

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JANUARY 5, 2015

PORTSMOUTH, NH
TIME: 6:00PM

I. CALL TO ORDER (6:30PM)

At 7:15 p.m., Mayor Lister called the regular City Council meeting to order.

II. ROLL CALL

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen (via conference call at 9:10 p.m.), Kennedy, Lown, Dwyer (via conference call at 7:15 p.m.), Morgan, Spear and Thorsen

III. ANTICIPATED “NON-MEETING” WITH COUNSEL RE: PROPOSED EARLY RETIREMENT PROGRAM IN ACCORDANCE WITH RSA 91- A: 2, I (b)

Councilor Spear moved to enter into a “Non-Meeting” with Counsel regarding Proposed Early Retirement Program in accordance with RSA 91-A:2, I (b) at 6:30 p.m. Seconded by Councilor Lown.

Assistant Mayor Splaine moved to amend the motion to include Proposed Early Retirement Program “for the Police Department”. Seconded by Councilor Morgan.

On roll call 7-0, voted to pass the amendment to include “for the Police Department” to the title of the “Non-Meeting”. Councilors Shaheen and Dwyer were not present for vote.

On a roll call 5-2, voted to enter into “Non-Meeting” with Counsel regarding Proposed Early Retirement Program for the Police Department in accordance with RSA 91-A:2, I (b). Councilors Lown, Morgan, Spear, Thorsen and Mayor Lister voted in favor. Assistant Mayor Splaine and Councilor Kennedy voted opposed. Councilors Shaheen and Dwyer were not present for vote.

Assistant Mayor Splaine stated he would not attend this “Non-Meeting” with Counsel.

IV. INVOCATION

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

V. PLEDGE OF ALLEGIANCE

George Dempsey led in the Pledge of Allegiance to the flag.

PRESENTATION

1. Pedestrian and Bicycle Plan – Juliet Walker, Transportation Planner

Transportation Planner Walker provided an updated on the Pedestrian and Bicycle Plan and addressed the related policy initiatives and plans.

She discussed the public outreach that was done with an online WikiMap, 2 public meetings and targeted outreach with a Bicycle and Pedestrian Advisory group, seniors' luncheon and the Portsmouth Housing Authority. She also addressed the 5 E's for Non-Infrastructure Recommendations which are Engineering, Education, Encouragement, Enforcement and Evaluation. In addition, Transportation Planner Walker reviewed the implementation process with the City Council.

Councilor Kennedy asked if skateboards and segways were included in this or would this have a second report. Transportation Planner Walker said most improvements could apply to those modes of transportation.

Councilor Lown thanked Transportation Planner Walker for all of her work on this over the last 3 years. He said we were planning to apply for the gold status of Bicycle Friendly Community and now we are talking about platinum status.

Transportation Planner Walker stated she will continue to provide updates to the City Council as we move forward with the process.

VI. ACCEPTANCE OF MINUTES – NOVEMBER 17, 2014, DECEMBER 8, 2014 AND DECEMBER 22, 2014

Councilor Lown moved to approve and accept the minutes of the November 17, 2014, December 8, 2014 and December 22, 2014 City Council meetings. Seconded by Councilor Morgan.

On a unanimous roll call vote 8-0, motion passed.

VII. PUBLIC COMMENT SESSION

Beth Margerson spoke regarding AIRBNB and said that she believes there is one operating in her neighborhood but is unable to confirm it so she has not reported it. She said we have a Master Plan and it should be followed.

Mark Brighton spoke regarding the rate of inflation being .9% which is less than 1%. He said the Joint Budget Committee is recommending a guideline of 3.9% which he feels is outrageous and unsustainable.

Declan McEachern, Rye, NH spoke in support of AIRBNB and stated he had one when he lived in New York. He said this puts money in the resident's pockets and the people that stay at the AIRBNB are the type of people you want to visit the City.

Erik Anderson spoke to derelict buildings in the City and said he is pleased that there will be a work session on this matter. He spoke to various properties in the City that need attention.

