

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JUNE 20, 2011

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

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

Mayor Ferrini called the meeting to order at 7:00 p.m.

II. ROLL CALL

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

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Councilor Lister led the Pledge of Allegiance.

PRESENTATIONS

1. Mayor's Awards – Portsmouth Girls Lacrosse State Champions – Division II

Mayor Ferrini presented Mayor's Awards and gifts in recognition of the Portsmouth Girls Lacrosse Division II State Champions and their coaches. Coach Squire thanked Mayor Ferrini and the City Council for this recognition.

2. Mayor's Awards – Portsmouth Varsity Baseball Team – Record Breaking Accomplishment and Regular Season

Mayor Ferrini presented Mayor's Awards and gifts to the Portsmouth Varsity Baseball Team State Champions and in recognition of their setting the longest Record Breaking season in the U.S. Coach Hopley thanked Mayor Ferrini and the City Council for this recognition.

3. *Annual Report Art-Speak

Steve McHenry, Chair of Art-Speak provided a presentation on the Annual Report of Art-Speak. He informed the City Council that the City continues to receive accolades for the arts being alive and well in our community. He addressed various organizations which provide arts throughout the City and theatrical performance that are held. He also spoke to the overnight art program which has been very successful.

Councilor Dwyer moved to suspend the rules in order to take up Item XI. A.2. - Art-Speak Annual State of the Arts Report and Memorandum of Understanding (MOU) Renewal Request. Seconded by Councilor Smith and voted.

IX. A.2. - Art-Speak Annual State of the Art Report and Memorandum of Understanding (MOU) Renewal Request

Councilor Dwyer moved to authorize the City Manager to extend the Art-Speak Memorandum of Understanding from July 1, 2011 through June 30, 2012. Seconded by Councilor Smith.

Assistant Mayor Novelline Clayburgh thanked Art-Speak for the work it does in the community. She said many people come to the City because of its arts and culture and provides a large impact on our economy.

Motion passed.

4. Proposed Betterment Assessment for Commerce Way

Everett Eaton, Chair of the Economic Development Commission, spoke to the recommendation of EDC regarding improvements to Commerce Way. He stated that the planned Commerce Way road improvement design has been reviewed by city staff and is part of a larger plan to significantly upgrade the Commerce Way Office Park to a Class "A" commercial office park that when complete, will be competitive with Pease Tradeport. Included in the proposed 2,500 linear feet of roadway improvements are:

- Partial undergrounding of utilities
- Upgraded sidewalks and curbs,
- Landscaped medians,
- Construction of a bike lane,
- Installation of a state-of-the-art storm water drainage system including 1,300 linear feet of buried ductile water service.

The advantages of the Betterment Assessment to the City are:

- A private road is upgraded to city standards and would be fully available to the public
- An office park with notable vacancy can be upgraded and hopefully occupancy improves
- Higher occupancy means higher values and higher property taxes

Nancy Carmer, Economic Development Manager provided a presentation of the Proposed Betterment Assessment for Commerce Way. She outlined the Conditional Road Layout (RSA 231:28).

Conditional Road Layout (RSA 231:28)

- An owner of a privately-owned road petitions the City Council to undertake road improvements (“conditional road layout”) to bring the road into compliance with City standards
- The City Council holds a public hearing at which the owner provides details of the proposed road improvements. Abutting property owners and those served by the road are given 14-day advance written notice of the hearing.
- If there is no petition of objection filed within 10 days of the public hearing by a majority the abutting property owners and those served by the road, the road improvements may proceed.

The following is an outline of the Betterment Assessment Process (RSA 231:29-22).

Betterment Assessment Process (RSA 231:29-22)

- As part of the conditional road layout process, the construction cost of the proposed road improvements is assessed by the City Council against property owners abutting or served by the road
- Assessment amounts may not exceed the entire cost of construction and must be reasonable and proportional to the benefits accruing to the land served
- Payments of assessments may be payable in one year or pro rated over a period up to ten years at the discretion of the City Council
- Assessments are treated similarly to tax obligations; they will be billed with the taxes and having the same due date
- All assessments create a lien upon the land and continue until fully discharged
- Assessments are subject to same interest and other charges applicable to delinquent tax collection
- Assessments are committed to the tax collector and the City has available the same remedies for collection as tax liabilities
- Unless otherwise waived, persons aggrieved by the betterment assessment may request abatement

Attorney Malcolm McNeill spoke on behalf of Commerce Way LLC. He advised the City Council that this is not a unique statutory process and this process is used in other communities. He thanked the Economic Development Commission and City staff for working with Commerce Way on this matter.

