

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, FEBRUARY 1, 2010

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

At 5:45 p.m., an Anticipated "Non-Meeting" with counsel was held regarding Negotiations – RSA 91-A:2, I (b-c).

At 6:15 p.m., a Work Session was held regarding Sustainable Practices Recommendations.

I. CALL TO ORDER [7:00PM or thereafter]

Mayor Ferrini called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Ferrini, Assistant Mayor Novelline Clayburgh, Councilors Lister, Hejtmanek, Spear, Dwyer, Coviello and Smith.

Absent: Councilor Kennedy

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

PRESENTATION

1. Comprehensive Annual Financial Report (CAFR) - Melanson, Heath & Company, P. C. Auditors' Financial Report for the Year Ending June 30, 2009 (Annual Audit)

Scott McIntyre of Melanson, Heath & Company reviewed the City of Portsmouth Financial Report for the Year Ending June 30, 2009. He informed the City Council that the books and records were well maintained. He spoke to the assets and unrestricted funds and reported that we meet the requirements of standard governmental procedures for an audit.

Assistant Mayor Novelline Clayburgh moved to suspend the rules in order to take up Item XII. A. Informational Item 3 – News Release Re: Kelli Barnaby, City Clerk. Seconded by Councilor Smith and voted.

XII. A.3. Informational – News Release Re: Kelli Barnaby, City Clerk

Mayor Ferrini and City Manager Bohenko announced that Kelli Barnaby, CMC, City Clerk, has been included in the Presidential Who's Who 2010 Edition for the level of success she has reached as a City Clerk. Mayor Ferrini presented the Presidential Who's Who plaque to City Clerk Barnaby who was joined by her family.

V. ACCEPTANCE OF MINUTES – JANUARY 4, 2010 AND JANUARY 19, 2010

Assistant Mayor Novelline Clayburgh moved to approve and accept the minutes of the January 4, 2010 and January 19, 2010 City Council meetings. Seconded by Councilor Lister and voted.

VI. PUBLIC COMMENT SESSION

Martin Cameron spoke regarding the WWI monument that is currently located outside of the Calvary Cemetery and informed the Council that it should be relocated back to its original location at the Plains Ball field.

Heather Hurtt thanked City Manager Bohenko and Recreation Director Wilson for facilitating the recreational study. She expressed concern with relocating the Connie Bean Center to the Middle School. She said a second gym would be created and urged the Council to respect the study before a decision is made relative to this matter.

Assistant Mayor Novelline Clayburgh moved to suspend the rules in order to take up Item XII. A.1. - Approval of Employment Agreement for Assistant Fire Chief Steve Achilles. Seconded by Councilor Smith and voted.

XII. A.1. Approval of Employment Agreement for Assistant Fire Chief Steve Achilles

Councilor Smith moved to approve the employment agreement between the Portsmouth Fire Commission and Assistant Fire Chief Steve Achilles. Seconded by Councilor Coviello.

Assistant Mayor Novelline Clayburgh thanked the Fire Commission and all involved for the establishment of a fair and equitable schedule for salary and benefits.

Motion passed.

VII. PUBLIC HEARINGS

A.1. ORDINANCE AMENDING CHAPTER 7 – VEHICLES, TRAFFIC PARKING
OMNIBUS ORDINANCES (*First Ordinance*)

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

Parking Manager Frederick reviewed both of the omnibus ordinances and their proposed amendments.

After no speakers, Mayor Ferrini declared the public hearing closed.

A.2. ORDINANCE AMENDING CHAPTER 7 – VEHICLES, TRAFFIC PARKING
OMNIBUS ORDINANCES (*Second Ordinance*)

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

Parking Manager Frederick said that definition of meter has changed to allow for the flexibility of technology changes.

After no speakers, Mayor Ferrini declared the public hearing closed.

B. ORDINANCE AMENDING CHAPTER 6, ARTICLE XIII, SECTION 6.1307 –
PROHIBITED CONDUCT – VENDOR FROM MOTOR VEHICLE

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

Assistant City Attorney Woodland reviewed the ordinance amendments as recommended by the Vendor and Parking Committees. She reported on the three main amendments as follows:

- 1) Limiting 3 parking spaces for mobile vendors
- 2) The season shall be from April 1st – November 1st
- 3) Creation of a bid process for the mobile vendors

She indicated that the Parking Committee has limited the parking spaces for mobile vendors from 3 to 2 and they will be located on Hanover Street and State Street.

Ryan Cronin, owner of Googies, spoke opposed to mobile vendors and said that it is not fair to have a competitor come into the City as a mobile vendor and pay a minimal amount of money when business owners have much more overhead costs and taxes to deal with.

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

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Wellness Grant from Health Trust's Health Program - \$3,754.00

Councilor Smith moved to accept the Wellness Grant in the amount of \$3,754.00 from the Trust's Health Promotion WELLDollars Grant Program. Seconded by Councilor Coviello and voted.

- B. Acceptance of Grant to the Portsmouth Police Department from the Office of Justice – Violence Against Women and Victim/Witness Advocate Position - \$28,000.00

Councilor Dwyer moved to approve and accept the grant to the Portsmouth Police Department, as listed. Seconded by Councilor Lister and voted.

- C. Acceptance of Grant to the Portsmouth Police Department from the Office of Justice – Violence Against Women Act for specialized officer training - \$7,860.00

Councilor Smith moved to approve and accept the grant to the Portsmouth Police Department, as listed. Seconded by Councilor Lister and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Resolution Increasing the Maximum Income Limit for Individuals Qualifying for the Elderly Real Estate Tax Exemption to \$33,182.00 for single and \$40,933.00 for married and total assets may not exceed \$110,611.00 whether single or married

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the Resolution for Elderly Exemptions, as submitted, at the February 16, 2010 City Council meeting. Seconded by Assistant Mayor Novelline Clayburgh and voted.

- B. First reading of Resolution Increasing the Maximum Income Limit for Individuals Qualifying for the Disabled Real Estate Tax Exemption to \$33,182.00 for single and \$40,933.00 for married and total assets may not exceed \$110,611.00 whether single or married

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the Resolution for Disabled Exemptions, as submitted, at the February 16, 2010 City Council meeting. Seconded by Councilor Coviello and voted.

- C. First reading of Resolution Authorizing a Bond Issue of up to One Million Eight Hundred Thousand Dollars (\$1,800,000.00) for FY10 Citywide Facilities, Streets, Sidewalks and Bridge Improvements

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the proposed Bond Resolution for Citywide Improvements in the amount of up to \$1,800,000.00 at the February 16, 2010 City Council meeting. Seconded by Councilor Dwyer and voted.

D. First reading of Resolution Authorizing a Bond Issue of up to Five Hundred Thousand Dollars (\$500,000.00) for FY10 School Facilities Improvements

Councilor Smith moved to pass first reading and schedule a public hearing and adoption of the proposed Bond Resolution for School Facilities Improvements in the amount of up to \$500,000.00 at the February 16, 2010 City Council meeting. Seconded by Councilor Dwyer and voted.

E.1. Second reading of Ordinance amending Chapter 7 – Vehicles, Traffic Parking Omnibus Ordinances (*First Ordinance*)

Councilor Smith moved to pass second reading and schedule third and final reading of the proposed Ordinance Amending Chapter 7 – Vehicles, Traffic Parking Omnibus Ordinance at the February 16, 2010 City Council meeting. Seconded by Councilor Dwyer.

Councilor Coviello asked why the library parking lot would not be available on events other than snow bans. City Manager Bohenko said the library is concerned because people parked overnight and don't moved their vehicles.

Motion passed.

E.2. Second reading of Ordinance amending Chapter 7 – Vehicles, Traffic Parking Omnibus Ordinances (*Second Ordinance*)

Councilor Smith moved to pass second reading and schedule third and final reading of the proposed Ordinance amending Chapter 7, Vehicles, Traffic Parking Omnibus Ordinance at the February 16, 2010 City Council meeting. Seconded by Councilor Coviello and voted.

F. Second reading of Ordinance amending Chapter 6, Article XIII, Section 6.1307 – Prohibited Conduct – Vendor from Motor Vehicle

Councilor Smith moved to pass second reading and schedule third and final reading of the proposed ordinance amendments to Chapter 6, Article XIII at the February 16, 2010 City Council meeting. Seconded by Councilor Coviello.

Councilor Dwyer said the ordinance indicates no more than 3 locations, does that mean the City has the option to designate less than 3 spaces. Assistant City Attorney Woodland said the Parking Committee would review the parking downtown and make recommendations.

Assistant Mayor Novelline Clayburgh asked if the locations will be parking spaces.

Councilor Lister said there are 5 licenses that have been issued for mobile vendors, is there a ceiling on the number of licenses that will be issued. City Attorney Sullivan said this limits parking on City streets others could park in a private parking lot and serve as a mobile vendor.

Councilor Smith informed the Council that the starting bid would be \$5,000.00.

Councilor Dwyer said the ordinance does not specify criteria for the bidding other than the dollar amount. Assistant City Attorney Woodland said that the Legal and Health Departments will work with the Vendors Committee together with the Purchasing Department on the criteria for the process.

Motion passed.

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Jeanine Sylvester, Redhook Brewery, requesting permission to hold the 13th Annual Runner's Alley/Redhook Brewery on May 30, 2010 at 11:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Barbara Massar, Pro Portsmouth, Inc., requesting permission to hold the following events:
- Children's Day, Sunday, May 2, 2010, Noon – 4:00 p.m.
 - 33rd Annual Market Square Day Festival & 10k Road Race, Saturday, June 12, 2010
 - 8th Annual Summer in the Street Music Series, Saturday evenings from 5:00 – 9:30 p.m. on June 26th, July 10th, July 17th, July 24th, July 31st and August 7th (rain date August 14th)
- (Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Robert Sutherland Jr., St. John's Lodge, requesting permission to hold the 5k "Out of Hibernation" Road Race on Saturday, April 24, 2010 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Robert Sutherland Jr., St. John's Lodge, requesting permission to march in observance of St. John's Sunday at (Queen Chapel) St. John's Church on Sunday, June 27, 2010 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Coviello and voted.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Peter G. Weeks, PGW Real Estate Consulting, on behalf of property owners on Sagamore Grove requesting consideration of the rezoning of the following lots on Map 201 Lots 3, 4, 5, 6, 7, 8 to Mixed Residential Business (MRB) or Single Residence B (SRB) ***(Sample motion – move to refer to the Planning Board)***

Councilor Smith moved to refer to the Planning Board for report back. Seconded by Councilor Coviello and voted.

- B. Letter from Bill St. Laurent regarding the relocation of monuments in dedication to veterans that died in battle during WW I

Assistant Mayor Novelline Clayburgh moved to accept and place the letter on file and to refer the matter to the Veterans Organization. Seconded by Councilor Coviello.

Councilor Dwyer said that this maybe something that Art-Speak could work on and make some kind of recommendation.

Councilor Lister said that it should be discussed at the Veterans Committee.

City Manager Bohenko said we will give this consideration however, this is the location that has been decided upon and that there will be new access going into the cemetery. He also indicated that if these were to be moved, it would cost the City additional funds.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 3. Proposed Adoption of Flag Policy #2010-01

City Manager Bohenko reported that Josh Cyr worked on this policy with the Economic Development Commission and the recommendation is before you this evening for a vote. He reminded the City Council that the policy can be amended by a simple vote of the City Council at a later date.

