

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, AUGUST 2, 2010 TIME: 6:00PM

AGENDA

- 6:00PM – WORK SESSION REGARDING CONTINUING CARE RETIREMENT COMMUNITY (CCRC)
 - I. CALL TO ORDER [7:00PM or thereafter]
 - II. ROLL CALL
 - III. INVOCATION
 - IV. PLEDGE OF ALLEGIANCE

 - V. ACCEPTANCE OF MINUTES – JULY 19, 2010

 - VI. PUBLIC COMMENT SESSION

 - VII. APPROVAL OF GRANTS/DONATIONS
 - A. Acceptance of Donations to the Coalition Legal Fund
 - Town of Sugar Hill - \$500.00
 - Town of Hebron - \$1,500.00
 - Town of Rye - \$5,000.00
 - Town of Sunapee - \$5,000.00

(Sample motion – move to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund)

 - B. Conservation License Plate Grant for City-owned Building Leased by Players’ Ring
(Sample motion – move to accept and expend a grant from the NH Division of Historical Resources Conservation License Plate Grant Program in the amount of \$5,276.00 for the purpose of making repairs to the City-owned building on Marcy Street leased by the Players’ Ring)

 - C. Acceptance of Grant from the NH Department of Highway Safety for “Portsmouth Enforcement Patrols” to the Police Department - \$6,050.00 *(Sample motion – move to approve and accept the grant to the Portsmouth Police Department, as listed)*

 - D. Acceptance of Grant from the NH Department of Highway Safety for “Portsmouth Red Light Running Enforcement Patrols” to the Police Department - \$6,050.00 *(Sample motion – move to approve and accept the grant to the Portsmouth Police Department, as listed)*

 - E. Acceptance of Grant from the NH Department of Highway Safety for “Portsmouth Sobriety Checkpoints” to the Police Department - \$9,900.00 *(Sample motion – move to approve and accept the grant to the Portsmouth Police Department, as listed)*

- F. Acceptance of Grant from the NH Department of Highway Safety for “Portsmouth DWI Patrols” to the Police Department - \$6,050.00 (**Sample motion – move to approve and accept the grant to the Portsmouth Police Department, as listed**)

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

There are no items under this Section of the Agenda

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Acceptance of Donations to the Art-Speak Overnight Art Sponsorship - \$6,250.56
- Cash \$28.56
 - Jack & Diane Chambers \$50.00
 - Newmarket International \$150.00
 - M. Christine Dwyer \$6,022.00

(Sample motion – move to approve and accept the donations for the Art-Speak Overnight Art Sponsorship)

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

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Patricia Lanciani requesting to donate a bench in the Market Square area in memory of her parents

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action

1. 2700 Lafayette Road Auction (Old Fire Station 2)
2. New Castle Wastewater Agreement
3. Request for a License from Greg Walsh, owner of Working Class Music and Minerals property located at 90B Fleet Street to install a projecting sign
4. Request for a License from Helen Marks, owner of Spiritual Readings by Duchess property located at 74 Congress Street to install a projecting sign
5. City Council Referral – Off Street Parking in the Central Business District (Parking Focus Group Report)
6. Wetlands Ordinance – Proposed Amendments

7. Polling Hours for September 14, 2010 State Primary Election
8. Request for Dumpster License Agreement Re: HuLa, LLC d/b/a/ Foobar
9. Request for License from Brad Sawler, Oxland Builders for use of one parking space in front of 55 High Street
10. Request for License from Mark McNabb, 82-86 Congress Street

Informational Items

1. Events Listing
2. Notice Re: Seawall Reconstruction Projects on Mechanic Street and South Mill Street
3. Press Release Re: National Night Out
4. Invitation and News Release to Pine Street Park and Playground Ribbon Cutting
5. Notice of Softball Fundraiser for Portsmouth Firefighter Sarah Fox

B. MAYOR FERRINI

1. Letter from Gerald Howe, Police Commission Chair, Re: Independent Survey of the Portsmouth Police Department requesting the appointment of Councilor Chris Dwyer to serve on the Steering Committee
2. *Reports

XII. MISCELLANEOUS/UNFINISHED BUSINESS

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

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

(*Indicates verbal report)

INFORMATIONAL ITEMS

1. Notification that the Conservation Commission Minutes of the June 9, 2010 meeting are available on the City's website for your review
2. Notification that the Historic District Commission Minutes of the June 2, 2010 meeting are available on the City's website for your review
3. Notification that the Planning Board Minutes of the June 17, 2010 meeting are available on the City's website for your review
4. Notification that the Public Undeveloped Lands Assessment (PULA) Minutes of the January 8, 2009, meeting are available on the City's website for your review

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 29, 2010
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on August 2, 2010 City Council Agenda

Work Session:

6:00 p.m.

1. **Continuing Care Retirement Community.** On Monday evening, at 6:00 p.m., the City Council will hold a work session regarding the CCRC (Continuing Care Retirement Community Ordinance). [Attached are the following materials](#), regarding this matter:
 - 1) Memorandum from Robert Sullivan, City Attorney, dated July 26, 2010.
 - 2) Memorandum from Rick Taintor, Planning Director, dated June 16, 2010, and provided to the City Council at the June 21, 2010 City Council meeting.
 - 3) CCRC Draft Zoning Ordinance.

Acceptance of Grants/Donations:

1. **Acceptance of Donations to the Coalition Legal Fund.** [Attached are copies of checks](#) from the Town of Sugar Hill in the amount of \$500.00, the Town of Hebron in the amount of \$1,500.00, the Town of Rye in the amount of \$5,000.00 and the Town of Sunapee in the amount of \$5,000.00 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 VII of the Agenda.

2. **Conservation License Plate Grant for City-owned Building Leased by Players' Ring.** As you know, Players' Ring has leased a City-owned building on Marcy Street for many years and, under the terms of their lease with the City, Players' Ring is responsible for all maintenance and repair of the building in exchange for a nominal lease fee. Players' Ring has successfully pursued a number of small grants to make repairs to the building in the last several years and, most recently, they have been successful in obtaining a grant in the amount of \$5,276.00 from the NH Division of Historical Resources Conservation License Plate Grant Program. These funds will be used by Players' Ring to make upgrades to the City building they lease. As with other grants they have obtained, they are asking that the City act as fiscal agent by accepting these grant funds.

I would recommend the City Council vote to accept and expend a grant from the NH Division of Historical Resources Conservation License Plate Grant Program in the amount of \$5,276 for the purpose of making repairs to the City-owned building on Marcy Street leased by the Players' Ring. Action on this matter should take place under Section VII of the Agenda.

3. **Acceptance of Police Department Grants.** Attached under Section VII of the Agenda is a [memorandum](#), dated May 27, 2010, from Gerald W. Howe, Chairman of the Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve the following grants:

- a. A grant in the amount of \$6,050 from the NH Department of Highway Safety for "Portsmouth Enforcement Patrols".
- b. A grant in the amount of \$6,050 from the NH Department of Highway Safety for "Portsmouth Red Light Running Enforcement Patrols".
- c. A grant in the amount of \$9,900 from the NH Department of Highway Safety for "Portsmouth Sobriety Checkpoints". Portsmouth will conduct three sobriety checkpoints with this funding.
- d. A grant in the amount of \$6,050 from the NH Department of Highway Safety for "Portsmouth DWI Patrols".

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 to the Portsmouth Police Department, as listed. Action on this matter should take place under Section VII of the Agenda.

Consent Agenda:

1. **Acceptance of Donations for Art-Speak for Overnight Art.** Art-Speak requests that the following donations totaling \$6,250.56 to sponsor Overnight Art be accepted by the City Council:

- Cash \$ 28.56

- Jack & Diane Chambers \$ 50.00
- Newmarket International \$ 150.00
- M. Christine Dwyer \$6,022.00

I would recommend the City Council move to accept and approve the donations to Art-Speak for Overnight Art, as presented. Action on this matter should take place under Section IX of the Agenda.

City Manager’s Items Which Require Action:

1. **2700 Lafayette Road Auction (Old Fire Station 2).** As you are aware, the auction sale of the former Fire Station 2 is currently scheduled for August 18, 2010 at 11:00 a.m. The auctioneer selected by the City Council that will be conducting the auction is Paul McInnis, Inc. City Ordinance provides that in accepting a bid for the sale of property, “the City Purchasing Officer shall forward all proposals to the City Council for final selection by the Council”, Section 1.504D.

The City Attorney has advised that because of the dynamics of the public auction sale that an authorized person be present at the auction with the authority to accept a bid proposal immediately. The requirement that the acceptance of the bid be delayed until it can be presented to the City Council essentially defeats the purpose of an auction and could lead to a situation in which the City is unable to sell the property at the highest bid. The City Attorney recommends, as well as Paul McInnis, the auctioneer selected, that the City Council consider providing the City Manager with full authority necessary with respect to the impending auction and its sale.

Therefore, it is recommended that the City Council authorize the City Manager to take all necessary action in the best interest of the City to sell 2700 Lafayette Road on August 18, 2010.

2. **New Castle Wastewater Agreement.** [Attached](#) for the City Council’s consideration is a proposed agreement with the Town of New Castle relative to treatment of its sewage. As you may know, New Castle presently owns, operates, and maintains sewer lines, pump stations and other appurtenances which collect sanitary sewage from New Castle residents. That sewage has been conveyed to and treated at Portsmouth’s Peirce Island Wastewater Treatment Plant since 1978 pursuant to an agreement which has since expired. Portsmouth and New Castle have been in negotiations relative to a new Agreement. By way of highlights, the agreement proposes:

- A 30-year term (the same term as the original agreement);
- That New Castle will be charged the average household user rate as its waste is almost exclusively residential in nature;
- The rate will automatically be adjusted under the agreement as annual changes are made to the sewer rates as part of the budget process;
- New Castle will at its own cost update its telemetry for the purpose of monitoring flow into the system to obtain better billing data.

This proposed Agreement is in the best interest of the City and New Castle. The rate which New Castle is prepared to pay (and has been paying since January 1, 2009 in anticipation of this agreement being finalized) is an increase over the prior rate. The amount of flow received from New Castle is less than two percent of the flow to Peirce Island and is not a determining/influential factor in the wastewater master planning process. To put this into perspective, it is estimated that we bill a total of \$230,000 annually to New Castle. It is also likely that this is the environmentally best option for New Castle and the surrounding water bodies.

I would recommend the City Council move to approve the proposed Sewer Agreement with the Town of New Castle, and further, authorize the City Manager to execute this Agreement.

3. **Request for a License from Greg Walsh, owner of Working Class Music and Minerals property located at 90B Fleet 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 Greg Walsh owner of Working Class Music and Minerals for property located at 90B Fleet Street, to install a projecting sign on an existing bracket (see attached photographs).

This request was received by the Planning Department on July 9, 2010, and reviewed by the Planning Board on July 15, 2010. The Board voted to recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be 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 Greg Walsh, owner of Working Class Music and Minerals to install a projecting sign on an existing bracket at 90B Fleet Street and further authorize the City Manager to execute a License Agreement for this request.

4. **Request for a License from Helen Marks, owner of Spiritual Readings by Duchess property located at 74 Congress 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 Helen Marks owner of Spiritual Readings by Duchess for property located at 74 Congress Street, to install a projecting sign on an existing bracket (see attached photographs).

This request was received by the Planning Department on July 7, 2010, and reviewed by the Planning Board on July 15, 2010. The Board voted to recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be 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 Helen Marks, owner of Spiritual Readings by Duchess to install a projecting sign on an existing bracket at 74 Congress Street and further authorize the City Manager to execute a License Agreement for this request.

5. **City Council Referral – Off Street Parking in the Central Business District (Focus Group Report).** On January 19, 2010, the City Council referred to the Planning Board a request to reconsider the off-street parking regulations in the revised Zoning Ordinance, and specifically Section 10.1115.30, "Optional Payment in Lieu of Providing Required Off-Street Parking Spaces." The Planning Board reviewed this matter at its meeting on February 18, 2010, and took the following actions:

- (1) The Board voted to initiate a study process through a subcommittee or focus group of City officials and downtown property owners who would be charged with reviewing alternative strategies for managing and financing public parking in the central business district.
- (2) The Board also voted to recommend that the City Council enact an interim change in the Zoning Ordinance reducing the amount of the in-lieu payment from \$5,000 to \$2,000 per parking space not provided.

On April 5, 2010, the City Council enacted the interim reduction in the in-lieu payment as recommended by the Planning Board.

As noted above, the “Downtown Parking Focus Group” was formed to bring the views of those involved in downtown development to the discussion of downtown parking policy. The Focus Group was chaired by Planning Board member Donald Coker, and included five individuals involved in downtown development, along with Councilor Eric Spear and Economic Development Commission member Everett Eaton. City staff support was provided by Rick Taintor, Planning Director, and Jon Frederick, Traffic and Parking Supervisor.