City Manager Bohenko stated that this matter would be referred to the Planning Board as required by our City Ordinance.

V. ACCEPTANCE OF MINUTES – MAY 16, 2011 AND JUNE 6, 2011

Councilor Coviello moved to accept and approve the minutes of the May 16, 2011 and June 6, 2011 City Council meetings. Seconded by Councilor Smith and voted.

VI. PUBLIC COMMENT SESSION

Jackie Cali-Pitts said she is before the City Council as a resident this evening to express her concern with the closing of Fire Station 3. She said there are many concerns relating to response times and the need for complete coverage of the City. She indicated that Fire Station 3 could remain open without raising taxes.

Susan Denenberg said that the current parking garage is not full a great deal therefore, she does not see a reason for the construction of a new garage. She said it is important for the stakeholders to provide input on this matter.

Robert Padian asked if Fire Station 3 is closed what impact it would have on response time and residents insurance rates.

Ralph DiBernardo said as a former Deputy Fire Chief for the City he would ask that the City Council reconsider its priorities when it relates to Fire Station 3. He said that the Fire Chief and Fire Commission have advised the Council of the need to keep Station 3 open and its impacts if it were closed.

Natalie Roman-Nelson advised the City Council that she owns Portsmouth Health Food. She said she feels it is important that the Council conduct a feasibility study on the need for a parking garage at the Worth Lot. She expressed the issues businesses in the area would face during the construction of a new garage. She indicated there would be a reduction in parking which would cause a reduction in business and that would lead to her having to layoff employees.

Rick Condon said he is speaking as a resident and his concerns with the closing of Fire Station 3. He said that the City is spending funds for a new recreational facility and perhaps a new parking garage but will not supply the adequate funding in order to keep Fire Station 3 open.

William McQuillen asked the City Council to slow down the process of considering the construction of a new parking garage. He said that he is concerned with the Council not funding basic public safety needs to keep Fire Station 3 open. He said that public safety needs should be put ahead of a parking garage.

Peter Sommsich asked the City Council to move slowly on the new parking garage. He expressed his opposition to the Worth Lot being used as a site for a new parking facility. Mr. Sommsich also spoke in support of keeping Fire Station 3 open. He suggested a comprehensive review of the parking needs for the City be conducted.

VII. APPROVAL OF GRANTS/DONATIONS

A. *Acceptance of Grant for Household Hazardous Waste Collection

Councilor Kennedy moved to accept and expend a \$4,381.00 DES grant for the purpose of household hazardous waste collection events and authorize the City Manager to execute any documents which may be necessary for this grant contract. Seconded by Councilor Lister and voted.

a. Acceptance of Community Development Block Grant (CDBG)

Councilor Smith moved to accept and expend a Community Development Block Grant (CDBG) in the amount of \$594,463.00 from the U.S. Department of Housing and Urban Development. Seconded by Councilor Coviello and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

(There are no items under this section on the agenda)

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Acceptance of Donation to the Coalition Legal Fund
- Town of New Castle - \$500.00
(Anticipated action – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)
- B. *Acceptance of Donations for USS Virginia
- Harold Whitehouse - \$30.00
 - The Ceres Bakery Creative - \$40.00
(Anticipated action – move to approve and accept the donations for the USS Virginia, as presented)

Councilor Smith moved to adopt the Consent Agenda. Seconded by Councilor Kennedy and voted.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Deb Weeks, The Green Monkey Restaurant, requesting permission to place 1 two-yard dumpster and 3 eco-movement totes for composting and recycling on Church Street for a 1 year period

Councilor Smith moved to refer to the City Manager with power. Seconded by Assistant Mayor Novelline Clayburgh and voted.

- B. Letter from Julie Slayton Frank, South Church, requesting renewal of their Dumpster License Agreement

Councilor Smith moved to refer to the City Manager with power. Seconded by Assistant Mayor Novelline Clayburgh and voted.

- C. Letter from Grace K. Staller, The Descendants of the Signers of the Declaration of Independence, Inc., requesting permission to place a small plaque at the gravesite of William Whipple located in North Cemetery

City Manager Bohenko advised the City Council if this request was referred to him with power he would work with Ms. Staller.

Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Lister and voted.

- D. Letter from Ben Anderson, Prescott Park Arts Festival Executive Director, requesting permission to place 5 directional signs at the following locations:
- Route 1 Bypass Maplewood exit
 - Market and Bow Street corner
 - Pleasant and State Street corner
 - Pleasant and Marcy Street corner
 - State and Marcy Street corner

City Manager Bohenko said the banner request was withdrawn and that we will need to discuss as a City Council how we want to handle these types of requests because more banner requests will be coming forward.

