

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, JULY 18, 2011 TIME: 6:00PM

## AGENDA

- 6:00PM – 7:30PM – WORK SESSION RE: FINAL REPORT OF CITY CHARTER ADVISORY COMMITTEE

- I. CALL TO ORDER [7:30PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PRESENTATION

- 1. \*Status of Zoning Ordinance Revisions – Rick Taintor, Planning Director

- V. ACCEPTANCE OF MINUTES – JUNE 20, 2011

- VI. PUBLIC COMMENT SESSION

- VII. APPROVAL OF GRANTS/DONATIONS

*There are no items under this Section of the Agenda*

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Adoption of Resolution Authorizing a Bond Issue of up to Twelve Million Dollars (\$12,000,000.00) for the Construction of a new Parking Facility (*Tabled from the May 2, 2011 City Council Meeting*) (*Two-thirds vote required for adoption*) (***Sample motions – (1) move to remove item from the table; (2) move to further table the adoption to the November 21, 2011 or December 5, 2011 Council meeting pending receipt of the Parking Study***)

- IX. CONSENT AGENDA

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

- A. Acceptance of Donations to the Coalition Legal Fund
  - Town of Carroll - \$1,000.00
  - Town of Rye - \$5,000.00
  - Town of Moultonborough - \$6,500.00

***(Anticipated action – move to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund***

- B. Acceptance of Donations for Portsmouth Police Department
- Mr. F. Mastan - \$75.00 to support the Police Honor Guard
  - Jerry Howe and Jodi Frechette Howe - \$320.00 to replace worn boots for the Police Honor Guard
- (Anticipated action – move to approve and accept the donations for the Police Honor Guard, as presented)***
- C. Letter from Chris Curtis, The Music Hall, requesting permission to hold the Annual Telluride by the Sea Weekend Celebration on Friday, September 23, 2011 – Sunday, September 25, 2011 with the closing of Chestnut Street from Congress to Porter Streets; hang a banner across the Congress Street end; and further have live music entertainment on the street Friday night from 5:00 p.m. – 6:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Attorney Brian DeVellis, Lomardo & DeVellis, Attorneys At Law, LLP, Re: Rezoning of Land on Bartlett Street/Cate Street ***(Anticipated action – move to refer to the Planning Board for report back)***
- E. Request for Approval of Pole License – Underground Conduit System for New Hampshire Department of Transportation ***(Anticipated action – move to approve the license with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- F. \*Acceptance of Donation for Art-Speak
- Chris Greiner - \$25.00
- (Anticipated action – move to accept and approve the donation to Art-Speak for operating funds, as presented)***
- G. Letter from Catherine Edison, Community Child Care Center, requesting permission to hold a 5K Race/Walk Fundraiser on Saturday, October 15, 2011 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***

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

- A. Letter from Carl Diemer, Recreation Board Chair, requesting to name the new “Granite Street” softball field as the Alumni-Wentworth Field) ***(Sample motion – move to establish a Work Session with the Recreation Board on August 1, 2011 to discuss the request)***
- B. Letter from Mark McNabb, Martingale Wharf Limited Partnership, regarding 99 Bow Street – Martingale Wharf Encroachments ***(Sample motion – move to refer to the Planning Board for report back)***
- C. Letter from Amon Re requesting to use the Vaughan Mall stage for two shows per day on Friday, July 22, 2011 and Saturday, July 23, 2011 from 12 Noon to 3:00 p.m. and again from 6:00 p.m. to 9:00 p.m.
- D. Renewal of Sidewalk Obstruction License for Maine-ly New Hampshire *(with no changes from last year)* – 1 A-frame sign ***(Sample motion – move to refer to the City Manager with power)***

- E. Letter from Fil Kovisars, Stonyfield Farm, requesting permission to hold a sampling of their new Organic Omega 3 Milk and Organic Cookies at the Pierce Island Pool on Thursday, July 28, 2011
- F. Letter from Joseph R. Baroni Family LLC, Re: Acquisition of City owned Land on Constitution Avenue **(Sample motion – move to refer to the Planning Board for report back)**
- G. Letter from Attorney Paul McEachern Re: Rezoning 1900 Lafayette Road **(Sample motion – move to refer to the Planning Board for report back)**
- H. Letter from Stephen Kelm requesting a waiver of the Capacity Usage Fee for the 51 Islington Street project **(Sample motion – move to refer to the City Manager for report back)**
- I. Letter from Mary Bailey, Seacoast African American Cultural Center, requesting permission to conduct a raffle calendar fundraiser and place a small table with informational materials in Market Square near the visitor kiosk for weekends during the months of August, September and October from approximately 12:00 p.m. – 4:00 p.m. **(Sample motion – move to refer to the City Manager with power)**

## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. CITY MANAGER

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

- 1. Adoption of Proposed Resolution:
  - 1.1 Adoption of Resolution Authorizing a Bond Issue of up to Twelve Million Dollars (\$12,000,000.00) for the Construction of a new Parking Facility *(Tabled from the May 2, 2011 City Council Meeting) (Two-thirds vote required for adoption)*  
**(Action on this item should take place under Section VIII of the Agenda)**

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

- 1. Proposed Ambulance Service Agreement with Town of New Castle
- 2. Approval of RFP for Parking Supply and Demand Analysis for Downtown Portsmouth
- 3. Request for Naming a Driveway at Prescott Park
- 4. Planning Board Report Back on City Council Referral: Letter from Attorney Robert Shaines, requesting the City Council authorize the City Manager to execute a release deed discontinuing the sewer easement for property located at 80 Woodlawn Circle
- 5. Letter from Attorney Robert Burns, Corporate Counsel, Pan Am Railways Re: Abandonment and Discontinuance of Service of Hampton Branch
- 6. Service Credit Union Sidewalk Construction and Maintenance Agreement

7. Letter from Anne M. Crotty, Esq., regarding the Laurel Court Subdivision

### **Informational Items**

1. Events Listing
2. Redistricting Report
3. African Burying Ground Trust Donations
4. News Release Re: Portsmouth Recertified as a Tree City USA

### **B. MAYOR FERRINI**

1. Appointments to be Considered:
  - Susan Chamberlin – Appointment to the Zoning Board of Adjustment
  - Patrick Moretti – Appointment to the Zoning Board of Adjustment
2. Appointment to be Voted:
  - Leslie Stevens – Appointment to the Trees and Public Greenery Committee
3. Resignations:
  - Carol Eaton from the Zoning Board of Adjustment effective September 1, 2011
  - Kent Kirkpatrick from the Traffic & Safety Committee
  - Joel Look from the Taxi Commission

### **C. ASSISTANT MAYOR NOVELLINE CLAYBURGH**

1. City Charter Advisory Committee (***Sample motion – move to instruct the City Attorney to draft the text of the proposed amendment list amendment and that a public hearing be established on the amendment for the August 15, 2011 City Council meeting***)

### **D. COUNCILOR SPEAR**

1. \*Request to Investigate Curb Side Parallel Parking on Junkins Avenue (***Sample motion – move to refer to the Parking Committee for report back***)

### **E. COUNCILOR DWYER**

1. \*Transportation Committee

### **F. COUNCILOR SMITH**

1. \*Funding of Fire Station 3 – FY12 (***Sample motion – move to establish a public hearing for Monday, August 1, 2011 at 7:00 p.m. for the purposes of a supplemental appropriation of \$158,000.00 from undesignated fund balance for necessary FY12 expenditures for the operation of the Fire Department***)

## **XII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

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

*\*Indicates Verbal Report*

**INFORMATIONAL ITEMS**

1. Notification that the Planning Board Minutes of April 21, 2011 meeting are available on the City's website for your review
2. Notification that the Site Review Technical Advisory Committee Minutes of May 31, 2011 meeting are available on the City's website for your review
3. Notification that the Historic District Commission Minutes of the June 1, 2011 meeting are available on the City's website for your review
4. Notification that the Zoning Board of Adjustment Minutes of the April 19, 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:** July 14, 2011  
**To:** Honorable Mayor Thomas G. Ferrini and City Council Members  
**From:** John P. Bohenko, City Manager  
**Re:** City Manager's Comments on July 18, 2011 City Council Agenda

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***6:00 p.m. – Work Session***

1. **Final Report of City Charter Advisory Committee.** On Monday evening, at 6:00 p.m., the City Council will hold a work session, regarding the final report of the City Charter Advisory Committee.

***Presentation:***

1. **Status of Zoning Ordinance Revisions.** Rick Taintor, Planning Director will make a presentation to the City Council regarding the status of Zoning Ordinance revisions.

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

1. **Adoption of Proposed Resolution:**
  - 1.1 **Adoption of Resolution Authorizing a Bond Issue of up to Twelve Million Dollars (\$12,000,000.00) for the Construction of a New Parking Facility (Tabled from the May 2, 2011 City Council Meeting).** As you will recall, at the May 2<sup>nd</sup> City Council meeting, the Council voted to table the aforementioned Resolution until the July 18, 2011 City Council meeting. Therefore, the City Council needs to take action on this matter.

The City Council has the following two options available:

- 1) Move to remove item from the table, or,
- 2) Move to further table the adoption to the November 21, 2011 or December 5, 2011 Council meeting pending receipt of the Parking Study.

*Two-thirds vote is required for adoption. Action on this item should take place under Section VIII of the Agenda.*

## ***Consent Agenda:***

1. **Acceptance of Donations to the Coalition Legal Fund.** Attached are copies of checks from the Town of Carroll in the amount of \$1,000.00; the Town of Moultonborough in the amount of \$6,500.00; and the Town of Rye in the amount of \$5,000.00 donating funds to the Coalition Legal Fund, which will be utilized to continue our fight to eliminate the statewide property tax.

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

2. **Acceptance of Police Department Donations.** Attached under Section IX of the Agenda is a memorandum, dated June 20, 2011, from Gerald W. Howe, Chairman, Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve the following donations:
  - a) Two donations totaling \$75 from Mr. F. Mastan in support of the Portsmouth Police Honor Guard.
  - b) A donation in the amount of \$320 from Mr. Jerry Howe and Mrs. Jodi Frechette Howe to cover the cost of replacing worn boots for the Honor Guard.

The Police Commission is submitting this information pursuant to City Policy memorandum #94-36, for the City Council approval and acceptance.

*I would recommend that the City Council move to approve and accept the donations to the Portsmouth Police Department, as listed. Action on this matter should take place under Section IX of the Agenda.*

3. **Request for Approval of Pole License – Underground Conduit System for New Hampshire Department of Transportation.** Attached is a request for a Pole License Agreement from the State of New Hampshire Department of Transportation (NHDOT) for an underground conduit system running from Kearsarge Way onto the right-of-way for Interstate 95. This underground system will provide an electrical service for a Traffic Camera and Dynamic message sign to be installed above both directions of travel on Interstate 95. This underground system poses no impact to existing City infrastructure and the Public Works Department recommends approval of this license. Attached is a picture of the proposed location of the system.

*I would recommend that the City Council move to approve the license with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes. Action on this matter should take place under Section IX of the Agenda.*

4. **Acceptance of Donation for Art-Speak.** Art-Speak requests that the following donation for operating funds be accepted by the City Council on behalf of Art-Speak:

➤ Chris Greiner \$25.00

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

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

1. **Proposed Ambulance Service Agreement with Town of New Castle.** As you are aware, the Fire Department has been working with New Castle on an agreement to provide ambulance service. [Attached is a copy of a memorandum from Christopher LeClaire, Fire Chief](#), regarding this matter. [Also, attached is a copy of the proposed Agreement](#) to provide that service. The Fire Chief and Fire Commission are recommending that the City Council approve this Agreement.

*I would recommend the City Council move to accept the recommendation of the Fire Chief and Fire Commission to provide ambulance service to the Town of New Castle, and further, to execute the Agreement.*

2. **Approval of RFP for Parking Supply and Demand Analysis for Downtown Portsmouth.** As you know, at the June 20, 2011 City Council work session regarding the Worth Lot Parking Garage, it was the consensus of the Council that staff should prepare a Request for Proposals (RFP) that would result in an objective review and analysis of downtown parking supply and demand. As you also know, much data and a number of studies have been developed over the course of the last ten years, but the intent with this RFP would be to review, update and further analyze this information prior to any decision regarding construction of a parking garage on the Worth Lot.

[Attached is a memo from Jon Frederick, Director of Parking and Transportation](#), regarding this matter as well as the RFP for the Parking Supply and Demand Analysis for Downtown. Jon worked with Deputy City Manager Cindy Hayden, Public Works Director Steve Parkinson, Planning Director Rick Taintor and Economic Development Program Manager Nancy Carner to develop the RFP.

Please note that the Scope of Services outlined in the RFP does not include stakeholder input. While stakeholder input is critical to the construction of a site-specific parking garage, this RFP is focused on an assessment of downtown parking supply and demand, not on the feasibility of a particular garage site. As a result, stakeholder input would take place at a later date once the question is answered as to whether or not additional structured parking is needed and, if so, in what particular location(s). Different parking garage sites would in all likelihood have very different stakeholders.