Jeffrey Cooper said that AIRBNB are really tourist rentals. He said when this became an issue he was a case study and received a cease and desist order last fall. He was told at that time to apply for a special exemption, which he did and was denied because his property did not meet the criteria of a BNB. Mr. Cooper said that the City needs to create a policy.

Abby Cooper said that the City has a current ordinance which addresses AIRBNB and it is home occupation. She said the City does not need to create a new policy it is more about defining the client in the current ordinance.

Howard Mangold spoke regarding the need for the City to create a Swap Shop. He said other communities have them and he would be willing to assist the City in anyway to get one started here in Portsmouth.

George Dempsey spoke in opposition to the AIRBNB and said they should not be allowed in neighborhoods. He said this negatively impacts residents in the neighborhoods where these are taking place.

VIII. PUBLIC HEARING

- A. RESOLUTION IN THE AMOUNT OF FIVE HUNDRED FIFTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$555,500.00) FOR A SUPPLEMENTAL APPROPRIATION RE: COLLECTIVE BARGAINING AGREEMENTS

Mayor Lister read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Lister closed the public hearing.

IX. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation from Mark Wentworth Home in the amount of \$15,000.00 in support of the monthly Senior Luncheons

Councilor Morgan moved to approve and accept the donation from The Mark Wentworth Home, as listed. Seconded by Councilor Spear.

On a unanimous roll call vote 8-0, motion passed.

X. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Adoption of Resolution in the amount of Five Hundred Fifty-Five Thousand Five Hundred Dollars (\$555,500.00) for a Supplemental Appropriation Re: Collective Bargaining Agreements.

Councilor Spear moved to adopt a Resolution in the amount of Five Hundred Fifty-Five Thousand Five Hundred Dollars (\$555,500.00) for a Supplemental Appropriation from Unassigned Fund Balance regarding Collective Bargaining Agreements in accordance with Section 7.14 of the City Charter. Seconded by Councilor Lown.

Councilor Thorsen said the decision to spend the money has been made, so the decision this evening is where the funding will come from.

On a unanimous roll call vote 8-0, motion passed.

- B. Third and Final 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 Spear moved to accept the recommendation of the Planning Board that the Zoning Ordinance be amended as proposed and, further, move to pass third and final reading. Seconded by Councilor Morgan.

On a unanimous roll call vote 8-0, motion passed.

- C. Third and Final Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.1110 – Off-Street Parking by Inserting a new paragraph 10.1115.24 – The Provisions of Section 10.1112.50 – Maximum Number of Parking Spaces, shall not apply to Buildings and Uses within the Downtown Overlay District

Councilor Lown moved to pass third and final reading of the proposed Ordinance as recommended by the Planning Board, as presented. Seconded by Councilor Spear.

On a unanimous roll call vote 8-0, motion passed.

XI. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

A. Acceptance of Police Department Grant and Donations:

- A Grant in the amount of \$7,391.00 from Susteen Advanced Mobile Forensics. The total cost of the equipment is \$12,390.00, the grant pays for \$7,391.00 of the cost and the matching funds of \$4,999.00 will come from the main ICAC funding Grant already in place
- Donation of a Gateway laptop computer by Homeland Security to the Portsmouth Police Department. This is forfeited equipment resulting from a New Hampshire Internet Crimes Against Children Task Force Case
- A Donation in the amount of \$25.00 from retired Police Commissioner William Mortimer in support of the Portsmouth Explorer Post
- A Donation in the amount of \$151.40 from retired Chief Dr. David “Lou” Ferland, in support of the Portsmouth Police Explorers
- A Donation to the Police Department from Newburyport Five Cents Savings Bank in the amount of \$500.00

(Anticipated action - move to approve and accept the grant and donations to the Portsmouth Police Department)

- B. Acceptance of Donation to the Fire Department from Newburyport Five Cents Savings Bank in the amount of \$500.00 ***(Anticipated action - move to approve and accept the donation to the Portsmouth Fire Department)***

- C. Acceptance of Donation to the Coalition Legal Fund:
- Town of Carroll - \$1,000.00
(Anticipated action - move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)
- D. Letter from Emily Christian, National Multiple Sclerosis Society, Greater New England Chapter, requesting permission to hold the 2015 Bike MS NH Seacoast Escape on Saturday, August 22, 2015 ***(Anticipated action – move to refer to the City Manager with power)***

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Morgan.