Assistant Mayor Novelline Clayburgh moved to refer to the City Manager with power. Seconded by Councilor Lister.

Councilor Kennedy asked if these signs would be placed with the other Strawberry Banke signs. She stated that she would like to see the signs together. City Manager Bohenko said that the Way Finding project would address sign requests like these.

Councilor Dwyer asked if these would be temporary signs. Councilor Smith said he would like these signs to be temporary. City Manager Bohenko said the signs will be issued to be removed at the end of the summer season.

Motion passed.

- E. Letter from Richard Wagner, AIDS Response Seacoast Director, requesting permission to provide free HIV testing from a Mobile Testing Unit in downtown Portsmouth from 3:00 p.m. to 6:00 p.m. on Monday, June 27, 2011

City Manager Bohenko informed the City Council that the mobile unit would be placed at the Bridge Street Lot.

Councilor Coviello moved to refer to the City Manager with power. Seconded by Councilor Dwyer and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Proposed Amendment to the Professional Management Association (PMA) Collective Bargaining Agreement and Non-Union Employees Re: Health Insurance

City Manager Bohenko said that this would be an amendment to the PMA Bargaining Agreement and Non-Union Employees health insurance. He said that this is a major component of the budget. He advised the City Council that the Human Resources Department held meetings with a representative of Cigna and PMA and Non-Union employees. City Manager Bohenko informed the City Council that the change in insurance would be a net savings of \$110,000.00 for 47 employees and the savings could be more depending upon the point of service chosen by the employees. He thanked PMA for coming forward to discuss this and going forward with the change.

Councilor Smith moved to approve the Memorandum of Agreement between the Portsmouth Professional Management Association and the City of Portsmouth, as presented and, further, approve this change for non-union employees. Seconded by Assistant Mayor Novelline Clayburgh.

Councilor Lister asked City Manager Bohenko if there were any issues with employees keeping their current doctors. City Manager Bohenko said no. There would be a higher deductible people would have to reach.

Councilor Dwyer said this is amazing how much this saving is for a small group of employees. She asked how much we could save if all employees went with this insurance. City Manager Bohenko said he would provide that information to the City Council.

Councilor Smith thanked City Manager Bohenko, PMA and Non-Union employees for their assistance with this.

Motion passed.

3. Report Back Re: Cocheco Valley Humane Society Event

City Manager Bohenko stated that this matter was referred to the Peirce Island Committee and the Recreation Board for review and they have recommended that the City Council deny the request based on the intensity of the use.

Councilor Smith moved to accept the report back from the Peirce Island Committee and Recreation Board to deny the request, as presented. Seconded by Councilor Lister and voted.

4. Report Back Re: the Revised Proposal from John Tinios, Owner of Popovers on the Square, for use of City Owned Property for Outdoor Seating with Alcohol Service

Deputy City Manager Hayden reported that Mr. Tinios is requesting outdoor seating (40 seats) where alcohol would be served with the area being for the exclusive use of Popovers. If the proposal is approved this will be a pilot use of the City sidewalk for this purpose similar to the use of a portion of Vaughan Mall (500 square feet) by The District Restaurant for outside alcohol service. She also informed the Council that Mr. Tinios has asked that the area service fee be reduced to 25% (or \$2,500.00) of the \$10,000.00 seasonal fee. In the case of The District Restaurant, which is for the use of approximately 500 square feet in Vaughan Mall, the Area Service Agreement specifies that the \$10,000.00 fee will be prorated on a per day basis by that portion of the season remaining from the date of execution of the Agreement. The season is 6 months, from April 15th to Columbus Day; so, for example, if the Agreement was not executed until July 15th, one-half of the \$10,000.00 fee would be owed.

City Manager Bohenko said while the City has received a number of additional requests, he would like to request no additional approvals for service of alcohol on City property for the coming season. He indicated he would like to focus on 2 pilots for this season.

Assistant Mayor Novelline Clayburgh moved to authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor liquor service on City land in Market Square and pro-rate the fee on a per day basis. Seconded by Councilor Smith.

Councilor Kennedy asked if Mr. Tinios would only pay \$2,500.00. City Manager Bohenko said he would recommend the fee be based on a per day basis for a 6 month period therefore, the fee would be \$5,000.00.

City Manager Bohenko informed the Council that the Liquor Commission has reviewed Mr. Tinios request and support it. In addition, if there are any issues with violating the liquor laws, the Liquor Commission would take care of that.

Councilor Spear said he would like to see a snake line that people go through for the separation of the seating area from the sidewalk. City Manager Bohenko stated that we are using a similar barrier that is used in other cities.

Councilor Smith said he would support the motion because it is a pilot program and corrective action would be taken if there are any issues.

Councilor Kennedy asked what time Popover's would start serving on a Sunday. Deputy City Manager Hayden stated that was not contemplated. City Manager Bohenko said closing would be at 10:00 p.m. and they would work with Mr. Tinios on the start time.

Councilor Spear said he would vote opposed to the motion. He stated he supports the idea of outside seating but the area makes him uncomfortable.

On a roll call 5-4, voted to authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor liquor service on City land in Market Square and pro rate the fee on a per day basis. Assistant Mayor Novelline Clayburgh, Councilors Dwyer, Coviello, Smith and Mayor Ferrini voted in favor. Councilors Lister, Hejtmanek, Spear and Kennedy voted opposed.

5. Proposed Amendment to Worth Development Agreement Re: Parking

Assistant City Attorney Woodland stated back in 2006 the City entered into an agreement with Worth Development. She indicated they would like to amend the Agreement so that 23 parking spaces which it is allowed to reserve at an agreed upon daytime parking rate for Monday to Saturday, now be made available on Sunday.

Assistant Mayor Novelline Clayburgh moved to approve the aforementioned amendment and, further, authorize the City Manager to execute the amended Agreement. Seconded by Councilor Smith.

Councilor Dwyer stated that she would like to amend the motion to extend the years of ownership. City Manager Bohenko said that we could ask if they would allow for that change.

Councilor Dwyer said she does not want to withhold the approval of the agreement so she would withdraw her suggestion.

Assistant City Attorney Woodland said she would ask if they would consider extending the ownership 10 years.

Motion passed.

6. Request for Approval of Pole License #63-0510

Councilor Smith moved to approve the request of PSNH for pole license agreement, #63-0510, as recommended by the Public Works Department. Seconded by Councilor Dwyer.

Councilor Coviello asked if these items could be placed on the consent agenda in the future. City Manager Bohenko said we would move all future pole license requests to the consent agenda.

The City Council agreed to move all future pole license requests to the consent agenda.

Motion passed.

7. Request for a License from Scott Segee and Liz Wright owners of Fa La Lo of Portsmouth LLC for property located at 7 Commercial Alley to install a projecting sign

Councilor Smith moved to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Scott Segee and Liz Wright, owners of Fa La Lo of Portsmouth LLC to install a projecting sign on an existing bracket at 7 Commercial Alley and, further, authorize the City Manager to execute a License Agreement for this request. Seconded by Councilor Lister and voted.

Planning Director Stipulations:

- *The license shall be approved by the Legal Department as to content and form;*
- *Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and*
- *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.*

8. Request for a License from Ted Alex, owner of True North Property Management for property located at 208 Market Street to install a projecting sign

Councilor Smith moved to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Ted Alex, owner of True North Property Management, to install a projecting sign on an existing bracket at 208 Market Street and, further, authorize the City Manager to execute a License Agreement for this request. Seconded by Assistant Mayor Novelline Clayburgh and voted.

Planning Director Stipulations:

- *The license shall be approved by the Legal Department as to content and form;*
- *Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and*
- *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.*

The City Council agreed to move all future Projecting Sign requests to the Consent Agenda.

9. Request for Approval of Porter Street Dumpster License Agreement

Councilor Smith moved to authorize the City Manager to enter into a new License Agreement with Jay McSharry for waste receptacles on Porter Street. Seconded by Assistant Mayor Novelline Clayburgh and voted.

City Manager's Informational Items:

- Report Back Re: Letter from Jennifer Wilhelm

Councilor Dwyer asked about Ms. Wilhelm's concerns contained within her letter. Councilor Kennedy stated that Ms. Wilhelm attended the Peirce Island Committee meeting and the members asked her if she would like to join the committee. She further stated that the committee did recognize her interest in Peirce Island.

B. MAYOR FERRINI

1. Appointment to be Considered:
 - Leslie Stevens – Appointment to the Trees and Public Greenery Committee

The City Council considered the appointment of Leslie Stevens to the Trees and Public Greenery Committee and will vote on the appointment at the July 18, 2011 City Council meeting.

2. Appointments to be Voted:
 - Richard Katz – Reappointment to the Historic District Commission
 - Nancy Beach – Reappointment to the Cable Television and Communications Commission
 - Steven Berg – Reappointment to the Portsmouth Housing Endowment Fund Advisory Board

Councilor Smith moved to reappoint Richard Katz to the Historic District Commission until June 1, 2014; the reappointment of Nancy Beach to the Cable Television and Communications Commission until April 1, 2014; and the reappointment of Steve Berg to the Portsmouth Housing Endowment Fund Advisory Board until June 1, 2014. Seconded by Councilor Coviello and voted.

