted. Seconded by Councilor Novelline Clayburgh.

Councilor Kennedy said she would like to look at making this street one-way to allow for parking on one side.

Motion passed.

- D. Third and final reading of Ordinance amending Chapter 5, International Fire Code; Chapter 12, Part I - International Building Code and Part II – International Residential Code; Chapter 15, Part I – International Plumbing Code and Part II – International Mechanical Code

Councilor Novelline Clayburgh moved to pass third and final reading of the proposed amendments to the Fire Code, Commercial Building Code, Residential Building Code and Plumbing/Mechanical Code Ordinances, as submitted. Seconded by Councilor Dwyer.

Councilor Spear said some of the codes would require more energy review and asked City Manager Bohenko if he anticipates having someone conduct energy code enforcement. City Manager Bohenko said we may want to have someone on retainer for large projects and would discuss that matter further with Building Inspector Hopley.

Councilor Kennedy asked what the status of creating a pamphlet outlining the various code amendments. Building Inspector Hopley said that the department will move forward with creating a pamphlet once the ordinance has been adopted. He also informed the Council that some of the amendments will be implemented over time.

Motion passed.

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting permission to hold First Night Portsmouth 2010 on Thursday, December 31, 2009 (***Anticipated action – move to refer to the City Manager with power***)

Councilor Smith moved to adopt the Consent Agenda. Seconded by Councilor Pantelakos and voted.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Karen Morton-Clark, Dare Mighty Things, requesting permission to set up in front of the North Church for Todd and Racing for Recovery on Saturday, November 7, 2009 from 10:00 a.m. – 2:00 p.m.

Councilor Smith moved to refer to the City Manager with power and to authorize the event to take place in the Vaughan Mall. Seconded by Councilor Pantelakos and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Proposed Schedule Re: Zoning Ordinance and Zoning Map and Amendments to Chapter 11 of City Ordinances

City Manager Bohenko requested that Deputy City Manager Hayden come forward and address this issue.

Deputy City Manager Hayden said the Zoning Ordinance has been recommended by the Planning Board and first reading is recommended to be held at the November 16, 2009 City Council meeting.

Councilor Dwyer moved that the Council schedule first reading of the proposed Zoning Ordinance, as well as the proposed amendments to Chapter 11 of the City Ordinances, for November 16, 2009. Seconded by Assistant Mayor Blalock.

Councilor Spear moved to remove Section 10.730 – Continuing Care Retirement Community in order to consider that section separately in January, 2010. Seconded by Councilor Pantelakos.

Councilor Dwyer spoke in opposition of the motion to amend. She said that the Planning Board has reviewed this matter over the last two years and discussed where this section should be included in the Zoning Ordinance. She said the Planning Board is recommending having this as part of the Ordinance. Councilor Dwyer expressed concern with removing this section from the ordinance and the potential of having individuals say that this was spot zoning.

Councilor Spear said he appreciates the comments of Councilor Dwyer but there is a time pressure to get the Zoning Ordinance adopted. He said he feels that this section of the ordinance should be considered separately.

Councilor Smith said he would not support the amendment. He said that the Planning Board has put a great deal of time and effort and to remove this section could create an issue with the public.

Assistant Mayor Blalock said that this motion is to schedule first reading and we should not isolate a section of the ordinance.

Councilor Kennedy said she would support the motion because there is a concern among the public relative to this section of the ordinance.

Councilor Dwyer spoke to changes made by the Planning Board at their last meeting relative to this section of the ordinance. She said that we should not hold up the entire ordinance and the public will be allowed to express their concerns during the public hearing on the ordinance.

Councilor Novelline Clayburgh said she has some major concerns with the ordinance and would like to see income limits addressed.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock. Mayor Ferrini said he appreciates the work of the Planning Board and stated that the ordinance could be obscured by removing this section now. Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

On a roll call vote 3-5, motion to remove Section 10.730 – Continuing Care Retirement Community in order to consider that section separately in January, 2010 ***failed*** to pass. Councilor Kennedy, Spear and Pantelakos voted in favor. Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith and Mayor Ferrini voted opposed.

Main Motion passed to schedule first reading of the proposed Zoning Ordinance, as well as the proposed amendments to Chapter 11 of the City Ordinances, for November 16, 2009.

2. Proposed Resolutions Requesting Appropriation of Bond Premium

City Manager Bohenko said the City issued a \$21,000,000 bond back in June and was able to take advantage of our excellent bond rating. He advised the Council that the proceeds of the bond will finance \$5 Million of General Fund capital projects and \$16 Million for the Madbury Water Treatment Plant. In addition to the \$21 million principal, the City received a premium of \$867,624.35 from the winning underwriter at closing. A premium is the amount by which the purchase price of a bond is greater than its par value. Under certain market conditions, in order to enhance the marketability of the bonds, bond underwriters will structure their bids with bond premiums. In this case, the City of Portsmouth received an average net interest rate of 3.76% and a bond premium of \$867,624.35. Under Federal Tax Law and State Statutes, the City is restricted on how to appropriate and use these funds.

