

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, OCTOBER 4, 2010 TIME: 7:00PM

AGENDA

- 6:00 P.M. – NON MEETING WITH COUNSEL RE: LITIGATION - RSA 91-A:2, I (c)

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

PRESENTATION

- A. Update of Revaluations – City Assessor Rosann Lentz

- V. **ACCEPTANCE OF MINUTES** – September 20, 2010

- VI. **PUBLIC COMMENT SESSION**

- VII. **PUBLIC HEARING**

- A. 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. Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.

- VIII. **APPROVAL OF GRANTS/DONATIONS**

- A. Acceptance of Donation to the Coalition Legal Fund
 - Town of Hampton Falls- \$1,000.00
(Sample motion – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)
- B. Acceptance of Land and Water Conservation Fund (LWCF) Grant Funding – Peverly Hill Road/Route 33 Property *(Sample motion – move to approve and accept the LWCF grant)*

- IX. **CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. Second 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. Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.
- C. Third and Final Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 – Continuing Care Retirement Community.

X. CONSENT AGENDA

There are no items under this Section of the Agenda

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Peter J. Loughlin, Attorney representing Service Credit Union, regarding Ordinance amendment proposal to Chapter 10, Section 10.517, Roof Appurtenances and Other Rooftop Features.
- B. Letter from Bill St. Laurent, President, Association of Portsmouth Taxpayers, regarding contract negotiations.
- C. Letter from Barbara Massar, Pro Portsmouth Inc., regarding Funding of Fireworks and Outdoor Activities
- D. Request to Hold Annual Portsmouth Halloween Parade

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

- 1. Public Hearing/Second Reading of Proposed Ordinance 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)
- 2. Public Hearing/Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.
- 3. Third and Final Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, by creating a new Section 10.740 – Continuing Care Retirement Community.

City Manager's Items Which Require Action

- 1. Request for First Reading on Proposed Bonding Resolution of up to Six Million Four Hundred Thousand Dollars (\$6,400,000.00) for Capital Improvement Projects Identified in FY 2011 Budget.
- 2. Request for First Reading on Proposed Bonding Resolution for the sum of Five Hundred Thousand Dollars (\$500,000) for Lease Purchase to Replace Fire Engine Number 6.
- 3. Request for First Reading Re: HDC Membership.
- 4. Request for Approval of Pole License Agreement #63-0495

Informational Items

- 1. Events Listing

B. MAYOR FERRINI

1. Appointments to be Voted:
 - James Feehley, Taxi Commission

C. COUNCILOR DWYER

1. *Middle School Project Update

D. COUNCILOR SMITH

1. Parking Committee Action Sheet and Minutes of the September 9, 2010 meeting
2. Traffic & Safety Committee Action Sheet and Minutes of the September 9, 2010 meeting

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 Planning Board Minutes of the July 15, 2010 and August 17, 2010 meetings are available on the City's website for your review
2. Notification that the Board of Adjustment Minutes of the May 18, 2010 and June 15, 2010 meetings are available on the City's website for your review
3. Notification that the Planning Board/Board of Adjustment Minutes of the June 23, 2010 Joint Work Session 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 30, 2010
To: Honorable Mayor Thomas G. Ferrini and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on October 4, 2010 City Council Agenda

6:00 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Presentation:

1. **Update on Revaluations.** As requested by the City Council, City Assessor Rosann Lentz will be making a presentation to give an update on the revaluation.

Acceptance of Grants/Donations:

1. **Acceptance of Donation to the Coalition Legal Fund.** Attached is a copy of a check from the Town of Hampton Falls in the amount of \$1,000.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

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

2. **Acceptance of Land and Water Conservation Fund (LWCF) Grant Funding – Peverly Hill Road/Route 33 Property.** As you know, the City has been interested in acquiring the 107-acre Stokel property on Peverly Hill Road/Route 33 for the development of recreation fields and for conservation purposes. This parcel is adjacent to 500 acres of conservation land, which includes the City-owned Great Bog and conservation land owned by The Nature Conservancy.

