

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, SEPTEMBER 3, 2013

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

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

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

Mayor Spear called the meeting to order at 7:00 p.m.

### **II. ROLL CALL**

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

### **III. INVOCATION**

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

### **IV. PLEDGE OF ALLEGIANCE**

Councilor Thorsen led the Pledge of Allegiance to the Flag.

### **V. ACCEPTANCE OF MINUTES – AUGUST 19, 2013**

**Assistant Mayor Lister moved to approve and accept the minutes of the August 19, 2013 City Council meeting. Seconded by Councilor Coviello and voted.**

### **VI. PUBLIC COMMENT SESSION**

Bob Shouse spoke in support of the Height Ordinance and indicated it is reasonable to allow controlled growth to preserve the character of the City. He stated removing the granting authority of a conditional use permit from the Historic District Commission to the Zoning Board of Adjustment is the right decision.

Beth Margeson spoke opposed to the proposed skating rink at Strawberry Banke. She stated a 12,000 square foot structure is not with the character of the area and it will effect the quality of life for the residents of the south end.

### **VI. PUBLIC HEARINGS**

- A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS ARE HERE BY AMENDED AS FOLLOWS:

- SECTION 10.531 – TABLE OF DIMENSIONAL STANDARDS – BUSINESS AND INDUSTRIAL DISTRICTS, MAXIMUM STRUCTURE DIMENSIONS – STRUCTURE HEIGHT, CBA 45' OR 3 ½ STORIES, WHICHEVER IS LESS; CBB 45' OR 3 ½ STORIES, WHICHEVER IS LESS;
- SECTION 10.535 – EXCEPTION TO DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICTS, BY INSERTING A NEW SECTION 10.535.13: INCREASED BUILDING HEIGHT BY CONDITIONAL USE PERMIT
- SECTION 10.1530 – TERMS OF GENERAL APPLICABILITY, ADD NEW TERMS AND DEFINITIONS

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

Planning Director Taintor provided a brief presentation on the ordinance and stated that the height was last changed in 1982. He spoke to the process that has been followed and reported that the ordinance as amended reduces the height to 45 feet or 3 ½ stories in the CBA and CBB Districts. Planning Director Taintor also stated that the Zoning Board of Adjustment would have the authority to grant a conditional use permit.

Councilor Lown asked when the City Council would be addressing form-based zoning. City Manager Bohenko stated once the Planning Board is done it would come back to the City Council, and we hope to have something adopted before the end of the year.

David Witham, Chair of Zoning Board of Adjustment and speaking as a resident, he expressed concern with the amendment and having the BOA grant conditional use permits. He stated the conditional use permit process should remain with the HDC. Mr. Witham said he supports the height amendment as a way to put something in place until form-based zoning is adopted.

Gibson Kennedy feels the ordinance is a good compromise but the conditional use permit should stay with the HDC and not moved to the BOA.

William Gladhill, Planning Board member and speaking as a resident stated the HDC should keep the authority to grant conditional use permits.

Paul McEachern said the City Council needs to look at the impacts of this ordinance. He spoke to the tax base and revenues received. He urged the Council to consider all the ramifications when acting on this ordinance.

Zelita Morgan urged the City Council to pass the ordinance as amended for the quality of life of residents. She spoke to the need to preserve the City and common sense and sustainable development.

Claire Kittredge, Portsmouth Now, spoke in support of the ordinance amendment for restricting the height of buildings. She said the City needs to preserve the old buildings and our views. She indicated the 45 ft height limit is forward thinking and sustainable building.

Bob Shouse said there are more issues to be considered than just the tax rate.

Jim Splaine spoke in favor of the ordinance and that discussions should continue on who is granted the authority to issue conditional use permits. He stated the Council needs to think how this will effect the future of the City.

Christine Davidson said the City has a wonderful variety of building heights in the City. She expressed concern with whether the BOA or HDC should grant conditional use permits but feels the authority should be with the HDC.

Steven Kelm spoke as a developer he feels any changes in the zoning needs to be clear for people to understand. He stated he does not support the BOA having authority to grant conditional use permits. He said complex formulas make it difficult to determine the map of a building and feels the height should remain the same.

William Gladhill spoke to how the HDC working to streamline the work session process. He feels that the conditional use permit authority should be with the HDC.

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

- B. ORDINANCE AMENDING CHAPTER 7, VEHICLES, TRAFFIC AND PARKING – OMNIBUS ORDINANCE:
  - 1. AMEND: CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES, SECTION 7.601 TRUCK LOADING/UNLOADING ZONES ESTABLISHED
  - 2. AMEND: CHAPTER 7, ARTICLE VI – TRUCK LOADING/UNLOADING ZONES, SECTION 7.602 TRUCK LOADING/UNLOADING ZONES (24 HOURS)
  - 3. AMEND: CHAPTER 7, ARTICLE II – TAXICABS, SECTION 7.224 TAXICAB STANDS
  - 4. ADD: CHAPTER 7, ARTICLE III, SECTION 7.328 UTILIZATION OF MULTIPLE PARKING SPACES
  - 5. AMEND: CHAPTER 7, ARTICLE IV: SECTION 7A.408 TAXICAB STANDS DESIGNATED
  - 6. ADD: CHAPTER 7, ARTICLE III, LIMITED PARKING – THREE HOURS: SECTION 7.328: LIMITED PARKING – THREE HOURS
  - 7. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS
  - 8. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, LIMITED TIME PARKING, SECTION 7.327: LIMITED PARKING – TWO HOURS

9. AMEND: CHAPTER 7, ARTICLE IVA, BUS STOPS, TAXICAB STANDS AND HORSE DRAWN CARRIAGE AND ARTICLE IV, OFF-STREET PARKING AREAS
10. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS
11. AMEND: CHAPTER 7, ARTICLE IX, PENALTIES, FORFEITURES AND SEPARABILITY, SECTION 7.901: PENALTIES
12. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.321: SNOW EMERGENCY PARKING BAN
13. AMEND: CHAPTER 7, ARTICLE III, TRAFFIC ORDINANCE, SECTION 7.326: LIMITED PARKING – FIFTEEN MINUTES
14. AMEND: CHAPTER 7, ARTICLE IV, OFF-STREET PARKING AREAS, SECTION 7.401, DEFINITIONS

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

Parking & Transportation Division Director Nelson spoke to the omnibus ordinance and stated the changes have been piloted in the City over the last year and briefly reviewed the various amendments.

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

## **VII. APPROVAL OF GRANTS/DONATIONS**

- A. Acceptance of Donation from Novel Iron Works, Inc to the Police Department for the purchase of a new canine - \$7,500.00

**Councilor Novelline Clayburgh moved to approve and accept the donation from Novel Iron Works, Inc. to the Police Department, as presented. Seconded by Assistant Mayor Lister and voted.**

## **VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. Second reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, are here by Amended as follows:
  - Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45’ or 3 ½ Stories, which ever is less; CBB 45’ or 3 ½ Stories, which ever is less;
  - Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by Inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit

- Section 10.1530 – Terms of General Applicability, add new Terms and Definitions

**Councilor Dwyer moved to pass second reading, as presented, and hold third and final reading at the September 16, 2013 City Council meeting. Seconded by Councilor Smith.**

**Assistant Mayor Lister moved to amend Section 10.535.13 – Increased Building Height by Conditional Use Permit – by removing the Zoning Board of Adjustment having the authority to grant a conditional use permit and designating the Historic District Commission with the authority to grant a conditional use permit. Seconded by Councilor Coviello.**

Councilor Kennedy said she thought the City Council would receive the form-based zoning in September, not November as Planning Director Taintor stated earlier. City Manager Bohenko said there is a meeting on October 21, 2013 and the Council could have the ordinance in its form.

Councilor Novelline Clayburgh said in terms of the amendment it is clear that the BOA does not want the authority to grant conditional use permits. If the HDC becomes overwhelmed the Council may take over the granting of the permits.

Councilor Coviello and Planning Director Taintor discussed the definitions of roofs and exterior walls. Planning Director Taintor stated a story immediately below a roof in which the floor area with a ceiling height of 7 feet or more is not greater than 50 percent of the total floor area of the story below. Any exterior wall of a half story shall be set back at least 15 feet from any building wall of a lower story facing a street or public right of way.

Councilor Lown asked if this ordinance would be repealed with a form-based zoning ordinance or should an amendment be made to have the ordinance sunset with the adoption of form-based zoning. Planning Director Taintor stated that the CBA and CBB Districts would no longer remain with form-based zoning.

Councilor Thorsen spoke opposed to the amendment and said the HDC is concern with height and mass of buildings. He stated he does not support the permit process for conditional use.

Councilor Dwyer stated that the review criteria are applied in a yes or no way.

Councilor Lown said he feels that the conditional use permit should be the authority of the HDC.

Councilor Dwyer said she does not think we will have form-based zoning before the end of the year.

**On a roll call 7-2, voted to amend Section 10.535.13 – Increased Building Height by Conditional Use Permit – by removing the Zoning Board of Adjustment having the authority to grant a conditional use permit and designating the Historic District Commission with the authority to grant a conditional use permit. Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Smith and Mayor Spear voted in favor. Councilors Dwyer and Thorsen voted opposed.**

Councilor Dwyer said she feels the ordinance will stand for quite a long time and if it stands longer than 4 months, we need to have more options.

**Main motion passed, as amended.**

- B. Second reading of Proposed Ordinance amending various sections of Chapter 7, Vehicles, Traffic Parking Omnibus Ordinance

**Councilor Coviello moved to pass second reading and hold third and final reading on the proposed Ordinance, as presented, at the September 16, 2013 City Council meeting. Seconded by Councilor Lown.**

Councilor Kennedy asked how many parking spots were lost in the City from this omnibus ordinance. Parking & Transportation Division Director Nelson said he would research the matter and provide the information back to the City Council.

Councilor Kennedy asked about loading and unloading zones on Bow Street and valet parking. Councilor Smith stated under no circumstances are valets to use parking spaces. He said the valet service permit was granted through September and the Parking & Traffic Safety Committee is concerned with this and is following the matter.

Councilor Kennedy asked about taxi stands and if we are working with taxi drivers to just use their spaces. Councilor Smith stated he attended a recent Taxi Commission meeting and if taxi drivers are not using their spots the Parking & Traffic Safety Committee would review the taxi stands.

Councilor Kennedy inquired as to the parking meters removed from Maplewood Avenue. Councilor Smith stated the meters were removed at the request of a City Councilor to see if there would be better utilization of the parking spots. He reported 2 parking spaces have been reinstated and the City Council would be seeing an ordinance coming forward for 9 spaces on the westerly side of Maplewood Avenue.

Councilor Kennedy stated that Water Street is closed off during events and people with disabilities have no area to park now. Councilor Smith stated this matter could be on the Parking & Traffic Safety Committee meeting for review and consideration.

**Motion passed.**

## X. CONSENT AGENDA

Councilor Smith requested to remove and vote separately on Item X.E. - Request for License from Carl Norwood, owner of NAI Norwood Group for property located at 22-28 Deer Street for a projecting sign on an existing bracket.

