

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, NOVEMBER 17, 2014

PORTSMOUTH, NH
TIME: 5:30 PM [or thereafter]

I. CALL TO ORDER (5:30 P.M.)

Mayor Lister called the meeting to order at 5:30 p.m.

II. ROLL CALL

In attendance at 5:30 p.m.: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Lown and Spear.

III. ANTICIPATED "NON-MEETING" IN ACCORDANCE WITH RSA 91-A:2, I (a) REGARDING COLLECTIVE BARGAINING

Councilor Spear moved to adjourn to Conference Room A for a "Non-Meeting" in accordance with RSA 91-A:2, I (a) regarding Collective Bargaining, seconded by Councilor Shaheen. Motion voted on a 5-0 roll call.

IV. ANTICIPATED "NON-PUBLIC" SESSION

- A. **LAND NEGOTIATIONS IN ACCORDANCE WITH RSA 91-A:3, II (d)**
- B. **PERSONNEL IN ACCORDANCE WITH RSA 91-A:3, II (a)**

Councilor Shaheen moved to go into "Non-Public" Session regarding Land Negotiations in accordance with RSA 91-A:3, II (d) and Personnel in accordance with RSA 91-A:3, II (a), immediately following the "Non-meeting", seconded by Councilor Lown. Motion passed on a 6-0 roll call vote (Councilor Thorsen arrived in time for vote and Councilor Dwyer was also in attendance at the Non-meeting and Non-Public Sessions for a total of 7 Councilors present)

CALL TO ORDER OF REGULAR MEETING

Mayor Lister called the regular meeting to order in Council Chambers at 7:05 p.m.

ROLL CALL

Mayor Lister requested the Clerk take another roll call for attendance.

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

V. INVOCATION

VI. PLEDGE OF ALLEGIANCE

Mayor Lister requested Josh Denton from the audience to lead the Pledge of Allegiance.

VII. PRESENTATIONS

▪ Blue Ribbon Committee on Sustainable Practices

Bert Cohen, Chair, Peter Britz, Environmental Planner, Patrick Ellis, School Board Representative, members Josh Denton and Bob Cook, gave a brief presentation of past and current sustainability issues and gave some ideas for future measures, including “pay as you throw” program for trash removal to coincide with the upcoming Master Plan process.

Councilor Morgan stated she appreciates the work of the Committee and Chairman Cohen for his passion as well as Peter Britz. She stated they are enthusiastic and knowledgeable and she looks forward to seeing the vision brought forward.

Assistant Mayor Splaine stated he doesn't want to lose sight of the sustainability ideas going forward with the Waste Water Treatment Facility. He stated he recently toured the Durham Treatment Plant and wants the City Manager to look into that as well.

Mayor Lister thanked the Sustainable Practices Committee for their presentation.

▪ U.S. Post Office Relocation

Joseph Mulvey, Real Estate Specialist for the US Postal Service, gave a brief update regarding the recent notice from General Services Administration (GSA) to vacate their current space at 80 Daniels Street, the McIntyre Federal Building. He stated they would prefer to remain in the current location but if they have to relocate they would like to have a combination retail/mail carrier facility with approximately 13,660 square feet, as currently they are in 2 separate locations. He concluded that the first phase of the relocation process is to notify the elected officials and public and receive public comment and he gave the address as follows: Joseph Mulvey, Relocation Specialist, 2 Congress Street, Room 8, Milford, MA 01757.

Mayor Lister stated that the City will work with them through the process.

Councilor Dwyer clarified that the GSA is not longer involved in the postal service activities. Mr. Mulvey stated that is correct as the postal service separated from the government in the 1970's.

Councilor Shaheen stated that a new location hasn't yet been identified but asked if they are looking to stay downtown. Mr. Mulvey stated they would like to stay as close as possible to the existing facility but if they do combine the two services, they will require greater parking so they may have to go outside of the downtown. Councilor Shaheen clarified that if they are able to stay in existing location then they will still have to have 2 facilities for the 2 separate functions. Mr. Mulvey stated yes.

VIII. ACCEPTANCE OF MINUTES – JULY 14, 2014

Councilor Shaheen moved to accept the Minutes of the July 14, 2014 City Council meeting. Seconded by Councilor Dwyer and voted on an 8-0 roll call. (Councilor Kennedy was disconnected at time of this vote)

IX. PUBLIC COMMENT SESSION

Bob Hassold – stated Portsmouth is a popular destination with a serious parking problem. He stated that there have been many discussions with many Councils and he wants this Council to be the one that ends the problem by beginning the construction of a new parking garage in Spring 2015. He suggested asking the PDA to lease a few acres in the Port while the garage is being built.

Sarah Hourihane on behalf of Rebecca Perkins – stated they both sit on the Workforce Housing Coalition and are excited to hear about the redevelopment plan for the Frank Jones Center and that it may include workforce housing and hopes that the city will work toward this plan.