3. *City Manager's Evaluation Committee

Mayor Ferrini announced that it is time for the City Manager's Evaluation. He informed the City Council that he will have Assistant Mayor Novelline Clayburgh serve as Chair and that other City Councilors will be appointed shortly.

4. *Reports

C. ASSISTANT MAYOR NOVELLINE CLAYBURGH

1. Final Report of City Charter Advisory Committee

Assistant Mayor Novelline Clayburgh announced that the Final Report of the City Charter Advisory Committee has been placed in the Council binders for review. She stated that she would like to hold a Work Session on this matter to allow City Attorney Sullivan to present the Final Report at the July 18, 2011 City Councilor meeting.

Assistant Mayor Novelline Clayburgh move that the Report of the City Charter Advisory Committee be accepted, and, that a Work Session be established at 6:00 p.m. prior to the regular City Council meeting of July 18, 2011, and, that the matter be placed on the agenda for the July 18, 2011 meeting so that the City Council may vote on the recommendations made by the Committee and on any other charter amendments which might be proposed by the Council. Seconded by Councilor Coviello.

Councilor Dwyer said that there is a great deal of information to discuss and does not feel we should only have 1 hour for discussions.

Mayor Ferrini said it would be unrealistic to think we could complete the work session in 1 hour. City Manager Bohenko suggested holding a work session on July 25, 2011. Councilor Coviello suggested starting the work session on July 18, 2011 at 5:30 p.m. The City Council agreed to have the work session at 5:30 p.m.

Mayor Ferrini requested that the Committee members be invited to attend the Work Session to answer any questions the City Council may have.

Assistant Mayor Novelline Clayburgh stated that the City Council had the opportunity to come forward to the Committee and discuss any changes. She further stated it is her hope that there is not a great deal of items brought forward, as the Committee worked hard to address everyone's concerns.

Motion passed.

D. COUNCILOR DWYER

1. Authorize Joint Building Committee (JBC) to Oversee Construction of the Youth Recreational Facility

Councilor Dwyer spoke to a memorandum from Dexter Legg, School Board Chair and herself requesting to formulate the Joint Building Committee for the construction of the Youth Recreational Facility. She said it makes sense for the Joint Building Committee to oversee the construction of the Youth Recreational Facility and they would invite the Recreation Board to join them at appropriate times.

Councilor Dwyer moved to authorize the Joint Building Committee (JBC) to oversee construction of the Youth Recreational Facility in accordance with memorandum dated June 16, 2011. Seconded by Council Spear.

Councilor Kennedy moved to amend the motion to have the Finance Director and Recreation Director have bi-monthly meetings with Steve Bartlett. Seconded by Assistant Mayor Novelline Clayburgh and voted.

Main motion passed as amended.

Councilor Dwyer stated that all of the construction bills are reviewed by Dan Hartrey and the committee before they are paid.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer said everyone discussed a supplemental option for the Fire Station and at some point it would make sense. She suggested holding a work session with the Fire Department to discuss the department changing how they use their resources. She spoke to the recent submittal of 7 retirements and suggested inviting the Fire Commission to a Work Session to discuss their plans with these pending retirements.

Councilor Kennedy said the Council should conduct a work session to review the retirements in either the summer or fall.

Councilor Coviello moved to hold a work session on the retirements pending in the Fire Department. No second to the motion received.

Councilor Smith moved to request the Fire Commission meet with the City Council in a Work Session on Monday, June 27, 2011 at 6:30 p.m. regarding Fire Station 3 and beginning with a Non-Meeting with Counsel regarding Personnel Matters. Seconded by Councilor Coviello.

Assistant Mayor Novelline Clayburgh said she would hope that Fire Chief LeClaire and the Fire Commission would come forward with the changes in retirement with a way to keep Fire Station 3 open and does not feel a meeting is necessary.

Councilor Smith said because the Council is the policy setting board we need to let them know the public wants to keep Fire Station 3 open as well as during the budget process we told them we would continue to work with them, that is the reason for the meeting.

On a roll call 6-3, voted to request the Fire Commission meet with the City Council in a Work Session on Monday, June 27, 2011 at 6:30 p.m. regarding Fire Station 3 and beginning with a Non-Meeting with Counsel regarding Personnel Matters. Councilors Hejtmanek, Dwyer, Coviello, Kennedy, Smith and Mayor Ferrini voted in favor. Assistant Mayor Novelline Clayburgh, Councilors Lister and Spear voted opposed.

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

At 9:30 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Spear and voted.



Kelli L. Barnaby, CMC/CNHMC
City Clerk