

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: TUESDAY, SEPTEMBER 6, 2011

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

I. CALL TO ORDER

Mayor Ferrini called the meeting to order at 7:10 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

Assistant Mayor Novelline Clayburgh led the Pledge of Allegiance.

V. ACCEPTANCE OF MINUTES – AUGUST 15, 2011

Councilor Smith moved to approve and accept the minutes of the August 15, 2011 City Council meeting. Seconded by Councilor Kennedy and voted.

VI. PUBLIC COMMENT SESSION

There were no speakers this evening.

VII. APPROVAL OF GRANTS/DONATIONS

- A. *Approval of Additional Energy Grant Funds for the Discover Portsmouth Center

Councilor Smith moved to authorize the City Manager to accept and expend an additional \$23,100.00 in grant funds from the TRC Environmental Corporation for energy upgrades to the former Library Building at 10-30 Middle Street. Seconded by Assistant Mayor Novelline Clayburgh and voted.

Councilor Dwyer moved to suspend the rules in order to take up Item X. D.1. – Artwork for 9/11 Memorial. Seconded by Councilor Spear and voted.

X. D.1. Artwork for 9/11 Memorial

Councilor Dwyer spoke to her memorandum to the City Council dated September 2, 2011 regarding this Artwork for 9/11 Memorial. She stated that this is an opportunity to recognize the 10th anniversary of 9/11 and honor the memory and work of Mayor Evelyn Sirrell who was our City's leader during those difficult times for the nation. She explained that this is a hand-woven work of art that uses thousands of donated buttons from people all over the country to represent lives lost on 9/11. The work was created by local artist Sarah Haskell and it has been displayed at Ground Zero and many other sites. Councilor Dwyer reported that the artwork is available and can be purchased for the City by donated funds for this purpose, which are held by the Trustees of Trust Funds. She indicated that no tax dollars will be used for purchase of this artwork but rather private donations.

Councilor Dwyer moved to authorize the Trustees of the Trust to expend \$15,000.00 from the Public Art Trust at the direction of the City Manager to acquire the artwork known as "The Button Project" a 9/11 Memorial. Seconded by Councilor Smith.

Councilor Coviello stated that a person made a significant donation for the purchase of the artwork.

Councilor Kennedy asked if there was an RFP or bidding process and where does the Portsmouth artist fit in with the Trust. Councilor Kennedy was advised that there was no need for an RFP with the donation for this piece of art.

Councilor Dwyer said there was discussion whether artists should be limited to just Portsmouth and no one wanted to do that.

Councilor Lister said we should have Art-Speak look at the issue of local artists.

Assistant Mayor Novelline Clayburgh said she will approve the request because it is not an expenditure of taxpayer's funds. She would like to see us memorialize former Mayor Sirrell in other ways than just with the artwork.

Mayor Ferrini said he would support the motion and former Mayor Sirrell served the City well.

City Manager Bohenko stated that we would display the artwork here in the Eileen Foley Dondero Council Chambers for several months and then the City Council could make a decision where to permanently display the artwork.

Motion passed.

VIII. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Barbara Massar, Executive Director, Pro Portsmouth, Inc., requesting permission to hold First Night Portsmouth 2012 on Saturday, December 31, 2011 (***Anticipated action – move to refer to the City Manager with power***)
- B. Request for a License from Joanne Wiren, owner of Art with a Splash for property located at 222 State Street to install a projecting sign (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Joanne Wiren, owner of Art with a Splash to install a projecting sign at 222 State Street and, further, authorize the City Manager to execute a License Agreement for this request***)

Planning Director's Stipulations:

- ***The license shall be approved by the Legal Department as to content and form; and***
 - ***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***
- C. Request for a License from Sorassa Soeur, owner of Salonista for property located at 90 Fleet Street to install a projecting sign (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Sorassa Soeur, owner of Salonista to install a projecting sign at 90 Fleet Street and, further, authorize the City Manager to execute a License Agreement for this request***)

Planning Director's Stipulations:

- ***The license shall be approved by the Legal Department as to content and form; and***

- **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**

D. Request for a License from Kerry Lajoie, owner of Hazel Boutique for property located at 7 Commercial Alley to install a projecting sign (**Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Kerry Lajoie, owner of Hazel Boutique to install a projecting sign at 7 Commercial Alley and, further, authorize the City Manager to execute a License Agreement for this request**)

Planning Director's Stipulations:

- **The license shall be approved by the Legal Department as to content and form; and**
- **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**