Nancy Novelline Clayburgh – spoke regarding One Sky Community Services located on Banfield Road which supports children with developmental disabilities and brain injuries. She stated that her 25 year old son Michael has been able to be a contributing member of the community and earn his own money, graduate high school, volunteer and play sports and lives a fulfilling life and not one of institutionalization, because of this organization.

Dick Bagley – President of One Sky Community Services – stated they are looking to inform the public regarding the services provided to people with various maladies. He stated they are asking for public support in several ways; people to volunteer to serve on the Board, public support to contact State legislature to continue funding as the shift is towards for-profit organizations instead on non-profits; and finally, businesses to provide work opportunities for those who are leaving school ready to enter the workforce. He thanked Lowe's and Target for their support and urged more companies to become involved.

David Lafevers – stated he is concerned that the handicap parking spaces downtown are now enforced as 3 hour parking spots which takes away spaces for those who need it near their residences. He asked that more handicap spaces be provided.

Jeffrey Cooper – stated he received a cease and desist order from the City regarding his AirBnB which he and his wife began in order to supplement income to pay taxes and make repairs etc. He stated that the AirBnB is a gray area of what constitutes a business versus a private residence use. He stated there are no signs, names, websites, food service etc. and is only one room in their house. He stated it is unfortunate that this has become an issue and would like the ZBA to look for positive solutions and a win/win outcome when they appeal.

Jane Zill - thanked the Mayor and Police Commissioners for holding the recent public forum regarding the Webber inquiry and applauds the courage and integrity of the officials and public who attended.

Mark Brighton – stated that “pay as you throw” was mentioned during the presentation and wonders what problem is being solved by this program. He stated this would just add another tax to residents and would lead to illegal dumping, trash burning etc.

Arthur Clough – thanked Assistant Mayor Splaine for trying to bring transparency to the City. He continued with the Webber/Goodwin issue stating that at the 08/18/14 Council meeting Council Shaheen asked if the e-mail address set up for public comment would be anonymous and he was concerned with the answer as it did not say that it would be. He stated he is also

concerned with the choice of the investigator by the Police Commission and feels that the police interfered with John Connors constitutional rights to speak. He stated that the number given out to the public goes straight to voice mail. Finally, he stated that if this one person has this inheritance, there may be others.

Susan Denenberg – stated that in relation to the Sustainable Practices presentation, the transportation policy and the reuse of current properties should be included with this program. She stated that part of the problem with parking downtown is that people aren't aware of where it is available and gave the example of the Heineman Lot on Rock Street that only had 8 cars parked when she checked. She continued that some time ago it was stated that businesses were going to be surveyed by the Chamber of Commerce but this still hasn't been done. She concluded by reminding everyone that the Nelson/Nygaard parking study reported that we have a management problem and not a parking problem.

X. PUBLIC HEARINGS

A. ORDINANCE AMENDING CHAPTER 1, ARTICLE IX, SECTION 1.901: - CONFLICT OF INTEREST OF THE ADMINISTRATIVE CODE

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

Paul Mannle – stated that the City has been out of compliance with the requirements and suggested as a compromise that the reporting amount be lowered to \$5,000; list only the source of income; remove the asset portion and include all elected and land use board officials.

Dick Bagley – stated he doesn't understand what is trying to be accomplished with this as we are asking people to serve on our boards who have the qualifications to be on the board but then they could appear to have a conflict of interest. He stated we do need to have transparency but we need to go about it correctly.

Rick Becksted – stated that the financial disclosure forms were implemented in 1987 to protect citizens and doesn't understand why the board members no longer receive the forms when they are appointed. He stated there are people who have served on the land use boards in the past who remember signing those forms. He stated he understands that people feel it is a privacy issue but feels that they are representing citizens and we need to have confidence in these people. He stated that the minimum reporting amount should be reduced to \$5,000.00.

Arthur Clough – stated that these boards are adjudicating whether or not something can be built and we need transparency in the process. He cited several recent projects that the votes were split and seemed to be inconsistent and he feels that Councilor Thorsen's amendments should be approved.

With no further speakers, Mayor Lister closed the public hearing.