On a unanimous roll call vote 8-0, motion passed.

XII. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

(There are no written communications or petitions on for acceptance)

XIII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Ratification of Purchase of Property Re: 113 Cottage Street

City Manager Bohenko said he is looking for ratification by the City Council for purchasing the property which abuts the Doble Center. He indicated he is offering \$270,000.00 for the property and the funds will come from the Mariner Park Associates Property fund.

Community Development Director Moore provided a brief presentation of the property. He showed where the property is located in relation to the Doble Center and that it would add measurably to the Doble Center.

Councilor Spear moved that the City Council ratify the purchase of 113 Cottage Street in the amount of \$270,000.00 from the Mariner Park Associates Property fund, and further, refer this matter to the Recreation Board, Senior Subcommittee of Recreation Board and the Planning Board for their advisory review. Seconded by Assistant Mayor Splaine.

City Manager Bohenko stated we do not intend to do anything with the property immediately. He stated he would come back to the City Council to rent the property and gain income.

Councilor Lown stated he needs to recuse himself from the vote.

Assistant Mayor Splaine asked if we should refer this to the Recreation Board and Senior Center Subcommittee of the Recreation Board. Councilor Spear agreed to have this as part of the motion.

Assistant Mayor Splaine said he wants residents to look at this and offer input on the matter.

Councilor Kennedy said that this continues to be a hard decision for her because she does not want it to become the Recreation Center or the Police Department. She said the property should become the Senior Center which is much needed.

Councilor Thorsen expressed concerns with the City becoming a landlord.

On a unanimous roll call vote 7-0, motion passed. Councilor Lown abstained from voting on this matter.

Informational items

2. Report Back Re: Abandoned or Derelict Buildings

City Manager Bohenko would like to have this as a topic for the February 9th Work Session. He said we will try to have several topics as part of our Work Sessions. He stated that City Attorney Sullivan would prepare a presentation for the Work Session.

Councilor Morgan asked if we have other items for the February 9th Work Session because she is concerned that there may not be enough time.

City Manager Bohenko said we would also have AIRBNB and the Work Session would start at 6:30 p.m.

Mayor Lister said Assistant Mayor Splaine and Councilor Dwyer both have items on the agenda and he would like them moved to the February 9th Work Session but they could speak briefly to the matter this evening.

Councilor Kennedy said she is against eminent domain for derelict buildings and would like to see the Council go in another direction.

Councilor Lown thanked City Attorney Sullivan for his detailed memorandum on derelict buildings and listing the options available to the City with these types of properties.

B. MAYOR LISTER

1. Joint Budget Committee Recommendation for FY16 Operating Budget

Councilor Spear moved to accept budget guidelines recommended from the Joint Budget Committee for the FY16 Operating Budget, as presented. Seconded by Councilor Lown.

Councilor Kennedy said she would not support the motion. She does not feel it is fair to our young families and senior citizens. She said it is a slimy way of doing this and there should have been discussion by the City Council.

Mayor Lister said we have had meetings on this where people could come and express their views.

Councilor Spear said the Joint Budget Committee is an information gathering committee. He said the increase is because what people are experiencing in their own homes with increases in health, electricity and oil prices. He said we need to give direction to our departments in order for them to create their budget. Councilor Spear said the 3-4% increase would be a minor tax increase and that this is a reasonable approach.

Councilor Thorsen said he feels the 3.95% increase is too high.

Councilor Thorsen moved to amend the motion and strike the 3.95% as the set percentage increase for the operating budget to 1.9%. Seconded by Councilor Kennedy.

Assistant Mayor Splaine said he opposes both figures. He said he objected to reinstating the Joint Budget Committee. He wants to hear the visions of the departments and commissions and the Council needs to decide what we should be doing for investments to the future.

Councilor Lown stated we are only voting on a ceiling for the budget. He said most of the City Council was in favor of the establishment of the Joint Budget Committee during our retreat last year. He feels much of this talk that is premature this evening and we need to remember the City Council always brings the budget down before adoption.

Councilor Morgan said departments need to look at efficiencies. She said we need to consider our wastewater treatment plant and the amount of that expense to the budget and taxpayers.

On a roll call vote 3-5, motion to amend and strike the 3.95% as the sent percentage increase for the operating budget to 1.9% failed to pass. Councilors Kennedy, Morgan and Thorsen voted in favor. Assistant Mayor Splaine, Councilors Lown, Dwyer, Spear and Mayor Lister voted opposed.

City Manager Bohenko said that this is the beginning of our process. He said the Charter requires that the City Manager start to put in place the budget and on Wednesday he would be meeting with department heads on budget guidelines, whatever happens this evening. He suggested adding to the motion the total number increase not to exceed \$3,000,000.00 for the operating budget.

On a roll call 5-3, voted to accept budget guidelines recommended from the Joint Budget Committee for the FY16 Operating Budget, as presented and that the operating budget increase shall not exceed more than \$3,000,000.00. Assistant Mayor Splaine, Councilors Lown, Dwyer, Spear and Mayor Lister voted in favor. Councilors Kennedy, Morgan and Thorsen voted opposed.

At 9:00 p.m., Mayor Lister declared a brief recess. At 9:10 p.m., Mayor Lister called the meeting back to order.

Councilor Shaheen joined the meeting via conference call at 9:10 p.m.

2. Report Back Re: Members to the Blue Ribbon Committee on the Sagamore Creek Land

At the City Council meeting on December 8, 2014, the Blue Ribbon Committee on Sagamore Creek Land was established. The charge of the Committee is to develop a plan for public usage of the 66-acre city-owned parcel. A report back to the City Council shall be completed on or prior to September 21, 2015:

The following Committee members have been appointed:

1. Councilor Eric Spear, Chairman, Council Representative
2. Councilor Christine Dwyer, Council Representative
3. Allison Tanner, Representative from the Conservation Commission
4. Lennie Mullaney, Representative from the School Board
5. Kory Sirmaian, Representative from the Recreation Board
6. John Mikolajczyk, Resident
7. Alison Pyott, Resident
8. Ex-officio City Manager, or his designee Non-Voting

Mayor Lister reported on the establishment of the Blue Ribbon Committee on the Sagamore Creek Land which he created at the December 8, 2014 City Council meeting. He reviewed the charge of the Committee with the City Council and stated that a report back to the City Council shall be completed on or prior to September 21, 2015. He also stated this land is for public usage and for the City to enjoy.

3. Appointment to be Considered:

- Jay Leduc – Appointment to the Planning Board as a regular member (current alternate)
- Reagan Ruedig – Appointment to the Historic District Commission as a regular member (current alternate)
- Richard Shea – Appointment to the Historic District Commission as an alternate member

The City Council considered the appointments listed above and action will be taken at the January 20, 2015 City Council meeting.

4. Resignations:

- Shelley Saunders from the Conservation Commission
- Tracy Kozak from the Historic District Commission

Councilor Lown moved to accept with regret the resignations of Shelley Saunders from the Conservation Commission and Tracey Kozak from the Historic District Commission and a letter of thanks and appreciation being sent to Ms. Saunders and Ms. Kozak for their years of service to the City. Seconded by Councilor Kennedy.