The total cost of the Stokel project is not known at this time, however, the City has been identifying grant funding opportunities in order to leverage any local funds that may be needed if, and when, this project moves forward. For example, earlier this year the City was awarded a \$40,000 Coastal Program grant for acquisition of the Stokel parcel.

The City now has the opportunity to apply to the NH Department of Resources and Economic Development (DRED) for a federal Land and Water Conservation Fund (LWCF) grant of up to \$100,000 to be used for acquisition of the Stokel parcel for both the development of recreation fields and for conservation. This LWCF grant round is expected to be very competitive due to limited federal funds. While LWCF is a 50-50 match program, it is not necessary to identify matching funds until grant funds are awarded.

I would recommend the City Council move to authorize the City Manager to apply for, accept and expend a Land and Water Conservation Fund (LWCF) grant of up to \$100,000 from NH DRED to be used toward the acquisition cost of the 107-acre Stokel property on Peverly Hill Road/Route 33 and for the development of recreation fields and conservation uses on this parcel. Action on this matter should take place under Section VIII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Ordinance Amendments and Resolutions:**
- 1.1 **Public Hearing/Second Reading of Proposed Ordinance 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 20th 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, 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 second reading and schedule a third and final reading of the proposed Ordinance and Map, as presented, at the October 18th City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Proposed Ordinance amending the City Ordinances, Chapter 10 - Zoning Ordinance, Articles 4 and 5.** As a result of the September 20th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second 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 move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the October 18th City Council meeting. Action on this matter should take place under Section IX of the Agenda.

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

- 2.1 **Third and Final 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 September 20th City Council meeting, under Section IX of the Agenda, I am bringing back for third and final 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.

Also, [attached is a memorandum from City Attorney Robert Sullivan](#), regarding amendments that will be proposed by Councilor Esther Kennedy. As indicated in his memorandum, any amendments on third reading requires the suspension of rules (6 votes required).

The City Council has the following options:

- 1) Pass third reading regarding proposed amendments to the Zoning Ordinance, as presented;*
- 2) Pass third reading of ordinance with any amendments requires suspension of the rules (6 votes required), or*
- 3) Deny the Ordinance.*

Action on this matter should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Request for First Reading of Proposed Bonding Resolution of up to Six Million Four Hundred Thousand Dollars (\$6,400,000) Re: Capital Improvement Projects Identified in FY 2011 Budget.** I am requesting that the City Council authorize the City Manager to bring back for first reading at your October 18th City Council meeting a Bonding Resolution of up to Six Million Four Hundred Thousand Dollars (\$6,400,000) for Fiscal Year 2011 Citywide Facilities, Street, Sidewalks and Storm Water Drain System Improvements.

These projects are as follows and are identified in the FY11 Capital Improvement Program ([see attached element sheets and memorandum](#) from Steve Parkinson, Public Works Director):

- 1) BI-PW-29: Citywide Facilities' Capital Improvements (Pages 81 and 82) – (\$1,000,000).
- 2) TSM-CITY-09: BIKE/PED: Citywide Sidewalk Reconstruction Program (Pages 102 and 103) – (\$600,000).
- 3) TSM-CITY-27: ROADWAY: Street Paving, Management and Rehabilitation (Pages 121 and 122) – (\$2,500,000).
- 4) BI-PW-28: Maple Haven Storm Water Drain System (Page 80) – (\$1,000,000).
- 5) TSM-CITY-08 : BIKE/PED : State Street Sidewalk Replacement (Page 101) – (\$400,000).
- 6) TSM-CITY-12: BIKE/PED: Middle Road New Sidewalk Construction (Page 106) – (\$500,000).
- 7) TSM-CITY-20: ROADWAY: McDonough Street Area Improvements Project (Page 114) – (\$400,000).

As you are aware during the CIP process, the City Council approved a Capital Plan that identified the aforementioned projects but requires separate vote of the City Council on items

that need to be bonded. The bonding requires two readings and a public hearing with two-thirds vote of the City Council.

I have also [attached a copy of the Bonding Resolution](#) for your review.