B. ORDINANCE AMENDING THAT THE FOLLOWING LOTS BE REZONED FROM INDUSTRIAL (I), OFFICE RESEARCH (OR) OR MUNICIPAL (M) TO CHARACTER DISTRICT 4 (CD4):

- ASSESSORS MAP 163, LOTS 33, 34 AND 37;
- ASSESSORS MAP 165, LOTS 1, 2 AND 14

- ASSESSORS MAP 172, LOTS 1 AND 2;
- ASSESSORS MAP 173, LOTS 2 AND 10

AND INCLUDING CATE STREET BETWEEN HODGSON'S BROOK AND BARTLETT STREET, AS SHOWN ON THE ATTACHED EXHIBITS TITLE "AREAS PROPOSED TO BE REZONED TO CHARACTER DISTRICT 4 (CD4)", AND FURTHER THAT THE ZONING MAP REFERENCED IN CHAPTER 10, ARTICLE 4, SECTION 10.420 (DISTRICT LOCATION AND BOUNDARIES) OF THE ORDINANCES OF THE CITY OF PORTSMOUTH BE REVISED ACCORDINGLY

Mayor Lister declared the continuation of the Public Hearing from the September 22, 2014 City Council meeting and called for speakers:

Bernie Pelech – explained his opposition to the proposed ordinance stating that it makes no sense zoning it the same as the Lower end of Daniel Street, Penhallow, Sheafe and State Streets as there is no similarity to that area. He suggested that rezoning to a Gateway District with mixed use and workforce housing could bring a new vibrancy to the underused area. He stated the Portsmouth Housing Authority also supports this as a Gateway District and concluded by asking that the Council vote this proposal down.

Rick Becksted – stated he grew up in this area and it is the same now as it was then. He stated he would like to see this go through the Charette process as was done with the North End. He stated there was some controversy at first but after awhile progress was made and a good discussion held. He stated we should wait until February and let it go through the Charette process.

Dan Rawling – stated he agrees with Mr. Becksted that this should be allowed to go through the Charette process which the basic intent of this is to develop ideas to deal with properties such as this.

Amanda Bouchard – speaking on behalf of her parents Dave and Sherry Gross – stated she owns a business in this area and her parents own 201 Cate Street and they agree that something needs to be done to the area and knew that there was a Charette process being proposed but did not know this ordinance had been proposed. She stated they are not in favor of the current proposal and urged the Council to wait and see what the people have to say through the Charette process.

Paul Mannle – stated that one of the parcels is zoned a natural resource protection area so that needs to be considered. He stated that the Council should wait until the Charette process to go forward but we don't want to miss an opportunity to buy this property. He stated if the City is serious about solving the parking problems, then 3 acres of this could be used for a parking garage with 300-350 spaces per level and run shuttles up and down Islington Street. He suggested that workforce housing, police station, municipal ice rink, are other options for the area. Finally, he stated that the School Department could run their Culinary Program through the Frank Jones Center.

With no further speakers, Mayor Lister closed the public hearing.

XI. APPROVAL OF GRANTS/DONATIONS

A. Acceptance of Police Department Grant and Donations:

1. A grant from the Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), for the Internet Crimes Against Children Task Force - \$260,254.00
2. Donations:
 - a) A donation in the amount of \$3,000 from the Banyan Fund, under the aegis of Mr. and Mrs. Gerald W. Howe, to defray the cost of producing and airing Public Service Announcements (PSAs) regarding the department's opiate addiction initiative.
 - b) Donations in support of the Police Explorer Cadets:
 - A donation in the amount of \$50 from retired Chief David "Lou" Ferland
 - A donation in the amount of \$25 from former Commissioner William Mortimer
 - A donation in the amount of \$400 from the "Friends of the South End"

Councilor Shaheen moved to approve and accept the grant and donations to the Portsmouth Police Department, seconded by Councilor Dwyer. Motion passed on a 9-0 roll call vote.

3. Acceptance of Donation to Senior Services Program from the Balance of the Margaret Tebbetts Checking Account - \$813.52

Councilor Shaheen moved to approve and accept the donation to the Senior Services Program, as presented, seconded by Councilor Morgan. Motion passed on an 8-0 roll call vote, Councilor Lown abstained.

XII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- ### **A. First Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.440 Table of Uses, use #15.20 and Section 10.1530 Terms of General Applicability, regarding Helipad and Heliport**

Councilor Morgan moved to pass first reading and schedule a second reading and public hearing for January 5, 2015 regarding the proposed Ordinance, as presented, and further refer this matter to the Planning Board for report back, seconded by Councilor Thorsen.

Councilor Dwyer stated the hospital is already allowed to have the helipad for emergency transport and asked if this would be meant to eliminate it anywhere else in Portsmouth. City Manager Bohenko clarified that it would not affect the hospital.

Planning Director Taintor stated that the Hospital helipad is a pre-existing non-conforming use. Councilor Dwyer stated she is concerned that if the Hospital had to relocate it for some reason, they wouldn't be able to do so without going to the ZBA..

Councilor Shaheen agrees and stated that the problem we are trying to solve is the red helicopters and making sure that no other companies can come in and do the same thing but feels that our current ordinance already does that.

Councilor Morgan referred to a previous meeting she attended with Planning Director Taintor, Deputy City Manager Allen and City Attorney Sullivan where it was agreed that there currently is no definition for heliport. Planning Director Taintor stated that is correct. Councilor Morgan continued that this is not blocking any emergency helicopters because those fall under State law. Planning Director Taintor stated that is not correct, the only State law is regarding landing in an emergency situation, not as a part of regular hospital use. He stated if the hospital wanted to move or expand their existing helicopter pad they would have to go before the ZBA.