Assuming the RFP is approved by the City Council this evening, we will proceed to seek proposals from qualified consultants to perform the work requested. Once proposals are



received and reviewed by staff, I will make a recommendation to the Council regarding the highest ranked firm and seek Council approval to appropriate funding from the Parking Special Revenue Fund to engage that firm.

*I would recommend the City Council move to authorize the City Manager to approve the RFP for the Parking Supply and Demand Analysis for Downtown as presented.*

3. **Request for Naming a Driveway at Prescott Park.** The Trustees of the Trust Funds have contacted us regarding an unnamed driveway at Prescott Park which serves both the Shaw and Sheafe Warehouses. For 9-1-1 purposes, the Trustees would like to have the unnamed driveway named. The roadway would still not become a City street but would have an identification for emergency purposes.

City Attorney Robert Sullivan has advised the Trustees that the naming of the driveway would be within the purview of the City Council. Accordingly, the Trustees are requesting that the Council name the driveway. In order to assist the Council in that matter, the Trustees have provided the following list of proposed names:

- Prescott Way
- Prescott Drive
- Water Street
- Union Wharf
- Wharf Way
- Cappy Stewert Drive
- Shaw Wharf
- Warehouse Drive
- Shaw Drive

The City Attorney has reviewed this matter with the Police Chief and the Chief has indicated that the Police Department would not recommend Prescott Way or Prescott Drive as they are too close to Prospect Street. Further the Chief would not recommend Union Wharf as we have a Union Street, nor would he recommend Shaw Wharf or Shaw Drive as we have a Shaw Road. As a result, the remaining options presented by the Trustees are Water Street, Wharf Way, Cappy Stewert Drive and Warehouse Drive.

*I would recommend the City Council move to identify the unnamed Prescott Park driveway as Water Street for 9-1-1 purposes.*

4. **Planning Board Report Back on City Council Referral: Letter from Attorney Robert Shaines, requesting the City Council authorize the City Manager to execute a release deed discontinuing the sewer easement for property located at 80 Woodlawn Circle.** As you will recall, at the May 16, 2011 City Council meeting, the Council referred a request from Attorney Robert Shaines that the City release a 15-foot sewer easement across a parcel at 80 Woodlawn Circle (see attached letter). Attached is a report back from Planning Director Rick Taintor regarding this matter.

*I would recommend the City Council accept the Planning Board's report back regarding this matter as presented and authorize the City Manager to execute any necessary documents.*

5. **Letter from Attorney Robert Burns, Corporate Counsel, Pan Am Railways Regarding Abandonment and Discontinuance of Service of Hampton Branch.** Please find attached a letter dated June 21, 2011 from Attorney Robert Burns, Corporate Counsel, Pan Am Railways regarding the abandonment and discontinuance of service of the Hampton Branch railroad line. Because the letter asks that the City respond within fourteen (14) days from receipt of the letter, I have sent the attached letter which objects to the abandonment and discontinuance of this line in order to afford the City Council time to review this matter.

If abandonment does go forward it would presumably be in the interest of each municipality impacted (Portsmouth, Greenland, Rye, North Hampton and Hampton) to work with the State and the Regional Planning Commission towards State acquisition of the line. The State already owns the segment from Hampton center south through Seabrook to the Massachusetts border, and Seabrook is actively working toward constructing a bikeway on a portion of the line. The Executive Director of the Rockingham Planning Commission (RPC) has indicated that there are no longer active shippers on the line and the RPC's position will likely be to support and encourage state acquisition and preservation of the right-of-way if and when it comes up for sale. The RPC has studied the feasibility of passenger rail restoration on the line twice in the past and most recently in 1999 (updated in 2003), and their conclusion then was that service was feasible but unlikely in the short-term due to the large capital and operating costs involved and recommended that the right-of-way be preserved for future use as a rail corridor. The Council should also be aware that the Hampton Branch is proposed as the route of the East Coast Greenway through NH, which the RPC supports. Mr. Sinnott indicates that while that may seem to conflict with rail service restoration, the RPC considers the rail-trail to be an important interim use of the right-of-way that helps justify public acquisition, while preserving it for potential future rail use. Because of the width of the right-of-way (double track), it may be able to accommodate both uses through much of the corridor. The RPC will be acting as a facilitator for the impacted communities to work together on this matter and City staff will be part of that process. I will advise the City Council of future developments regarding the discontinuance of the Hampton Rail Line and potential acquisition options.