Therefore, I am requesting the City Council move to authorize the City Manager to bring back for first reading at your October 18th City Council meeting, a Bonding Resolution for up to Six Million Four Hundred Thousand Dollars (\$6,400,000) for the projects, as presented.

2. **Request for First Reading on Proposed Bonding Resolution for the sum of Five Hundred Thousand Dollars (\$500,000) for Lease Purchase to Replace Fire Engine Number 6.** The Fire Department is requesting a Bonding Resolution for the sum of Five Hundred Thousand Dollars (\$500,000) through the issue of bonds and notes or the execution of lease purchase agreements for the acquisition of one fire apparatus to replace Fire Engine Number 6. A new engine for District 1 is in the CIP for FY11. I am requesting that the City Council authorize the City Manager to bring back for first reading at your October 18th City Council a bonding resolution. See [attached element sheet VE-FD-02: Vehicle Replacement Fire Engine Number 6 \(Page 39\)](#) and a memorandum from Fire Chief Christopher LeClaire.

As you are aware, bonding resolutions require a public hearing, two readings and a two-thirds vote is required of the City Council for passage.

I have also [attached a copy of the Bonding Resolution](#) for your review.

Therefore, I am requesting the City Council move to authorize the City Manager bring back for first reading at your October 18th City Council meeting, a Bonding Resolution appropriating the sum of Five Hundred Thousand Dollars (\$500,000), for a lease purchase of a Fire Apparatus to replace Fire Engine Number 6, as presented.

3. **Request for First Reading Re: HDC Membership.** The Historic District Commission is established by the City of Portsmouth Ordinances, Chapter 1 – Administrative Code, Article IV – Commissions and Authorities, Section 1.404. The membership of the Commission is defined in Section 1.404(A)(1) which states in part,

One of the members shall be a City Council member and another shall be a Planning Board member as provided by State Law.

However, the applicable State statute (RSA 673:4, II) actually provides as follows:

One commission member shall be a member of the local governing body and one commission member may be a member of the planning board. [emphasis added]

In Portsmouth, both the Planning Board and the Historic District Commission have heavy workloads, frequently requiring special meetings. As a result, it has been difficult to fill the Planning Board seat on the HDC.

The HDC ordinance also requires that “At least two members shall be residents of the Historic District and at least one member shall be a person owning or being employed in a business within the Historic District.” This requirement supports the requirement that members “have demonstrated interest in and commitment to promote the purposes” of the Historic District. However, it also means that individual members must often recuse themselves from acting on particular cases where they may be abutters to a proposed project or participants in an application.

As a result of the lack of a Planning Board representative combined with recusals of other members, the Commission often hears applications with less than a full complement of members, which may be detrimental to the applicant. After considering this issue for several months, the Planning Board voted at its meeting on September 16, 2010, to recommend that the City Council amend the City Ordinance to reflect the State statute on historic district commissions. The specific change would be as follows:

Amend the City of Portsmouth Ordinances, Chapter 1 – Administrative Code, Article IV – Commissions and Authorities, Section 1.404(A)(1), second sentence, by changing the words “shall be a Planning Board member” to “may be a Planning Board member.”

This change would free up the HDC seat reserved for Planning Board members, and allow it to be filled by another qualified member, thereby increasing the number of members potentially available to sit on a particular case.

I am requesting that the City Council move to accept the Planning Board’s recommendation and authorize the City Manager to bring back for first reading at the October 18, 2010 City Council meeting an amendment to the City Ordinance, as presented.

4. **Request for Approval of Pole Licenses #63-0495.** [Attached is a request for a Pole License Agreement](#) from PSNH, License 63-0495. This request is to license one pole located at the easterly end of Sudbury Street where it intersects Rock Street. The new pole will replace a rotten pole and will be placed behind the sidewalk on Rock Street where it will pose no impact to existing City infrastructure and the Public Works Department recommends approval of this license. [Attached is a photograph of the pole.](#)

I would recommend that the City Council approve the request from PSNH for pole license agreement, #63-0495, as recommended by the Public Works Department.

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 20, 2010. In addition, this now can be found on the City’s website.