Councilor Morgan stated the intention is to avoid more of what we already have which are helicopters flying over the city and disturbing the peace of residents.

Discussion ensued.

Assistant Mayor Splaine stated this is an important discussion that needs to be had and allow the public to give their input. He stated there needs to be a definition of helipad/heliport at the very least and feels that the Hospital would be accommodated regardless of what they needed to do. He stated he doesn't want to put a company out of business but he doesn't want to see 2 or 3 more come here either.

Motion to pass first reading and refer to 2nd reading and public hearing FAILED on a 4-5 roll call vote. Assistant Mayor Splaine, Councilors Kennedy, Morgan and Thorsen voted in favor. Councilors Shaheen, Low, Dwyer, Spear and Mayor Lister voted opposed.

Councilor Dwyer moved to request the City Attorney and Planning Director to bring back an ordinance for first reading at the 12/8/2014 Council meeting with the definitions of helipad and heliport, table of use with provision for helipad for medical purposes only as a special exception in the OR (Office Research), I (Industrial), or WI (Waterfront Industrial) zones, seconded by Councilor Shaheen.

Councilor Morgan stated it is not about the red helicopters but meant to clarify and clearly define the issue in our ordinance. Councilor Shaheen stated we cannot have this conversation without the red helicopters as they are what caused it to become an issue for discussion.

Motion passed on a 9-0 roll call vote.

Councilor Spear moved to suspend the rules to bring Item XIV.B.1. (Mayor Lister item) up on the Agenda. Seconded by Councilor Dwyer and passed on a 8-0 roll call vote. (Councilor Lown out of Chambers)

1. Report Back Re: Meeting with Police Commission

Mayor Lister thanked everyone for coming to speak on the issue stating the purpose of the meeting being that we are all on the same page in regards to the scope of the investigation. He then read the statement of Police Commission Chair John Golumb.

Assistant Mayor Splaine stated he felt it was excellent that the City Council voted unanimously to share their concerns, and those of many of the public, with the Police Commission. He felt the result of the discussions in the non-public session was productive and made their case of the Roberts Task Force to go wherever the facts and the evidence will lead them. He stated he hopes that the investigation will be comprehensive and extensive. He stated the probate court case will be coming up in late April and he hopes that what needs to be done will be done.

Councilor Spear asked Commissioner Chair Golumb if it was an omission in the charge that there was no inclusion of possible actions that the Commission or Department could have taken or can take in the future. He stated he wants to make sure that it also being communicated to Judge Roberts that they would like to hear from the Task Force what can be done to improve from a departmental and Commission standpoint. Commissioner Golumb stated that the "but not limited to" covers that and any other issues they feel are relevant.

Councilor Dwyer stated she has the same concern and feels it is a very passive directive when it was meant to be a proactive call for transparency and that the charge be such that the Police Department be included in it. She stated that if the phrase "but not limited to" conveys that and Judge Roberts understands it to be as such, then that is fine. Commissioner Golumb stated the wording was meant to give Judge Roberts a range and not limit the charge. He stated he has had that conversation with Judge Roberts and apologizes if that was not clear.

Assistant Mayor Splaine asked if the panel has subpoena power and power to take testimony under oath. City Attorney Sullivan stated the Task Force does not have subpoena powers but they do have the authority from the Police Commission to order anyone employed by the Portsmouth Police Department to present themselves. He stated there are rules with this including Union representation.

Mayor Lister stated he feels comfortable with the public input received and will wait for the report back.

Councilor Shaheen moved to suspend the rules to bring Item XV.A.1. (City Manager Item) up on the Agenda. Seconded by Councilor Dwyer and passed on a 9-0 roll call vote.

1. Request for First Reading of Bonding Resolution of up to \$600,000.00 (Six Hundred Thousand Dollars) for the Purchase of a Heavy Rescue Fire Truck

Assistant Mayor Splaine moved to authorize the City Manager to bring back for first reading at the December 8, 2014 City Council meeting, a Bonding Resolution appropriating the sum of up to Six Hundred Thousand (\$600,000) Dollars, for the FY15 purchase of a Heavy Rescue Fire Truck, as presented, seconded by Council Shaheen.

Chief Achilles explained the need for the Heavy Rescue Fire Truck and answered questions regarding value, staffing levels and life expectancy which is 15-20 years. He further explained that the current truck is not working up to capacity and that they have to remove equipment from the truck to keep it going.

Councilor Lown asked if they could use a trailer to haul the equipment instead of the truck. Chief Achilles explained that the equipment is dispersed between vehicles and that they have tried a trailer in the past but it is not conducive to the timeliness required. He stated that this has been put off previously in the CIP and it now needs to be dealt with. City Manager Bohenko stated that is correct it has been in the CIP and the Council needs to vote to bond it.

Motion passed on a 9-0 roll call vote.

Councilor Spear moved to suspend the rules to bring Item XV.C.1. (Councilor Lown Item) up on the Agenda. Seconded by Councilor Shaheen and passed on a 9-0 roll call vote.

1. Fire Department Study Committee Recommendation

Councilor Low explained that this was on the last meeting agenda and tabled which he feels was due to the union having spoken to City Councilors individually prior to the meeting. He stated that although they also attended the last meeting, they did not get up and speak at public comment.

Assistant Mayor Splaine stated that he feels that the union and fire department employees can come up with their own ideas and feels that we can learn from the employees and not hire a consultant for \$39,000. He stated the results are usually local names plugged into a standard report. He suggested that another committee be formed to meet with employees, administration, union etc.

Councilor Spear feels this should be looked at as a learning opportunity for an outside professional to look at the organization as a whole. He doesn't agree that a standard report will be submitted but will show us how to best utilize our people and possible reconfiguration of the department which could save taxpayer money.

Councilor Morgan agrees with Assistant Mayor Splaine that there is a huge value in starting the process in-house and having the employees come together as a group and brainstorm. She stated she would favor postponing the study until after this process has been conducted.

Councilor Dwyer stated there is a value in having an outside consultant come in and give a different perspective and feels this is especially true with entrenched unionized personnel. She stated she feels that the consultant may come back with some difficult recommendations.

Councilor Shaheen is concerned with the timing of this study in relation to Chief Achilles having only been on the job for a year + and wonders if he has had enough time to implement changes he is looking to make.

Chief Achilles stated both he and the Fire Commissioners support a mechanism to look at the organization and continued that this will be the 2nd budget session for him and he will be bringing forward measures regarding staffing levels.

Discussion ensued regarding the timing of bringing in a consultant.

Councilor Shaheen asked if the unions were involved during the committee process. Councilor Lown stated they were invited to attend and did attend all of the meetings, but they did not participate, nor did they voice any opposition during the meetings and also are not in attendance this evening.

Councilor Shaheen asked if there was a specific issue or event that made this come forward.

Councilor Lown explained that former Mayor Spear had formed the committee not to address any specific issue but because reform is difficult within these types of institutions and therefore felt we should bring in an outside consultant. He continued that during the budget process year after year, overtime continues to be an issue at \$500,000 and the explanation given to the Council is difficult to understand and it is an entrenched practice.

Councilor Dwyer further explained that there had been operational efficiency committees formed for the school department and police department which garnered results but the least change has come from the Fire Department. She stated we understand it is the nature of the work and the staffing levels that are required etc. but every year questions asked by the Council are never answered to anyone's satisfaction and it is a continuous loop of discussion year after year.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister stated that Chief Achilles has done a great job and works well with other Departments and feels that if the School Board had wanted more information from him when he was Superintendent, he would have wanted them to ask him before going outside. He stated he would like to give the Chief the opportunity to give his input first.

Assistant Mayor Lister passed the gavel back to Mayor Lister.

Councilor Morgan stated that Chief Achilles can put out anonymous surveys to the staff to gather information. Chief Achilles stated that the Fire Department Study Committee was provided a lot of information and it will also be provided during the budget process.

Councilor Shaheen stated there are 2 paths; first map out a process and timetable for the Chief to come back to the Council or rely on a committee that was provided the data but still want more information. She continued that she understands the issue of having heard the same information over and over but feels that was the previous administrator.

Chief Achilles stated he is trying to adopt processes that are localized to his department. He stated he would be concerned with tabling this motion and would rather see it voted up or down as it would be unfair to the consultant as well as he needs to know how to proceed for the upcoming budget.

Motion to direct the City Manager to work with the Fire Department to enter contract negotiations with Public Safety Strategies Group FAILED on a 4-5 roll call vote. Councilors Lown, Dwyer, Spear and Thorsen voted in favor. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Morgan and Mayor Listered voted opposed.

Councilor Lown stated that this has been a huge expenditure of time for everyone on the Committee and their work is done. He suggested that the people who voted opposed move forward with the next step.

Assistant Mayor Splaine moved to suspend the rules to allow meeting to go beyond 10:00 p.m., seconded by Councilor Shaheen. Motion passed on a 9-0 roll call vote.

Mayor Lister called a 10 minutes recess from 10:15 – 10:25 p.m.

