

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, MARCH 7, 2011 TIME: 7:00PM

## AGENDA

- 6:15PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS RSA: 91-A:2, I (b-c) AND LITIGATION RSA 91-A:2 I (c)

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

### PROCLAMATION

1. Music in our Schools Month

- V. ACCEPTANCE OF MINUTES – FEBRUARY 22, 2011

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS

- A. PROPOSED RESOLUTIONS APPROPRIATING FUNDS FOR THE CONSTRUCTION OF A YOUTH RECREATION FACILITY:

- RESOLUTION APPROPRIATING THE SUM OF FIVE HUNDRED TWELVE THOUSAND, SEVEN HUNDRED DOLLARS AND FIFTY-EIGHT CENTS (\$512,700.58) FROM THE PREMIUM THE CITY RECEIVED FROM THE SALE OF ITS \$17,300,000.00 GENERAL OBLIGATION CAPITAL IMPROVEMENT BONDS FOR EXPENSES RELATING TO THE CONSTRUCTION OF A YOUTH RECREATION FACILITY
- RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM UNDESIGNATED FUND BALANCE FOR NECESSARY EXPENDITURES FOR THE CONSTRUCTION OF A YOUTH RECREATION FACILITY. THE CITY COUNCIL HAS DETERMINED THAT THE SUM OF ONE MILLION EIGHT HUNDRED THOUSAND (\$1,800,000.00) DOLLARS BE APPROPRIATED TO PAY A PORTION OF THE COSTS OF THE CONSTRUCTION OF THE YOUTH RECREATION FACILITY

- B. PROPOSED CAPITAL IMPROVEMENT PLAN (CIP) FY2012-2017 (*Action on this matter will be taken at the March 21, 2011 City Council meeting*)

- VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Police Department Grant from the Seacoast Crime Stoppers in support of the upcoming 2011 Citizen Police Academy in the amount of \$1,000.00 (*Sample motion – move to approve and accept the grant to the Portsmouth Police Department, as listed*)

## IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.321, Sub-section G – Snow Emergency Parking Ban (**Sample motion – move to accept the Parking Committee’s recommendation and pass first reading and schedule a public hearing and second reading of the proposed ordinance amendment to Chapter 7, Article III, Section 7.321 for the March 21, 2011 City Council meeting**)
- B. Adoption of Proposed Resolutions Appropriating Funds for the Construction of a Youth Recreation Facility:
- Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents (\$512,700.58) Resolution (**Sample motion – move to adopt the Resolution in the amount of Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents \$512,700.58, in accordance with the attached Resolution**)
  - One Million Eight Hundred Thousand (\$1,800,000.00) Dollars Resolution (**Sample motion – move to adopt the Resolution in the amount of One Million Eight Hundred Thousand (\$1,800,000.00) Dollars in accordance with the attached Resolution**)
- C. Third and final reading of Ordinance amending Zoning Ordinance, Article 7, Section 10.730 – Gateway Development, Subsection 10.735 – Sustainability Standards (**Sample motion – move to pass third and final reading of the proposed Zoning Ordinance, as presented**)

## X. CONSENT AGENDA

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

- A. Letter from Sarah Curtin, Seacoast Suicide Prevention Coalition, requesting permission to hold the 7<sup>th</sup> annual Out of the Darkness Community Walk on Saturday, September 24, 2011 (**Anticipated action – move to refer to the City Manager with power**)
- B. Letter from Dee Dee Schreitmueller, The New England Relay, requesting permission to hold the 24 hour relay running race on Saturday, June 11, 2011 and Sunday, June 12, 2011 (**Anticipated action – move to refer to the City Manager with power**)
- C. Letter from Kathie Lynch, President of Portsmouth Little League, Inc, requesting permission to place temporary signage at the Plains and Hislop Park baseball fields during the 2011 baseball season and maintain signage to the rear of the Plains scoreboard (**Anticipated action – move to refer to the City Manager with power**)
- D. Acceptance of Donations for USS Virginia
- James L. Colbert - \$50.00
  - Jay S. & Jean L. Smith - \$100.00
- (**Anticipated action – move to approve and accept the donations for the USS Virginia, as presented**)

- E. Acceptance of Donations for Art-Speak's Annual Appeal
- Nicholas & Molly Ferrara -\$25.00
  - Russ & Katie Grazier - \$50.00
  - Dennis Moulton & Maureen Gallagher - \$50.00
  - Diane Cabell (Firstgiving) - \$185.00
  - Peter Michaud - \$200.00
- (Anticipated action – move to accept and approve the donations for the Art-Speak for operations, as presented)***

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

- A. Letter from Tom and Zelita Morgan regarding the proposal to erect a youth recreation facility on Alumni Field
- B. Letter from Attorney Peter Loughlin, regarding Connector Roadway – Lang Road to Long Meadow Road ***(Sample motion – move to refer to the Planning Board for report back)***
- C. Letter from Paul Mahoney regarding labor unions rally held on Saturday in Market Square

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

### **A. CITY MANAGER**

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

1. Consideration of First Reading of Proposed Ordinance Amendments:
- 1.1 First Reading of Proposed Ordinance Amendment to Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban ***(Action on this matter should take place under Section IX of the Agenda)***
2. Public Hearings and Adoption of Resolutions:
- 2.1 Public Hearings & Adoption of Proposed Resolutions Appropriating Funds for the Construction of a Youth Recreation Facility
- A) Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents (\$512,700.58) Resolution
- B. One Million Eight Hundred Thousand (\$1,800,000.00) Dollars Resolution
- (Action on this matter should take place under Section IX of the Agenda)***

3. Public Hearing:
  - 3.1 Public Hearing Re: Proposed Capital Improvement Plan (CIP) FY2012-2017  
***(Action on this matter will be taken at the March 21, 2011 City Council meeting)***
4. Third and Final Reading of Proposed Ordinance Amendments:
  - 4.1 Third and Final Reading of Proposed Amendment to the Zoning Ordinance, Article 7, Section 10.730 – Gateway Development, Subsection 10.735 – Sustainability Standards ***(Action on this item should take place under Section IX of the Agenda)***

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

1. Pilot Program Re: Use of City Property for Outdoor Seating with Alcohol Service
2. Proposed Lease of South Meeting House by the Portsmouth Public Media, Inc.
3. Report Back Re: 54 Rogers Street
4. Request for Approval of Pole License #63-0506
5. Report Back Re: Regulation of Synthetic Marijuana (K-2)

**Informational Items**

1. Events Listing
2. African Burying Ground Trust Donations

**B. MAYOR FERRINI**

1. Acceptance of Resignation of Betsy Shultis from the Board of Library Trustees
2. \*Questions for FY12 Budget
3. \*Reports

**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 Board of Adjustment Minutes of July 20, 2010, July 27, 2010, August 17, 2010 and December 20, 2010 meetings are available on the City's website for your review
2. Notification that the Planning Board Minutes of January 20, 2011 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:** March 3, 2011  
**To:** Honorable Mayor Thomas G. Ferrini and City Council Members  
**From:** John P. Bohenko, City Manager  
**Re:** City Manager's Comments on March 7, 2011 City Council Agenda

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**6:15 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.

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

1. **Acceptance of Police Department Grant.** Attached under Section VIII of the Agenda is a memorandum, dated February 16, 2011, from Gerald W. Howe, Chairman of the Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve the following grant:
  1. A grant in the amount of \$1,000 has been received from Seacoast Crime Stoppers in support of the upcoming 2011 Citizen Police Academy

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 grant to the Portsmouth Police Department, as listed. 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:**

- 1.1 **First Reading of Proposed Ordinance Amendment to Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban.** Attached please find a [proposed Ordinance](#) to amend Chapter 7, Article III, Section 7.321 – Snow Emergency Parking Ban, as recommended by the Parking Committee at their February 10, 2011 meeting. The City Council approved the Parking Committee minutes at their February 22, 2011 City Council meeting. The following amendment allows for the expansion of the timeframe during a snow emergency:

#### Section 7.321: SNOW EMERGENCY PARKING BAN

- G. City residents may park in the High-Hanover Parking Facility during snow emergencies utilizing snow ban coupons from ~~two hours before~~ a declared parking ban **advanced notice** until ~~two hours after the ban has been terminated~~ **a time deemed appropriate by the Public Works Director or his/her designee following termination of the snow ban, but in no event less than two hours after the termination of the snow ban.** Snow ban coupons shall be available at the Parking Clerk's Office and entitle the bearer to a flat rate payable upon exit from the parking facility.

*I would recommend the City Council move to accept the Parking Committee's recommendation and pass first reading and schedule a public hearing and second reading of the proposed ordinance amendment to Chapter 7, Article III, Section 7.321 for the March 21, 2011 City Council meeting. Action on this item should take place under Section IX of the Agenda*

### **2. Public Hearings and Adoption of Resolutions.**

- 2.1 **Public Hearings & Adoption of Proposed Resolutions Appropriating Funds for the Construction of a Youth Recreation Facility.** As a result of the February 22<sup>nd</sup> City Council meeting, under Section VII of the Agenda, I am bringing back for separate public hearings and adoption the following two proposed Resolutions appropriating funds for the construction of a Youth Recreation Facility:

**A) Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents (\$512,700.58) Resolution.** This Resolution appropriates the sum of Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents (\$512,700.58) for expenses relating to the construction of a Youth Recreation Facility, which represents the premium the City received from the sale of its general obligation bonds in May of 2010. State law requires that the use of the bond premium be allocated for a capital project with a useful life of 20 years.

**B) One Million Eight Hundred Thousand (\$1,800,000) Dollars Resolution.** This Resolution authorizes a supplemental appropriation of One Million Eight Hundred Thousand (\$1,800,000) from undesignated fund balance for necessary expenditures for the construction of a Youth Recreation Facility.

[Attached are the two Resolutions.](#) For your information, I have [attached a copy of the presentations](#) that were made on Wednesday, February 9, 2011 at the City Council work session with the Middle School Joint Building Committee, Recreation Board, and City staff to discuss the proposed Youth Recreation Facility that would be built in conjunction with the Middle School project to replace the Connie Bean Center.

On Monday evening, I have asked that Rus Wilson, Recreation Director and John Stokel, Principal of the Middle School, provide a presentation regarding this matter.

Because these are supplemental appropriations, it requires two thirds vote of the City Council to adopt the use of these funds for the purposes described.

*I would recommend the City Council move the following two motions:*

- a) Adopt the Resolution in the amount of Five Hundred Twelve Thousand, Seven Hundred Dollars and Fifty-eight cents (\$512,700.58), in accordance with the attached Resolution, and,*
- b) Adopt the Resolution in the amount of One Million Eight Hundred Thousand (\$1,800,000) Dollars in accordance with the attached Resolution.*

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

### 3. **Public Hearing:**

- 3.1 **Public Hearing Re: Proposed Capital Improvement Plan (CIP) FY2012-2017.** In accordance with Section 7.7 of the City Charter, a Public Hearing on the proposed Capital Improvement Plan for FY2012-2017 will take place on Monday evening at 7:00 p.m. At that time, I have requested that staff make a PowerPoint presentation giving the public an overview of the proposed Capital Plan for the aforementioned years. In addition, I will have copies available of the summary pages for the public, as well as the capital expenditures that will be proposed in the FY12 budget. Also, a copy of the Capital Plan is on our web page ([www.cityofportsmouth.com](http://www.cityofportsmouth.com)).

The City Council is required, in accordance with Section 7.8 of the City Charter, to adopt the Capital Plan subsequent to the Public Hearing and before the City Manager submits his budget to the City Council. I anticipate that I will be transmitting my proposed FY2012 budget to you on or about April 8, 2011. Given that projected date, I am suggesting the City Council adopt the proposed Capital Improvement Plan at your March 21st meeting. In accordance with the



Charter, you could adopt the CIP no later than your April 4<sup>th</sup> meeting. Please bring your Capital Improvement Plan with you. If you need another copy, please let me know.

*I would suggest that action on this matter be taken at the March 21st City Council meeting, at which time I will recommend adoption of the CIP with any appropriate amendments.*

4. **Third and Final Reading of Proposed Ordinance Amendments.**

4.1 **Third and Final Reading of Proposed Amendment to the Zoning Ordinance, Article 7, Section 10.730 - Gateway Development, Subsection 10.735 - Sustainability Standards.** As a result of the February 22nd City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed amendment to the Zoning Ordinance](#), Article 7, Section 10.730 – Gateway Development, Subsection 10.735 – Sustainability Standards. Also, [attached is a memorandum from Rick Taintor](#), Planning Director, outlining this proposed amendment to the Zoning Ordinance. At the January 20, 2011 Planning Board meeting, the Board voted unanimously to recommend to the City Council that the Zoning Ordinance be amended to provide this additional flexibility.

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

**Consent Agenda:**

1. **Acceptance of Donations for USS Virginia.** The City of Portsmouth has received the following donations totaling \$150.00 for the USS Virginia party:

- James L. Colbert                      \$ 50.00
- Jay S. & Jean L. Smith                \$100.00

*I would recommend the City Council move to approve and accept the donations for the USS Virginia, as presented. Action on this matter should take place under Section X of the Agenda.*

2. **Acceptance of Donations for Art-Speak Annual Appeal.** Art-Speak requests that the following donations to Art-Speak’s Annual Appeal, totaling \$510.00 be accepted by the City Council on behalf of Art-Speak:

- Nicholas & Molly Ferrara                \$25
- Russ & Katie Grazier                      \$50
- Dennis Moulton & Maureen Gallagher    \$50
- Diane Cabell (Firstgiving)                \$185

➤ Peter Michaud \$200

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

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

1. **Pilot Program Re: Use of City Property for Outdoor Seating with Alcohol Service.**  
As a result of the February 22<sup>nd</sup> City Council meeting, I am bringing back for formal vote the request of Pesce Italian Kitchen and Bar for permission to utilize approximately 500 square feet of the Vaughan Mall pedestrian way (City-owned land) for expansion of their existing outdoor dining patio for a trial period to commence on April 15, 2011 and end on October 15, 2011 and to include outdoor alcohol service ([see attached letter](#)). The City Council voted to refer this matter to the City Manager for a report back with a recommendation. [Attached is a report back](#) outlining a pilot program for the use of City property for outdoor seating with alcohol service for a term of April 15, 2011 through October 10, 2011.

*I would recommend the City Council move to approve the pilot program for use of City property for outdoor seating with alcohol service, as presented.*

2. **Proposed Lease of South Meeting House by the Portsmouth Public Media, Inc.** As a result of the February 22<sup>nd</sup> City Council meeting, I am bringing back for action the proposed lease of South Meeting House by Portsmouth Public Media, Inc. (PPM). This lease was developed in coordination with a Committee of the Friends of the South End (FOSE). Portsmouth Public Media has expressed interest in leasing the South Meeting House on Marcy Street for use as its offices and production studio. City staff and the FOSE Subcommittee have met with PPM to discuss the organization's needs and developed a proposed 5-year lease.

[Attached is a summary](#) of the key terms of the proposed lease, as well as a [complete copy of the proposed lease](#). Some minor provisions may change such as notice requirements during final negotiations.

PPM will meet with Comcast representatives and an architect to ensure that its broadcast and business needs can be met at the South Meeting House location. Comcast was not prepared to do the engineering necessary to evaluate the location until the City Council expressed its interest in making the space available to PPM. Comcast's investigation/engineering estimate process should take 45 days. If Comcast and PPM's architect confirm, as is expected, that the building can be improved and used by PPM at a reasonable cost, PPM will proceed to execute the proposed lease.

*I would recommend the City Council move to approve the proposed Lease between the City of Portsmouth and Portsmouth Public Media, Inc. and authorize the City Manager to execute the necessary documents.*

3. **Report Back Re: 54 Rogers Street.** As you will recall, at the February 7, 2011 City Council meeting, the Council referred the [attached letter from William Hess and Jane Donovan](#), regarding the location of the boundary line between the City's Middle School property and the Hess/Donovan property at 54 Rogers Street, to Robert Sullivan, City Attorney, for a report back to the City Council. [Attached is a memorandum from the City Attorney](#) with a recommendation that the City Council refer this matter to the Planning Board for a recommendation and a report back to City Council.

*Therefore, I would recommend that the City Council move to refer this matter to the Planning Board for a recommendation and a report back to City Council.*

4. **Request for Approval of Pole License #63-0506.** [Attached is a request for a Pole License Agreement](#) from PSNH, License #63-0506. This request is to license one pole located on Northwest Street that needs to be replaced. PSNH could not find an existing license for a pole at this location and is requesting one at this time. This proposed pole poses no impact to existing City infrastructure. 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, #63-0506, as recommended by the Public Works Department.*

5. **Report Back Re: Regulation of Synthetic Marijuana (K-2).** As you will recall, at the February 7<sup>th</sup> City Council meeting under Councilor Ken Smith's name, the City Council voted to request that Robert Sullivan, City Attorney, come back with an ordinance proposal banning synthetic marijuana. The Legal Department has prepared the [attached detailed report on the K-2 issue](#). After determining that the State legislature is currently contemplating the regulation of K-2 and in light of the fact that enabling legislation for a local ordinance has not been found, the City Attorney recommends that the City Council delay action on K-2 until the State legislature has completed its consideration of the matter.

*I would recommend the City Council move to refer this matter to the City Council Legislative Subcommittee to support this legislation.*

### ***Informational Items:***

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on February 22, 2011. In addition, this now can be found on the City's website.

2. **African Burying Ground Trust Donations.** The African Burying Ground Committee has received the following donations to the African Burying Ground Trust since its February 16, 2011 memo to City Council. The total donated, by individuals, to date is \$4,290.04.

- Michael Frandzel & Judith Silver \$50.00
- South Church, Community Outreach Collections \$490.04