

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, OCTOBER 6, 2014

PORTSMOUTH, NH  
TIME: 6:00PM

### **I. CALL TO ORDER [6:00PM]**

### **II. ROLL CALL**

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

### **III. ANTICIPATED “NON-PUBLIC” SESSION WITH COUNSEL RE: CONSIDERATION OF ACQUISITION OF REAL PROPERTY – RSA 91-A:3, II (d)**

**Councilor Spear moved to enter into a Non-Public Session regarding Consideration of Acquisition of Real Property per RSA 91-A:3, II (d). Seconded by Councilor Kennedy.**

**On a unanimous roll call 6-0, voted to enter into a Non-Public Session regarding Consideration of Acquisition of Real Property per RSA 91-A:3, II (d). Councilors Shaheen, Dwyer and Morgan were not present for this vote.**

### **IV. INVOCATION**

Mayor Lister asked everyone to join in a moment of silent prayer.

### **V. PLEDGE OF ALLEGIANCE**

Mayor Lister asked former City Councilor Harold Whitehouse to lead in the Pledge of Allegiance to the Flag.

### **VI. ACCEPTANCE OF MINUTES – JUNE 16, 2014**

**Councilor Lown moved to approve and accept the minutes of the June 16, 2014 City Council meeting. Seconded by Councilor Shaheen and voted.**

### **VII. PUBLIC COMMENT SESSION**

Catherine DiPentima thanked Mayor Lister for his efforts regarding Sea-3 and for meeting with Governor Hassan on rail safety.

Diane Stradling spoke regarding the petition for sidewalks on Union Street. She stated the last time sidewalks were not in concrete on Union Street was in 1928.

Michael Frandzel spoke regarding the sidewalks on Union Street and that it should be concrete the entire length. He said concrete is more ascetically pleasing than asphalt and concrete will last longer.

Mark Brighton showed an old picture of Union Street which showed the sidewalks were concrete.

Mary Lou McElwain said that the post office received a letter that they must move in February and said people need to be advised of this as soon as possible.

Bill Sylla signed the petition for continued concrete for the sidewalks and driveways. He said Union Street was historically concrete and should remain that way.

Susan Denenberg said she lives on Wibird Street and spoke to the sidewalk installation plans for that street. She spoke opposed to the plan and said it would change the look of the neighborhood.

Rick Becksted spoke in support of Option B for the Financial Disclosure.

Paul Mannle said if the Council wants to view a street without traffic calming look at Cass Street to Islington Street. He also spoke regarding Financial Disclosures and that Option B is better than Option A.

David Noard said there needs to be full transparency on the Council.

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

- A. Acceptance of Grant from the New Hampshire Charitable Foundation from the Our New Hampshire Heritage – a fund of Northeast Auctions for Restoration of the Kearsarge Fire Pumper - \$15,000.00

**Councilor Kennedy moved to approve and accept the grant from the New Hampshire Charitable Foundation from the Our New Hampshire Heritage – a fund of Northeast Auction, as submitted. Seconded by Councilor Shaheen and voted.**

- B. Acceptance of Grant for State Declared Infrastructure Funds

**Councilor Kennedy moved to accept and expend a \$12,500.00 Department of Safety grant for the purpose of protecting the water resource at the Madbury Water Treatment Plant and authorize the City Manager to execute any documents which may be necessary for this grant contract. Seconded by Councilor Shaheen and voted.**

- C. Acceptance of Police Department Grants and Donation

- A donation in support of the Police Department's planned public service announcements addressing the opiate problems in our community:
  - Amos and Boris Fund under the aegis of Ellen & Ed Frechette - \$1,000.00
- A JAG grant in the amount of \$9,653.00 from the Department of Justice to provide funding to combat drug sales/use in the city. The \$9,653.00 is the city's portion of the \$31,113.00 total grant awarded to Rockingham County

- A grant in the amount of \$6,084.00 from NH Highway Safety for “Operation Safe Commute” patrols

**Councilor Kennedy moved to approve and accept the grants and donation to the Portsmouth Police Department. Seconded by Councilor Dwyer and voted.**

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

- A. First Reading of Proposed Ordinance amending Chapter 7, Article II, Section 7.213 – Fees and Terms for Medallions/Licenses

**Councilor Kennedy moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance at the October 20, 2014 City Council meeting, as presented. Seconded by Councilor Morgan and voted.**

- B. Third and Final Reading of Proposed Ordinance Amendment to Chapter 7, Article II, Section 7.230 – Prohibited Conduct by Medallion Holders or Owners

**Councilor Shaheen moved to pass third and final reading on the proposed Ordinance amendment, as presented. Seconded by Councilor Lown and voted.**

#### **X. CONSENT AGENDA**

##### ***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

- A. Acceptance of Donation to Art-Speak:  
• Harborside Associates, LP \$500.00  
***(Anticipated action – move to approve and accept the donation to Art-Speak, as listed)***
- B. Acceptance of Donation to the Coalition Legal Fund:  
• Town of Rye \$5,000.00  
***(Anticipated action – move to approve and accept the donation as listed, to be placed in the Coalition Legal Fund)***
- C. Request for Approval of Pole License to install 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)***
- D. Request for Approval of Pole License to install 2 poles located on Clinton Street and Thornton/Ruth 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)***

- E. Letter from Matthew McFarland, Saint Patrick School, requesting permission to hold the 2<sup>nd</sup> Annual 5k Road Race on Saturday, March 14, 2015 at 10:30 a.m.  
***(Anticipated action – move to refer to the City Manager with power)***

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

**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**

1. Request for Approval of Agreement Between the Trustees of the Trust Funds of the City of Portsmouth and The Gundalow Company

City Attorney Sullivan advised the City Council that the Agreement has been thoroughly vetted.

**Councilor Kennedy moved to approve the Agreement between the Trustees of the Trust Funds of the City of Portsmouth and The Gundalow Company, and further, authorize the City Manager to execute the document. Seconded by Councilor Spear and voted.**

2. Request for Approval of Amendment to Wright Avenue LLC License Agreement

City Manager Bohenko reported to the Council that the owner is requesting an amendment to the license to reflect the current construction schedule.

Councilor Kennedy felt there needed to be more information as to why the extension is needed and its affects on the sidewalks.

**Councilor Kennedy moved to table until the October 20, 2014 City Council meeting. Seconded by Councilor Shaheen and voted.**

3. Request for Continuous Concrete Sidewalks Union Street from Middle Street to Lincoln Avenue

Public Works Director Rice advised the City Council that this is a policy decision of the Council. He stated that the request is for 24 houses for continued concrete sidewalks. He reported that the policy is to stop the concrete on the apron side of the drive way.

Councilor Shaheen said she is reluctant to vote on this for citywide. She said we have received evidence that concrete existed in the past so she would vote for it but this does create issues for other citywide projects.

**Councilor Shaheen moved to move forward with continuous concrete sidewalks on Union Street from Middle Street to Lincoln Avenue. Seconded by Assistant Mayor Splaine.**

City Manager Bohenko said we would re-draft a policy we have in place currently and bring it to the City Council.

Discussion followed by the Council in regards to the difference in materials and the costs.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said this is an interesting issue but not a small one. This is not something we have currently budgeted.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

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

**Informational items**

1. Events Listing
2. Report Back Re: Sunday Free Parking Commencing on November 1, 2014 for 20 Sundays
3. Estimated Annualized Operating Costs for Downtown Parking Shuttle
4. Report Back on Commercial Alley Lighting Request
5. Letters and Article Re: Federal Aviation Administration and Helicopter Noise
6. Memorandum of Agreement with Air Force Re: Haven Well
7. Report Back Re: Abandoned or Derelict Buildings
8. Household Hazardous Waste Day
9. News Release Re: Public Meeting on Atlantic Heights Emergency Access

Councilor Kennedy asked if anyone from the staff has asked downtown employees if they would use the shuttle more if it was available more than just on weekends. City Manager said he would ask Juliet Walker and get back to the City Council.

City Manager Bohenko announced that the FAA has declined to meet with the City in a public meeting regarding helicopters.

City Manager Bohenko reported the money in the memorandum regarding Agreement with Air Force regarding Haven Well should have indicated the Agreement provides \$154,000.00 in reimbursement for the City to complete hydro geological studies on potential water supply sites and not \$154,000,000.00.

City Attorney Sullivan reviewed his memorandum on abandoned or derelict buildings with the City Council.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister asked if the buildings that are vacant are up to date on taxes. City Attorney Sullivan said if they were not we would acquire the property.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Discussion followed regarding the shape of these buildings and lack of care for them and potential dangers.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister asked how these properties are affecting other surrounding property values.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

## **B. MAYOR LISTER**

### 1. Appointments to be Voted:

- Amy Burns – appointment to the Cable Television and Communication Commission
- John Pratt – reappointment to the Economic Development Commission
- John Crist – reappointment to the Library Board of Trustees
- Stephanie Hausman – appointment to the Library Board of Trustees
- Shaula Balomenos Levenson – appointment to the Library Board of Trustees
- Donald Margeson – appointment to the Library Board of Trustees
- Rick Becksted Jr. – appointment to the Recreation Board

**Councilor Kennedy moved to appoint Amy Burns to the Cable Television and Communication Commission until April 1, 2016; reappointed John Pratt to the Economic Development Commission until October 1, 2018; reappointed John Crist to the Library Board of Trustees until October 1, 2017; appointed Stephanie Hausman to the Library Board of Trustees until October 1, 2017 filling the expired term of John Weaver; appointed Shaula Balomenos Levenson to the Library Board of Trustees until October 1, 2017 filling the expired term of Grace Lessner; appointed Donald Margeson to the Library Board of Trustees until October 1, 2017 filling the expired term of John O’Leary; and appointed Rick Becksted Jr. to the Recreation Board until April 1, 2017 filling the expired term of Elaine Syracuse. Seconded by Assistant Mayor Splaine and voted.**

### 2. Letter from Governor Hassan Re: Sea-3

Mayor Lister spoke to the letter in the Council packet from Governor Hassan on the Sea-3 issue. He said we are working to schedule a meeting with Governor Hassan to discuss this matter further.

Assistant Mayor Splaine thanked Mayor Lister for sending the letter to Governor Hassan and he was happy to see a response back.

3. City Manager's Evaluation (Not on Agenda)

Councilor Spear said City Manager Bohenko's contract requires an evaluation each year. He read a statement on the evaluation and that City Manager Bohenko continues to receive excellent marks.

**The City Council unanimously approved and accepted the report on the City Manager's Evaluation.**

**C. ASSISTANT MAYOR SPLAINE**

1. "Non-Meetings" vs. "Non-Public Sessions:"

**Assistant Mayor Splaine moved that the Portsmouth City Council agrees not to hold any more "non-meetings," and that when non-public sessions are held they will follow the provisions of the New Hampshire Right-To-Know Law with a recorded public vote prior to meeting behind closed-doors for any purpose. Seconded by Councilor Kennedy.**

Assistant Mayor Splaine said he challenges the frequency of "Non-Meetings" by the Council and feels most of the discussions should be taking place in Non Public Sessions.

Councilor Kennedy thanked Assistant Mayor Splaine for bringing this matter forward. She said that this has been a concern of hers and she would like us to document what is taking place.

Councilor Dwyer said she provided a memorandum on the Right-to-Know Law and she has just completed a webinar on these subjects. She stated in the law there are 2 purposes not covered in Non Public Session. One is Strategy with Collective Bargaining and the second is Consultation with Legal Counsel on our Strategy.

**Councilor Thorsen moved to amend the motion to allow "non-meetings" for strategies with collective bargaining and consultation with legal counsel on litigation acquisition of property. Seconded by Councilor Shaheen.**

Councilor Lown said he does not want the public to think we have done something in a "non-meeting" that is not allowed. He said it is a statement to comply with the law.

Councilor Shaheen asked the City Attorney if we could talk about collective bargaining agreements or how to reach an agreement in a Non Public Session. City Attorney Sullivan stated that the legislature has clearly defined what is allowed under "non-meetings" and a specific way to deal with those things. He spoke with Attorney Tom Closson and said he would be uncomfortable with documents outlining what is discussed in collective bargaining and strategies because it would no longer be confidential.

Councilor Shaheen said we could not have strategy discussions in Non Public Sessions. City Attorney Sullivan said that is correct.

Assistant Mayor Splaine expressed his opposition to the amendment to the motion. He said it

is important that we limit our topics. He said we need to be transparent.

Councilor Thorsen said he agrees with Assistant Mayor Splaine and we need to pass the amendment for compliance with State statute. He said we can make another amendment that the City Council will approve to hold a “non-meeting” and have a vote to go into a “non-meeting”.

Councilor Shaheen said it would be better to never have “non-meetings” but we need to comply with the statute. City Attorney Sullivan said the clear intent of the legislature is that collective bargaining should be held in “non-meeting”.

Assistant Mayor Splaine said he would make a motion for “non-meetings” with the two areas as outlined in the RSA. Councilor Shaheen said she is agreeable with the second.

*Assistant Mayor Splaine withdrew his motion. Assistant Mayor Splaine stated he would be bringing back the following motion at the October 20, 2014 City Council meeting: (Proposed motion – that the Portsmouth City Council agrees “non-meetings” will be held only when absolutely necessary in order to discuss strategy or negotiations with respect to collective bargaining or consultation with legal counsel, and that when they are held the purpose of the non-meeting will be publicly disclosed, there will be a public roll call vote, and a record will be kept of when the non-meeting begins, ends, and who is in attendance).*

#### **D. COUNCILOR KENNEDY**

1. Non Public with the Police Commission on Personnel (*Tabled from the September 22, 2014 City Council meeting*)

Councilor Kennedy said she would like to have a Non Public Session with the Police Commission at the next City Council meeting.

Mayor Lister said that the Police Commission, Police Chief, Deputy Police Chief will need to be present and he would have that at the October 20, 2014 City Council meeting.

Councilor Lown asked if any one sees the irony of this motion after the 30 minutes discussion that was just held.

Councilor Spear asked what letter under the law would be entering a Non Public Session.

Councilor Dwyer said she agrees. She asked Assistant Mayor Splaine how this would need to be delineated with this item.

Councilor Kennedy said she has concerns about things that have taken place with police actions. She would like to have better communication with these kinds of issues and concerns in general and comments about employees in the department.

Councilor Dwyer said she feels this is a matter that Councilor Kennedy should ask to meet with the Police Commission to discuss.



Councilor Spear said that Councilor Kennedy should speak directly with the Police Commission on this matter.

Councilor Thorsen said the general discussion should be in public and maybe in a work session.

Mayor Lister said we could have a work session on general matters and come back to the City Council with a date.

#### **E. COUNCILORS KENNEDY, SPEAR & THORSEN**

##### 1. Conflict of Interest / Mandatory Disclosure Ordinance – Option A & Option B

**Councilor Thorsen moved to move forward with the Conflict of Interest/Mandatory Disclosure Ordinance Option B. Seconded by Councilor Morgan.**

Councilor Thorsen said any individual on a board or working for the City and making commitments should disclose their financial background. The public should know where the person could be influenced. He said he would like to see us be the most transparent in the city.

Councilor Dwyer said she has no problem with the overall intent but feels that there is cleaning up that needs to happen. She said conflict of interest and mandatory financial disclosure are very different.

Councilor Spear said there is a concern with the income in Option B including household income and incomes of spouses. He is the spouses should remain private. He said we would be better served focusing on the area of conflict of interest materials.

Councilor Thorsen said we should have the public hearing and hear what the public would like to see changed.

Discussion followed on Option B.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said it is becoming increasingly difficult to fill vacancy on the Boards and Commissions. He said we need to be transparent but we need to look at some of the issues between Option A and Option B.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

**On a 4-5 roll call vote, motion to move forward with the Conflict of Interest / Mandatory disclosure Ordinance Option B failed to pass. Assistant Mayor Splaine, Councilor Kennedy, Morgan and Thorsen voted in favor. Councilors Shaheen, Lown, Dwyer, Spear and Mayor Lister voted opposed.**

**Councilor Spear moved to bring back Option A of the Conflict of Interest / Mandatory Disclosure Ordinance for first reading at the October 20, 2014 City Council meeting and include refinements heard from the City Council this evening. Seconded by Councilor Lown.**

Councilor Kennedy said she would not support Option A because it does not include land use boards or the City Manager. She does not feel that Option A meets our Charter.

Councilor Thorsen said he would vote for this because he could bring forward amendments.

Assistant Mayor Splaine said he would like us to move forward with the motion.

**Motion passed.**

**Councilor Dwyer moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Seconded by Councilor Shaheen and voted.**

Mayor Lister declared a brief recess at 10:05 p.m. At 10:15 p.m., Mayor Lister called the meeting back to order.

**F. COUNCILOR DWYER**

1. Formal request to PDA for transition plan from Grimmel Re: Scrap

Councilor Dwyer reported that Grimmel expects that all scrap metal will be gone from the site and repairs finished no later than November 15, 2014.

**G. COUNCILOR MORGAN**

1. City Ordinance for Helicopters (*Tabled from the September 22, 2014 City Council meeting*)

Councilor Morgan stated she would be bringing a motion forward for a vote at the October 20, 2014 City Council meeting.

2. EDC – Updating the composition of the Economic Development Committee (*Tabled from the September 22, 2014 City Council meeting*)

Councilor Morgan stated she would be bringing a motion forward for a vote at the October 20, 2014 City Council meeting. She said there should be a member from the Sustainability Committee serving on the Economic Development Commission.

3. North End Visioning process (*Tabled from the September 22, 2014 City Council meeting*)

No action taken.

4. Request for Additional Council Meeting in November

Councilor Morgan said she would like to have the City Council to add an additional meeting for November. Mayor Lister stated the 2015 City Council calendar will be brought forward for action at the October 20, 2014 City Council meeting.

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

**At 11:00 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Shaheen and voted.**



Kelli L. Barnaby, CMC/CNHMC  
City Clerk