- B. Second Reading of Proposed Ordinance amending that the following lots be rezoned from Industrial (I), Office Research (OR) or Municipal (M) to Character District 4 (CD4):

- Assessors Map 163, Lots 33, 34 and 37;
- Assessors Map 165, Lots 1, 2 and 14
- Assessors Map 172, Lots 1 and 2;
- Assessors Map 173, Lots 2 and 10

and including Cate Street between Hodgson's Brook and Bartlett Street, as shown on the attached exhibits title "Areas Proposed To Be Rezoned to Character District 4 (CD4)", and further that the Zoning Map referenced in Chapter 10, Article 4, Section 10.420 (District Location and Boundaries) of the Ordinances of the City of Portsmouth be revised accordingly *(Continued from the September 22, 2014 City Council meeting)*

Councilor Spear moved to postpone second reading until December 8, 2014 City Council meeting, seconded by Assistant Mayor Splaine.

Councilor Thorsen asked why this should be postponed. Councilor Spear explained that if this ordinance is voted down before another option is brought forward, then the pre-existing zoning would be back in play and is not in the best interest of the City. Councilor Thorsen stated that he thought this would be voted down and then we would go through the Charette process before bringing back another option. He stated the property has been pulled off the market and he doesn't understand the need to postpone the vote.

Motion passed on a 7-2 roll call vote. Councilors Morgan and Thorsen voted opposed.

- C. Second Reading of Proposed Ordinance amending Chapter 1, Article IX, Section 1.901: - Conflict of Interest of the Administrative Code

Councilor Thorsen moved to continue the second reading to the December 8, 2014 City Council meeting, seconded by Assistant Mayor Splaine.

Councilor Thorsen explained that there are 3 amendments for consideration included in the Council packet information and feels that it would require more discussion than what time

would allow this meeting and therefore, would like to continue to the next meeting.

City Manager Bohenko clarified that the public hearing was closed this evening, but people can speak on it again during the public comment session.

Motion passed on a 9-0 roll call vote.

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

Councilor Dwyer moved to pass third and final reading of the proposed Ordinance as presented, Seconded by Councilor Shaheen and passed on a 9-0 roll call vote.

- E. Third and Final Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.202, Table of Uses – Residential Mixed Residential, Business and Industrial Districts, by changing Use #1.30 (Townhouse) and Use #1.41 (Multifamily Dwelling, 3 or 4 Dwelling Units) from “P” (Permitted) to “S” (Special Exception) in the General Residence A and B (GRA & GRB) Districts

Councilor Dwyer moved to pass third and final reading of the proposed Ordinance as presented. Seconded by Councilor Morgan and passed on a 9-0 roll call vote.

XIII. CONSENT AGENDA

Councilor Lown moved to adopt the Consent Agenda s presented. Seconded by Councilor Shaheen and passed on a 9-0 roll call vote.

- A. Acceptance of Membership Dues to Art-Speak
Pro Musica
shire Theatre Project

(Anticipated Action – move to approve and accept the membership dues to the Piscataqua Arts & Cultural Alliance, a program of Art-Speak, as listed)

- B. Letter from Donald Allison requesting to hold the 20th Annual Eastern State 20 Mile Road Race on Sunday, March 29, 2015 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Donna Hepp, Seacoast Century C-Coordinator, Granite State Wheelmen, Inc, requesting to hold the Seacoast Century on September 26-27, 2015 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Caroline Amport Piper, Friends of the South End, requesting permission to hold the Annual Fairy House Tour on Saturday, September 26, 2015 and Sunday, September 27, 2015 from 11:00 a.m. – 3:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***

- E. Request for Approval of Pole License to install 2 poles located at the intersection of Lafayette Road and the Route 1 ByPass in conjunction with the NHDOT Project replacing the Flyover bridge **(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)**
- F. Request for Approval of Comcast License agreement to install 40' of underground conduit located on Green Street to provide cable services to on-going developments on Green Street **(Anticipated action – move to approve the aforementioned Comcast 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)**
- G. Request for License from Keith R. Malinowski, owner of Portsmouth Buddhist Center for property located at 84 Pleasant Street for a projecting sign on a bracket **(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Keith R. Malinowski, owner of Portsmouth Buddhist Center for a projecting sign at property located at 84 Pleasant Street and, further, authorize the City Manager to execute License Agreements for this request)**

Planning Director's Stipulations:

- The license shall be approved by the Legal Department as to content and form;
- Any removal or relocation of the projecting sign, for any reason, shall 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 sign, 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

- H. Request for License from Angel Williams, owner of SIX Degrees for property located at 47 Bow Street 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 Angel Williams, owner of SIX Degrees for a projecting sign at property located at 47 Bow Street and, further, authorize the City Manager to execute License Agreements for this request)**

Planning Director's Stipulations:

- The license shall be approved by the Legal Department as to content and form;
- Any removal or relocation of the projecting sign, for any reason, shall 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 sign, 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

XIV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Kyle Crosen-Langelier regarding The Board of Adjustment controversial denial of carport application

Assistant Mayor Splaine moved to refer to the Zoning Board of Adjustment, seconded by Councilor Lown.

Councilor Dwyer asked for clarification that there is no further recourse for an appeal. City Attorney Sullivan stated that is correct. Councilor Dwyer stated she doesn't think it is correct that the staff advises people that will be going before the ZBA on the appeals from a legal standpoint.

Councilor Spear stated that there are 43 non-conforming approved lots mentioned in the letter and he would like to see there be a way for people to do things to their property without having to go to the Board of Adjustment by expanding Character based zoning and would like this discussed in the budget process.

Motion passed on a 9-0 roll call vote.

- B. Letter from Gloria Guyette regarding noise and other issues at Prescott Park

Councilor Lown moved to accept and place the letter on file. Seconded by Councilor Shaheen and passed on a 9-0 roll call vote.

- C. Letter from Attorney Bernie Pelech Re: Rezoning Request for Cate Street/Route 1 Bypass Area Gateway District (***Postponed to December 8, 2014 City Council Meeting***)

XV. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request for First Reading of Bonding Resolution of up to \$600,000.00 (Six Hundred Thousand Dollars) for the Purchase of a Heavy Rescue Fire Truck (***Previously acted upon***)
2. Easement Deed for Public Service Company of New Hampshire for Transformer Pad in Prescott Park

Councilor Lown moved to authorize the City Manager to execute an easement to Public Service Company of New Hampshire across property owned by the City of Portsmouth in Prescott Park for the purpose of providing utility service to the soon to be renovated docks for the South Floating Docks project, seconded by Councilor Thorsen.

Councilor Dwyer stated she is concerned that they are going to be cutting trees and feels that there is a different sensibility in Prescott Park. She stated she wants to make sure that the City is contacted for input when this goes forward. Community Development Director David Moore stated he agrees, but clarified that this is a small area on a concrete pad with no trees.

City Manager Bohenko stated he will make sure we are represented.

Motion passed on a 9-0 roll call vote.

3. Establish a Mayor's Blue Ribbon Committee Re: City-Owned Sagamore Creek Land – Capital Improvement Plan Project

City Manager Bohenko stated that the Mayor will be bringing forward appointments to this Blue Ribbon Committee at a future meeting.

4. Report Back and Request for First Reading regarding a Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.1110- Off-street Parking for Conference Centers

Councilor Spear moved to authorize the City Manager to bring back for first reading the proposed Ordinance as recommended by the Planning Board at the December 8, 2014 City Council meeting as presented, seconded by Assistant Mayor Splaine.

Councilor Morgan asked if there are any impact fees that can be imposed as is done in other cities and towns as there will be impacts on water and sewer, traffic, parking etc. or will the taxpayers continue to foot the bill. Planning Director Taintor explained that we do not have impact fees and a conscious decision was made not to have them because we feel we get better results through negotiations with each development and not by a set formula. He continued that impact fees are primarily used for residential developments due to impact on schools etc.

Councilor Spear asked if this will have any impact on Whole Foods. City Manager Bohenko stated it will raise the cap. Planning Director Taintor stated they are invested now because it was presented in December 2013 and has been through design review and the site plan application was submitted.

Councilor Dwyer stated that it was wise for the Planning Board to remind us that when the changes were previously made, we were going to be building a 2nd parking garage, but that hasn't happened yet and now we are in a deficit situation. Secondly, she would like to have a short work session on impact fees for the citizens and new Councilors who are not familiar with them.

Councilor Morgan stated she finds it inadequate to have 1 space per 100 sq. ft. and feels this is a never-ending problem.

Motion passed on a 9-0 roll call vote.

5. Request for Special Non-Public Session with Counsel regarding discussions on Parking Garage Land Negotiations

Councilor Spear moved to hold a non-public session to discuss a parking garage at 165 Deer Street on Monday, December 15, 2014 at 6:30 p.m., seconded by Councilor Dwyer.

Assistant Mayor Splaine asked when we will be coming forward with information for the public as they are concerned with this issue. City Manager Bohenko stated he would like to get the City Council's perspective.

Motion passed on a 9-0 roll call vote.

6. Holiday Free Parking

Assistant Mayor Splaine moved to approve Holiday Free Parking commencing on Monday, December 15, 2014 through Friday, January 2, 2015, seconded by Councilor Shaheen.

Councilor Thorsen asked if anyone has measured the efficacy of this policy as to whether it really brings more people to downtown to shop and also, how do the businesses feel about the policy.

Councilor Spear agrees that those questions need to be asked and feels it should show up as an expense item in the budget. He stated he wonders if there are other ways to spend this money, such as advertising, than to offer free parking.

Councilor Lown suggested instead of free parking, we not ticket people and instead leave a "Happy Holidays" sticker on the cars as he has seen in another municipality.

Mayor Lister asked the Council Liaison to the Chamber of Commerce, Assistant Mayor Splaine, to get feedback from the Chamber.

