

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, SEPTEMBER 20, 2010 TIME: 6:00PM

## AGENDA

- 6:00PM – WORK SESSION REGARDING DOWNTOWN PARKING REPORT

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

### PRESENTATION

1. African Burying Ground Committee

- V. ACCEPTANCE OF MINUTES – September 7, 2010

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARING

- A. Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 – Continuing Care Retirement Community.

- VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of NH State Council on the Arts Education Grant. ***(Sample motion – move to accept the NH State Council on the Arts Education Grant as presented)***
- B. Acceptance of Donations to the Coalition Legal Fund
  - Town of Bridgewater - \$1,250.00***(Sample motion – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)***

- IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 4, Section 10.420 – District Location and Boundaries and the Zoning Map. (Rezoning of Former Fire Station 2)
- B. First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.
- C. Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 – Continuing Care Retirement Community.

- D. Third and Final Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Subsection 10.1010 of the Wetlands Protection.

**X. CONSENT AGENDA**

***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

- A. Acceptance of Cash Donation of \$66.67 for Art-Speak. ***(Anticipated action – move to accept and approve the donation to Art-Speak for general operations, as presented)***

**XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Ben Anderson, Co-Chair, 2010 Fishtival Steering Committee, Prescott Parks Arts Festival, requesting \$1,000.00 in support of the 2<sup>nd</sup> annual NH Fish and Lobster Festival, September 25, 2010.
- B. Letter from Mark D. Herrholz, Secretary, Portsmouth Professional Fire Fighters Local 1313, regarding Donations raises for Muscular Dystrophy through annual Boot Drive Campaign.
- C. Letter from Jerry Tostenson regarding Portsmouth's Comprehensive Recreational Needs Study.
- D. Letter from Pam Langone requesting permission to hold wedding ceremony at Peirce Island.
- E. Letter from Joseph Almeida requesting license to relocate construction fence line at 10 State Street
- F. Letter from Melissa Clark, Field Director, Every Child Matters, requesting permission to hold a mock rally in Market Square on October 2, 2010 at 3:15 p.m.
- G. Letter from Richard Gamester, Chair, Board of Fire Commissioners, withdrawing request for surplus funds to complete restoration of City's 1950 Mack Fire Engine.

**XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

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

1. First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 4, Section 10.420 – District Location and Boundaries and the Zoning Map. (Rezoning of Former Fire Station 2) ***(Action on this item should take place under Section IX of the Agenda)***
2. First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5. ***(Action on this item should take place under Section IX of the Agenda)***

3. Public Hearing/Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 – Continuing Care Retirement Community. **(Action on this item should take place under Section IX of the Agenda)**
4. Third and Final Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Subsection 10.1010 of the Wetlands Protection. **Action on this item should take place under Section IX of the Agenda)**

#### **City Manager's Items Which Require Action**

1. Approval of African Burying Ground Trust
2. Masonic Parking Agreement
3. Report Back on Date for Goal Setting Retreat
4. Establish Date for Tour of Water Treatment Plant
5. Polling Hours for November 2, 2010 State General Election
6. Request for a License from Yalcin Kaya, owner of Kaffee Vonsolln for property located at 79 Daniel Street to install a projecting sign.
7. Request for License from John and Anglea Foddrill, owner of Bliss for property located at 85 Market Street to install a projecting sign.

#### **Informational Items**

1. Events Listing
2. Report Back Re: Flaggers
3. Meeting Notice Re: South Mill Street and Mechanic Street
4. Status of Safe Routes to School Programs

#### **B. MAYOR FERRINI**

1. Appointments to be Voted:
  - Amy Schwartz, Portsmouth Housing Authority
2. Appointments to be Considered:
  - James J. Feehley – Taxi Commission
3. Resignations:
  - Lyz Boudreaux – Peirce Island Committee
  - Paul E. Harvey – Economic Development Commission

**C. COUNCILOR DWYER**

1. \*Update on Middle School Project
2. \*Establishment of Transportation Committee