*I would recommend the City Council object to the abandonment and discontinuance of service of the Hampton Branch railroad line in Portsmouth unless a plan is in place for the State of New Hampshire to acquire this land.*

6. **Service Credit Union Sidewalk Construction and Maintenance Agreement.** As you will recall, the Planning Board granted Site Plan Approval for the new Service Credit Union corporate headquarters building at 2995 Lafayette Road on March 17, 2011; and on March 21, 2011, the City Council approved acceptance of land for a connector road across the Service Credit Union parcel between Lang and Longmeadow Road. The approved Site Plan includes a new City sidewalk along the Lafayette Road frontage of the site; and as a precondition to the issuance of a driveway permit for this development, the New Hampshire Department of Transportation (NHDOT) requires that the City execute a Sidewalk Construction and Maintenance Agreement under which the City assumes responsibility and liability for maintenance of this sidewalk. [Attached please find a draft of the required sidewalk agreement.](#) NHDOT has yet to approve this document, but it is nearly identical to an agreement for the sidewalk in front of the new Fire Station directly across Route 1 from the Service Credit Union parcel; and staff believes this agreement is in substantially the form which will be approved by NHDOT.

*I would recommend the City Council move to authorize the City Manager to negotiate and execute a maintenance agreement with the New Hampshire Department of Transportation in substantial conformance with the document provided.*

7. **Letter from Anne M. Crotty, Esq., regarding the Laurel Court Subdivision.** On May 19, 2011, the Planning Board granted final subdivision approval for the 20-lot “Laurel Court” subdivision off Kearsarge Way, subject to a number of easements. As you will recall, at the June 6, 2011 City Council meeting, the Council approved a request from John Chagnon that the City accept a parcel of land in the subdivision (“Lot A”) for stormwater management and protection of an open space buffer. [The attached letter from Anne M. Crotty, Esq.,](#) requests City Council approval of three additional documents that will implement aspects of the subdivision plan and the Planning Board’s stipulations:
- a) A **Confirmatory Deed** is requested to clear title to a portion of the subdivision previously owned by the City of Portsmouth. The land in question was formerly part of three paper streets that were never constructed, [as shown on the attached Exhibit 1](#); and was intended to be conveyed to the current applicant’s predecessor in title in 1986. The City Attorney has researched the City Council minutes and has determined that the proposed Confirmatory Deed does reflect the Council’s intent at that time.
  - b) A **Release of Easement** is requested to release a water line easement across the applicant’s property. The easement, [which is shown on the attached Exhibit 2](#), was established in 1986 when the City deeded the land to the applicant’s predecessor in title; and the easement deed specifically provides for relocation of the water line and easement at such time as the property owner requires. The development of the subdivision includes the relocation of the existing water line to within the parcel that is being conveyed to the City, and therefore this easement is no longer required.

- c) The proposed **Easement Deed** conveys to the City several easements: (a) a utility easement across a corner of Lot 1 to allow a new water main in Laurel Court to be connected to an existing water main on the adjacent parcel owned by the Housing Authority (see Exhibit 3); (b) a sight easement along the frontage of Lots 9 and 10 to allow vehicles exiting Laurel Court to watch for vehicles approaching on Kearsarge Way (see Exhibit 4); (c) a drainage easement along the boundary between Lots 18 and 19 (see Exhibit 5); and (d) a slope easement along the boundary between Lots 17, 18 and 19 and Lot A (see Exhibit 5).

These documents have been developed in consultation with the City Attorney and Planning Director and all the transactions have been approved by the Planning Board.

*I would recommend the City Council authorize the City Manager to execute the Confirmatory Deed and the Release of Easement, and to accept the Easement Deed, in substantial conformance with the documents provided.*

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

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on June 20, 2011. In addition, this now can be found on the City's website.
2. **Redistricting Report.** For your information, [attached is a memorandum from Kelli Barnaby, City Clerk](#), regarding redistricting ward boundaries.
3. **African Burying Ground Trust Donations.** The African Burying Ground Committee has received the following donation to the African Burying Ground Trust since its May 31, 2011 memo to City Council. The total donated to the trust, by individuals, to date is \$6,765.04.

➤ Lucius & Nancy Hill	\$100
➤ James & Susan Anderson	\$25
4. **News Release Re: Portsmouth Recertified as a Tree City USA.** For your information, [attached is a news release](#) announcing that the City of Portsmouth has received approval of its Tree City USA recertification request from the State Forester.