

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 16, 2012

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

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

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

Mayor Spear called the meeting to order at 7:15 p.m.

II. ROLL CALL

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

Absent: Councilor Thorsen

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer in memory of the Town of Greenland Police Chief Michael Maloney who was killed in the line of duty. Mayor Spear said on behalf of the City Council, those suffering from the tragic loss of Chief Maloney are in their thoughts and prayers.

IV. PLEDGE OF ALLEGIANCE

Councilor Novelline Clayburgh led the Pledge of Allegiance to the Flag.

PROCLAMATIONS

1. Arbor Day

Councilor Lown read the Proclamation declaring Friday, April 27, 2012, as Arbor Day in the City of Portsmouth.

2. Earth Day 2012

Councilor Dwyer read the Proclamation declaring April 22, 2012, as Earth Day and encouraged residents to participate in Portsmouth's Sustainability Day on May 12, 2012.

V. ACCEPTANCE OF MINUTES

(There are no minutes for acceptance this evening)

VI. PUBLIC COMMENT SESSION

There were no speakers for the Public Comment Session this evening.

VI. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of Port Security Analysis Grant

Fire Chief LeClaire reported to the Council we would be serving as the fiscal agent for this grant. He said this grant is relative to Home Land Security and the Port. He advised the City Council that all information will be gathered and contained in one document.

Councilor Smith moved to approve and accept the Port Security Analysis Grant. Seconded by Assistant Mayor Lister and voted.

VII. 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

Councilor Lown moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Smith and voted.

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.

Councilor Smith moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

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

Councilor Smith moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the May 7th City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

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

Councilor Coviello moved to pass third and final reading on the proposed Ordinance amendment. Seconded by Councilor Smith and voted.

- 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

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

- 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

Councilor Coviello moved to pass third and final reading on the proposed Ordinance amendment. Seconded by Councilor Novelline Clayburgh and voted.

IX. CONSENT AGENDA

Councilor Novelline Clayburgh moved to adopt the Consent Agenda. Seconded by Assistant Mayor Lister and voted.

- 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.

Councilor Coviello moved to accept and place the letter on file. Seconded by Councilor Novelline Clayburgh.

City Attorney said an amendment to the ordinance would be necessary or the City Manager could set the time for the hours of operation of the park. He said there is significant support by the neighborhood to close the park in the evenings.

Councilor Dwyer stated that Police Chief Ferland and the neighborhood support this request. She feels this is a different situation and suggested creating a pilot program. She requested that the Council allow the City Manager to establish the hours for the park and that this not be extended to other parks.

City Manager Bohenko suggested referring the request to him and Police Chief Ferland for report back.

Councilor Smith said he would not support the motion. He would like to limit the hours but feels we need to have a report back from City Manager Bohenko.

Councilor Coviello withdrew his motion and Councilor Novelline Clayburgh withdrew her second to the motion.

Councilor Smith moved to refer to the City Manager for report back. Seconded by Councilor Kennedy.

Councilor Lown said that the property is owned by the taxpayers and he does not feel the motion is needed or accomplishes the request.

Councilor Smith said that this is a specific park and is unique. He said the report back is needed and maybe we should have an ordinance amendment with a public hearing.

Councilor Novelline Clayburgh said that the neighborhood wants to have the park included and we need to take that into consideration.

Councilor Kennedy and Assistant Mayor Lister said they support the motion.

Motion passed with Councilor Lown voting opposed.

- B. Letter from John Semprini, President of Sons of Italy, regarding Portsmouth Owned Building at 1 Plains Avenue

City Manager Bohenko stated he would like to work with Mr. Semprini on this matter and report back on the issue to the Council.

Councilor Kennedy moved to refer to the City Manager for report back. Seconded by Councilor Smith. Councilors Coviello and Novelline Clayburgh abstained from voting.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

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

City Manager Bohenko announced that he is pleased to bring the AFSCME Agreement to the City Council for approval.

Human Resources Director Fogarty reviewed the specific items contained within the Agreement that changed as well as reported that the Agreement meets the guidelines established by the City Council. She further stated that the Agreement would expire on June 30, 2014. Some of the items she reviewed with the Council were the 10-year rolling cola, insurance co-pay and all overtime requirements have been met.

Councilor Kennedy thanked the employees for working with the City Council on this matter.

Councilor Smith moved 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. Seconded by Assistant Mayor Lister.

Councilor Dwyer said that she would be abstaining from voting on this matter.

Assistant Mayor Lister thanked the employees for meeting the guidelines of the Council on this contract.

Councilor Lown said that this is a good contract and recommended approval by the Council.

Councilor Smith thanked the employees for their hard work on this contract and the process. He also thanked the employees for their hard work for the City.

Councilor Novelline Clayburgh thanked the employees for their hard work and dedication to the City of Portsmouth.

Councilor Coviello spoke in support of the changes in work hours contained in the Agreement.

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear said that this issue covers a large area of services and the employees are hard working and knowledgeable at their positions.

Assistant Mayor Lister returned the gavel to Mayor Spear.

Motion passed with Councilor Dwyer abstaining from the vote.

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

City Manager Bohenko reported that The Page Restaurant would like to remove the atrium which is partially on City property on the Vaughan Mall side of the building. He said if the atrium is removed, alcohol service would not be allowed to that area without City Council approval.

Councilor Smith moved 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. Seconded by Councilor Novelline Clayburgh.

Councilor Lown asked if the bond was still in place from 30 years prior. City Attorney Sullivan said he has not heard of a bond. City Manager Bohenko said we would research the files for a bond.

Councilor Dwyer said she understands the reason for the work but don't we want that atrium removed whether we approve another use for it. City Attorney Sullivan said once the atrium is gone we could have a blue tarp for instance placed on the building with a hole in the side.

Motion passed.

3. Modification of Consent Decree

Assistant City Attorney Woodland informed the City Council that this would be a modification to the existing Consent Decree among the City, the Environmental Protection Agency and the New Hampshire Department of Environmental Services. She reported that the Modification reflects a compliance date that is about 5 months longer than that initially approved by the City Council at its November 10, 2012 meeting. She stated that 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.

Assistant City Attorney Woodland informed the City Council that current version of the Consent Decree in the Council packet is not the correct version. Paragraph g currently reads as follows:

- g. By June 30, 2012, the City shall complete pilot testing of potential treatment technologies for achieving secondary treatment, including, but not necessarily limited to: Biologically Aerated Filters (BAF), BioMag, Moving Bed Biofilm Reactors (MBBR) w/**Ballested Settlement**, and **Membrane Biological Reactor (MBR)**. By July 1, 2012, the City shall complete a data summary relative to the pilot testing.

*Items that are in **bold** have been removed from paragraph g and replaced with new language listed below.

Assistant City Attorney Woodland read into the record the correct language for paragraph g as follows:

- g. By June 30, 2012, the City shall complete pilot testing of potential treatment technologies for achieving secondary treatment, including, but not necessarily limited to: Biologically Aerated Filters (BAF), BioMag, Moving Bed Biofilm Reactors (MBBR) w/Dissolved Air Flotation (DAF), and Conventional Activated Sludge with BioMag. By July 30, 2012, the City shall complete a data summary relative to the pilot testing.*

Assistant City Attorney Woodland apologized to the City Council for any confusion this may have caused.

Councilor Coviello moved to approve the Consent Decree Modification representing the additional five months to the schedule, as presented. Seconded by Councilor Novelline Clayburgh and voted.

City Manager Bohenko announced that the City Council will be holding the Public Hearing on the Budget Wednesday, April 18, 2012 at 7:00 p.m. in the Eileen Dondero Foley Council Chambers.

Councilor Smith informed the City Council and City Manager Bohenko that he will not be in attendance on Wednesday, April 18, 2012 due to a scheduling conflict but he would watch the meeting.

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 DelValle to Recreation Board

The City Council considered the appointments which will be voted on at the May 7, 2012 City Council meeting.

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

Councilor Dwyer moved to reappoint Rich DiPentima to the Conservation Commission until April 1, 2015. Seconded by Councilor Kennedy and voted.

Councilor Dwyer moved to reappoint Peter Vandermark to the Conservation Commission until April 1, 2015. Seconded by Councilor Novelline Clayburgh and voted.

Councilor Kennedy moved to reappoint Laura Montville to the Portsmouth Economic Development Loan Program (PEDLP) until April 16, 2015. Seconded by Councilor Novelline Clayburgh and voted.

Councilor Kennedy moved to reappoint Steven Berg to the Portsmouth Economic Development Loan Program (PEDLP) until April 16, 2015. Seconded by Councilor Coviello and voted.

Councilor Kennedy moved to appoint Robert Cook to the Blue Ribbon Committee on Sustainable Practices. Seconded by Councilor Coviello and voted.

Councilor Coviello moved to appoint Shelley Saunders to the Parking Traffic & Safety Committee. Seconded by Councilor Lown.

Councilor Smith said he would not support the candidate because the process of Rule 23 was not followed.

Councilor Kennedy said she agrees with Councilor Smith and Rule 23 should be followed with appointments.

City Attorney Sullivan reviewed Rule 23 with the City Council.

Assistant Mayor Lister said the person stated that she would like to get more involved in the community and he would like to see her appointed to another committee.

Councilor Lown said there are two other people that want to serve on this committee. He said that it was a mistake for the City Council to amend Rule 23 and further stated that an ordinance trumps a rule. The ordinance says that the Mayor brings the names forward for appointment. Councilor Lown said that Mayor Spear interviewed the person and feels that she is qualified to serve on the committee. He stated that he would support the ordinance and the recommendation of the Mayor.

Councilor Dwyer said it is a simple procedure to make the ordinance work or the rule work. She stated that she has a problem with the Council not following their own process.

Discussion followed among the City Council.

Mayor Spear passed the gavel to Assistant Mayor Lister.

Mayor Spear said that there are only 4 residents on the Parking Traffic & Safety Committee. He stated when considering the appointment he looks at what is the best person and how that person will fit the makeup of the committee currently. Mayor Spear said on the Parking Traffic & Safety Committee it is appropriate to have a mother of a school aged child on the committee and the committee needs geographic diversity and this individual lives in an area of the City that is not represented. He said some appointments we look for technical skills, other times you look at other experiences and this particular committee has a great deal of staff members serving that have the technical skills and he looked for other attributes for the appointment. In addition, Mayor Spear advised the City Council that he interviewed multiple applicants but he felt that Ms. Saunders fit the bill. He said he would continue to look for those skills moving forward.

Assistant Mayor Lister returned the gavel to Mayor Spear.

On a roll call vote 3-5, motion to appoint Shelley Saunders to the Parking Traffic & Safety Committee failed to pass. Councilors Coviello, Lown and Mayor Spear voted in favor. Assistant Mayor Lister, Councilors Kennedy, Novelline Clayburgh, Dwyer and Smith voted opposed.

Further discussion followed on Rule 23 and how to proceed in the future.

C. COUNCILOR NOVELLINE CLAYBURGH

1. *Update on Senior Citizens Programs

Councilor Novelline Clayburgh provided an update on the senior citizens program. She stated that the steering committee developed 6 dimensions of wellness which are as follows:

- Exercise
- Emotional
- Spiritual
- Social
- Vocational
- Intellectual

Councilor Novelline Clayburgh further reported that an organizational chart is being constructed at this time and in the next month or two the committee would develop the final chart.

Councilor Kennedy asked about the time frame for when the programs would begin.

City Manager Bohenko said there is a commitment but not officially by the Mark Wentworth Home for money from the sale of the Parrott Avenue property. He said those funds would go for improvements and an addition to the Community Campus. He further stated that we need to also look at the transportation end of things and support that as well.

Councilor Novelline Clayburgh said that we do not have any answers for a time frame at this time.

Councilor Dwyer said we need to look at housing and Medicare for seniors as well. She said the Council needs to know what housing options are currently available.

D. COUNCILOR DWYER

1. *Update on Middle School

Councilor Dwyer provided an update on the Middle School project. She reported that the windows are being installed and that Principal Stokel is working on a plan for packing the classrooms. Councilor Dwyer announced two upcoming events.

- April 27th – Dedication of the Alumni-Wentworth Field at 4:00 p.m.
- May 17th – Informational Night for parents and students of the Middle School at 6:00 p.m.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Kennedy announced that the Peirce Island Committee will be holding a fundraising event on April 24th at Flat Bread Pizza from 5:00 p.m. – 7:00 p.m.

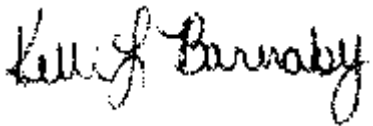
Assistant Mayor Lister requested that a letter be sent to the family of Michael Maloney, Greenland Police Chief who was tragically killed in the line of duty on Thursday, April 12, 2012 with the City Council's condolences. He also requested that each member of the City Council sign the letter.

The City Council agreed with the request of Assistant Mayor Lister and expressed their sympathies to the Town of Greenland and the family of Chief Maloney.

Councilor Novelline Clayburgh recognized Portsmouth Regional Hospital, their staff and Dr. Heller for their work with this tragic event.

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

At 8:40 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Kennedy 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