RSA 33:3 states that any premium received cannot be used to increase the amount to be spent for the purpose for which the loan was originally incurred. Therefore, the City cannot use this money to increase the costs of the projects set forth for the \$21 Million bond issuance. However, the RSA states *“a city by a vote of 2/3 of the city council may authorize the expenditure for the premiums received for any purpose or purposes for which bonds or serial notes may be issued for an equal or longer period of time.”*

City Manager Bohenko said the bond premium of \$867,624.35 has been allocated respectively to the Water Fund in the amount of \$659,394.50 and the General Fund in the amount of \$208,229.85.

In accordance with State statute, he is recommending that the City Council authorize and appropriate the bond premium to be used from the General Fund and the Water Fund for the State Street Utilities and Road Upgrade project as described below.

The State Street Utilities and Road Upgrade project was driven by the sewer separation work, which includes the replacement of failing brick sewer line in the street, and includes upgrades to other underground utilities in the street. Streetscape improvements including new brick sidewalk, curbing and period lighting will complete the project.

On November 10, 2008, the City Council adopted a resolution authorizing the Sewer Fund to participate in the State's revolving loan fund program (SRF) up to \$2,200,000 for costs associated with the Sewer portion of this project. This City is also eligible under this program to receive up to 50% of the \$2.2 Million as a grant through the American Recovery and Reinvestment Act (ARRA). Project costs of approximately \$1.9 Million associated with the water fund and the General Fund will be funded through capital outlay in the respective funds.

As this project has a useful life that exceeds the original bond issue from which the premiums were received, and would be eligible for bonding under the Municipal Finance Act, it is in the best interest of the City to utilize the premium of \$867,624.35 to fund portions of the costs associated with the General and Water Funds. The total project cost of \$4,086,893 will be shared between General, Water, and the Sewer Fund.

Councilor Pantelakos moved to authorize the City Manager to bring forward the two Resolutions for first reading at the November 16, 2009 City Council meeting. Seconded by Councilor Smith.

Councilor Smith said that by using the funds we do not need to take out tax anticipation notes. City Manager Bohenko said that is correct.

Councilor Novelline Clayburgh thanked City Manager Bohenko for putting the City in such a great financial climate.

Motion passed.

3. Report Back from Planning Board Re: Request of The Music Hall to Rename Chestnut Street

City Manager Bohenko advised the City Council that the Planning Board is recommending the renaming of a portion of Chestnut Street to Music Hall Way.

Councilor Dwyer moved to accept the Planning Board's recommendation that the section of Chestnut Street between Congress Street and Porter Street be renamed Music Hall Way. Seconded by Councilor Spear.

Assistant Mayor Blalock spoke to the concerns expressed by Harold Whitehouse earlier this evening and will not vote in support of the motion.

Councilor Smith said he also has concerns with this request and asked if it was looked into having an honorary name designated for the street. City Manager Bohenko said we do not do that because of confusion that can result with the 911 system.

Councilor Kennedy said she is also concerned with the motion and will not support its passage.

Councilor Dwyer said our history is about changing names of streets.

On a roll call vote 2-6, motion to accept the Planning Board's recommendation that the section of Chestnut Street between Congress Street and Porter Street be renamed Music Hall Way ***failed*** to pass. Councilor Dwyer and Mayor Ferrini voted in favor. Assistant Mayor Blalock, Councilors Novelline Clayburgh, Smith, Kennedy, Spear and Pantelakos voted opposed.

4. Proposed Extension of Parking Lot Agreement with St. John's Masonic Association

City Manager Bohenko reported that St. John's Masonic Association allows for free public access to 69 parking spaces, Monday through Saturday, 6:00 a.m. to 7:30 p.m. He said that St. John's has indicated that they are willing to extend this agreement for another year for the period January 1, 2010 through December 31, 2010. The annual compensation to St. John's for 2010 is \$21,210, an increase of \$210, or 1% above the 2009 agreement. The total compensation equates to \$307.39 per space for the year, or \$.99 per space per day.

He further reported that the Mason's lot is valuable as a staging area for races and as a satellite lot for various events in the City, especially when multiple events take place simultaneously. This agreement is even more important with the commencement of the construction of the Middle School, which will put more pressure on parking in this area of the City.

