

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, JANUARY 7, 2013 TIME: 7:00PM

AGENDA

- 6:30PM – ANTICIPATED “NON-MEETING” WITH COUNSEL - RSA: 91-A:2, I (b-c)

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

PRESENTATION

1. Portsmouth US Route 1 Bypass Bridge Replacement Projects Update – Alex Vogt, Project Manager, NH DOT Highway Design

- V. ACCEPTANCE OF MINUTES – DECEMBER 3, 2012 AND DECEMBER 17, 2012

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARING

- A. AMENDMENTS TO CHAPTER 10 – ZONING ORDINANCE, ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS, SECTION 10.535 – DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICTS, RELATING TO THE HEIGHT REQUIREMENTS IN THE CBA AND CBB DISTRICTS

- VIII. APPROVAL OF GRANTS/DONATIONS

- A. Grant Application for New Hampshire Department of Transportation Safe Routes to School Program (***Sample motion – move to authorize the City Manager to apply for, accept, and expend a \$250,000.00 grant from the NH DOT Safe Routes to School Program for the purpose of implementing infrastructure projects and non-infrastructure programming to encourage and enable elementary and middle school children to safely walk and ride bicycles to school***)

- IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts (***Sample motion – move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the January 22, 2013 City Council meeting***)

- B. Third and Final 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” **(Sample motion – move to pass third and final reading of the proposed Ordinance)**

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Kim Blanchard, National Multiple Sclerosis Society, requesting permission to hold the 2013 Walk MS Portsmouth on Saturday, April 13, 2013 from 10:00 a.m. – 2:00 p.m. **(Anticipated action – move to refer to the City Manager with power)**
- B. Letter from Zhana Morris, Production Manager, The Music Hall, requesting Meter Bags for 2012-2013 Season **(Anticipated action – move to refer to the City Manager with power)**
- C. Letter from Dave Abbett, Founder, Sub 5 Race Management, requesting permission to hold the 2013 Friends on the Fourth 5K road race on Thursday, July 4, 2013 **(Anticipated action – move to refer to the City Manager with power)**
- D. Letter from Garfield Jones, Fattman Productions, requesting permission to hold a portion of 24 hour relay race on Saturday, June 22, 2013 – Sunday, June 23, 2013 **(Anticipated action – move to refer to the City Manager with power)**
- E. Letter from Caitlyn Mosher Ellis, Alzheimer’s Association, requesting permission to hold the 2013 Walk to End Alzheimer’s on Sunday, September 29, 2013 **(Anticipated action – move to refer to the City Manager with power)**
- F. Request for Approval of Pole License of one pole, one electrical manhole and 710 feet of underground conduit located on Hanover and Bridge Streets **(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)**

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

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

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

1. Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:
 - 1.1 Public Hearing/Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts (**Action on this item should take place under Section IX of the Agenda**)
2. Third and Final Reading of Proposed Resolution and Ordinance Amendments:
 - 2.1 Third and Final 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 IX of the Agenda**)

City Manager’s Items Which Require Action

1. Proposed Revisions to Fund Balance Ordinance
2. Report Back Re: Cemetery Setbacks
3. Report Back Re: Zoning for Assisted Living Facilities
4. Request to Establish Work Session Re: Water/Sewer Rate Study

Informational Items

1. Events Listing

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Alison Hamilton, Citizens Advisory Committee
 - Anthony Blenkinsop, reappointment to the Planning Board
2. Appointments to be Voted:
 - Elizabeth Moreau appointment as an alternate to the Planning Board
 - Karina Quintans appointment as a regular member to the Planning Board (*current alternate*)
 - Thomas Watson reappointment to the Trustees of the Trust Fund

C. COUNCILOR SMITH

1. Parking and Traffic Safety Committee Action Sheet and Minutes of December 13, 2012

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

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

**Indicates Verbal Report*


INFORMATIONAL ITEMS

1. Notification that the Conservation Commission Minutes of the October 10, 2012 meeting are available on the City's website for your review
2. Notification that the Conservation Commission Minutes of the November 14, 2012 meeting are available on the City's website for your review

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

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: January 4, 2013
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on January 7, 2013 City Council Agenda

6:30 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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Presentation:

1. **Update and Presentation Re: US Route 1 Bypass Bridge Projects.** Alex Vogt, Project Manager from New Hampshire Department of Transportation Highway Design will give an update to the City Council regarding the Portsmouth US Route 1 Bypass bridge replacement projects, which will include construction schedules with anticipated bridge closure durations and proposed detour routes.

Acceptance of Grants and Donations:

1. **Grant Application for New Hampshire Department of Transportation Safe Routes to School Program.** On November 2, 2012, the City had sent a letter to the New Hampshire Department of Transportation and the Rockingham Regional Planning Commission indicating the City's intent to request grant funds under the Safe Routes to School (SRTS) program. To that end, Juliet Walker, Transportation Planner, has prepared the application that includes projects identified in the attached memo.

The City would be applying for \$250,000 of grant funding. Those grant monies do not require a match and the City is not obligated to use the entire grant amount. The application

requires that the governing body vote to authorize the submission of the grant application which is due on January 16th.

I would recommend the City Council move to authorize the City Manager to apply for, accept, and expend a \$250,000.00 grant from the NH DOT Safe Routes to School Program for the purpose of implementing infrastructure projects and non-infrastructure programming to encourage and enable elementary and middle school children to safely walk and ride bicycles to school. Action on this item should take place under Section VIII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

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

- 1.1 **Public Hearing/Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts.** As a result of the December 17th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Zoning Ordinance amendment](#) addressing building height in the Central Business Districts. Also, [attached is a memorandum from Rick Taintor, Planning Director, regarding this matter.](#)

At the December 3rd meeting, representatives of several downtown developers raised concerns about potential impacts of the amendment. In response to these concerns, the Planning Department staff revised the initial proposal and met with a group of architects and designers to discuss the revised draft. The revised amendment is simpler than the previous version and would make the following changes to the building height provisions in the Central Business Districts:

- a) Require that within 25 feet of a street line, no portion of a building be higher than 50 feet above the street in the CBA district or 60 feet above the street in the CBB district. (The “street line” is the edge of the municipal right of way, which in the downtown area is approximately at the back of the sidewalk.)
- b) Exempt from this requirement parapet walls, railings, fences, and roof appurtenances (such as HVAC equipment or antennas) that are no more than 2 feet above the roof surface.

In order to accommodate two identified development projects that have initiated a formal process with the City’s land use boards (and thereby demonstrated significant investment in project design), the proposed ordinance also exempts applications which have been the subject of legal notice for a hearing before the Zoning Board of Adjustment.

Finally, as the City Council is aware, during 2013 the Planning Department will be preparing a form-based zoning ordinance for the downtown area. This project will include opportunities for public input, and will provide an opportunity to thoroughly consider and address a range of urban design issues including appropriate building height.

Rick Taintor, Planning Director, will make a presentation on Monday evening, regarding this matter.

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the January 22, 2013 City Council meeting. Action on this item should take place under Section IX of the Agenda.

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

- 2.1 **Third and Final 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 December 17th City Council meeting, under Section IX of the Agenda, I am bringing back for third and final 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 third and final reading of the proposed Ordinance. Action on this item should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Proposed Revisions to Fund Balance Ordinance.** As you will recall, at the October 27, 2012 City Council Retreat, there was a request to review the existing Fund Balance Ordinance to determine if it needed any revisions that would place the City in a better position to obtain AAA bond rating. As you are aware, the City presently has a bond rating of AA+ which is one step below AAA.

Since 1997, the City has received four bond upgrades which have been attributed directly to financial policies that the City has enacted (stable tax rate, health insurance stabilization fund, leave at termination fund, capital improvement plan and fund balance ordinance).

In reviewing AAA ratings in other communities, it appears that the one thing they have in common is a fund balance policy and/or an ordinance that strives to maintain an unassigned fund balance between 10% and 17% of general fund appropriations.

I have **attached a proposed ordinance amendment** which would maintain an unassigned fund balance of not less than 10% with a goal of 17%. Please note further that use of unassigned fund balance typically should be used for appropriations that are nonrecurring in nature.

I am requesting that you allow me to bring this back at the Tuesday, January 22, 2013 City Council meeting.

2. **Report Back Re: Cemetery Setbacks.** As you may recall, at the April 2, 2012 City Council meeting, the Council referred the **attached letter from Attorney James Nocas** requesting that the City Council enact a local zoning regulation regarding setbacks from all cemeteries in the City, to the Planning Board for report back to the City Council. **Attached is a memorandum from Rick Taintor, Planning Director**, outlining the background, Attorney Nocas' request, and the Planning Board's consideration and recommendation. Attorney Nocas' request was on behalf of The Robert J. Fabbriatore family, owners of units in a condominium at 62 Livermore Street, who wish to construct a garage along the rear boundary line of their property, which abuts the Pleasant Street Cemetery.

The Planning Board discussed the request at its April and June meetings, and then postponed the matter to the July meeting at the applicant's request. At the July meeting, the Board voted to postpone consideration of the Request to its September meeting in order to provide the applicant with an opportunity to obtain the input of the State Archaeologist, Dr. Richard

Boisvert. At the request of the applicant, the matter was subsequently postponed to the Board's October, November and December meetings.

At its meeting on December 20, 2012, the Planning Board heard from Dr. Richard Boisvert State Archaeologist, who gave a thorough explanation of the issues that had led to the enactment of RSA 289:3 in 1994, which is the State law that establishes a minimum 25 foot setback from cemeteries. Dr. Boisvert described two related statutes: RSA 635 regarding unauthorized disturbing of graves, and RSA 227:C regarding treatment of unmarked graves. He discussed the impacts of construction over burial sites and the potential consequences of unintentional unearthing of human remains. He also addressed the overlapping rights of property owners and other interested parties (including the next of kin) where development occurs around cemeteries and burial sites. Finally, he stated that he was not aware of any other municipality having adopted a local zoning regulation to supersede RSA 289:3.

Based on consideration over a period of several months, the Planning Board voted unanimously at the December 20th meeting to recommend that the City Council not enact a zoning ordinance regarding setbacks from cemeteries. Planning Board members felt that there was no need to depart from the requirements of the State statute, and that it would not be appropriate to enact a local regulation that could potentially allow development to impact historic cemeteries and burial grounds.

Therefore, I would recommend the City Council move to accept the Planning Board's recommendation to not vote to enact a zoning ordinance regarding setbacks from cemeteries as requested.

3. **Report Back Re: Zoning for Assisted Living Facilities.** As you will recall, at the May 21, 2012 City Council meeting, the Council voted to request that the Planning Board review the Table of Uses to expand where assisted living facilities can be located. The Planning Board held a work session on September 13, 2012 and considered the matter further at its meetings on October 18, November 15 and December 20, 2012.

At its meeting on December 20, 2012, the Planning Board voted unanimously to recommend that the Zoning Ordinance be amended as presented in the **attached memorandum from Rick Taintor, Planning Director**. Further, the memorandum presents an overview of existing zoning for assisted living facilities and describes the considerations underlying the recommended Zoning Ordinance amendments.

I would recommend the City Council move to authorize the City Manager to bring back for first reading the proposed Zoning Ordinance amendment, as presented, at the January 22, 2013 City Council meeting.

4. **Request to Establish Work Session Re: Water/Sewer Rate Study.** I am requesting the City Council establish a work session on Monday, February 11, 2013 at 6:30 p.m., regarding the Water/Sewer Rate Study.

I would recommend the City Council move to establish a Work Session on Monday, February 11, 2013 at 6:30 p.m., regarding the Water/Sewer Rate Study.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on December 17, 2012. In addition, this now can be found on the City's website.