

## **CITY COUNCIL WORK SESSION**

### **City Council Rules and Orders**

January 17, 2012 – 6:00 p.m.

Eileen Dondero Foley Council Chambers

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City Council Present: Mayor Spear, Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

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#### **I. Call to Order – Mayor Spear**

Mayor Spear called the Work Session to order at 6:05 p.m.

Mayor Spear stated it is his intention to have this rule adopted at the Council meeting this evening and asked City Attorney Sullivan to review his memorandum outlining the appointment process for members of all City Board, Commissions and Committees, specifically those appointments controlled by City Council Rule 23.

City Attorney Sullivan stated the current Rule 23, adopted by the 2010/2011 City Council reads as follows:

“The Mayor shall nominate all committees, subject to the approval of the Council. All nominations shall be laid on the table until the next regularly scheduled Council meeting.”

He stated the second sentence of Rule 23 was adopted in 01/22/1996 and has been in place since that time. He stated the Legal Department has prepared a matrix (attached) to illustrate each City Council Board, Commission or Committee to briefly describe the appointment process as well as whether or not City Council Rule 23 as adopted by the previous Council would have any effect on that appointment process. He continued that the Boards, Commissions and Committees are grouped together to show those which are controlled by Rule 23 or an amendment to that Rule; those which would not be so affected; those in which the Rule affects the process but not the ultimate appointment authority. Lastly, the matrix contains a list of former Committees which have now ceased to exist due to being unsupported by a statute or an ordinance. These Committees were created by the prior City Council and therefore expired with the completion of the term of that Council. Any of this final group of Committees would need to be brought back into existence either by action of the current City Council or by the Mayor as a Blue Ribbon Committee in the manner described. He concluded by stating that the matrix was prepared with significant time constraints so that some educated guess work went into determining the complete list of Boards, Commissions and Committees as well as the appointment process for each of them and it is possible that some Boards, Commissions or Committees were overlooked or that the appointment process described could stand further analysis.

City Attorney Sullivan continued by explaining that the Mayor also retains the authority to create so-called Mayor's Blue Ribbon Committees which have no authority to take any action but exist to provide input to the Mayor. He stated these blue ribbon committees may be established under whatever terms and conditions the Mayor deems appropriate.

He concluded by addressing 2 additional issues on which further information could be of assistance to the Mayor and City Council. These are as follows:

Question: In light of the fact that the adoption of Council Rules has been delayed, are any members of Boards, Commissions or Committees appointed by the prior City Council still able to serve?

Answer: Yes. It is accepted principle of administrative law that members of administrative bodies whose term has expired may, if they are willing, continue to serve subsequent to the expiration of the term until their replacement has been appointed, unless there are provisions to the contrary. Under this policy an elected or appointed officer may remain in office after the expiration of its term until a successor qualifies, whether or not this is provided for by the statute creating the office.

Question: Since the Council has yet to adopt Council Rules for the 2012/2013 term, under what rules is the Council currently operating?

Answer: Legal research to date has not produced a clear answer to this question. However under the analysis similar to that regarding holdover appointments described above, it would seem that as nearly as possible the Council should operate under the now expired rules until new rules are adopted. The essence of this observation is simply that there seems no other choice. If problems should arise pending the adoption of new Council rules, by 2/3<sup>rds</sup> vote the City Council is able at any time to adopt, or amend any rule.

Assistant Mayor Novelline Clayburgh offered her suggested motion to amend Rule 23 as follows:

At the first meeting of the year, Councilors will bring forward their requests for committees. If there is a multiple request for a committee, a one-minute explanation of why a councilor would like to sit on that committee will be given. A closed vote will be taken by the Council, and the votes will be counted by the City Clerk.

The Councilor on a committee will bring forward the names of citizens who are interested in being on said committee. Those individuals must have completed the application process through the City Clerk's office. The Council will vote on the recommendation at the next regularly scheduled Council Meeting.

Councilor Dwyer stated that there are 2 separate issues being addressed with these proposed amendments; the first being Mayor appointments of Councilors to committees, and the second the process for approval of appointments of citizens to committees.

Discussion ensued regarding the various committees listed on the matrix and the effect of Council Rule 23 with differing opinion as to the level of authority of the Mayor to make appointments with or without Council approval.

Finally, the Mayor referred to his list of Committee Assignments for 2012-2013 which was presented at the January 3, 2012 Special Council meeting. He stated he is unsure that any consensus had been reached but feels that the Council needs to move forward on these issues.

### **VIII. Adjournment**

Mayor Spear closed the Work Session at 6:55 p.m.

Respectfully submitted by:

Valerie A. French,  
Deputy City Clerk

City of Portsmouth  
Boards, Commissions and Committees  
Matrix

Presented to City Council by Legal Department  
January 17, 2012 Work Session

	<b>Name of Board/Commission which are controlled by Rule 23</b>	<b>Source of Appt. Authority*</b>	<b>Description of Appt. Authority</b>
1	Building Code Board of Appeals	RSA 673:3, IV; Ports. Ord. Sec. 1.311; Ports. Ord. Sec. 12	Appointed by City Council
2	Historic District Commission	RSA 673:4; Ports. Ord. Sec. 1.404	7 members plus 2 alternates appointed by City Council subject to state and local criteria.
3	Middle School Joint Building Committee	RSA 199:3	Chosen in equal numbers by City Council and School Board
4	Planning and Development Council	Ports. Ord. Sec. 1.406	Appointments by Council pursuant to specified criteria
5	Zoning Board Of Adjustment	RSA 673:3; Ports. Ord. Sec. 1.310	Appointed by City Council

