

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 2, 2012

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

At 6:15 p.m. an anticipated "Non-Meeting" with Counsel was held regarding Negotiations - RSA 91-A:2, I (b-c).

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

Mayor Spear called the meeting to order at 7:05 p.m.

II. ROLL CALL

Present: Mayor Spear, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

Absent: Assistant Mayor Lister

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Kennedy led the Pledge of Allegiance to the Flag.

MAYOR'S AWARDS

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

Mayor Spear presented Mayor's Awards and gifts to the Portsmouth High School Boys Varsity Basketball Team in recognition of being the 2012 Division II State Champions.

Coach Mulvey thanked Mayor Spear and the City Council for their support throughout the year and said it was an honor for him to coach this team.

V. ACCEPTANCE OF MINUTES – MARCH 19, 2012

Councilor Coviello moved to approve and accept the minutes of the March 19, 2012 City Council meeting. Seconded by Councilor Kennedy and voted.

VI. PUBLIC COMMENT SESSION

James Boyle provided the City Council with a copy of an ordinance regarding residency for department heads. He stated he does not feel that Planning Director Taintor or Assistant City Attorney Woodland meet the requirements under residency and there should be an investigation into this matter.

Joann Lamoreaux spoke concerned with the sale of the senior center and said there needs to be funding set aside for a replacement of the services provided by the former senior center for the future needs of seniors in the community.

Jack Kelley spoke regarding the traffic and motorcycle noise in the Marcy and State Streets area. He said that the motorcycle noise needs to be mitigated and asked that Chief Ferland address the current bill in the legislature regarding this matter.

Ann Totsen agreed with the comments made by Ms. Lamoreaux.

Joseph Cunningham spoke to the need for the replacement of senior services in the community.

Dorothy Peterson spoke in support of the comments made by Ms. Lamoreaux and Mr. Cunningham.

Paul Peterson spoke to the need to provide services for the senior citizens in the community. He said there needs to be a commitment by the City Council to the seniors.

Alex Loucock spoke in support of the need for a replacement of the senior center. He said that there needs to be more communication between the City and the senior residents.

Councilor Coviello moved to suspend the rules in order to take up Item XII. C.1. – Elderly Services. Seconded by Councilor Smith and voted.

XII. C.1. Elderly Services

City Manager Bohenko reported that approximately \$125,000.00 has been set aside for transportation services throughout the budget for senior citizens. He stated over time, due to financial constraints, the Portsmouth Housing Authority could no longer afford the senior center. The Wentworth Home through Wentworth Connections came forward to provide services by the Portsmouth Housing Authority at a cost of approximately \$100,000.00.

City Attorney Sullivan reported that the City has reviewed the documents from the transfer of property and there were no conditions in any documents for the continued services and programs of the center.

Councilor Novelline Clayburgh informed the Council that Bill Henson of The Wentworth Home is the Chair of the Senior Citizen Steering Committee. She reported that several meetings have been held on the services and programs provided. She further stated that the Committee is awaiting a financial report and that this is a large project but the Committee feels we can have a top rated program with services for the seacoast area.

Mayor Spear stated that communication is important and will continue as the process moves forward.

Councilor Smith asked City Manager Bohenko to review how the Portsmouth Housing Authority is different from the City. City Manager Bohenko stated that the Portsmouth Housing Authority is a separate entity and governed by State statute and the federal government. He advised the City Council that the City had no prior knowledge of the sale of the property on Parrott Avenue.

Councilor Kennedy expressed concern regarding funding for a senior program and the time line. She said the report was due on March 30th and has not been completed. She stated that the seniors need to know if the services will return and when.

City Manager Bohenko said everyone on the staff and City Council wants to see some type of activities for the seniors. He said he was surprised when he came to the City in 1997 that the Portsmouth Housing Authority ran the senior services. He stated that the senior center will be in the City but will be for regional participation. City Manager Bohenko further stated that the City will be part of the services now.

Councilor Kennedy asked if we could have a COAST or Trolley stop at Borthwick Avenue for seniors. City Manager Bohenko said he would look into that matter.

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**

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Spear declared the public hearing closed.

- 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

Mayor Spear read the legal notice, declared the public hearing open and called for speakers.

Police Chief Ferland provided a short report on this matter. He advised the City Council that there were 1,286 panic alarms last year with 121 for residential. He stated that the department collected \$32,300.00 in revenue from responding to alarms. Chief Ferland explained the scale of fees and after 3 or more calls the fee increases. He further reported that this fee was created because there was a business in 2002 that had their alarm sound every day and would not do what was necessary to correct it which caused a great deal of time by the department to respond each day to these false alarms.

With no speakers, Mayor Spear declared the public hearing closed.

- 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

Mayor Spear read the legal notice, declared the public hearing open and called for speakers.

City Manager Bohenko stated that this would allow an additional \$1.00 to be charged for each dog license as permitted by State law. City Clerk Barnaby stated that the increase in fee would go into effect in 2013 to allow for advanced notification to the public.

With no speakers, Mayor Spear declared the public hearing closed.

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

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- 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

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- 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

Councilor Lown moved to pass second reading and schedule third and final reading on the proposed Ordinance amendment, at the April 16, 2012 City Council meeting. Seconded by Councilor Kennedy and voted.

- 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 terminology **Unassigned**

Councilor Novelline Clayburgh moved to pass third and final reading on the proposed Fund Balance Ordinance. Seconded by Councilor Smith and voted.

Councilor Kennedy moved to suspend the rules in order to take up Item XII. C.2. – Exhaust Pipes for Motorcycles. Seconded by Councilor Smith and voted.

XII. C.2. Exhaust Pipes for Motorcycles

Councilor Kennedy asked Chief Ferland to speak to this matter. Chief Ferland said he receives many inquiries on motorcycles and the noise created. He explained the process used to take a decibel measurement for motorcycles. He also spoke to the current legislation in the State for what will be allowable decibel levels. Chief Ferland indicated that the seacoast Police Chief's are in favor of House Bill 1442 and spoke to the various organizations that are in support of the legislation as well. He recommended a letter of support be sent to the State prior to Thursday's hearing by the Portsmouth Legislative Delegation.

Councilor Kennedy moved to instruct City Manager Bohenko to send a letter to NH Senators in support of HB 1442 regarding exhaust pipes for motorcycles. Seconded by Councilor Lown and voted.

X. CONSENT AGENDA

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

- 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 AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND 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

Councilor Coveillo moved to refer to the Planning Board for report back. Seconded by Councilor Kennedy and voted.

- 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

Councilor Coviello moved to refer to Art-Speak for report back. Seconded by Councilor Novelline Clayburgh and voted.

- C. Letter from Carl Diemer, Recreation Board Chair, requesting to name the new Youth Recreational Facility as the "Connie Bean Recreation Center"

City Manager Bohenko stated that in accordance with City Council Rules and Orders the City Council would have a Work Session on the naming of a facility however, City Attorney Sullivan has indicated that the Council could suspend the rules by a two-thirds vote to take action this evening.

Councilor Coviello moved to suspend the rules and act on the Recreation Board's Request. Seconded by Councilor Smith and voted.

Councilor Coviello moved to approve the naming of the Youth Recreational Facility as the *Connie Bean Recreation Center*. Seconded by Councilor Novelline Clayburgh.

Councilor Dwyer asked if discussion was held to name the Recreation Facility the Connie Bean Gym. Councilor Novelline Clayburgh said that she was not on the Recreation Board when the full discussion took place on this matter. Councilor Lown said the Recreation Board voted unanimously to approve the name presented.

Motion passed.

- 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

Councilor Coviello moved to refer to the Planning Board for report back. Seconded by Councilor Novelline Clayburgh and voted.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

City Manager Bohenko said at the February 6, 2012 City Council meeting this request was referred to the Planning Board for report back. The Planning Board voted to make recommended changes to the Zoning Ordinance. City Manager Bohenko requested that the Council accept the recommendation and bring the proposed ordinance back for first reading at the April 16, 2012 City Council meeting.

Councilor Smith moved to accept the Planning Board's recommendation, and further, authorize the City Manager to bring back for first reading the proposed amendment at the April 16, 2012 City Council meeting. Seconded by Councilor Dwyer and voted.

2. Request for a Parking Lot Agreement Re: Middle Street Baptist Church

City Manager Bohenko recommended the Council approve a one year extension to the agreement, as presented.

Councilor Novelline Clayburgh moved 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. Seconded by Councilor Smith and voted.

3. Report Back Re: Outdoor Boot Camp Proposal at Peirce Island

City Manager Bohenko said this matter was referred to the Recreation Board and Peirce Island Committee for report back. He reported that the Recreation Board approved the request and the Peirce Island Committee denied the request.

Councilor Kennedy expressed concerns because the individuals running the program are not residents.

City Manager Bohenko stated that the City Council can either approve or deny the request.

Councilor Coviello moved to accept the letter and send a letter to the applicant denying the request. Seconded by Councilor Kennedy.

Councilor Dwyer said that this is an unfortunate decision to deny the request. She said there are many individuals from Maine that come to Peirce Island and let their dogs free and they're not residents.

Councilor Coviello said he sees the area as recreational. He stated if this was a free service he would support the request.

Councilor Lown said he does not feel this would deny someone rights to use the Island. He does feel that there would be minimum impact and until there is a problem the request should be granted.

Councilor Coviello suggested allowing this as a pilot program.

Councilor Kennedy said speaking as a member of the Peirce Island Committee many requests have been considered. She reported the Committee has said no to private organizations use of the Island and feels it needs to be kept an open environment. She stated that this may open a Pandora's box.

Councilor Smith asked if the organization has suggested making a donation to Peirce Island. City Manager Bohenko said that conversation has not taken place with them. Councilor Smith said he sees both sides of this matter. He would like to have a one year pilot program.

Councilor Thorsen said he would oppose the motion and feels the Council should allow this request for a six week trial period.

On a roll call vote 2-6, motion to accept the letter and deny request with a letter to the applicant of the Council's decision failed to pass. Councilors Kennedy and Novelline Clayburgh voted in favor. Councilors Coviello, Lown, Dwyer, Smith, Thorsen and Mayor Spear voted opposed.

Councilor Lown moved to approve the request for a trial period of 6 weeks with a report back to the City Council. Seconded by Councilor Dwyer.

Councilor Smith said he would like to encourage donations be made to the park.

Councilor Novelline Clayburgh said she would not support the motion and feels the Council should support the decision of the Peirce Island Committee.

On a roll call 6-2, voted to approve the request for a trial period of 6 weeks with a report back to the City Council. Councilors Coviello, Lown, Dwyer, Smith, Thorsen and Mayor Spear voted in favor. Councilors Kennedy and Novelline Clayburgh voted opposed.

4. Request by Strawberry Banke Museum for Zoning Ordinance Amendment relative to the Definition of "Museum"

Councilor Coviello moved 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. Seconded by Councilor Smith and voted.

5. Request of PSNH for Easement for Placement of Service at Prescott Park

City Manager Bohenko reported that PSNH needs an easement for the installation of improvements and new transformer pad. He indicated that the cost will be paid by the Prescott Park Arts Festival.

Councilor Lown moved to refer the PSNH easement request to the Planning Board for a report back. Seconded by Councilor Novelline Clayburgh and voted.

City Manager Bohenko asked City Attorney Sullivan to speak to the comments made by Mr. Boyle during the Public Comment Session earlier.

City Attorney Sullivan stated that the ordinance Mr. Boyle referred to was found unconstitutional in 1986. He said the court found that it protects an individuals' right to live where they choose.

Councilor Dwyer thanked City Attorney Sullivan for explaining that to the City Council and the public. She asked if the Council should clean up ordinances that are unconstitutional and if the ordinance should be removed. City Attorney Sullivan said we should remove the ordinance and it would require three readings of the Council to do so.

Councilor Lown said there are many ordinances that should be removed and suggested a special committee be appointed to review the ordinances.

Councilor Smith suggested making changes to the ordinances in an omnibus fashion.

City Manager Bohenko said he would like to meet with Councilor Lown on his list of proposed ordinance changes.

Councilor Smith asked about Mr. Boyle's comments on Assistant City Attorney Woodland. City Attorney Sullivan stated that Assistant City Attorney Woodland is an employee like he is and paid from the budget.

B. MAYOR SPEAR

1. *Discussion Re: Context Sensitive Redevelopment

Mayor Spear spoke to the joint meeting of the City Council, Planning Board, Economic Development Commission and the Historic District Commission. He said he would like a free discussion with no action to receive feed back. Councilor Kennedy said she does not feel comfortable discussing it right now. She feels we need information from all the groups in order to have a discussion. Mayor Spear said this is more to allow the flow of discussion.

Councilor Dwyer said it was a great session and liked breaking into groups for discussion purposes. She stated whenever you have parallel process this is a concern that you could create more hoops rather than less.

Councilor Kennedy said that we were missing the Zoning Board of Adjustment members and felt they should be part of the process.

Mayor Spear passed the gavel to Councilor Coviello.

Mayor Spear said he was impressed with the Planning Department staff. He said Planning Director Taintor provided a thoughtful presentation and further stated that Deputy City Manager Hayden and Planning Director Taintor have been thinking in parallel on how to make the City a better place in the zoning process.

Councilor Coviello returned the gavel to Mayor Spear.

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

The City Council considered the above referenced appointments which will be voted on at the April 16, 2012 City Council meeting.

3. Appointments to be Voted:
 - Appointment of David Rheame as a regular member to the Zoning Board of Adjustment
 - Appointment of David Rheame as a regular member to the Building Code of Appeals filling the unexpired term of Chester Keefe
 - Reappointment of MaryAnn Blanchard to the Conservation Commission

Councilor Lown moved to appoint David Rheame as a regular member to the Zoning Board of Adjustment until December 1, 2016. Seconded by Councilor Coviello and voted.

Councilor Coviello moved to appoint David Rheame as a regular member to the Building Code Board of Appeals until July 1, 2012. Seconded by Councilor Lown and voted. Mr. Rheame is filling the unexpired term of Chester Keefe.

Councilor Smith moved to reappoint MaryAnn Blanchard to the Conservation Commission until April 1, 2015. Seconded by Councilor Coviello and voted.

4. Appointment of Councilor Anthony Coviello to the Public Access Financial Advisory Committee

City Manager Bohenko reported that this Committee meets once a year to review the budget and it is required by the trust.

Councilor Smith moved to appoint Councilor Anthony Coviello to the Public Access Financial Advisory Committee. Seconded by Councilor Dwyer and voted. Councilor Thorsen abstained.

Councilor Novelline Clayburgh said that there is another idea for a person that was recommended and feels that discussion should be held in a non-public session. City Attorney Sullivan said discussions can be done in non-public but the person that is being discussed could ask for the discussion to take place in public.

Mayor Spear said he would have a non-public session for the discussion.

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

Councilor Lown said this is to amend the Taxi Ordinance and said it is self evident that the Commission wants the owners to comply with State and Federal Law. He further stated that this gives the Commission power to grant and deny medallions that are not in compliance.

Councilor Kennedy moved to establish first reading at the April 16, 2012 City Council meeting. Seconded by Councilor Smith and voted.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

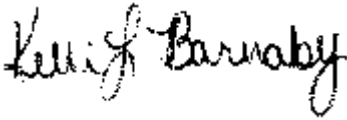
Councilor Coviello thanked the NH Astrological Society for donating a telescope to the Library and they have now donated a second telescope. He said they're located downtown on Saturday's and allow people to look at the planets.

Councilor Coviello said the discussion of CCRC will not go away and it was never personal to him but he has employees that are dealing with this matter. He suggested holding a work session on this matter. He said he wants to give seniors a place to live to stay in the City. He said many people are dealing with this and the community has a void by not having this available to senior citizens.

Councilor Novelline Clayburgh said the Rock Street neighborhood would like the issue of closing the park in the evening brought forward to the City Council for discussion. City Manager Bohenko said the City Council had this conversation in the past about all parks and the City Council wanted the Police Department to go back and look at neighborhoods. City Manager Bohenko said he could bring this matter back at the April 16, 2012 City Council meeting.

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

At 9:00 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Novelline Clayburgh and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk