

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, APRIL 2, 2012 TIME: 7:00PM

AGENDA

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

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

MAYOR’S AWARDS

1. 2012 Portsmouth High School Boys Varsity Basketball Team – Division II State Champions

V. ACCEPTANCE OF MINUTES – MARCH 19, 2012

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDMENT TO CHAPTER 6, ARTICLE XVI, SECTION 6.16 – MAGAZINE SUBSCRIPTION SOLICITORS BY AMENDING SECTION 6.1604 – LICENSE FEE – THE FEE FOR SUCH LICENSE SHALL BE DETERMINED ON AN ANNUAL BASIS BY THE CITY DURING ITS BUDGET PROCESS
- B. ORDINANCE AMENDMENT TO CHAPTER 5, ARTICLE VIII, SECTION 5.8 – ALARM SYSTEMS MONITORED BY THE CITY - SECTION 5.802 BY REMOVING SERVICE CHARGE TO SERVICE FEE AND ADDING SUCH AMOUNTS AS MAY BE DETERMINED ON AN ANNUAL BASIS BY THE CITY DURING ITS BUDGET PROCESS. THE SERVICE FEE MAY BE GRADUATED TO INCREASE BASED UPON AN INCREASING NUMBER OF UNFOUNDED EMERGENCY CALLS. IN ADDITION, AMENDING SECTION 5.803 – PERMISSIBLE UNFOUNDED EMERGENCY CALLS BY REPLACING SERVICE CHARGE WITH SERVICE FEE AND SUB-SECTION A - REPLACING POLICE OFFICES WITH POLICE DEPARTMENT AND SUB-SECTION B – REPLACING FIRE OFFICIALS WITH FIRE DEPARTMENT
- C. ORDINANCE AMENDMENT TO CHAPTER 6, ARTICLE VII – DOGS AND OTHER PETS, SECTION 6.708 LICENSE BY THE ADDITION OF THE FOLLOWING LANGUAGE – THE FEE FOR THIS LICENSE SHALL BE SET AT THE MAXIMUM AMOUNT PERMITTED BY STATE LAW

VIII. APPROVAL OF GRANTS/DONATIONS

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

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee – The fee for such license shall be determined on an annual basis by the City during its budget process
- B. Second reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City - Section 5.802 by removing service charge to service fee and adding such amounts as may be determined on an annual basis by the City during its budget process. The service fee may be graduated to increase based upon an increasing number of unfounded emergency calls. In addition, amending Section 5.803 – Permissible Unfounded Emergency Calls by replacing service charge with service fee and sub-section A - replacing Police Offices with Police Department and sub-section B – replacing Fire Officials with Fire Department
- C. Second reading of Proposed Ordinance Amendment to Chapter 6, Article VII – Dogs and Other Pets, Section 6.708 License by the addition of the following language – The fee for this license shall be set at the maximum amount permitted by state law
- D. Third and final reading of Proposed Ordinance Amendment to Chapter 1, Article XIV, Section 1.14 – Municipal Fund Balance by the deletion of the terminology *Undesignated* throughout the Ordinance with the replacement of the terminology **Unassigned**

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. 2012 Omnibus Sidewalk Obstruction Renewals – Part II – See Attached Listing (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Heidi Roy, National Multiple Sclerosis Society, requesting permission to hold the 2012 Bike MS NH Seacoast Escape on Saturday, August 11, 2012 (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Ken La Valley, American Foundation for Suicide Prevention, requesting permission to hold the Out of the Darkness Walk on Saturday, September 29, 2012 (***Anticipated action – move to refer to the City Manager with power***)
- D. Request for Approval of Pole License to install/replace 5 poles located on Plains Avenue (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)

- E. *Acceptance of Donations to the Portsmouth Police Department
- Donation from former Commissioner William Mortimer in memory of retired Police Captain Robert Roth - \$100.00
 - Donation from Mr. Frank Mastan to the Police Honor Guard - \$50.00
- (Anticipated action – move to approve and accept the donations to the Portsmouth Police Department, as listed)***
- F. Request for a License from Carrie Penna, owner of Lululemon Athletica on State Street for property located at 60 State Street to install a projecting sign on an existing bracket
- (Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Carrie Penna, owner of Lululemon Athletica on State Street to install a projecting sign at 60 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;***
- ***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***