	<b>Name of Board/Commission which Rule 23 affects process but not final appointment authority, which remains with the Mayor</b>	<b>Source of Appt. Authority*</b>	<b>Description of Appt. Authority</b>
6	Board of Health	Ports. Ord. Sec. 1.305	5 members appt'd by Mayor and City Council; Health Officer ex-officio
7	Cable Television and Communications Commission	Ports. Ord. Sec. 1.408	5 members plus 1 alternate appointed by Mayor subject to Council approval
8	Conservation Commission	RSA 36-A:3; Ports. Ord. Sec. 1.407	7 members plus 2 alternates appointed by Mayor with Council approval.
9	Economic Development Commission	Ports. Ord. Sec. 1.403	9 members plus 1 alternate appointed by Mayor subject to Council; Mayor and City Manager (ex-officio)
10	Board of Library Trustees	Ports. Ord. Sec. 1.307	All appointed by Mayor subject to Council approval
11	Microenterprise Advisory Committee	Ports. Ord. Sec. 1.410	7 members; all appointed by Mayor and Council
12	Parking and Traffic and Safety Committee	Ports. Ord. Sec. 1.412; Ports. Ord. Sec. 7.103	9 members appointed by Mayor and City Council
13	Pease Development Authority	See RSA 12-G:4	Specified by legislation, with one member appointed by Mayor and City Council
14	Peirce Island Committee	Ports. Ord. Sec. 1.411	12-18 members appointed by Mayor subject to Council approval

	<b>Name of Board/Commission which Rule 23 affects process but not final appointment authority, which remains with the Mayor (continued)</b>	<b>Source of Appt. Authority*</b>	<b>Description of Appt. Authority</b>
15	Personnel Advisory/Appeals Board	Ports. Ord. Sec. 1.308; Ports. Amd. Charter Sec. 49 (1947)	5 members appointed by Mayor subject to Council approval and Charter requirements
16	Planning Board	RSA 673:2, I-a; Ports. Ord. Sec. 1.303	City Manager or designee (with Council approval-ex officio); City admin. official chosen by City Manager (ex-officio); City Council member chosen by Mayor with Council approval (ex-officio); 6 residents of City appointed by Mayor with Council approval; 2 alternates-City residents appointed by Mayor with Council approval
17	Portsmouth Housing Endowment Fund Advisory Board	Ports. Ord. Sec. 1.409	City officials appointed by City Manager.; all others by the Mayor and Council
18	Taxi Commission	Ports. Ord. Sec. 7.206	Appointed by Mayor with Approval of City Council
19	Board of Trustees of Trust Fund	Ports. Ord. Sec. 1.309; Ports. Amd. Charter Sec. 67 (1947)	1 appointed annually by Mayor subject to 2/3 Council approval

	<b>Name of Board/Commission which Rule 23 does not affect the appointment process</b>	<b>Source of Appt. Authority*</b>	<b>Description of Appt. Authority</b>
20	Animal Control Committee	Ports. Ord. Sec. 6.712	Police chief or designee; a veterinarian; and a resident appointed by Mayor
21	Board of Plumbing Examiners	Ports. Ord. Sec. 1.306	Plumbing Inspector as Chair; 2 members appointed by City Manager
22	Building Commission	Ports. Ord. Sec. 1.402	5 specified individuals
23	Fire Commission	Ports. Charter Amdt. A	Specified selection procedure
24	Hearing Board, Sewer Disputes	Ports. Ord. Sec. 11.213	Appointments pursuant to specified criteria
25	Housing Authority	Ports. Ord. Sec. 1.405	5 appointed by Mayor
26	Police Commission	Ports. Charter Amdt. E	Specified selection procedure
27	Portsmouth Heritage Museum Board	Ports. Ord. Sec. 1.312	3 specified; 1 appointed by Mayor; 1 appointed by Trustees of Prescott Park
28	Recreation Board	Ports. Ord. Sec. 1.304	City Manager (ex-officio); 9 members appointed by Mayor
29	Site Review Technical Advisory Committee	Ports. Site Plan Review Regs. Sec. 2.2.1	9 members of specified qualifications

	<b>Name of Board/Commission which have ceased to exist (sunset) by expiration of the previous City Council Term</b>	<b>Source of Former Appt. Authority*</b>	<b>Description of Former Appt. Authority</b>
30	African Burying Ground Commission	Council Rule 23	Mayor nominates committees subject to Council approval
31	Cemeteries Committee	Council Rule 23	Mayor nominates committees subject to Council approval
32	Citizens Advisory Committee	Council Rule 23	Mayor nominates committees subject to Council approval
33	Citywide Neighborhood Committee	Council Rule 23	Mayor nominates committees subject to Council approval
34	Fee Schedule Study Committee	Council Rule 23	Mayor nominates committees subject to Council approval
35	Fishing Fleet	Council Rule 23	Mayor nominates committees subject to Council approval
36	Housing Committee	Council Rule 23	Mayor nominates committees subject to Council approval
37	Legislative Sub-Committee	Council Rule 23	Mayor nominates committees subject to Council approval
38	Martin Luther King Recognition	Council Rule 23	Mayor nominates committees subject to Council approval
39	Citywide Neighborhood Steering Committee	Council Rule 23	Mayor nominates committees subject to Council approval
40	Pease Development Authority-Port Subcommittee	Council Rule 23	Mayor nominates committees subject to Council approval
41	Safe Routes to School Committee	Council Rule 23	Mayor nominates committees subject to Council approval
42	Sustainable Practices	Council Rule 23	Mayor nominates committees subject to Council approval
43	Transportation Pol'y	Council Rule 23	Mayor nominates committees subject to Council approval
44	Trees & Public Greenery	Council Rule 23	Mayor nominates committees subject to Council approval
45	Vendors Committee	Council Rule 23	Mayor nominates committees subject to Council approval

\*Actual text kept in separate appendix.