E. Request for Approval of Pole License – Underground Conduit System for Comcast – 161 Deer Street (**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. Request for Approval of Pole License – Underground Conduit System for the NH Department of Transportation – Corner of Sapphire Street and Rockingham Avenue onto the Right of Way for Interstate 95 (**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**)

G. Request for Approval of Pole License – Installation of 1 pole located on Cutts Avenue for PSNH (**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**)

- H. Request for Approval of Pole License – Installation of 1 pole located on McKinley Road for PSNH (***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***)
- I. Acceptance of Donation to Fire Department from Mary E. Golomb - \$100.00 (***Anticipated action – move to approve and accept the donation to the Fire Department for the gift and donation account***)

City Manager Bohenko stated that the pole licenses and projecting sign requests have been placed under the Consent Agenda as requested by the Council.

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

IX. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Ellen Stockmayer, The Pan Massachusetts Challenge, requesting permission to hold the 6th annual PMC New Castle-Seacoast Kids Ride on Sunday, September 25, 2011

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

- B. Letter from Sorassa Soeur, Salonista, requesting permission to hold a fashion show in Market Square the Pleasant Street side of North Church on Wednesday, September 14, 2011 from 6:00 p.m. – 8:00 p.m. (*rain date September 15, 2011*)

City Manager Bohenko reported that Ms. Soeur has requested to have the event next to the North Church and he suggested that she consider moving the event to the Vaughan Mall. He said that Ms. Soeur said that she would prefer having the event in Market Square.

Councilor Coviello moved to refer to the City Manager and that the event be held at the Vaughan Mall. Seconded by Councilor Kennedy.

Councilor Spear said the event is next week and feels the event should be held at the Vaughan Mall this year and see how it goes and if they come back for next year.

City Manager Bohenko said there is a stage at the Vaughan Mall and the request came in at the last minute. He said he would meet with Ms. Soeur and advise her of the action by the Council.

Motion passed.

- C. Letter from Leanne Stella and Shanna Argyros, Arts In Reach (AIR), requesting permission to hold a fundraising walk on Saturday, October 22, 2011 from 9:00 a.m. – 11:00 a.m.

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

- D. Letter from Doug Bates, Greater Portsmouth Chamber of Commerce, requesting permission to hold a farewell event for the Memorial Bridge on Saturday, October 1, 2011 from 3:00 p.m. – 8:00 p.m. and further, request that Scott Avenue be closed for the event hours to create a flow between Harbour Place and Prescott Park surrounding the bridge

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

X. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Proposed Transfer of Funds Re: Retirement

City Manager Bohenko spoke regarding the employer contribution rates that were re-certified pursuant to House Bill 2, effective August 1, 2011 through June 30, 2013. He indicated that the shortfall can be made up through a transfer of \$521,689 from the FY12 collective bargaining and pension contingency, in accordance with Section 7.16 of the City Charter, which allows for transfer with the approval of the City Council.

City Manager Bohenko advised the Council at Councilor Esther Kennedy's request, what other cities are doing. He reported that the Human Resources Department surveyed twelve cities and heard back from six. Manchester will be using contingency funds; Somersworth will use fund balance; Dover will try to absorb the amount in their budget; and Franklin, Laconia and Concord have budgeted sufficient funds for FY12 to cover their costs.

Assistant Mayor Novelline Clayburgh moved to authorize the transfer of funds in the amount of \$521,689.00 from the FY12 Collective Bargaining and Pension Contingency for the retirement shortfall, in accordance with Section 7.16 of the City Charter to the following departments:

Police	\$117,700.00
Fire	\$101,405.00
School	<u>\$302,584.00</u>
Total	\$521,689.00

Seconded by Councilor Dwyer and voted.

2. Report Back Re: Request from Worth Development Condominium Association for Expansion of Dumpster Area in Worth Lot

City Manager Bohenko said that the Worth Development Condominium Association requested the expansion of its dumpster space in the Worth Lot to accommodate four restaurants and twelve office retail tenants. He said that there is currently four feet of open space between the right fence of the dumpster area and the adjacent parking space. He indicated that moving the fence three feet would provide the necessary dumpster space and provide enough space for car doors opening in the parking space. In addition, City Manager Bohenko reported that the Worth Development Condominium Association will pay to move the bollards and the fencing in order to expand the area to the right.

Councilor Smith moved to accept the recommendation of the Parking Committee and approve the Worth Development Condominium Association's request to move the fence three feet to the right as shown in the attached photograph at their expense. Seconded by Councilor Hejtmanek and voted.

3. Report Back Re: iPark

City Manager Bohenko said at the request of Councilor Spear we have evaluated the City absorbing customer service fees for purchasing parking credits on iPark devices. He reported that the City pays a fee for every parking credit purchase on the following schedule – 10% for \$25 purchases, 7% for \$50 purchases and 5% for \$100 purchases. In addition, the customer also pays a service fee based on the same schedule. He said the City paid \$2,751.88 in credit card and service fees on the \$22,700 in parking credits purchased by our customers in FY11 and we currently have 485 iPark users.

City Manager Bohenko said in FY11, the City would have paid an additional \$1,654 to subsidize the iPark customer service fee, bringing the total fees for the City up to \$4,405.88. The fee schedule is set up to incentivize larger purchases. If the City absorbs the fee for the customer, thereby removing the incentive for larger purchases, we could expect our fees to be an additional \$600 higher, or \$5,000 total per year, due to smaller increment purchases. In closing, City Manager Bohenko said absorbing the fee for only the \$100 increment keeps the incentive for higher purchases in place and cost to the City at \$370 annually (in FY11 terms).

Councilor Smith moved to accept the Parking Committee's recommendation and approve the elimination of the iPark customer service fee for parking credit purchases of \$100.00. Seconded by Assistant Mayor Novelline Clayburgh.

Councilor Coviello asked percentage wise how many are purchases over \$100.00. Parking and Transportation Director Frederick said 74% for FY11. He said he would have liked to see the amount lowered to \$50.00.

City Manager Bohenko said that this program will be evaluated for six months with a report back to the City Council on the findings.

Motion passed.

4. Proposed Purchase of LaCava Property Re: 95 Mechanic Street

City Manager Bohenko requested that City Attorney Sullivan address this matter.

City Attorney Sullivan said the subject property is located to the north and directly abutting the Mechanic Street pump station. He reported that the pump station currently pumps all of the Portsmouth flow over to the Peirce Island Wastewater Treatment Facility. He further indicated that through the purchase of the property, the City would gain control of the 95 Mechanic Street property which would be of significant value to the City as it proceeds with the implementation of the Wastewater Masterplan. City Attorney Sullivan said the ability to upgrade the Mechanic Street pump station will prove critical at some point in the future, whether to redirect flows or to deal with stormwater flows at that location.

City Manager Bohenko said that the Planning Board would need to review this matter and report back.

City Attorney Sullivan also spoke to a lease made in 1947 between the City and Grace LaCava for a strip of land called mud flats, lying off and easterly of Mechanic Street. He stated that this is a complex issue.

Councilor Smith moved to refer this matter to the Planning Board for report back to the City Council. Seconded by Assistant Mayor Novelline Clayburgh

Councilor Kennedy thanked City Manager Bohenko for bringing this issue forward. She said that the neighborhood wants this to be worked out in a reasonable way.

Motion passed.

5. Report Back Re: 99 Bow Street Martingale Wharf Encroachments

City Manager Bohenko reported that the Planning Board voted unanimously to recommend that the City grant the requested easements.

Councilor Smith moved to accept the recommendation of the Planning Board, as presented, and authorize the City Manager to execute the necessary documents. Councilor Coviello abstained from voting on this matter. Seconded by Councilor Dwyer.

Councilor Coviello informed the Council that he would abstain from voting on this matter.

Councilor Kennedy asked why this was not brought forward during the original process.

City Manager Bohenko requested that Deputy City Manager Hayden come forward to address this matter.

Deputy City Manager Hayden said that there are many items that we are not aware of that are on the sidewalk without licenses. She said that this is for the bow window that is being replaced.

Motion passed. Councilor Coviello abstained from voting.

6. Report Back Re: Request for Rezoning of land on Bartlett Street/Cate Street Assessors Map 165 Lot 1 (30 Cate Street)

City Manager Bohenko requested that Deputy City Manager Hayden speak on this matter.

Deputy City Manager Hayden said that this rezoning request was reviewed and based upon the research and the surrounding areas a business zone makes the most sense.

Councilor Smith moved to accept the Planning Board's recommendation, as presented and to bring back for first reading a zoning amendment to reflect this proposed change at the September 19, 2011 City Council meeting. Councilor Coviello abstained from voting on this matter. Seconded by Assistant Mayor Novelline Clayburgh.

Assistant Mayor Novelline Clayburgh asked what the plans are for the area. Deputy City Manager Hayden said non-residential and commercial.

Motion passed. Councilor Coviello abstained from voting.

7. Report Back Re: Request from Joseph R. Baroni Family, LLC, regarding the Acquisition of City Owned Land on Constitution Avenue

Deputy City Manager Hayden reported that the Planning Board reviewed this matter and is recommending approving the sale of the parcel.

City Manager Bohenko recommended the City Council accept the recommendation of the Planning Board with the final purchase price to be approved by the City Council.

Councilor Smith moved to accept the Planning Board's recommendation to approve the sale of the requested parcel on such terms as it deems acceptable, and further, authorize the City Manager to negotiate the sale of this parcel with final approval of purchase price to be made by the City Council. Seconded by Assistant Mayor Novelline Clayburgh and voted.

8. New Hampshire Department of Transportation (DOT) Request for License to Affix Telecommunication Equipment to Pease Water Tower

City Manager Bohenko reported that the New Hampshire Department of Transportation (NHDOT) is requesting use of the Water Tower licensed by the Pease Development Authority (PDA) to the City located off International Drive at Oak Avenue on the Tradeport. He indicated that the NHDOT proposes to deploy an Advanced Traffic Management System (ATMS) on the southern corridor of Route I-95. Further, the wireless communication network will involve three (3) antennas on the railing of the water tank with support structure on the land near the tank.

City Manager Bohenko advised the Council in order to proceed with the project, NHDOT requires a license from the City to allow the antennas to be attached to the water tank. He also reported that the PDA will be involved as the owner of the property.

City Manager Bohenko indicated that NHDOT will pay the City \$250.00 a month and all design, construction, maintenance and risk associated with the antennas will be the responsibility of NHDOT. In addition, the NHDOT desires that the license be for a term of five (5) years with three (3) automatic five (5) year renewal periods.

Councilor Coviello moved to authorize the City Manager to negotiate and execute an agreement with NHDOT to allow use of the International Drive Water Storage Tank by NHDOT and adjoining property for the purpose of installing telecommunication equipment for the purpose of creating and operating an Advance Traffic Management System kept on the southern corridor of Route I-95. Seconded by Councilor Smith.

Councilor Kennedy asked what the support structures would look like. City Attorney Sullivan reported that it would be like a small electrical box.

Assistant Mayor Novelline Clayburgh asked if the PDA had to approve the request. City Attorney Sullivan responded affirmatively.

Motion passed.

9. Report Back Re: On-street Parking at 233 Vaughan Street

City Manager Bohenko requested that Parking and Transportation Manager Frederick to come forward to speak on this matter.

Parking and Transportation Director Frederick said that the Site Review Technical Advisory Committee referred the project to the Parking Committee. He indicated there would be two-hour metered parking on the south side of Vaughan Street and no parking on the north side.

Councilor Dwyer moved to accept the Parking Committee's recommendation to approve the recommendation of TAC to initiate the necessary ordinance amendments (two-hour metered parking on the south side of Vaughan Street and no parking on the north side) and further, schedule a first reading on the proposed amendments for the September 19, 2011 City Council meeting. Seconded by Councilor Smith.

Councilor Dwyer asked Parking and Transportation Director Frederick why we needed to do away with parking for the entire north side. Parking and Transportation Director Frederick said because currently vehicles are parking where the sidewalk will be installed.

Councilor Kennedy said she received some calls with concerns of losing parking spaces on the street. She asked if the street could become one way to keep parking. She suggested that the matter be re-examined.

Councilor Kennedy moved to request the Parking Committee re-examine the area to be one way. No second received.

City Manager Bohenko recommended that the original motion be withdrawn and then a new motion made to have the Traffic & Safety Committee look at the area. City Manager Bohenko asked Councilor Smith if feels this is appropriate with a report back to the City Council. He also said that the matter could be tabled and referred to the Traffic & Safety Committee.

Councilor Smith said he would have the Traffic & Safety Committee look at the matter with a report back to the City Council.

Mayor Ferrini asked Councilor Dwyer if she would like to withdraw her motion. ***Councilor Dwyer withdrew her motion and Councilor Smith his second to the motion.***

Councilor Smith moved to refer this matter to the Traffic & Safety Committee for review to make Vaughan Street one-way. Seconded by Councilor Lister.

Councilor Coviello said he feels the area should not be metered until the building is complete and would like to have the meters removed from the side of the street where the buildings are located.

Councilor Smith said the meters would not be removed because of the bank.

Motion passed.

10. Request for License Agreement Re: 104 Congress Street

City Manager Bohenko reported that Martini Northern would like a license for construction activities at 104 Congress Street. City Manager Bohenko indicated that the license would have special terms relative to live loading of construction debris, pedestrian passage and special coordination with upcoming City events and Music Hall events. He stated that no parking impact is anticipated. He also stated that the license would contain the usual terms and conditions related to limitation of use, restoration of any damage and insurance requirements. The license term would be for a period of two months with the option for him to extend the license term for no more than six months at his discretion should there be unavoidable construction or weather delays.

Councilor Smith moved to authorize the City Manager to negotiate and enter into a License Agreement with Martini Northern to facilitate construction activities at 104 Congress Street. Seconded by Assistant Mayor Novelline Clayburgh.

City Manager Bohenko requested that Public Works Director Parkinson come forward to address this matter.

Public Works Director Parkinson reported on the project and indicated that the sidewalks are much larger in this area.

Councilor Smith asked if all snow would be removed from the street if construction is not complete. Public Works Director Parkinson said that it would.

Motion passed.

Informational Items

3. *Comprehensive Annual Financial Report (CAFR) Award*

City Manager Bohenko announced that the City of Portsmouth recently was awarded its 18th "Certificate of Achievement for Excellence in Financial Reporting" for the annual Comprehensive Annual Financial Report (CAFR), which is prepared following the end of each fiscal year. He said that this award covers the fiscal year ending June 30, 2010, for the CAFR, which is prepared annually by staff under the guidance of Finance Director Judie Belanger.

4. *Utility of the Year Award*

City Manager Bohenko announced that the New England Water Works Association (NEWWA) has awarded the Portsmouth Water Division the "Utility of the Year" award. He said that the award recognizes Portsmouth Water Division for its "significant improvements to the water system infrastructure, customer service, staff training and operations to further protect public health of the customers it serves."

8. *Atlantic Heights Emergency Access Project*

City Manager Bohenko announced that the cost for the work outlined in the project scope is \$13,220 and will be funded through Capital Contingency.

5. *Report Back Re: Request for Rezoning of 1900 Lafayette Road*

City Manager Bohenko requested that Deputy City Manager Hayden speak to this matter. Deputy City Manager Hayden said that the Planning Board feels that a public hearing is in order.

B. MAYOR FERRINI

1. Appointments to be Considered:
 - William Gladhill – Appointment as Regular member to the Planning Board (*currently serves as an Alternate member*)
 - John Crist – Appointment to the Board of Library Trustees

The City Council considered the appointments of William Gladhill as a Regular member to the Planning Board (*currently serves as an Alternate member*) and John Cristo to the Board of Library Trustees. The City Council will vote on the appointments at the September 19, 2011 City Council meeting.

2. Appointments to be Voted:
 - Chris Hubbard – Appointment to the Peirce Island Committee
 - Dana Levenson – Appointment to the Board of Trustees of Trust Fund

Councilor Smith moved to appoint Chris Hubbard to the Peirce Island Committee until December 31, 2011 and Dana Levenson to the Board of Trustees of the Trust Fund until January 1, 2014. Seconded by Councilor Kennedy and voted.

C. ASSISTANT MAYOR NOVELLINE CLAYBURGH

1. *City Manager's Evaluation Report

Assistant Mayor Novelline Clayburgh reported that the City Council finds that the City Manager's overall performance continues to be outstanding to exceptional in all categories.

E. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the August 11, 2011 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the August 11, 2011 Traffic & Safety Committee meeting. Seconded by Councilor Lister.

Councilor Smith reported that there are no ordinance changes required.

Motion passed with Councilor Kennedy voting opposed.

2. Parking Committee Action Sheet and Minutes of the August 11, 2011 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the August 11, 2011 Parking Committee meeting. Seconded by Assistant Mayor Novelline Clayburgh and voted. Councilor Kennedy voted opposed.

XI. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Lister asked if there is a time line for the ribbon cutting ceremony for the Alumni-Wentworth field. City Manager Bohenko said that staff has reviewed the field and the ribbon cutting will be delayed. He stated that there are some issues with the field and we will not accept the field until we are comfortable that all items have been addressed to our requirements. He also stated that the Joint Building Committee has been made aware of these issues.

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

At 8:30 p.m., Councilor Smith moved to adjourn. Seconded by Assistant Mayor Novelline Clayburgh and voted.



Kelli L. Barnaby, CMC/CNHMC
City Clerk