**D. COUNCILOR COVIELLO**

1. Naming Fields

**E. COUNCILOR KENNEDY**

1. \*Revaluation

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

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

*\*Indicates Verbal Report*

**INFORMATIONAL ITEMS**

1. Notification that the Site Review Technical Advisory Committee Minutes of the August 3, 2010 meetings are available on the City's website for your review
2. Notification that the Conservation Commission Minutes of the July 14, 2010 and August 11, 2010 meetings are available on the City's website for your review
3. Notification that the Historic District Commission Minutes of the July 7, 2010 and July 14, 2010 meetings 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:** September 17, 2010

**To:** Honorable Mayor Thomas G. Ferrini and City Council Members

**From:** John P. Bohenko, City Manager

**Re:** City Manager's Comments on September 20, 2010 City Council Agenda

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***Work Session:***

6:00 p.m.

1. **Downtown Parking Report.** On Monday evening, Rick Taintor, Planning Director, will be making a presentation regarding the Parking Focus Group's Report that was completed this past July. For your information, I have [enclosed a copy of the report along with a memorandum](#) from Jon Frederick, Parking Manager in response to inquiries made by Councilor Eric Spear pertaining to various parking issues.

***Presentation:***

1. **African Burying Ground Committee.** As you know, in response to the [enclosed July 14<sup>th</sup> letter](#) from Vernis Jackson, Chair of the African Burying Ground Committee, the Council agreed to have a presentation on September 20<sup>th</sup> regarding this matter. Deputy City Manager Cindy Hayden, who has been working with the Committee, will make the presentation, along with project artist and sculptor Jerome Meadows, and Committee Chair Vernis Jackson. The intent of the presentation is to highlight the efforts of the African Burying Ground Committee to date with regard to creating a memorial to those buried on Chestnut Street, outline the Committee's fundraising strategy, and provide an overview of the memorial design titled *We Stand for Those Forgotten*. At a later date, the Committee will seek to secure a substantial financial commitment from the City as a first, key step in leveraging private contributions, foundation grants and the like for this \$1.0 to \$1.2 million project. [Enclosed are background materials on the project and design.](#)

## ***Acceptance of Grants/Donations:***

1. **Acceptance of NH State Council on the Arts Education Grant.** Art-Speak has received an education grant from the NH State Council on the Arts for \$2,000.00. This grant is for an Art-Speak program at the Portsmouth Middle school (PMS), which partners PMS, Seacoast Local and the Seacoast Family Food Pantry. H(ART) will involve 7<sup>th</sup> grade art students in the development of a marketing campaign to promote Seacoast Local's H(EAT) program which raises donations for the Seacoast Food Pantry and heating oil each fall.

*I would recommend the City Council move to accept and approve the education grant to Art-Speak, as presented. Action on this matter should take place under Section VIII of the Agenda.*

2. **Acceptance of Donation to the Coalition Legal Fund.** Attached is a copy of a check from the Town of Bridgewater in the amount of \$1,250.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

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

## ***Items Which Require Action Under Other Sections of the Agenda:***

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

- 1.1 **First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 – Zoning Ordinance, Article 4, Section 10.420 – District Location and Boundaries and the Zoning Map.** As a result of the September 7<sup>th</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for first reading the [attached proposed Ordinance](#) amending Chapter 10, Article 4, Section 10.420 – District Location and Boundaries of the Zoning Ordinance of the City of Portsmouth and the City of Portsmouth Zoning Map. [Attached is a memorandum](#) from Rick Taintor, Planning Director, outlining a proposed rezoning of 2700 Lafayette Road (former Fire Station #2) from Municipal District to Gateway District.

*I would recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance and Map, as presented, at the October 4th City Council meeting. Action on this matter should take place under Section IX of the Agenda.*

- 1.2 **First Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.** As a result of the September 7<sup>th</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for first reading the [attached proposed Ordinance](#) amending Articles 4 and 5 of the Zoning Ordinance. [Attached is a memorandum](#) from Rick Taintor, Planning Director, outlining three

proposed zoning ordinance amendments to Articles 4 and 5 – Dimensional and Intensity Standards of the Zoning Ordinance.

The proposed amendments make the following changes:

1. For multifamily dwellings in the Garden Apartment/Mobile Home (GA/MH) zoning district, replace the current maximum of 8 dwelling units per building with a maximum building length of 160 feet.
2. For residential zoning districts along Lafayette Road, apply the same front yard requirements as currently apply to nonresidential zoning districts along Lafayette Road;
3. Reduce the side and rear setback standards for accessory structures in zoning districts where the required side yard or rear yard is less than 10 feet.

*I would recommend the City Council may move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the October 4th City Council meeting. Action on this matter should take place under Section IX of the Agenda.*

2. **Public Hearing/Second Reading of Proposed Ordinance Amendments and Resolutions:**

2.1 **Public Hearing/Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 - Continuing Care Retirement Community.** As a result of the August 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached](#) proposed Ordinance amending Chapter 10, Zoning Ordinance, Section 10.740 to authorize the establishment of a Continuing Care Retirement Community (CCRC) in an Office Research district. Also [attached](#) for the Council's reference are several memos from the City Attorney and Planning Director addressing issues and questions raised by Councilors over the past 9 months.

- 2/11/10 from City Attorney regarding workforce housing;
- 3/3/10 from City Attorney regarding taxation issues;
- 6/16/10 from Planning Director addressing questions raised at 1/25/10 and 2/5/10 work sessions;
- 7/8/10 from City Attorney regarding parliamentary rules, and,
- 8/4/10 from Planning Director addressing questions raised at the 8/2/10 City Council work session.

*The City Council has the following options:*

- 1) *Pass second reading regarding proposed amendments to the Zoning Ordinance, as presented;*
- 2) *Pass second reading of ordinance with amendments, or*
- 3) *Deny the Ordinance.*

3. **Third and Final Reading of Proposed Ordinance Amendments and Resolutions:**

3.1 **Third and Final Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Article 10 – Environmental Protection Standards, Subsection 10.1010 - Wetlands Protection.**

As a result of the September 7th City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed Ordinance amendments](#) to the Wetlands Protection provisions of the Zoning Ordinance. The proposed amendments make the following changes:

1. Replace the word “use” with the phrase “use, activity or alteration” in several locations in order to reduce ambiguity (housekeeping change);
2. Exempt small emergency generators in wetland buffer areas from the requirement to obtain a conditional use permit;
3. Authorize the Planning Director to require review of a wetlands application by an independent wetland scientist or other special studies;
4. Update the reference documents for stormwater best management practices;
5. In the table of vegetation management areas, delete conflicting language regarding inland wetlands jurisdiction, and replace a reference to State law with specific standards.

These proposed amendments have been reviewed by the Conservation Commission and the Planning Board, and both boards have voted their support.

*I would recommend the City Council move to pass third and final reading for the proposed amendments to the Zoning Ordinance, as presented. Action on this matter should take place under Section IX of the Agenda.*

**Consent Agenda:**

1. **Acceptance of Donation for Art-Speak.** Art-Speak requests that cash donation totaling \$66.67 for Art-Speak’s general operations be accepted by the City Council.

*I would recommend the City Council move to accept and approve the donation to Art-Speak for general operations, as presented. Action on this matter should take place under Section X of the Agenda.*



## ***City Manager's Items Which Require Action:***

1. **Approval of African Burying Ground Trust.** As you know, at the City Council meeting on July 19<sup>th</sup> the Council reviewed a letter from Vernis Jackson, Chair of the African Burying Ground Committee, requesting that a fund be established for the purpose of accepting contributions that would ultimately fund the construction of the African Burying Ground memorial titled *We Stand for Those Forgotten*. The City Attorney has drafted [the attached African Burying Ground Trust document](#) and reviewed same with the Trustees of Trust Funds. The trust creates a repository for funds contributed to the City for the construction and maintenance of the African Burying Ground memorial. Trust assets would be administered by the Trustees of Trust Funds, and expended with City Council authorization, for the purposes stated in the trust document.