The Focus Group met three times (March 2, April 1, and June 10); prepared a draft report on June 5; and submitted its final report to the Planning Board on June 17. ([See the report on the inside cover of your packet.](#)) The report contains seven recommendations:

1. Eliminate off-street parking requirements in the CBA and CBB districts for all projects except those over a specified threshold of lot area and/or building area.
2. Repeal the “optional payment in lieu of providing required off-street parking” (which would no longer be required if recommendation #1 is implemented).
3. Create additional off-street parking at the Worth Lot, and identify other strategic sites for future parking facilities.
4. Create a Parking Enterprise Fund.
5. Provide limited free and low-cost parking for downtown residents and employees.
6. Provide variable on-street parking rates and durations to free up the highest demand spaces for frequent turnover.
7. Invest some revenues in downtown enhancements, including rehabilitation of pedestrian plazas, implementing a public signage/wayfinding system, and supporting public art and sculpture.

The first two recommendations would require amendments to the Zoning Ordinance to be addressed by both the Planning Board and City Council; while the remaining five recommendations represent broader policy issues for the City Council to address.

The Planning Board reviewed the report at its meeting on July 15, 2010, and voted to endorse the Focus Group’s seven (7) recommendations.

I would recommend that the City Council move to establish a work session on Monday, September 20, 2010, to review with the City Council what actions that the Council may want to proceed with regarding this matter.

6. **Wetlands Ordinance – Proposed Amendments.** When City staff presented the new Zoning Ordinance to the City Council last year, it was anticipated that staff would be bringing some amendments to the Council. The Planning Department has also been working on amendments to various sections of the Zoning Ordinance, and we will be reviewing these with the Planning Board in stages over the coming months.

As the first step in this process, the Planning Board has recommended [the attached proposed amendments](#) to Section 10.1010 (Wetlands Protection), as follows:

1. Change “use” to “use, activity or alteration” in several locations (housekeeping change);
2. Exempt small emergency generator pads from the requirement to obtain a conditional use permit;
3. Authorize the Planning Director to require review by an independent wetland scientist or other special studies;
4. Update the reference manuals for stormwater best management practices (BMPs).

The Conservation Commission voted to support these proposed amendments at its meeting on July 14, 2010.

The Planning Board reviewed these proposed amendments at its meeting on July 15, 2010, and voted to recommend that the City Council enact the amendments as proposed.

I would recommend the City Council move to schedule this matter for first reading at the August 16, 2010 City Council meeting.

7. **Polling Hours for September 14, 2010 State Primary Election.** In accordance with RSA 659:4, the City Council shall determine the polling hours for the election. Kelli Barnaby, City Clerk, requests that the polling hours be set from 8:00 a.m. - 7:00 p.m. for the State Primary Election on Tuesday, September 14, 2010.

Therefore, I would recommend the City Council move to set the polling hours from 8:00 a.m. to 7:00 p.m. for the State Primary Election on Tuesday, September 14, 2010.

8. **Request for Dumpster License Agreement Re: HuLa, LLC d/b/a Foobar.** [Attached is a letter](#) from Daniel J. LaCava on behalf of HuLa, LLC d/b/a Foobar, a restaurant establishment being located at 21 Congress Street (the former site of Muddy River Smokehouse) requesting a dumpster license to facilitate disposal of trash for Foobar. Also, [attached is a sketch](#) of the proposed dumpster license area prepared by Public Works Director Steve Parkinson.

I would recommend the City Council move to authorize the City Manager to enter into a dumpster license agreement for the benefit of HuLa, LLC d/b/a Foobar.

9. **Request for License from Brad Sawler Oxland Builders, 55 High Street.** Brad Sawler of Oxland Builders is seeking a license agreement to use one parking space in front of 55 High Street (meter space 2171). See [attached letter](#) request sent by email. Mr. Sawler has been in communication with the Parking Manager, the Legal Department and Director of Public Works regarding the proposed use of the space.

Oxland Builders is presently using the parking space through the rental of a meter bag through the Parking Office but asserts he will need the space until September 30, 2010 in order to complete the approved work. The space will be used principally to facilitate removal of debris from the work site and the unloading of materials and equipment. See attached photograph showing the impacted metered space.

There is an impact on one parking space and the licensee would be charged the usual \$20 per day, Monday – Saturday fee. The license would have the usual terms and conditions related to limitation of use, restoration of any damage and insurance requirements.

I would recommend the City Council move to authorize the City Manager to enter into a license agreement with Oxland Builders for one parking space on High Street to facilitate construction activities at 55 High Street.