Councilor Smith moved to authorize the City Manager to enter into a Parking Lot Usage/Maintenance Agreement with St. John's Masonic Association for the period January 1, 2010 through December 31, 2010. Further to compensate St. John's Masonic Association in the amount of \$21,210.00 which shall be taken from the Parking Impact Fee Fund. Seconded by Councilor Kennedy and voted.

5. Proposed Parking Lot Agreement with Bethel Assembly of God

City Manager Bohenko reported that the Bethel Assembly of God is proposing they provide the City 93 parking spaces on a daily basis, except Sunday until 1:00 p.m. He said a proposed agreement would be for a period of ten years from July 1, 2009 through June 30, 2019. In exchange for access to these parking spaces for the next ten years, the City would conduct pavement repair and crack sealing of the lot at a cost not to exceed \$20,000. (This works out to \$2,000.00 per year).

In addition, the value of the parking during the course of this agreement will be \$21.50 per space per year. In the event Bethel elects to expand their facility, thus increasing their demand for parking, they may buy out of this agreement at a cost of \$2,000 per year for the remaining years.

City Manager Bohenko said the Bethel lot is heavily utilized during marquee events in the City, such as Market Square Day and the Tall Ships event. In addition to these events, it would be beneficial for the City to have satellite parking available for conferences, construction projects or other events where large quantities of parking are required in the vicinity of the downtown.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock and recused himself from the discussion and vote on this matter.

Councilor Smith moved to authorize the City Manager to enter into a Parking Lot/Usage Maintenance Agreement with the Bethel Assembly of God for a period of July 1, 2009 through June 30, 2019. Seconded by Councilor Kennedy and voted.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

7. Southgate Plaza Water Valve Easement

City Manager Bohenko said that 2422 Lafayette Road Associates, LLC has obtained approval from the Planning Board to make improvements to the Southgate Plaza located at 2422 Lafayette Road, next to Water Country. The Planning Board stipulated that the owner provide an easement to the City to allow the City to access and service various water valves and related infrastructure located on the property. The Legal Department has approved the form of the easement.

Councilor Pantelakos moved to authorize the City Manager to accept an easement from 2422 Lafayette Road Associates LLC for purpose of facilitating the City's access to certain water valves and related infrastructure. Seconded by Councilor Novelline Clayburgh and voted.

B. MAYOR FERRINI

1. Appointment to be Considered:
 - John F. McVay – Appointment to the Peirce Island Committee

The City Council considered the appointment of John F. McVay to the Peirce Island Committee. This appointment will be voted on by the City Council at the November 16, 2009 meeting.

2. Resignation – Christine Casa from Safe Routes to School Committee

Councilor Smith moved to accept with regret the resignation of Christine Casa from the Safe Routes to School Committee. Seconded by Councilor Novelline Clayburgh and voted.

Councilor Smith requested a letter of thanks and appreciation be sent to Ms. Casa for her service to the Safe Routes to School Committee.

3. * Report Back Re: Proposed Blue Ribbon Committee on Downtown Events

Mayor Ferrini announced that individuals serving on the Blue Ribbon Committee on Downtown Events will be appointed at the November 16, 2009 City Council meeting.

Councilor Smith expressed concern that the size of the committee could be too large. City Manager Bohenko informed the City Council that ex-officio members would not be voting members but serve to support the committee.

Assistant Mayor Blalock said that staff members serving on a committee helps that committee function efficiently and effectively.

City Manager Bohenko said it is important to note that this is an advisory committee in nature.

Councilor Smith said he would like to see a specific charge of this committee with a sunset date.

Mayor Ferrini said he would bring back a charge for the committee with the names for appointment.

Councilor Kennedy said that the City-Wide Neighborhood Committee should have representation on the committee.

Mayor Ferrini thanked the City Councilors for their comments and suggestions and said he would take them into consideration when making his recommendation.

C. ASSISTANT MAYOR BLALOCK

1. *City Manager's Evaluation

Assistant Mayor Blalock announced that the City Council conducted its annual evaluation of City Manager Bohenko and reported that the City Council finds that the City Manager's overall performance continues to be "excellent to exceptional" in all categories.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

City Clerk Barnaby announced that absentee ballots are currently available for the Municipal Election. In addition, she reported that the polling hours will be from 8:00 a.m. – 7:00 p.m. on November 3, 2009.

Councilor Dwyer announced on October 22, 2009, from 7:00 p.m. – 8:00 p.m., in the Eileen Dondero Foley Council Chambers the Portsmouth Five Year Sustainability Planning Steering Committee will host the first public announcement/press conference of this community-based process.

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

At 8:50 p.m., Councilor Pantelakos moved to adjourn. Seconded and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk