

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, JUNE 2, 2014

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

At 6:00PM, An Anticipated "Non-Meeting" with Counsel was held Re: Litigation and Negotiations – RSA: 91-A:2, I (b-c).

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

Mayor Lister called the meeting to order at 7:20 p.m.

### **II. ROLL CALL**

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan, Spear and Thorsen

### **III. INVOCATION**

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

Mayor Lister asked State Representative Laura Pantelakos to lead in a moment of silence followed by the Pledge of Allegiance.

### **PROCLAMATION**

1. Portsmouth Symphony Orchestra – Mitchell Shuldman

Councilor Dwyer read the Proclamation declaring Portsmouth Symphony Orchestra as Portsmouth's Community Orchestra. Mitchell Shuldman and Janet Polasky accepted the Proclamation with thanks and appreciation.

### **V. ACCEPTANCE OF MINUTES – *(There are no minutes available for acceptance)***

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

Tom Carroll stated that Promote our Port will be the new name for Save our Port. He spoke to the PDA's announcement last week to not renew the agreement with Grimmell. He suggested leasing the lot for parking by the City to meet the parking needs.

Larry Drake urged the City Council to vote to appeal the Town of Newington's decision on Sea-3. He stated that the expansion puts the City at extreme risk.

Catherine DiPentima thanked the City Council for their effort and hard work on the Sea-3 issue. She spoke in support of the Council voting to appeal the Town of Newington's decision. She indicated that this is explosive non-odorized gas which is a real concern for the City. Ms. DiPentima said the Council are the stewards of the City and need to take action.

Bob Gibbons would like the City Council to appeal the Town of Newington's Planning Board decision for the expansion of Sea-3. He commended Councilor Shaheen for opening the discussion of a quiet zone in our City and indicated that these items will cost the City approximately \$400,000.00 per unit. He said the safety of the residents of the City are in the City Council's hands.

Matt Nania spoke in favor of the City Council appealing the Town of Newington's Planning Board decision for the expansion of Sea-3. He said they can only receive up to 16 cars per day and if they need more they need to seek further approvals. He further stated that a train going through the downtown is not safe.

Arthur Clough said any one using an electronic device during this meeting is violating the right to know law. He also addressed employee pensions.

State Representative Laura Pantelakos asked the City Council to consider some way to remove parking meters from Noon to 7:00 p.m. on Sunday's in the downtown. She said we need to start giving residents a break.

Mark Brighton said 2 City Councilors have spouses working for the City and does not feel that the best interest of the City is being met. He asked that City Councilors recuse themselves from votes on their spouses departments.

Erik Anderson asked the City Council to take into account the increase to the budget. He said it is a modest increase but you need to consider how the budget has increased over time and if the budget is sustainable.

Rick DiPentima reminded the City Council that you are making a decision that over 700 residents of the City are asking you to appeal with regards to Sea-3.

**Assistant Mayor Splaine moved to suspend the rules in order to take up Item XI. C.1. – Sea-3 (Vote to appeal Town of Newington Planning Board decision?). Seconded by Councilor Lown and voted.**

**Assistant Mayor Splaine moved to authorize the City Manager to direct the Legal Department to take any and all action necessary and appropriate to appeal the decision by the Newington Planning Board to approve the site plan for the Sea-3 project. Seconded by Councilor Shaheen.**

Assistant Mayor Splaine stated the Council had a long discussion on this matter earlier in Non-Meeting with Counsel.

Councilor Thorsen asked if the City Attorney could explain the matter of making these decisions in Non-Meeting with Counsel.

City Attorney Sullivan said this is a policy decision for the City Council. He said no actions can take place in a Non-Meeting with Counsel.

**On a unanimous roll call 9-0, motion passed.**

**VII. APPROVAL OF GRANTS/DONATIONS**

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

**VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

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

**IX. CONSENT AGENDA**

- A. Request for Approval of Pole License to install 3 poles on Sagamore Avenue as part of the Sagamore Avenue Complete Street Project ***(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. Letter from Duncan J. Regonini, Secretary, Portsmouth Professional Firefighters Local 1313, requesting permission to conduct two Fill-the-Boot Drive voluntary “toll booths”, at Market Square to collect donations for the Muscular Dystrophy Association on Saturday, July 12, 2014 and Saturday August 9, 2014 between 8:00 a.m. and 5:00 p.m. ***(Sample motion – move to refer to the City Manager with power)***
- C. Letter from Kevin Walker, Area General Manager, Hilton Garden Inn, requesting a temporary road closure of Portwalk Place on June 14, 2014 in conjunction with Market Square Day from 7:00 a.m. to 7:00 p.m. ***(Sample motion – move to refer to the City Manager with power)***
- D. Letter from Ruth Griffin requesting permission to plant 2 trees of her choice in front of property located at 479 Richards Avenue ***(Sample motion – move to refer to the Trees and Greenery Committee)***

**Councilor Dwyer moved to adopt the Consent Agenda. Seconded by Councilor Morgan and voted.**

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

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

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

### **A. CITY MANAGER**

1. Discussion Re: Proposed FY15 Budget
  - Resolution No. 6-2014 – Municipal Fees

City Manager Bohenko said the first item to discuss is Resolution #6 – Municipal Fees.

Councilor Lown asked if City Manager Bohenko would like a straw vote to approve the fees.

City Manager Bohenko asked the Council if there was additional information needed.

Councilor Kennedy asked about the parking fee for the parking garage. She feels we are still too low and would like to know what the discussion was on this matter. City Manager Bohenko stated that the fee would be a 33% increase and this is not the last you will see of it but this is a supplemental increase in the fee this year. He indicated it is based on supply and demand and small businesses and offices use the parking as an economic development tool to locate their business downtown.

Councilor Dwyer said the concern was about escalating the fee over time with notice. She said the list of parking passes were reviewed and most were small businesses or people that live downtown and did not have off-street parking available to them.

Deputy City Manager Allen reviewed fees relating to the Historic District. Councilor Shaheen asked if there were fees that are paid each time the inspector has to come out to the property. Deputy City Manager Allen said the fee would be charged each time the person comes out. He spoke to the increase to the subdivision fees from \$500.00 to \$900.00 and lot size variances from \$125.00 to \$150.00. He also spoke to the increase in water and sewer fees for customers from \$652.00 to \$1,300.00, connection fees from \$1,225.00 to \$1,275.00, sewer fees from \$744.00 to \$1,800.00 and connection fees from \$350.00 to \$500.00.

Councilor Kennedy asked how you know when an independent reviewer for inspections should be hired. Deputy City Manager Allen said it is done in conjunction with the Planning Department and the Public Works Department based on the impact of time required. Councilor Kennedy asked who makes the decision. Deputy City Manager Allen said these projects go through Planning Board and the Site Review Technical Advisory Committee.

Councilor Morgan spoke on Inspection Department fees for non permitted work and applicability and how it fits. Councilor Dwyer said it is related to the building code.

The City Council seems to have consensus to move forward with the fee schedule next week for adoption.

Councilor Kennedy said she would like to know for future years the increase in rates and what other communities are charging.

City Manager Bohenko said inspections are on a case by case basis and determined internally by the inspector. He said he would speak with Deputy City Manager Allen and the Technical Advisory Committee, and the cost is in relation to the project it serves. The City hires the consultant and sends the developer a bill.

- Resolution No. 7-2014 – General Fund Expenditures

City Manager Bohenko said the Resolution breaks down General Government, Police, Fire, School, Collective Bargaining, Transfer to Indoor Pool and Non-Operating. He reported that the Resolution total is \$96,741,762.00. City Manager Bohenko reviewed each section in the Resolution and advised the City Council that the indoor pool is going to do \$80,000.00 in improvements this year. He said the increase is 3.93% from last year.

Councilor Dwyer suggested that there are some areas in the Capital Improvement Plan that could come from unassigned fund balance and she identified 5 reductions in the amount of \$375,000.00. The areas for reduction are located on page 19 of the budget and are as follows:

- II-24 Fire Station 3
- II-25 Police Department Study
- II-48 Planning Master Plan Process
- II-65 Hampton Rail
- II-79 Atlantic Height Connector

City Manager Bohenko said he would lay out something that could be used over time from unassigned fund balance and he would rather not do it on a case by case basis.

Councilor Dwyer likes the idea of a program going forward. City Manager Bohenko said \$375,000.00 would bring us down to a number away from our goals.

Councilor Thorsen said we often talk about an average house and how that would affect a home in regards to a tax increase.

City Manager Bohenko said the median \$316,600.00 household figures are listed on page 58. He said last year should be around the same. We need to talk about the taxes we are paying not the tax rate. Discussion centered on the revaluation and how the tax rate comes down.

Assistant Mayor Splaine discussed the delivery of services provided to the public.

Councilor Shaheen said given that the household median value is the same as last year and the budget increase is a little over 3% and with the increase in revenue, the overall impact to the resident is 1.6% to the taxpayers. City Manager Bohenko said that is correct.

City Manager Bohenko spoke to the Capital Improvement Plan and said there are things he does not want to cut such as I-68 Intersection Upgrade: Market Street At-Grade Crossing which is a State match. I-65 Hampton Branch Rail Trail which is grant funding. He stated we could look at a retaining wall program as there are 30 in the City. City Manager Bohenko said he could come back next week with proposed cuts in the Capital Improvement Plan.

Councilor Shaheen asked about contract negotiations related to health insurance plans. City Manager Bohenko said you needed to be very careful because you can't negotiate in public. He said the City Council is concerned with health care issues. In 2018 we have the issue of the Cadillac tax because there will be a 40% increase in our health insurance and the tax is against the insurer that is a key item to get us below the threshold.

Councilor Kennedy thanked Councilor Dwyer suggesting \$375,000.00 in reductions to the Capital Improvement Plan. She said that we are only \$3.2 million dollars away from being a \$100 million dollar City. She said we brought in revenues that allow us to reach the 1.6% and we keep adding money expecting people to pay. Councilor Kennedy said she would like to bring forward the 3 tier for the sewer billing.

Councilor Lown said he would postpone the 2 studies for Police and Fire Departments and he would make a motion next week, if needed. He stated the median 3 years ago was \$311,000.00 and over the last 4 years the rate has increased 1.1%. He said he would not support a motion to reduce the budget by \$1,000,000.00.

**Councilor Dwyer moved to remove \$200,000.00 from Unassigned Fund Balance and reduce the Capital Improvement Plan by \$100,000.00. Seconded by Councilor Shaheen and voted. Assistant Mayor Splaine voted opposed.**

**Councilor Spear moved to authorize the City Manager to come back with Resolution #7-2014 – General Fund Expenditures, as presented with the exception of the Capital Improvement Plan reduction. Seconded by Assistant Mayor Splaine and voted. Councilors Kennedy, Morgan and Thorsen voted opposed.**

- Resolution No. 8-2014 – Sewer Fund Expenditures

City Manager Bohenko spoke to Resolution #8 which includes an assistance program with an increase of \$50,000.00. He said there will also be \$50,000.00 from water and it has no net cost increase. He said the 3 tier program would not target people. He reported that the average increase for the sewer is \$31.81 for the rate payer and 80% of households use 10 units or less.

Councilor Kennedy reported that Cambridge, MA has a 3 tier approach and an assistance program. She said many residents are concerned with their sewer bills and they are right on the edge of lower class. She would like to look at the 3 tier approach again and feels there is a way to do both.

**Councilor Kennedy moved to look at a 3 tier approach for water and sewer along with assistance program for the elderly and disabled. Seconded by Councilor Morgan.**

City Manager Bohenko said someone needs to pay for it and Massachusetts has a different tax structure than New Hampshire. He stated that the 3 tier will hurt the people you are trying to help.

Councilor Spear said all 9 Councilors are concerned with the sewer rate increases. He said are we going to go about this right and help the people in need. He stated a 3 tier would hurt the industrial users and the multi-user resident would pay more. Councilor Spear said we need to stick with the Resolution, as presented.

Councilor Morgan said she supports 3 tier because it brings up conservation and we need to send that message. She asked Deputy Public Works Director Goetz if the Portsmouth Housing Authority is under industrial or multifamily. Deputy Public Works Director Goetz responded that they are multifamily. Councilor Morgan asked if we should have vouchers for the Portsmouth Housing Authority. Deputy Public Works Director said the tier 3 would impact the Housing Authority and David Hyder did a summary of the Housing Authority's 6 bigger accounts, which indicated that 140 Court Street and 245 Middle Street would see an increase. City Manager Bohenko stated all the units would be impacted.

Councilor Shaheen stated she would not support a 3 tier. She said she wants to clarify a statement made earlier. Councilor Shaheen stated that her husband is the Executive Director of the Portsmouth Housing Authority and is not an employee of the City; it is funded through federal funding. She also stated residents in the units are not paying the water bill and when the fees increase the section 8 vouchers would be effected.

Councilor Dwyer said we need to make a point of what the goal of this is. She said we need to figure out how many can't afford the increase and to mitigate the impact for those people.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister stated he is opposed to going to a tier 3 and feels it is detrimental to residents.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

**On a roll call vote 4-5, motion to look at a 3 tier approach for water and sewer along with assistance program the elderly and disabled failed to pass. Assistant Mayor Splaine, Councilors Kennedy, Morgan, Thorsen voted in favor. Councilors Shaheen, Lown, Dwyer, Spear and Mayor Lister voted opposed.**

**Councilor Spear moved to authorize the City Manager to bring back Resolution #8-2014 – Sewer Fund Expenditures, as presented. Seconded by Councilor Lown and voted. Assistant Mayor Splaine voted opposed.**

- Resolution No. 9-2014 – Water Fund Expenditures

**Councilor Spear moved to authorize the City Manager to bring back Resolution #9-2014 – Water Fund Expenditures, as presented. Seconded by Councilor Lown and voted.**

- Resolution No.10-2014 – Special Revenues, Debt Service Fund and Committed Fund Balances for Necessary Expenditures
- Resolution No. 11-2014 – Investment Policy

There was no discussion regarding Resolutions No. 10–2014 and No. 11-2014.

2. Phase II of the Character Based Zoning Project Re: North End

City Manager Bohenko said a presentation was given at the last meeting and he is seeking direction on the project for the North End and needs to know if any changes are needed.

Principal Planner Cracknell said we are expanding the CBZ into the North End and Islington Street including the infrastructure and streetscape. He reviewed Exhibit I and Deer Street and property on Maplewood Avenue and Vaughan would be next then the transition to Bridge, Dennett, Court and State Streets, which is 50 acres and Islington Street is 100 acres.

**Councilor Spear moved to approve the study area for the North End Character-Based Zoning project, as presented. Seconded by Councilor Lown.**

Councilor Shaheen asked if the \$100,000.00 in the Capital Improvement Plan would cover Phase II and if we need to look at Phase III, would there be a need for more funding. Principal Planner Cracknell said the number last year was \$100,000.00 that included the lion share of Phase II and III but we have expanded the areas and we will come back with a new number from our consultants.

Councilor Kennedy feels that Dearborn Street and Marsh Lane need to be included. City Manager Bohenko said he does not feel that would be difficult, we would define the line at Marsh and draw the line at Dearborn Street.

Councilor Thorsen said he would like to look at the land behind the tracks because it is developable and will leave that as a Phase II and Phase III question. City Manager Bohenko said we could look at it in Phase III. Principal Planner Cracknell said the railroad controls 75% of the area. City Manager Bohenko stated he would like to get the North End completed and then go back to speak with the consultant and put it into Phase III.

Assistant Mayor Splaine said we must look at this zoning before voting on the vision and find a way with the consultants to see part of the Charrette process by going into the neighborhoods.

**Motion passed.**

**Councilor Spear moved to reschedule the June 9<sup>th</sup> Work Session regarding Financial Disclosure to Tuesday, June 17, 2014 at 6:30 p.m. Seconded by Councilor Shaheen and voted.**

Assistant Mayor Splaine indicated he would be out of town on June 17<sup>th</sup>.



**Councilor Spear moved to establish a Special Meeting of the City Council for Monday, June 9, 2014 at 6:30 p.m. for adoption of the FY15 Budget which includes the six Resolutions identified in the City Manager's comment. Seconded by Councilor Shaheen and voted.**

**B. MAYOR LISTER**

1. Appointments to be Voted:
  - Paul Mannle to the Citywide Neighborhood Steering Committee
  - Dan Rawling to the Historic District Commission as a Regular Member
  - Tristan Law appointment to the Taxi Commission

**Assistant Mayor Splaine moved to appoint Paul Mannle to the Citywide Neighborhood Steering Committee until April 1, 2017; Daniel Rawling as a regular member of the Historic District Commission until June 1, 2016; and Tristan Law to the Taxi Commission until December 31, 2015. Seconded by Councilor Dwyer and voted.**

**D. COUNCILOR KENNEDY**

1. The possibility of adding additional Zoning Board of Adjustment members to the Board

Councilor Kennedy said she is looking for guidance on the Zoning Board of Adjustment meetings. She stated the last 2 meetings had 5 members available and could vote but there is a rule if only 5 members are available people can pull their project. She would like to know if we could add alternates to the boards. She said she would like to have a work session on this matter and see how people feel. Councilor Kennedy said she would like to look at the number of meetings per month, a deadline for the agenda, and making the process of having people go to another meeting.

Mayor Lister said he met with the Chairs of the Planning Board, Historic District Commission and Zoning Board of Adjustment and these are real issues as expressed by Councilor Kennedy. He said after a certain time in the evening it is difficult to make decisions.

City Attorney Sullivan said Councilor Kennedy observations cover a lot of ground. He stated the Zoning Board of Adjustment is covered by State law which allows 7 members but alternates can be added to land use boards with up to 5 alternates. He further stated it is a practice not a written process regarding if the full board could move their application to another meeting. He said that could be done at the Historic District Commission level by regulations. He further stated that the Zoning Board of Adjustment in this City is the largest board in the State.

Councilor Spear said we need a finding from the Zoning Board of Adjustment on this matter before adding any members as alternates. He said the numbers of applications have increased and running the meetings is a skill set. He stated that the boards should work with staff as a resource for running meetings.

Councilor Thorsen said he supports reducing the Zoning Board of Adjustment to 5 members and adding more alternates. He said all 3 boards should be asked questions and provide a report back and a work session to follow. He asked what in the process could we make better and he would like to know what larger cities are doing.

**Councilor Shaheen moved to suspend the rules to continue the meeting beyond 10:00 p.m. at 10:45 p.m. Seconded by Councilor Thorsen and voted. Assistant Mayor Splaine voted opposed.**

Councilor Shaheen stated that people are concerned with residential projects going through the same process as large developments.

Councilor Dwyer said she would like a report back from the Chairs with suggested changes to their own process. She said we have always tried to make changes to committee process and it has always been met negatively with the boards but now they are looking for changes.

Councilor Shaheen asked if we should have a work session with them.

Councilor Kennedy requested a report back at the July 14<sup>th</sup> City Council meeting regarding adding additional alternate members to the land use boards, reviewing the number of meetings being held by land use boards per month, establishing a deadline for submitting materials for land use board agendas, creating a time for adjournment of the land use meetings, and the effect of making applicants go to another meeting if the board is unable to get to their item on the agenda due to the lateness of the hour.

Councilor Dwyer suggested a report back from the land use board chairs with suggested changes to their own process.

#### **E. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the May 8, 2014 meeting

Councilor Kennedy asked how many parking spaces are going away with the request for “No Parking” near intersection of Preble/Ranger Ways. Councilor Lown said the new zones have not been decided yet so that is not known.

Councilor Lown said the unsafe parking near the driveway on Middle Street, is under the current ordinance and it is illegal to park there. He stated hash marks have been put in place.

**Councilor Shaheen moved to approve and accept the action sheet and minutes of the May 8, 2014 Parking & Traffic Safety Committee meeting. Seconded by Assistant Mayor Splaine and voted. Councilor Kennedy voted opposed.**

**F. COUNCILOR DWYER**

1. Proposed Rezoning East Side of Route 1 Bypass from Islington Street Bridge to Traffic Circle

Councilor Dwyer said this is regarding the Frank Jones property and to create a TIF we need to look at the zoning for the area. She would like the Planning Board to put on the agenda what kind of zoning would be appropriate. She said we need to look at the east side of the Bypass. She further stated we may want the Planning Board to look at the entire Bypass but this will get us started. Councilor Dwyer said she spoke with Deputy City Manager Allen and Planning Director Taintor on this matter and they may look at more than 1 zone and maybe that property will be well served by more than 1 zone.

Councilor Thorsen said he likes the approach and that Phase III CBZ will include most of this. He said he would support sending this to the Planning Board and to change the zone out of industrial to something new.

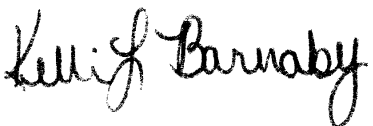
**Councilor Dwyer moved to refer to the Planning Board. Seconded by Councilor Thorsen and voted.**

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Kennedy thanked City Clerk Barnaby for putting the land use board minutes on the website rather than including them in the Council packets.

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

**At 11:15 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Shaheen and voted.**



Kelli L. Barnaby, CMC/CNHMC  
City Clerk