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

C. ASSISTANT MAYOR SPLAINE

1. AIRBNB – How we can make it work in Portsmouth (*See attached*)

Assistant Mayor Splaine said he placed this item on the agenda based on the discussion held by the Planning Board and feels we need to have a more in-depth discussion on this matter and stated he looks forward to the February 9, 2015 Work Session. He said this gives the City Council an opportunity to be proactive.

Councilor Morgan asked City Manager Bohenko to incorporate the memorandums from Assistant Mayor Splaine and Councilor Dwyer as part of the documents for the February 9, 2015 Work Session.

Councilor Kennedy stated that there are locations on the internet that have not received cease and desist orders from the City and everyone should receive the order and not just a select few.

D. COUNCILOR KENNEDY

1. Commercial Properties and the potential Assessors letter being sent out by the City

Councilor Kennedy said the letter that was potentially going to be sent to commercial property owners did not indicate the information the Assessor was seeking was voluntary. She also said the letter is not required by law.

Councilor Kennedy moved not to send the letter to our commercial entities. Seconded by Councilor Morgan.

Councilor Spear stated that this motion is out of order based on Council Rule #9 and the motion should be written. He said Councilor Kennedy should bring the motion forward at the next meeting with a written motion. Councilor Kennedy stated that she does not mind moving the motion to the next meeting of the City Council scheduled for January 20, 2015.

City Manager Bohenko said this is equivalent to him not interfering with the City Clerk on Elections. He stated that our Assessor has been commended by the State for her process on valuing properties. He said the Assessor uses the information as a tool and it is voluntary. City Manager Bohenko said it is bad precedent to interfere with how the Assessor collects data. He said there is a Charter provision that does not allow for the City Council to interfere with departments.

City Attorney Sullivan said that this is a City Manager form of government and under the Charter there is a non-interference clause.

Mayor Lister declared Councilor Kennedy's motion out of order.

Councilor Kennedy stated she will bring a motion forward at the January 20, 2015 City Council meeting requesting the City Manager not send out a letter to commercial property owners unless it states the form enclosed for completion with the letter is voluntary.

E. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the November 13, 2014 meeting

Councilor Spear moved to approve and accept the action sheet and minutes of the November 13, 2014 Parking & Traffic Safety Committee meeting. Seconded by Councilor Lown.

On a roll call vote 8-1, motion passed. Councilor Kennedy voted opposed.

F. COUNCILOR DWYER

1. Request for Work Session Re: Home-owner short-term rentals

Councilor Dwyer stated property owners renting out their homes as AIRBNB may require mortgage companies to pull owners mortgages and insurance companies to void insurance policies on these homes. She said our zoning laws are restrictive and maybe overly restrictive on in-law accessory use. Councilor Dwyer said we should not only look at it as AIRBNB but as an option for home owners to rent out for longer period of times. She said that this is a multilayer issue.

G. COUNCILOR THORSEN

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

Councilor Thorsen said at the last Council meeting we looked at this Resolution and the motion failed to pass. He said he spoke with Chief Achilles and the Chief feels he could get a truck for \$500,000.00.

Councilor Thorsen moved to reconsider Adoption of Bonding Resolution of up to Six Hundred Thousand Dollars (\$600,000.00) for the Purchase of a Heavy Rescue Fire Truck. Seconded by Councilor Lown.

Councilor Lown asked what if we had the department go out to bid on this. City Manager Bohenko said you could have the department go out to bid but it would need to be disclosed that it is subject to the City Council approving the funds.

Councilor Lown said he met with Chief Achilles and looked at the truck, which has 75,000 miles and no matter what the City Council does, the vehicle will be sold. He said the equipment would then need to be brought to the scene of an incident at the direction of the Fire Department.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said he would vote against the Resolution for the truck and that he would like to see the big picture. He would like the Chief to come before the City Council to speak to the long range plan for the Fire Department and then work with Chief Achilles and the Fire Commission on purchasing what is needed.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Councilor Lown asked if Councilor Thorsen would reconsider tabling this and having the Fire Chief come back with the market value on this and discuss what the big picture is with the City Council.

Councilor Dwyer said that the City Council does not have the knowledge for looking at fire trucks like the Fire Chief does.

Councilor Thorsen said he would not table the matter at this point.

On a roll call 7-2, voted to reconsider Adoption of Bonding Resolution of up to Six Hundred Thousand Dollars (\$600,000.00) for the Purchase of a Heavy Rescue Fire Truck. Assistant Mayor Splaine, Councilors Shaheen, Lown, Dwyer, Morgan, Spear and Thorsen voted in favor. Councilor Kennedy and Mayor Lister voted opposed.

City Attorney Sullivan said now the adoption of the Resolution is back before the City Council.

Councilor Thorsen moved to Adopt a Bonding Resolution of up to Five Hundred Thousand Dollars (\$500,000.00) for the Purchase of a Heavy Rescue Fire Truck. Seconded by Councilor Morgan.

Councilor Kennedy moved to amend the motion to have the Fire Department go out to bid and that it is contingent upon the City Council approval for funding. Seconded by Councilor Lown.

Councilor Thorsen said that Councilor Kennedy's motion is not a proper motion to amend.

City Attorney Sullivan said that these are decision for the City Council to make. He said the City Council needs to decide if the change is a substantial enough that changes the intent of the Resolution and would require a new Resolution.

Councilor Lown said we would need 6 votes to pass the Resolution. He said he would vote against the motion and he does not see what we are losing by having the Fire Department go out to bid.

Councilor Morgan said asking for bids is simple but Fire Chief Achilles has been here several times now and we need to let the him know what information we want so that he can move forward.

Councilor Kennedy withdrew her motion to amend and Councilor Lown withdrew the second to the motion.

Councilor Shaheen said she is concerned with reducing the number of the Resolution. She stated that Chief Achilles stated the public safety could be compromised with getting safety equipment to the scene of an accident.

Councilor Dwyer said the motion means we are not going to pay \$500,000.00 but up to \$500,000.00 for the vehicle. She said this is equipment that we need whether we have 2 or 3 stations.

On a roll call vote 5-4, motion to Adopt a Bonding Resolution of up to Five Hundred Thousand Dollars (\$500,000.00) for the Purchase of a Heavy Rescue Fire Truck failed to pass. Assistant Mayor Splaine, Councilors Shaheen, Dwyer, Morgan and Thorsen voted in favor. Councilors Kennedy, Lown, Spear and Mayor Lister voted opposed. Six votes are required for Adoption of the Resolution.

Councilor Lown moved that the Fire Commission go out to bid for a truck that is new or slightly used with no equipment included. Seconded by Councilor Kennedy.

Councilor Lown said the equipment would be upgraded later with the Capital Improvement Program funding. He said the equipment already exist in the truck.

Councilor Shaheen moved to amend the motion to request the Fire Commission go out to bid for a truck that includes the equipment needed. Seconded by Councilor Thorsen.

Councilor Lown said he has no problem with the amendment proposed by Councilor Shaheen.

Councilor Thorsen said he would be voting against the main motion.

City Attorney Sullivan advised the City Council they cannot direct the Fire Chief to do anything.

Councilor Lown said he agrees the motion should state the Fire Commission and not the Fire Chief.

City Attorney Sullivan said when the Fire Commission comes back with bids the City Council would need to make a motion for a vote. City Manager Bohenko said another public hearing on the Resolution and vote to adopt the Resolution will need to take place by the Council.

On a roll call 7-2, voted to amend the motion to request the Fire Commission go out to bid for a truck that is new or slightly used and includes the equipment needed. Assistant Mayor Splaine, Councilors Shaheen, Lown, Dwyer, Morgan, Spear and Thorsen voted in favor. Councilor Kennedy and Mayor Lister voted opposed.

On a unanimous roll call 9-0, voted to pass main motion as amended.

XIV. MISCELLANEOUS/UNFINISHED BUSINESS

XV. ADJOURNMENT

At 10:15 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Lown and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk