

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, APRIL 16, 2012 TIME: 7:00 PM

## AGENDA

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

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

### PROCLAMATIONS

1. Arbor Day
2. Earth Day 2012

- V. ACCEPTANCE OF MINUTES *(There are no minutes for acceptance this evening)*

- VI. PUBLIC COMMENT SESSION

- VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Port Security Analysis Grant

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of 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 pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting.)***
- B. First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Facilities. ***(Sample Motion – move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting.)***
- C. First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum ***(Sample Motion – move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting.)***
- D. Third and final reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee ***(Sample Motion – move to pass third and final reading on the proposed Ordinance amendment.)***

- E. Third and final 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 (**Sample Motion – move to pass third and final reading on the proposed Ordinance amendment**)
- F. Third and final Reading of Proposed Ordinance Amendment to Chapter 6, Article VII, Section 6.7 – Dogs and Other Pets by amending Section 6.708: License (**Sample Motion – move to pass third and final reading on the proposed Ordinance amendment**)

## IX. CONSENT AGENDA

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

- A. Request for approval of Pole License to install/replace one (1) pole located on Holiday Drive (**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**)
- B. Request for approval of Pole License to install/replace one (1) pole located on Jones 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**)
- C. Request for approval of Pole License to install/replace eight (8) poles located on Marcy Street (**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**)
- D. Request for approval of Pole License to install/replace two (2) poles located on Woodbury 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. Request for Licenses from Keith Prince, owner of Rudi's Restaurant for property located at 20 High Street and 5 Congress Street for 2 projecting signs. (**Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Keith Prince, owner of Rudi's Restaurant, for 2 projecting signs at property located at 20 High Street and 5 Congress Street and, further, authorize the City Manager to execute License Agreements for this request**)

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, 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 signs, 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***

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

- A. Letter from Nicole LaPierre requesting Rock Street Park to be closed between the hours of 11 p.m. and 5:00 a.m.
- B. Letter from John Semprini, President of Sons of Italy, regarding Portsmouth Owned Building at 1 Plains Avenue (***Sample Motion – move to refer to the City Manager for report back***)

**XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

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

- 1. First Reading of Proposed Resolution and Ordinance Amendments:
  - 1.1 First reading of 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 (***Action on this matter should take place under Section VIII of the Agenda***)
  - 1.2 First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Facilities. (***Action on this matter should take place under Section VIII of the Agenda***)
  - 1.3 First reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Section 10.1530 – Terms of General Applicability relative to the Definition of a Museum (***Action on this matter should take place under Section VIII of the Agenda***)

2. Third and Final Reading of Proposed Ordinance Amendments:
  - 2.1 Third and final reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee **(Action on this matter should take place under Section VIII of the Agenda)**
  - 2.2 Third and final 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 **(Action on this matter should take place under Section VIII of the Agenda)**
  - 2.3 Third and final Reading of Proposed Ordinance Amendment to Chapter 6, Article VII, Section 6.7 – Dogs and Other Pets by amending Section 6.708: License **(Action on this matter should take place under Section VIII of the Agenda)**

**City Manager’s Items Which Require Action**

1. Proposed Adoption of the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) Tentative Agreement.
2. Report Back Re: Request of Northern Tier Real Estate Acquisition and Development, LLC, for Property Located at 172 Hanover Street to Remove the Glass Atrium on the Vaughan Mall Side of the Property
3. Modification of Consent Decree

**Informational Items**

1. Events Listing
2. African Burying Ground Trust Donations
3. Report Back Re: Public Art Requests - Red Eft Project and Kit Clews Interactive Sculpture)
4. Special City Council Meeting Agenda Re: Proposed FY13 Budget.

**B. MAYOR SPEAR**

1. Appointments to be Considered:
  - Reappointment of Kathleen Bergeron to Citywide Neighborhood Steering Committee
  - Reappointment of John Leith to Portsmouth Housing Authority
  - Reappointment of Ed DeValle to Recreation Board
2. Appointments to be Voted:
  - 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

**C. COUNCILOR NOVELLINE CLAYBURGH**

1. \*Update on Senior Citizens Programs

**D. COUNCILOR DWYER**

1. \*Update on Middle School

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

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


*\*Indicates Verbal Report*

**INFORMATIONAL ITEMS**

1. Notification that the Site Review Technical Advisory Committee Minutes of February 28, 2012 meeting are available on the City's website for your review
2. Notification that the Historic District Commission Minutes of January 4, 2012 meeting are available on the City's website for your review

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** April 12, 2012  
**To:** Honorable Mayor Eric Spear and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on April 16, 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.

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

**1. Consideration of First Reading of Proposed Resolution and Ordinance Amendments:**

1.1 **First Reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section Entitled Compliance with State and Federal Law.** As you will recall, at the April 2<sup>nd</sup> City Council meeting, under Councilor Brad Lown's name, the Council voted to establish first reading at this meeting of the attached aforementioned Ordinance amendment.

*I would recommend the City Council move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting. Action on this matter should take place under Section VIII of the Agenda.*

1.2 **First Reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance Regarding Accessory Drive-through Facilities.** As a result of the April 2<sup>nd</sup> City Council meeting, under Section VIII of the Agenda, I am bringing back for first reading the attached aforementioned Ordinance amendment.

As you will recall, at the February 6, 2012 City Council meeting, the Council referred this 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 to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting. Action on this matter should take place under Section VIII of the Agenda.*

- 1.3 **First Reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 - Terms of General Applicability relative to the Definition of Museum.** As a result of the April 2<sup>nd</sup> City Council meeting, under Section VIII of the Agenda, I am bringing back for first reading the attached aforementioned Ordinance.

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 pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7<sup>th</sup> City Council meeting. Action on this matter should take place under Section VIII of the Agenda.*

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

- 2.1 **Third and Final 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 April 2nd City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final 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 third and final reading on the proposed Ordinance amendment. Action on this matter should take place under Section VIII of the Agenda.*

- 2.2 **Third and Final 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 April 2<sup>nd</sup> City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final 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 third and final reading on the proposed Ordinance amendment. Action on this matter should take place under Section VIII of the Agenda.*



- 2.3 **Third and Final 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 April 2nd City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final 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 third and final reading on the proposed Ordinance amendment. Action on this matter should take place under Section VIII of the Agenda.*

### **Consent Agenda:**

1. **Request for Approval of Pole Licenses.** Attached under Section IX of the Agenda are the following requests for a PSNH Pole License Agreements (see attached memorandum from Tom Richter, Engineering Technician, Public Works Department):
- a) #63-0530 - install/replace one (1) pole located on Holiday Drive
  - b) #63-0532 - install/replace one (1) pole at Jones Avenue
  - c) #63-0533 - install/replace and relocate eight (8) poles at Marcy Street
  - d) #63-0534 - install/replace and relocate two (2) poles at Woodbury Avenue

*I would recommend the City Council move to approve the aforementioned Pole License Agreements as recommended by the Public Works Department with the approval conditioned upon amendment of the licenses to allow for the collection of any lawfully assessed real estate taxes. Action on this matter should take place under Section IX of the Agenda.*

2. **Request for Licenses to install Projecting Signs.** Attached under Section IX of the Agenda are two requests for projecting sign licenses from Keith Prince, owner of Rudi's Restaurant for property located at 5 Congress Street and 20 High Street (see memorandums from Rick Taintor, Planning Director):

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

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

1. **Proposed Adoption of the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) Tentative Agreement.**

As you are aware, the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) has approved a Tentative Agreement for a six-year contract to expire June 30, 2014. (As you are aware, their contract expired on June 30, 2008.) Attached are the following documents:

- 1) A letter from Thomas Closson, Interim City Negotiator, outlining the principle elements of the Tentative Agreement.
- 2) A break down of the cost items, if the Tentative Agreement is approved.

Please bring your copy of the collective bargaining agreement from the last meeting. If you do not have it, please let me know and I will provide another one. All this information is online on the City's Website.

It is important to note that this contract meets the guidelines that were established by the City Council. The recommendations of the Matrix Study have been incorporated into the contract. Vacation, sick leave, personal leave, bereavement, and military leave will no longer count as hours worked for overtime calculation purposes.

In addition, all language regarding work schedules has been eliminated. Management may now change the work schedule by providing any affected employee/positions and the union with a minimum of sixty (60) calendar day notice of the intent to change including the rationale for the change and afford the Union the opportunity to impact bargain and present alternatives.

Dianna Fogarty, Human Resources Director will be available on Monday evening to answer any questions you may have regarding the Tentative Agreement.

*I would recommend the City Council move to approve the Agreement between the Portsmouth City Employees Local 1386 of the American Federation of State, County and Municipal Employees (AFSCME) and the City of Portsmouth to expire June 30, 2014.*

2. **Report Back Re: Request of Northern Tier Real Estate Acquisition and Development, LLC, for Property Located at 172 Hanover Street to Remove the Glass Atrium on the Vaughan Mall Side of the Property.**

On the agenda this evening is the attached memorandum from Planning Director Rick Taintor conveying the Planning Board recommendation that the City Council approve the removal of the Vaughan Mall atrium from The Page restaurant as requested by Northern Tier Real Estate Acquisition and Development, LLC in their attached letter. Mr. Taintor has made it clear that if the Council approves the removal of the atrium the owners of the Page should be advised:

1. That Council approval of the removal of the atrium should not be construed as City concurrence with any of the other types of approval

required for the completion of the project or future use of the atrium area (Planning Board, HDC, et cetera).

2. If the atrium is removed alcohol service may not occur in the City portion of the atrium area without approval by the City Council.

*Move to approve the request to remove the atrium subject to the property owner securing all necessary municipal approvals for its replacement prior to its removal.*

3. **Modification of Consent Decree.** For the City Council's consideration at its April 16<sup>th</sup> meeting is a proposed modification to the existing Consent Decree among the City, the Environmental Protection Agency and the New Hampshire Department of Environmental Services. See attached draft Consent Decree Modification ("Modification"). The Modification will set May 1, 2017, as the compliance date for the upgrade to achieve secondary treatment at the Peirce Island Wastewater Treatment Plant.

The Modification reflects a compliance date that is about 5 months longer than that initially approved by the City Council at its November 10, 2010 meeting. The May 1, 2017 date more accurately reflects the time needed to permit, fund and bid this significant wastewater upgrade project as well as the time needed to start-up a biological process. See the attached communication from AECOM, the City's consulting engineers, relative to the piloting effort and the impact of these biological processes on the schedule. In addition, AECOM recommended additional time be added to the schedule between the completion of final design of the upgraded facility and the commencement of construction.

The Modification will also adjust the completion dates for several of the City's remaining Long Term Control Plan (LTCP) sewer separation projects.

EPA has indicated its concurrence with the schedule shown in the Consent Decree Modification attached.

*I would recommend the City Council move to approve the Consent Decree Modification, as presented.*

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

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on April 2, 2012. In addition, this now can be found on the City's website.

2. **African Burying Ground Trust Donations.** For your information, the African Burying Ground Committee has received the following donations to the African Burying Ground Trust since its March 19, 2012 memo to City Council. The total donated to the Trust to date from individuals is \$80,321.04:

➤ TD Charitable Foundation	\$10,000
➤ State Rep. Robin Read	\$50
➤ Molly & Jeff Bolster	\$500
➤ Valerie Fagin	\$50
➤ Strategic Leadership Consult.	\$100
➤ Haley Brown	\$5
➤ Rob Carrigg, Jr.	\$500
➤ David & Kathleen Rushford	
Murray Charitable Fund	\$5,000
➤ Winebaum Fund	\$250

3. **Report Back Re: Public Art Requests – Red Eft Project and Kit Clews Interactive Sculpture.** Attached is a report back from Art-Speak regarding a request from Red Eft Project to locate three temporary art sculptures on City property as part of an exhibit of environmental art from May 11-13, 2012. Red Eft has withdrawn its request due to the lack of proposals.

Also, attached is a report back regarding a request from Kit Clews about his proposal to place an interactive sculpture in Market Square. After reviewing the proposal, it was concluded that there are too many concerns with the piece to recommend its placement in Market Square at this time.

4. **Special City Council Meeting Agenda Re: Proposed FY13 Budget.** The Special City Council Meeting regarding the proposed FY13 Budget is on Wednesday, April 18, 2012 at 7:00 p.m., in the Eileen Dondero Foley Council Chambers (see attached agenda).