

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, DECEMBER 3, 2012 TIME: 7:00PM

AGENDA

• 6:15PM ANTICIPATED “NON-MEETING WITH COUNSEL RE: LITIGATION – RSA 91-A:2 I (c)

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

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. ACCEPTANCE OF MINUTES – SEPTEMBER 4, 2012 & SEPTEMBER 17, 2012

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

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

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. First Reading of Proposed Amendments to Chapter 10 - Zoning Ordinance, Article 6 – Overlay Districts, Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District; and to Article 15 - Definitions, Section 10.1530 – Terms of General Applicability, Defining the term “Contributing Structure”

B. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts; and to Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, Relating to the Definitions of “Grade Plane” and “Street Wall”

C. Third and Final Reading of Proposed Ordinance amending Chapter 7, Article IX, Section 7.901 (E) – Penalties of the City Ordinances to amend Section 7.105 (A) Parking Violation – Expired Meter Fine Amount from \$10.00 to \$15.00

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

A. Letter from John Martin, Seacoast Ride for Polycystic Kidney Disease (PKD), requesting permission to hold the 4th Annual Seacoast Bike Ride for PKD on Sunday, June 9, 2013 (***Anticipated action – move to refer to the City Manager with power***)

- B. Letter from Dawn M. Sawyer, Chief Michael Maloney Memorial Fund, requesting permission to hold the 2nd Annual Chief Michael Maloney Run/Walk on Sunday, April 28, 2013 (***Anticipated action – move to refer to the City Manager with power***)
- C. Request for License from Peter Mocklis owner of Look, for property located at 68 State Street for a projecting sign on a new bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Peter Mocklis owner of Look for a projecting sign at property located at 68 State Street on a new bracket 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***

- D. Letter from Tracey Tucker, New Heights, requesting permission to hold the 4th Annual St. Paddy’s 5 Miler Road Race on Sunday, March 10, 2013 at the Pease Tradeport (***Anticipated action – move to refer to the City Manager with power***)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Jean and Gordon Willis transferring ownership of Artwill Avenue to the City of Portsmouth (***Sample motion – move to refer to the Planning Board 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 Amendments to Chapter 10 - Zoning Ordinance, Article 6 – Overlay Districts, Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District; and to Article 15 - Definitions, Section 10.1530 – Terms of General Applicability, Defining the term “Contributing Structure” (***Action on this item should take place under Section VIII of the Agenda***)

- 1.2 First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts; and to Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, Relating to the Definitions of “Grade Plane” and “Street Wall” (**Action on this item should take place under Section VIII of the Agenda**)
2. Third and Final Reading of Proposed Resolution and Ordinance Amendments:
 - 2.1 Third and Final Reading of Proposed Ordinance amending Chapter 7, Article IX, Section 7.901 (E) – Penalties of the City Ordinances to amend Section 7.105 (A) Parking Violation – Expired Meter Fine Amount from \$10.00 to \$15.00 (**Action on this item should take place under Section VIII of the Agenda**)

City Manager’s Items Which Require Action

1. Report Back Re: Request by Christopher McInnis to Rezone Parcels at 678 and 680 Maplewood Avenue and 261 Myrtle Avenue from Single Residence B (SRB) to Business (B)
2. Memorial Bridge Illumination Trust
3. Request from McAuliffe Realty Trust for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa
4. Adoption of 2013 Schedule of City Council Meetings and Work Sessions

Informational Items

1. Events Listing
2. Letter from Mayor’s Blue Ribbon Committee on Trees & Public Greenery Re: Everett Kern

B. MAYOR SPEAR

1. *Guidelines FY14 Budget (**Sample motion – move to instruct the City Manager to direct all departments to submit their operating budget with no more than a 4% increase over the FY13 budget**)
2. *Establish Blue Ribbon Committee on Efficiencies Part II Police/Fire Departments
3. Letter to Congressional Delegation Re: Proposed Legislation for Financial Reimbursement for Presidential Visits
4. Appointments to be Considered:
 - Alicia Weaver appointed to the Citizens Advisory Committee
 - John Pratt appointed to the Economic Development Commission
 - Reagan Ruedig appointed to the Historic District Commission

- Jody Record reappointment to the Board of Library Trustees
 - Philip Cohen reappointment to the Economic Development Commission
 - Charles LeMay reappointment to the Zoning Board of Adjustment
 - Patrick Moretti reappointment to the Zoning Board of Adjustment
 - David Witham reappointment to the Zoning Board of Adjustment
5. Appointments to be Voted:
- Marc Stettner appointed to the Peirce Island Committee
 - John Bosen appointed to the Economic Development Commission
 - Ernestine Greenslade appointed to the Library Board of Trustees
6. Resignation – Andrew Martin from the Blue Ribbon Committee on Sustainable Practices

C. ASSISTANT MAYOR LISTER

1. *Worth Lot and Parking Garage (***Sample motion – move that the City Council discontinue any further discussion about the development of the Worth Lot as a location for a parking garage and postpone any further discussion on a second garage in Portsmouth until June 2013 when other potential locations may be considered***)

D. COUNCILOR DWYER

1. *Update Re: African Burying Ground

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 Historic District Commission Minutes of July 11, 2012 meeting is available on the City's website for your review
2. Notification that the Historic District Commission Minutes of July 18, 2012 meeting is available on the City's website for your review
3. Notification that the Conservation Commission Minutes of September 12, 2012 meeting is available on the City's website for your review
4. Notification that the Zoning Board of Adjustment Minutes of June 19, 2012, Excerpt of September 18, 2012 Re: 37 Wholey Way, and Excerpt of September 25, 2012 Re: 3605 Lafayette Road 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: November 29, 2012
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on December 3, 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. **First Reading of Proposed Resolution and Ordinance Amendments:**

- 1.1 **First Reading of Proposed Amendments to Chapter 10 - Zoning Ordinance, Article 6 – Overlay Districts, Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District; and to Article 15 Definitions, Section 10.1530 – Terms of General Applicability, Defining the term “Contributing Structure”.** As a result of the November 13th City Council meeting, under Section VIII of the Agenda, I am bringing back for first reading the attached proposed Ordinance amendments to Chapter 10 - Zoning Ordinance relative to Exemptions from Certificate of Approval in the Historic District.

At its meeting on September 17, 2012, the City Council referred a proposed Zoning Ordinance amendment to the Planning Board for report back. The proposed amendment concerns exemptions from the requirement to obtain Historic District Commission approval for maintenance and repair work, and for other minor changes meeting specific performance standards set forth in the proposed amendments.

Section 10.633.20 of the Zoning Ordinance lists specific activities that are exempt from the requirement to obtain a Certificate of Approval from the Historic District Commission.

The changes proposed by the HDC are designed to:

- Streamline the current permitting process,
- Remove ambiguity and clarify the current exemptions, and
- Refine and develop new performance standards for many of the listed exemptions.

The HDC believes that the proposed amendments will significantly reduce its caseload and also reduce the cost and time burden to homeowners making minimal improvements. It will thus afford the HDC more time to carefully review larger projects within the Historic District.

At its meeting on October 18, 2012, the Planning Board voted unanimously to recommend that the City Council enact the proposed amendments, as set forth in the attached ordinance.

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 December 17, 2012 City Council meeting. Action on this item should take place under Section VIII of the Agenda.

- 1.2 **First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Exceptions to Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts; and to Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, Relating to the Definitions of “Grade Plane” and “Street Wall”.** As you will recall, at the November 13th City Council meeting the Council referred a proposed Zoning Ordinance amendment to modify the requirements for building height in the Central Business Districts, to the Planning Board for report back to the City Council. Under Section VIII of the Agenda, I am bringing back for first reading the attached proposed Ordinance amendment to Chapter 10 - Zoning Ordinance.

The proposed amendment would modify the existing building height provisions for the Central Business Districts in three ways:

- a) Define "street wall" as the wall of the building along the street edge and establish maximum street wall heights that are 10 feet lower than the maximum height for the district.
- b) Establish a "stepback" provision under which allowable building height increases with distance from the street. (These first two changes will replace a "building height setback" provision that was enacted in 2007 for the CBA District only.)

- c) Require that no portion of a building be higher above the street grade than the nominal maximum building height (50 feet in the CBA District and 60 feet in the CBB district.)

Finally, the draft amendment amends the definition of "grade plane" for buildings in the Central Business Districts. The current definition allows buildings that are set back more than 6 feet from a lot line to measure building height in relation to the finished grade within 6 feet from the property line. Buildings in the Central Business Districts have used this provision to artificially increase building height by modifying the grade to create an elevated podium.

The Planning Board reviewed the proposed amendment at its meeting on November 15, 2012, and voted to recommend enactment of the amendment with one modification, to apply the maximum height in item (c) above only within 100 feet of a street line. The attached draft ordinance incorporates that change.

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 December 17, 2012 City Council meeting. Action on this item should take place under Section VIII of the Agenda.

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

- 2.1 **Third and Final Reading of Proposed Ordinance amending Chapter 7, Article IX, Section 7.901 (E) – Penalties of the City Ordinances to amend Section 7.105 (A) Parking Violation Expired Meter Fine Amount from \$10.00 to \$15.00.** As a result of the November 13th City Council meeting, under Section VIII of the Agenda, I am bringing back for third and final reading the attached proposed Ordinance amending Chapter 7, Article IX, Section 7.901(E) – Penalties of the City Ordinances to amend Section 7.105 (A) Parking Violation Expired Meter Fine Amount from \$10.00 to \$15.00.

I would recommend the City Council move to pass third and final reading of the proposed Ordinance, as presented. Action on this item should take place under Section VIII of the Agenda.

Consent Agenda:

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

➤ Peter Mocklis, owner of Look for property located at 68 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 IX of the Agenda.

City Manager's Items Which Require Action:

1. **Report Back Re: Request by Christopher McInnis to Rezone Parcels at 678 and 680 Maplewood Avenue and 261 Myrtle Avenue from Single Residence B (SRB) to Business (B).** As you will recall, at the October 22, 2012 City Council meeting, the Council referred the aforementioned request to the Planning Board for report back to the City Council. Attached is a memorandum from Rick Taintor, Planning Director, outlining this matter.

The Planning Board held a public hearing on this request at its meeting on November 15, 2012. Approximately 10 Myrtle Avenue residents expressed opposition to the rezoning proposal because of the potential impact of commercial development on noise, traffic and safety in the neighborhood.

Following the public hearing, the Planning Board voted unanimously to recommend that the City Council not vote to rezone the land as requested.

Therefore, I would recommend the City Council move to accept the Planning Board's recommendation to not vote to rezone the land as requested.

2. **Memorial Bridge Illumination Trust.** As you will recall, at the November 13th City Council meeting, a presentation was made by the Memorial Bridge Illumination Committee regarding their fundraising efforts to provide support for the illumination of the new bridge. In order to proceed with this project, it is recommended that the City Council establish a Memorial Bridge Illumination Trust through the Portsmouth Trustees of the Trust Funds (see attached copy of the Trust). The Trust would receive all donations for both the capital portion of this proposed illumination project as well as the operational costs. If approved by the City Council, I along with the Illumination Committee will request the Town of Kittery's support for this document.

I would recommend the City Council move to authorize the City Manager to negotiate and execute a Memorial Bridge Illumination Trust in substantial conformance with the document which has been provided to the City Council.

3. **Request from McAuliffe Realty Trust for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa.** As you will recall, the City Council referred the attached letter dated September 17, 2012 from Attorney James E. Ritzo on behalf of McAuliffe Realty Trust, to the Legal Department for report back. The request was to restore four lots, merged by City action, to their premerger status. This is the third request submitted to the Council under a new statute enacted in 2011; and Attorney Ritzo submitted the request using a form that the Planning Department developed for this purpose.

The property that is the subject of this request is located at 452-460 Richards Avenue and is shown on Assessors Map 112 as Lot 6. Attached is a memorandum from Rick Taintor, Planning Director and Robert Sullivan, City Attorney, which outlines the requirements under RSA 674-39-aa, the property description and request and their conclusion. Also, attached to the memorandum are the orthophoto with parcel lines, RSA 674-39-aa, "Restoration of Involuntarily Merged Lots", sample "Notice to Owner" and an aerial.

After reviewing this matter, it is the recommendation of the Planning Director and City Attorney that the City Council deny the request of McAuliffe Realty Trust to "unmerge" the lots at 452-460 Richards Avenue. This recommendation is based in part on the fact that previous owners of the parcel have submitted applications for building permits and variances describing the lot as a single parcel.

It should be noted that if the City Council accepts this recommendation the property owner has an option under the statute of appealing that decision to the Board of Adjustment.

Therefore, I would recommend the City Council move to accept the recommendation of the Planning Director and City Attorney to deny the request of McAuliffe Realty Trust to "unmerge" the lots at 452-460 Richards Avenue.

4. **Adoption of 2013 Schedule of City Council Meetings and Work Sessions.** Attached for your review and approval is a proposed schedule for City Council Meetings and Work Sessions for calendar year 2013. Please note the change made to the all day Budget Work Session on a Saturday, April 6, 2013.

May I have your approval on this schedule.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on November 13, 2012. In addition, this now can be found on the City's website.
2. **Letter from Mayor's Blue Ribbon Committee on Trees & Public Greenery Re: Everett Kern.** For your information, attached is a letter from the Mayor's Blue Ribbon Committee on Trees & Public Greenery thanking Everett Kern, former Public Works General Forman, for his years of service.