Councilor Spear moved to adopt proposed Flag Policy #2010-01 as recommended by the Economic Development Commission. Seconded by Councilor Coviello.

Councilor Dwyer asked how we treat flags on State and Deer Streets and do they have to choose between a flag and a sandwich board.

Councilor Smith moved to suspend the rules in order to allow Josh Cyr to come forward and address the City Council. Seconded by Councilor Spear and voted.

Mr. Cyr said that issue was discussed at length. Councilor Dwyer said she does not want this policy to affect branded areas of the City. City Manager Bohenko said he agrees. Councilor Smith said the branded areas are allowed to have flags and sandwich boards. City Manager Bohenko said we could look at adding a sentence in the future regarding that situation, if needed.

Motion passed with Councilor Smith abstaining from voting.

2. Resolution Re: Rescission of the Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) Borrowing Authorization for an Underground Parking Facility

City Manager Bohenko said that this is to rescind the bonding resolution of \$12,500,000.00 for an Underground Parking Facility for the Portwalk Project.

Councilor Smith moved to approve the Resolution rescinding certain borrowing authority with regard to Resolution #19-2007 adopted by the City Council on December 17, 2007. Seconded by Assistant Mayor Novelline Clayburgh and voted.

4. Martingale Wharf LP, Request to Participate in Compactor Agreement

City Manager Bohenko said that Martingale would like to become part of the compactor agreement.

Councilor Smith moved to authorize the City Manager to negotiate a License Agreement and add Martingale Wharf, LP to the use of the compactor on Ceres Street. Seconded by Assistant Mayor Novelline Clayburgh and voted. Councilor Coviello abstained.

5. Proposed Parking Lease and Management Agreement for Portwalk Project Lot 3

City Manager Bohenko advised the City Council that the Portwalk project is interested in leasing to the City Lot 3 of the Portwalk project for municipal parking. He reported under the zoning regulations, the City has the right to operate a surface parking lot in a downtown area if it is owned or leased by the City. Jeff Johnston on behalf of the Portwalk project is offering the conditions of the lease to the City. These conditions are outlined as follows:

1. Lease of 200 +/- surface parking spaces.
2. Parking lot to be constructed and paid for by Portwalk, including parking equipment familiar to the City.
3. Target opening date May 2010.
4. Ten Year lease. In order to construct the future phases of the project, the Owner may terminate this lease anytime after the second year of this lease with three months notice.
5. The lot would be leased to the City at no cost. All operating expenses that the City would incur would be paid by Portwalk.
6. The City would receive a management fee to be negotiated.
7. The parking rates for hourly and monthly parking would be consistent with existing City rates. The Owner of the lot has requested that a flat rate be made available for validated parking for the two hotels.

8. The operations of the surface parking lot would be 24 hours 7 days a week with public access through a barrier gate via payment system monitored by intercom and closed circuit TV by the attendants at the High Hanover garage.
9. Portwalk would pay property taxes on Lot 3.

Assistant Mayor Novelline Clayburgh moved to authorize the City Manager to negotiate and execute a Lease Agreement with Portwalk for a municipal surface parking lot. Seconded by Councilor Smith.

Councilor Coviello asked who would be responsible for the maintenance of the area and plowing. City Manager Bohenko said it would be the responsibility of the City and we would bill Portwalk for the costs associated with it.

Councilor Coviello asked if the street would remain private. City Attorney Sullivan said that issue will be dealt with in the drafting of the lease. He said liability would be spelled out in the lease.

Councilor Smith moved to suspend the rules in order to allow Jeff Johnston to address the Council. Seconded by Councilor Spear and voted.

Councilor Dwyer asked said with the change of use of the property, how are there no additional parking requirements. City Attorney Sullivan said that this is a function of the change in the zoning ordinance. City Attorney Sullivan reported that there is no change of use with this lot. Councilor Dwyer said it is no longer going to be a retail area but a conference center and that if that is not a change of use; she would like to know why that is. City Attorney Sullivan said there was a subdivision of the property between the 3 lots.

City Manager Bohenko concurred with City Attorney Sullivan that this was not a change of use. Councilor Dwyer said she would like Planning Director Taintor to explain why this is not a change of use.

Councilor Dwyer said she would like to see bicycle racks added as well as additional landscaping for screening of the property.

Councilor Spear asked if the parking lot would go through Site Review.

Assistant Mayor Novelline Clayburgh said the intent is to develop this land and because of the state of the economy the best use of the area is to develop the area. City Manager Bohenko said we could look at a similar time frame over 5 years. Mr. Johnston said finances are an issue and they want the area developed and the bank wants to see it developed in 10 years.

Councilor Hejtmanek said that 10 years is not unreasonable and the area will be developed when it can be developed.

Councilor Smith stated when the machinery is put in place for the parking lot the gate will be operated via credit card. City Manager Bohenko said that is correct.

Motion passed. Councilor Dwyer abstained.

Councilor Dwyer requested City Manager Bohenko that she would like to know if there is a change of use issue as it relates to this matter as well as when the issue is before the Site Review Technical Advisory Committee, they consider adding bicycle racks and additional landscaping for screening

B. MAYOR FERRINI

1. *Reports

Mayor Ferrini reminded the City Councilors that the 2010 Goal Setting Retreat will be held on Friday, February 5th at 11:30 a.m. in the Levenson Room of the Library.

C. COUNCILOR DWYER

1. *Joint Building Committee Report

Councilor Dwyer provided a status update on the Joint Building Committee which addressed the following areas: Building Design, Construction Management, Phasing of Construction, Communication/Operations and Upcoming Key Milestones.

Building Design

- *Approved detailed project work plan*
- *Held initial review of site plans, floor plans, exterior elevations, and exterior finishes; resulted in list of issues for architects to discuss with middle school staff, e.g., functionality of courtyard, entryway, areas where flexible walls would be useful;*
- *Authorized studies for middle school site and Wentworth school site (softball field): topo and utility survey; geotechnical info./soils report; environmental study*
- *Upcoming work to be authorized: traffic study; commissioning agent for NE-CHPS (green building)*

Construction Management

- *Determined to use constructional manager at risk approach**
- *City staff with JBC liaisons developed criteria/RFQ for construction manager reviewed 11 responses and selected 5 to invite for full RFP process*
- *Upcoming: selection of construction manager*

Phasing of Construction

- *Explored several options for relocating students during construction*
- *Upcoming: discussion on phasing construction; use/need for temporary classrooms*

Communication/Operations

- *Approved document of guiding principles for JBC; description of roles/responsibilities*
- *Approved full communications plan along with budget for 3-years of activity*

Some Upcoming Key Milestones

- *April 7, 2010 – Parrott site schematic design approved; authorize design development*
- *April 21, 2010 – PHS field resurfacing authorize bidding negotiations*
- *May 12, 2010 – Softball field construction documents approved/authorize bidding*
- *July 14, 2010 – Parrot site design development approve/authorize construction documents*
- *November 10, 2010 – Parrott site construction documents approved/authorize bidding*

**Construction Manager at Risk – Provides construction leadership, contract management, direction, supervision, cooperation and control during construction phases. Develops a construction manage plan and creates construction documents, including cost estimating; advises on schematic design; negotiates guaranteed maximum price for project with JBC; selects and contracts building subcontractors.*

Assistant Mayor Novelline Clayburgh asked if any interest has come forward to relocate the students out at Pease Tradeport. Councilor Dwyer said that Business Administrator Bartlett has reviewed several sites but because of cost and design could not be used for a school setting.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

At 8:45 p.m., Councilor Smith moved to adjourn. Seconded by Councilor Coviello and voted.



Kelli L. Barnaby, CMC/CNHMC
City Clerk