*I would recommend the City Council move to authorize the City Manager to execute the Trust as presented.*

2. **Masonic Parking Agreement.** As you are aware, the City of Portsmouth has had a Parking Lot Usage Agreement with the St. John's Masonic Association which allows for free public access to parking spaces, Monday through Saturday, 6:00 a.m. to 7:30 p.m., at the corner of Middle Street and Miller Avenue. St. John's has indicated that they are willing to extend this Agreement for another year for the period January 1, 2011 through December 31, 2011 ([see attached proposed Agreement](#)). The 2011 Parking Lot Usage/Maintenance Agreement with the St. John's Masonic Association will continue free public access to 61 parking spaces, Monday through Saturday, 6:00 a.m. to 7:30 p.m. for the calendar year. Sunday usage of the lot is permitted by requesting permission from St. John's.

The annual compensation to St. John's for 2011 is \$21,500 an increase of \$290.00 or 1.4% above the 2010 Agreement. The total compensation equates to \$352.45 per space for the year, or approximately \$1.00 per space per day. 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. It would be beneficial for the City to maintain this Agreement with St. John's and continue to supply free public parking on the periphery of the downtown area.

*I would recommend that the City Council move 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, 2011 through December 31, 2011 and further to compensate St. John's Masonic Association in the amount of \$21,500.00 which shall be taken from the Parking Impact Fee Fund.*

3. **Report Back on Date for Goal Setting Retreat.** As requested by the City Council, I am recommending that we establish a date of Saturday, November 6, 2010 for the Goal Setting/Retreat of the City Council and staff. I propose to start at approximately 8:30 a.m. at the Levenson Room at the Library. Details to follows.

*I would recommend the City Council move to establish Saturday, November 6, 2010 for the Goal Setting/Retreat of the City Council and staff.*

4. **Establish Date for Tour of Water Treatment Plant.** As you will recall, at the last meeting, I asked the City Council if you were interested in a tour of the Water Treatment Plant. I am recommending Saturday, October 30, 2010 for this tour with a start time of 8:30 a.m. from the City Hall.

*I would recommend the City Council move to establish Saturday, October 30, 2010 at 8:30 a.m. for a tour of the Water Treatment Plant.*

5. **Polling Hours for November 2, 2010 State General 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 General Election on Tuesday, November 2, 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 General Election on Tuesday, November 2, 2010.*

6. **Request for a License from Yalcin Kaya, owner of Kaffee Vonsolln for property located at 79 Daniel 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 Yalcin Kaya owner of Kaffee Vonsolln for property located at 79 Daniel Street, to install a projecting sign on a new bracket (see attached photographs).

This request was received by the Planning Department on August 24, 2010, and reviewed by the Planning Board on September 16, 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 Yalcin Kaya, owner of Kaffee Vonsolln to install a projecting sign on a new bracket at 79 Daniel Street and further authorize the City Manager to execute a License Agreement for this request.*

7. **Request for a License from John and Anglea Foddrill, owner of Bliss for property located at 85 Market 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 John and Anglea Foddrill owner of Bliss for property located at 85 Market Street, to install a projecting sign on an existing bracket (see attached photographs).

This request was received by the Planning Department on August 23, 2010, and reviewed by the Planning Board on September 16, 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 John and Anglea Foddrill, owner of Bliss to install a projecting sign on an existing bracket at 85 Market 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 September 7, 2010. In addition, this now can be found on the City's website.
2. **Report Back Re: Flaggers.** As requested by the City Council, attached is a report from Steve Parkinson, Public Works Director and Jon Frederick, Parking Manager, for the months of July and August pertaining to the implementation of flaggers. On Monday evening, Steve Parkinson, Public Works Director, will be available to answer any questions regarding this report.
3. **Meeting Notice Re: South Mill Street and Mechanic Street.** For your information, attached is a copy of a meeting notice to residents of South Mill Street and Mechanic Street, regarding the reconstruction of two small seawalls. The City will be hosting a public informational meeting in Conference Room A at City Hall, on Wednesday, September 29, 2010, at 7:00 p.m., regarding this matter.
4. **Status of Safe Routes to School Grants Program.** As requested by Councilor Smith, attached is a report back from Steve Parkinson, Public Works Director, regarding status of the Safe Routes to School Grants Program.