Motion passed on a 9-0 roll call vote.

7. Report Back and Request for First Reading Re: Rezone Cate street Area to Gateway

City Manager Bohenko stated that the idea is to have an ordinance ready to go as the Charette process goes forward to give direction to the consultant.

Councilor Dwyer stated this is a good idea as the Gateway District is a complicated concept. She stated she doesn't favor Attorney Pelechs' amendments however.

Councilor Dwyer moved to authorize the City Manager to bring back for first reading the proposed Ordinance, as presented, at the December 8, 2014 City Council meeting, seconded by Councilor Shaheen.

Discussion ensued regarding the suggestions in Attorney Pelech's letter.

Motion passed on a 9-0 roll call vote.

8. Request for Approval Re: Isles of Shoals Employee Parking Agreement

Assistant Mayor Splaine moved to authorize the City Manager to negotiate and enter into an Agreement with Pease Development Authority, Division of Ports and Harbors and the Isles of Shoals Steamship Company, Inc., to allow employees of the downtown area to purchase City permits to park in the lot, seconded by Councilor Dwyer. *The motion also gives the City Manager authority to renegotiate the terms of this agreement in the future without future action of the Council.*

Motion passed on a 9-0 roll call vote.

9. Request for Approval Re: Strawberry Banke Snow Ban Parking Agreement

Councilor Spear moved to authorize the City Manager to negotiate and enter into an Agreement with Strawberry Banke Museum to allow residents to park in its lot during snow bans (as amended). Seconded by Councilor Dwyer and passed on a 9-0 roll call vote.

Informational items

1. Events Listing
2. Planning Board Presentation and Public Hearing Re: Capital Improvement Plan
3. Senior Activity Center Update
4. Parking Shuttle Report
5. Meeting with Federal Aviation Administration in Burlington, Massachusetts
6. Final Bicycle and Pedestrian Plan
7. Annual Update on Complete Streets Policy Implementation
8. Update Re: Red Pine Scale
9. Airbnb and Similar Online Property Rental Arrangements
10. Update Re: Commercial Alley Lighting

Councilor Shaheen would like to see the Parking Shuttle Report presented at the next meeting.

Mayor Lister commended Transportation Planner Juliet Walker and Planning Director Taintor on the Bicycle and Pedestrian Report. Councilor Spear agreed and asked that this be added to a future work session agenda.

Councilor Morgan stated that following up on the Transportation Policy, Portsmouth Listens had done a great deal of work on this and feels that all of the pieces of the puzzle need to come together. City Manager Bohenko clarified that the Transportation Policy had recently been adopted by the City Council.

Councilor Dwyer asked about the AirBNB. City Attorney Sullivan explained that they addressing this on a case by case basis upon complaint.

Councilor Morgan asked that there be a database of complaints kept to keep track of the issue going forward.

Assistant Mayor Splaine stated the due to today's technology, this and other issues, such as Uber, will be coming up more and more and the City needs to begin addressing these.

Councilor Lown asked if renting out property for AirBNB is against the zoning ordinance, the State Room and Meals tax or both. City Attorney Sullivan stated both and explained that neighborhood zoning entitles people in the neighborhood protection against their neighbors doing something against code.

B. MAYOR LISTER

1. Report Back Re: Meeting with Police Commission (*Previously acted upon*)
2. Report of Appointment Process (*Postponed to 12/08/2014 Council meeting*)
3. eCity Award

Mayor Lister read the award from Google naming the City of Portsmouth the 2014 e-city for New Hampshire which recognizes the strongest online business community in each state.

4. Appointment to be Considered:
 - Everett Eaton – Reappointment to the Economic Development Commission

The reappointment of Everett Eaton to the Economic Development Commission was considered and will be voted at the December 8, 2014 City Council meeting.

C. COUNCILOR LOWN

1. Fire Department Study Committee Recommendation (*Previously acted upon*)
2. Parking and Traffic Safety Committee Action Sheet and Minutes of the September 11, 2014 meeting

Councilor Shaheen moved to approve and accept the action sheet and minutes of the September 11, 2014 Parking and Traffic Safety Committee meeting. Seconded by Councilor Dwyer and passed on an 8-0 roll call vote. (Councilor Kennedy no longer in attendance via tele- conference)

D. COUNCILOR THORSEN

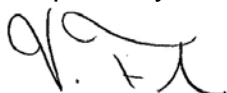
1. Conflict of Interest Ordinance Amendment Options #1 - #3 (*Postponed to December 8, 2014 City Council Meeting*)

XV. MISCELLANEOUS/UNFINISHED BUSINESS

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

Councilor Lown moved to adjourn at 11:40 p.m., seconded by Council Shaheen and voted unanimously.

Respectfully submitted:



Valerie A. French, Deputy City Clerk