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Attorney James Noucas, Jr., representing a property owner of the General Porter Condominiums requesting to construct a garage along the rear boundary line of property located at 32 Livermore Street abutting a cemetery ***(Sample motion – move to the Planning Board for report back)***
- B. Letter from Attorney James Noucas, Jr., representing Jim and Laurie Teetzel of Wilcox Industries, pledging \$25,000.00 towards the construction of a new tribute to American Veterans in Memorial Park for The Memorial Bridge ***(Sample motion – move to refer to Art-Speak for report back)***
- C. Letter from Carl Diemer, Recreation Board Chair, requesting to name the new Youth Recreational Facility as the “Connie Bean Recreation Center” ***(Sample motions – 1) move to establish a Work Session to discuss the naming of the Youth Recreational Facility as the Connie Bean Recreation Center; or 2) move to suspend the rules and act on the Recreation Board’s Request) (Please note: suspension of the rules requires a two-thirds vote)***

- D. Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the acquisition of a portion of the Right of Way along Market Street and site improvements for access to the National Guard Readiness Center on 803 McGee Drive ***(Sample motion – move to refer to the Planning Board for report back)***

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

1. Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:
 - 1.1 Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee – The fee for such license shall be determined on an annual basis by the City during its budget process ***(Action on this matter should take place under Section IX of the Agenda)***
 - 1.2 Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City - Section 5.802 by removing service charge to service fee and adding such amounts as may be determined on an annual basis by the City during its budget process. The service fee may be graduated to increase based upon an increasing number of unfounded emergency calls. In addition, amending Section 5.803 – Permissible Unfounded Emergency Calls by replacing service charge with service fee and sub-section A - replacing Police Offices with Police Department and sub-section B – replacing Fire Officials with Fire Department ***(Action on this matter should take place under Section IX of the Agenda)***
 - 1.3 Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 6, Article VII – Dogs and Other Pets, Section 6.708 License by the addition of the following language – The fee for this license shall be set at the maximum amount permitted by state law ***(Action on this matter should take place under Section IX of the Agenda)***
2. Third and Final Reading of Proposed Ordinance Amendments:
 - 2.1 Third and Final Reading of Proposed Ordinance Amendment to Chapter 1, Article XIV, Section 1.14 – Municipal Fund Balance by the deletion of the terminology *Undesignated* throughout the Ordinance with the replacement of the terminology **Unassigned** ***(Action on this matter should take place under Section IX of the Agenda)***

City Manager's Items Which Require Action

1. Report Back Re: Request of David Choate, III, Grubb & Ellis Northern New England, for an Amendment to Section 10.836.20 of the Zoning Ordinance regarding Drive-through Lanes for Retail/Commercial Buildings Outside of the Central Business District
2. Request for a Parking Lot Agreement Re: Middle Street Baptist Church
3. Report Back Re: Outdoor Boot Camp Proposal at Peirce Island
4. Request by Strawberry Banke Museum for Zoning Ordinance Amendment relative to the Definition of "Museum"
5. Request of PSNH for Easement for Placement of Service at Prescott Park

Informational Items

1. Events Listing
2. Reminder of City Council Work Session
3. Joint Meeting of Economic Development Commission and Parking & Traffic Safety Committee

B. MAYOR SPEAR

1. *Discussion Re: Context Sensitive Redevelopment
2. Appointments to be Considered:
 - Reappointment of Rich DiPentima to the Conservation Commission
 - Reappointment of Peter Vandermark to the Conservation Commission
 - Reappointment of Laura Montville to the Portsmouth Economic Development Loan Program (PEDLP)
 - Reappointment of Steve Berg to the Portsmouth Economic Development Loan Program (PEDLP)
 - Appointment of Robert Cook to the Blue Ribbon Committee on Sustainable Practices
 - Appointment of Shelley Saunders to the Parking & Traffic Safety Committee
3. Appointments to be Voted:
 - Appointment of David Rheume as a regular member to the Zoning Board of Adjustment
 - Appointment of David Rheume as a regular member to the Building Code Board of Appeals filling the unexpired term of Chester Keefe
 - Reappointment of MaryAnn Blanchard to the Conservation Commission
4. *Appointment of Councilor Anthony Coviello to the Public Access Financial Advisory Committee

C. COUNCILOR KENNEDY

1. *Elderly Services
2. *Exhaust Pipes for Motorcycles

D. COUNCILOR LOWN

1. Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E entitled Compliance with State and Federal Law (***Sample motion – move to establish first reading at the April 16, 2012 City Council meeting***)

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

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

**Indicates Verbal Report*


INFORMATIONAL ITEMS

1. Notification that the Planning Board Minutes of December 15, 2011 meeting are available on the City's website for your review
2. Notification that the Conservation Commission Minutes of the February 8, 2012 meeting are available on the City's website for your review

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: March 29, 2012
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on April 2, 2012 City Council Agenda

6:15 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

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Items Which Require Action Under Other Sections of the Agenda:

1. Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:

- 1.1 **Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604: License Fee.** As a result of the March 19th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the aforementioned Ordinance amendment (see attached).

The Ordinance amendment reflects the following additional language:

“The fee for such license shall be determined on an annual basis by the City during its budget process.”

There is no reference to a License fee in the current Ordinance so the City is unable to charge a fee, which is currently listed in the Fee Resolution for \$50.00 per license. This is a housekeeping issue to bring the ordinance in line with the Fee Resolution and allow for the collection of the fee.

I would recommend the City Council move to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City by amending Section 5.802: Service Fee and Section 5.803: Permissible Unfounded Emergency Calls.** As a result of the March 19th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the aforementioned Ordinance amendment (see attached).

The current ordinance needs to be amended to reference the fee for false alarms. The fees are adopted each year during the budget adoption process through the Fee Resolution. This is a housekeeping issue.

As requested, the Police Department will make a short presentation regarding this matter.

I would recommend the City Council move to pass second reading and schedule a third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.3 **Public Hearing/Second Reading of Proposed Ordinance Amendment to Chapter 6, Article VII, Section 6.7 – Dogs and Other Pets by amending Section 6.708: License.** As a result of the March 19th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the aforementioned Ordinance amendment (see attached).

The license and fee are in accordance with New Hampshire RSA 466. The Ordinance amendment reflects the following additional language:

“The fee for this license shall be set at the maximum amount permitted by state law.”

This allows for the local governing body to charge an additional \$1.00 for dog licenses, which will not be effective until the April 2013 licensing season. In addition, this allows ample time for notification to residents of the additional charge.

I would recommend the City Council move to pass second reading and schedule a third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Action on this matter should take place under Section IX of the Agenda.

2. **Third and Final Reading of Proposed Ordinance Amendments:**

- 2.2 **Third and Final Reading of Proposed Ordinance Amendment to Chapter 1, Article XIV, Section 1.14 – Municipal Fund Balance by the deletion of the terminology *Undesignated* throughout the Ordinance with the replacement of the terminology *Unassigned*.** As a result of the March 19th City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the aforementioned proposed Ordinance amendment (see attached). As part of the

budget presentation at the City Council retreat held on January 28, 2012, Finance Director, Judie Belanger described the new fund balance model in conformity with Governmental Accounting Standards Board (GASB) Statement No. 54.

As you know, the City currently has a Municipal Fund Balance Ordinance Chapter 1, Article XIV, Section 1.14 – which addresses the use and maintenance of the Undesignated portion of the fund balance. The new fund balance model changes the terminology of Undesignated Fund Balance to Unassigned Fund Balance. Therefore, the terminology change makes it necessary for the City to amend the current City ordinance to reflect the new terminology.

I would recommend the City Council move to pass third and final reading on the proposed Fund Balance Ordinance. Action on this matter should take place under Section IX of the Agenda.

Consent Agenda:

1. **Request for Approval of Pole License.** Attached under Section X of the Agenda is the following request for a PSNH Pole License Agreement (see attached memorandum from Tom Richter, Engineering Technician, Public Works Department):

- a) License to install/replace 5 poles located on Plains Avenue.

I would recommend the City Council move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department 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 X of the Agenda.

2. **Acceptance of Police Department Donations.** Attached under Section X of the Agenda is a memorandum, dated March 21, 2012, from John F. Golumb, Chairman of the Portsmouth Police Commissioners, and Police Chief David J. Ferland, requesting that the City Council approve the following grants and donations:

- a. A donation in the amount of \$100.00 from former Commissioner Wm. Mortimer in memory of retired Portsmouth Police Captain Robert Roth.
- b. A donation in the amount of \$50.00 in support of the Portsmouth Police Honor Guard from Mr. Frank Mastan.

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

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

3. **Request for License to install a Projecting Sign.** Attached under Section X of the Agenda is the following request for a projecting sign license (see memorandum from Rick Taintor, Planning Director):

- Lululemon Athletica, owner of Carrie Penna for property located at 60 State Street

I would recommend the City Council move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request. Action on this matter should take place under Section X of the Agenda.

City Manager's Items Which Require Action:

1. **Report Back Re: Request of David Choate, III, Grubb & Ellis Northern New England, for an Amendment to Section 10.836.20 of the Zoning Ordinance Regarding Drive-through Lanes for Retail/Commercial Buildings Outside of the Central Business District.** As you will recall, at the February 6, 2012 City Council meeting, the Council referred the attached aforementioned request to the Planning Board for report back to the City Council. Mr. Choate's request that the City consider amending the Zoning Ordinance with respect to the number of drive-through lanes allowed. The Planning Board considered this request at its meeting on March 15, 2012 and voted to recommend the changes to the Zoning Ordinance as outlined in the attached memorandum from Rick Taintor, Planning Director.

I would recommend the City Council move accept the Planning Board's recommendation, and further, authorize the City Manager to bring back for first reading the proposed amendment at the April 16th City Council meeting.

2. **Request for a Parking Lot Agreement Re: Middle Street Baptist Church.** In an effort to ease parking constraints from the Middle School project, the Middle Street Baptist Church has agreed to allow the City to utilize 17 parking spaces in their parking lot for use by employees of the Portsmouth Library for another year. Use of the lot will be limited to Monday through Friday, 8:30 a.m. to 9:30 p.m. each day. The attached agreement will be for one year.

In exchange for use of the spaces, the City will pay the Church \$1,000 per year and manage snow plowing and removal for the lot. As you know, the City has designated the subject parking spaces for permit parking and installed a key-locked security gate in the existing chain link fence to allow access to the Library. Enforcement of the 17 spaces is conducted by Parking Enforcement in conjunction with Library staff, on an as-needed basis.

In the event that Church services (funerals, weddings, etc.) preclude the use of the spaces, 24-hour advance notice will be given by the Church to the Library Director. This occurred only once during the past year.

I would recommend the City Council move to approve a one-year License Agreement between the Middle Street Baptist Church and the City of Portsmouth, as presented, and further, authorize the City Manager to execute this Agreement.

3. **Report Back Re: Outdoor Boot Camp Proposal at Peirce Island.** As you will recall at the February 6th City Council meeting, the Council referred the attached request for an outdoor boot camp at Peirce Island to the Recreation Board and Peirce Island Committee for report back. The Recreation Board approved the request, and the Peirce Island Committee denied the request (see attached memorandums).

On March 17, 2012, Julie Bokar and Jeanne Carter re-submitted their request for Peirce Island for an early morning class on Tuesday and Thursday mornings 6:00 a.m. to 6:45 a.m. The Peirce Island Committee by unanimous vote has denied the request of use of the island by the Fuel Training Studio based on the long time policy of not having groups that charge fees to use the island.

Action on this matter is necessary.

4. **Request by Strawberry Banke Museum for Zoning Ordinance Amendment Relative to the Definition of "Museum".** Attached is a memorandum from Rick Taintor, Planning Director, regarding a request from Strawberry Banke Museum for an amendment to the definition of "museum" in the Zoning Ordinance. Specifically, it is requested that the provision excluding "commercial galleries for the sale of art" be removed from the definition. At its meeting on March 15, 2012, the Planning Board voted unanimously to recommend that the City Council amend the definition of "museum" as follows:

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas, libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales (~~but not including the regular sale of objects collected or displayed~~), food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations, **provided that all such accessory uses are incidental and subordinate to the primary non-profit museum use.** ~~Museums include galleries for the display of works of art, but do not include Commercial galleries for the sale of art work.~~

I would recommend the City Council move to accept the Planning Board's recommendation, and further, authorize the City Manager to bring back for first reading the proposed Zoning Ordinance amendment at its April 16, 2012 City Council meeting.

5. **Request of PSNH for Easement for Placement of Service at Prescott Park.** Representatives of Public Service of New Hampshire, Prescott Park Arts Festival, Trustees of Trust Funds and the Department of Public Works have been working to identify a means to provide improved electrical service for Prescott Park. The proposed new service includes the removal and upgrade of certain poles and lines along Marcy Street and the installation of a new transformer pad on Prescott Park property. PSNH is requesting an easement to install and service the new transformer pad. The location of the new transformer

pad is shown on the attached plan. The cost of the improved electrical service is to be paid for by Prescott Park Arts Festival not the City/Trustees.

The Trustees reviewed and approved the proposed new service at its meeting held on March 22, 2012.

I would recommend the City Council move to refer the PSNH easement request to the Planning Board for a report back.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on March 19, 2012. In addition, this now can be found on the City's website.
2. **Reminder of City Council Work Session.** This is a reminder that there will be a City Council Work Session, on Monday, April 9, 2012 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers, regarding a Quarterly Update on Wastewater Treatment.
3. **Joint Meeting of Economic Development Commission and Parking & Traffic Safety Committee.** For your information, there will be a joint meeting between the Economic Development Commission and the Parking and Traffic Safety Committee on Friday, April 6, 2012 at 7:30 a.m., in Conference Room A. Attached are a memorandum and an agenda.