10. **Request for License from Mark McNabb, 82-86 Congress Street.** Mark McNabb of 82-86 Congress Street LLC is requesting a license to facilitate construction activities at 82 – 86 Congress Street. See [attached view](#) of the building at 82-86 Congress Street which presently houses Bull Moose Music as a tenant. Mr. McNabb seeks a license as part of an existing Construction Management and Mitigation plan to complete construction activities approved by the Planning Board on June 28, 2007.

In recent consultation with the Director of Public Works and the Legal Department, Mr. McNabb is requesting a license for the period of September 1 through May 30, 2011. If approved, the license would permit the intermittent use of a portion of the Chestnut Street sidewalk directly abutting the building under renovation and a small portion of the travel way along Chestnut Street for the purpose of placing a dumpster for approximately four weeks during demolition. This dumpster use is scheduled to occur in the September/October timeframe. The brick sidewalk would be protected from damage and the travel way would remain passable for vehicles. The dumpster would be cordoned off as necessary for safety. Placement of the dumpster on the Chestnut Street side of the building is preferable to Congress Street for pedestrian safety. Once initial demolition is completed, any further construction debris will be removed through the interior of the building and loaded into vehicles parked in the small parking garage associated with the building.

In addition to the temporary need for a dumpster this fall, the sidewalk along Congress Street and Chestnut Street in front 82-86 Congress Street will need to be intermittently closed to complete exterior wall work. Mr. McNabb will be using a boom lift to complete exterior wall work on the new third floor in the first half of next year. The boom lift will move along the side walk as the work progresses, so only a portion of the sidewalk will be closed at a time. As

discussed with Mr. McNabb, the license would include special provisions relative to pedestrian safety, the use of flaggers/police details as the Department of Public Works may deem necessary, as well as provisions to address any debris dropping from the lift. The boom lift would not be on the sidewalk after work hours.

Mr. McNabb has been in communication with Music Hall representatives and will continue to maintain that contact to coordinate his construction activities. Mr. McNabb was also agreeable to provisions which would sharply limit any use of the licensed area during the period from Thanksgiving through January 2, 2011. The license would also contain provisions limiting use during special City events.

Mr. McNabb represents he will need to set up a crane to off load materials for several days. The use of a crane, being of a very short duration and schedule presently unknown, will be handled under the existing Construction Management and Mitigation Plan. Under the Construction Management and Mitigation Plan, the owner must get the approval of the Director of Public Works to set up a crane.

There is no pre-determined impact on any parking spaces under this license agreement, but the owner will be required to coordinate with the Parking Office and the Department of Public Works to purchase parking meter bags at the usual rate on those occasions when the boom lift is being used on the Congress Street side of the building or if there are occasional needs for a construction vehicle to park to offload materials.

I would recommend the City Council move to authorize the City Manager to enter into a license with 82 – 86 Congress Street LLC to facilitate construction activities.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on July 19, 2010. In addition, this now can be found on the City's website.
2. **Notice Re: Seawall Reconstruction Projects on Mechanic Street and South Mill Street.** For your information, [attached](#) is a copy of a notice to abutters regarding a public input meeting on the Mechanic Street and South Mill Street Seawall Reconstruction Projects. As the notice indicates, City staff will send out a meeting notice in the near future.
3. **Press Release Re: National Night Out.** For your information, [attached](#) is a copy of a press release from the Police Department, which includes a list of the participating neighborhoods for National Night Out on Tuesday, August 3, 2010 from 5:30 p.m. to 8:30 p.m.
4. **Invitation and News Release to Pine Street Park and Playground Ribbon Cutting.** A ribbon cutting celebrating the park improvements to Pine Street Park and Playground has been scheduled to proceed along with the National Night Out event on Tuesday, August 3rd. The

ribbon cutting will begin at 5:30 p.m. in the Park. Please see the [attached invitation and news release](#).

The \$85,000 park improvement project was coordinated closely with the Christian Shore Neighborhood residents, and the City's Community Development, Public Works and Recreation Departments. The completed improvements include installation of new accessible pathways, picnic tables, and park benches as well as a bike rack, a park sign and some new play equipment. New playground equipment includes new swings, a climbing structure, and spring toys. The basketball court improvements include installation of new backboards as well as color seal coating and striping.

5. **Notice of Softball Fundraiser for Portsmouth Firefighter Sarah Fox.** For your information, [attached](#) is a notice regarding a softball fundraiser for Portsmouth Firefighter Sarah Fox on Sunday, August 22, 2010 at 2:00 p.m., at Alumni Field.