- A Letter from Alyssa Salmon, Big Brothers Big Sisters of the Greater Seacoast, requesting permission to close Pleasant Street on Saturday, June 21, 2014 from 3:00 p.m. – 6:00 pm. for the 4<sup>th</sup> Annual Stiletto Race (*Rain Date of Sunday, June 22, 2014*) (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Ellen Fisher, Pan Mass Challenge (PMC), requesting permission to hold the 7<sup>th</sup> Annual PMC Seacoast Kids Ride on Sunday, September 29, 2013 (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Barbara Massar, Pro Portsmouth, requesting permission to hold the following 2014 Events:
- First Night Portsmouth 2014 – Tuesday, December 31, 2013
  - Children’s Day 2014 – Sunday, May 4, 2014 from Noon – 4:00 p.m.
  - 37<sup>th</sup> Annual Market Square Day Festival & 10K Road Race – Saturday, June 14, 2014 from 9:00 a.m. – 4:00 p.m.
  - 12<sup>th</sup> Annual Summer in the Street – Saturday evenings – June 28, 2014; July 5, 2014; July 12, 2014; July 19, 2014; July 26, 2014; August 2, 2014 from 5:00 p.m. – 9:30 pm.
- (***Anticipated action – move to refer to the City Manager with power***)
- D. Request for License from Dana Hanson, owner of Concetta’s Closet for property located at 7 Commercial Alley for 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 Dana Hanson, owner of Concetta’s Closet for a projecting sign at property located at 7 Commercial Alley 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***

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

- E. Request for License from Carl Norwood, owner of NAI Norwood Group for property located at 22-28 Deer Street for a projecting sign on an existing bracket

**Councilor Kennedy moved to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Carl Norwood, owner of NAI Norwood Group for a projecting sign at property located at 22-28 Deer Street and, further, authorize the City Manager to execute License Agreements for this request. Seconded by Councilor Coviello and voted. Councilor Smith abstained from voting on this matter.**

**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***

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

- A. Letter from Deborah Bouchard-Smith, Scarecrows of the Port Committee, requesting permission to place scarecrows in designated locations throughout the downtown area beginning Thursday, October 10, 2013 through Friday, November 1, 2013

**Councilor Novelline Clayburgh moved to refer to the City Manager with power. Seconded by Councilor Kennedy and voted. Councilor Smith abstained from voting on this matter.**

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

**A. CITY MANAGER**

1. Proposed Revisions Re: City Trees & Public Greenery Ordinance

City Manager Bohenko said he would like authorization from the City Council to bring back this proposed ordinance for first reading at the September 16, 2013 City Council meeting.



**Councilor Lown moved to bring back for first reading the aforementioned ordinance, as presented, at the September 16, 2013 City Council meeting. Seconded by Councilor Novelline Clayburgh.**

Councilor Kennedy asked if the tree warden would make decisions on the preservation of trees. She stated she feels that decision should be by the entire Committee. City Attorney Sullivan stated that the Committee would make that decision and not just the tree warden.

Councilor Kennedy asked if this is a current position or a new position. City Manager Bohenko said the Public Works Director sits on the committee and serves as the tree warden.

Assistant Mayor Lister asked if we have access to an arborist. City Manager Bohenko stated yes, through the Urban Forestry Center.

Councilor Dwyer said we need to consider how we would inform the public of this ordinance. City Manager Bohenko said we would do something through the website.

**Motion passed.**

2. Request of Players' Ring Company to Renew their Lease with the City for 99-105 Marcy Street

City Manager Bohenko said this would be a renewal of the lease with the Players' Ring Company. He reported normally these are 3-year terms but the Players' Ring is asking for a 10-year lease due to the amount of capital improvements they want to make to the building.

**Councilor Novelline Clayburgh moved to authorize the City Manager to execute a proposed 10-year lease renewal between Players' Ring Company and the City of Portsmouth for the use of 99-105 Marcy Street. Seconded by Assistant Mayor Lister.**

Councilor Novelline Clayburgh said City Manager Bohenko works with non-profits to preserve historic buildings. She stated the process of leasing buildings is expanding and is successful for the City.

Assistant Mayor Lister said he supports the lease because of the assistance they provide to the community.

**Motion passed.**

3. Proposed Amendment Re: Taxi Medallions Ordinance

City Attorney Sullivan reported the Taxi Commission discussed the number of medallions in the City and they feel there is difficulty getting a cab downtown in the evenings, therefore the Commission voted to have an amendment to the ordinance to increase the number of medallions from 25 to 28.

**Councilor Novelline Clayburgh moved to schedule first reading of the proposed Ordinance, as presented, at the September 16, 2013 City Council meeting. Seconded by Councilor Kennedy.**

Councilor Coviello asked why we limit the number of medallions. City Attorney Sullivan stated if any person with a car could operate as a taxi it would become problematic. Councilor Coviello said we should not limit the number of medallions and expressed concern with decisions being made by people in the evening that are not good decisions.

Councilor Thorsen said he agrees with Councilor Coviello and asked what process we have to monitor the number of hour's taxi companies are in operation with respect to what we expect of them. He further stated we should have a performance measure to see if medallions are getting the best use possible.

Councilor Smith said he would not support the motion because we should have a report back on the use of medallions before the ordinance goes to first reading.

Councilor Lown reported that the Taxi Commission ensures that taxi companies are inspected, licensed and insured. The issue with not enough medallions is in the evening hours during the weekend. He further reported that the Taxi Commission has written to hotels that operate shuttles to inquire if they could expand the hours of operation in the downtown to help with the lack of taxis.

Councilor Kennedy said she spoke with someone said it took 2 ½ hours to get a taxi. If it is taking that long and people are not making the right decisions and driving, she feels we need to educate.

Councilor Novelline Clayburgh thanked the Taxi Commission for their work and said she supports the motion.

**Motion passed with Councilor Smith voting opposed.**

4. Polling Hours for November 5, 2013 Municipal Election

**Councilor Novelline Clayburgh moved to set the polling hours from 8:00 a.m. – 7:00 p.m. for the Municipal Election on Tuesday, November 5, 2013. Seconded by Assistant Mayor Lister and voted.**

**City Manager's Informational Items**

1. Events Listing
2. Trustees of Trust Funds Annual Report

Mayor Spear requested the Trustees of Trust Funds make a Presentation to the City Council at a future meeting.

**B. MAYOR SPEAR**

1. Appointment to be Considered:
  - Elizabeth A. Moreau to the Planning Board as a regular member
  - T. Stephen McCarthy – Reappointment to the Building Code Board of Appeals

The City Council considered the above referenced appointments which will be voted on at the September 16, 2013 City Council meeting.

**C. ASSISTANT MAYOR LISTER**

1. Report on City Manager's Evaluation

Assistant Mayor Lister reported that the City Manager's Evaluation was conducted and the City Council finds City Manager Bohenko's overall performance continues to be excellent to exceptional in all areas.

Councilor Novelline Clayburgh thanked City Manager Bohenko for his work and commitment to the City. She said the City was recently designated as a triple A bond rating community which is due to City Manager Bohenko's efforts. She stated that we are the second municipality in NH to achieve this rating.

Councilor Lown said the City is well run because of City Manager Bohenko.

Councilor Smith thanked City Manager Bohenko and his family for the sacrifices made throughout his career in the City.

Councilor Thorsen said there are many good things to say about City Manager Bohenko.

**D. COUNCILOR SMITH**

1. Establishing Time Limits for Unmetered On-Street Parking – Chapter 7, Article X, Section 7.1000-E

Councilor Smith requested to bring back the first reading of the proposed ordinance for unmetered on-street parking at the September 16, 2013 City Council meeting.

**Councilor Smith moved to bring back ordinance for first reading at the September 16, 2013 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.**

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Kennedy said she received a letter this afternoon from Sandra Dika of The Wentworth Gardner and Tobias Lear Houses Association, requesting the City Council's endorsement of the Rehabilitation and Restoration Project for the Historic House Museum which may help the organization in receiving the State LCHIP Grant.

**Councilor Kennedy moved to support this letter going forward and request City Manager Bohenko write a letter to that effect for the Wentworth Gardner and Tobias Lear Houses Association. Seconded by Councilor Smith and voted.**

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

**At 9:45 p.m., Councilor Lown moved to adjourn. Seconded by Councilor Smith 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