

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, NOVEMBER 16, 2015

PORTSMOUTH, NH
TIME: 7:00 PM

I. CALL TO ORDER (7:00PM)

Mayor Lister opened the meeting at 7:00 p.m.

II. ROLL CALL

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

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

Mayor Lister asked that a moment of silence be held in memory of the victims of the recent attacks in Paris, France.

Mayor-elect Jack Blalock led the Pledge of Allegiance.

PRESENTATION

1. Wastewater Treatment Facility Schedule Update

Assistant City Attorney Suzanne Woodland and City Engineer Terry Desmarais reviewed the history of informal discussions and explained the formal process and next steps relating to the upgrade of the Wastewater Treatment Facility at Peirce Island.

Assistant City Attorney Woodland explained that in 2007 the EPA issued a new permit requiring a secondary treatment plant due to a change of interpretation of the Clean Water Act. She continued that since then, they have been evaluating and designing the largest Public Works project in the City's history as it will determine how the city handles wastewater for the next 50-100 years. She stated that contrary to statements in the newspaper, the City will be at 100% design by the end of the year. She reviewed the various issues that caused delays over the last few years including the nitrogen limits issue that required a more complicated and bigger plant as well as the evaluation of the Pease option. She stated following the approval of the plan, we will begin the local permitting process, pre-qualifying bidders, bond authorization and a possible contract by July 1, 2016 and compliance with the permit by September 2020. She further explained that this is a complicated project that will required 47 months construction and then a 4 month start up of operations. She stated that the constraints of construction with one shift, a tight work site, and keeping the current plant operational are all issues that have to be taken into consideration. She stated that adding a 2nd and/or 3rd shift could be considered, but it will add additional truck traffic and noise for the residents of the south end. She stated the May 2017 deadline will not be met, but we are hoping for some relief from that timeline. She concluded that once the plans are complete, a Statement of Position will be submitted to the EPA who will have until January 24, 2016 to respond and if there are any disputes, they can take the dispute to a federal judge.

Councilor Spear stated we just went through the complex project of building a new school and this building is twice as technical and agrees that we cannot do a 3rd shift in that neighborhood. He stated he supports a request for formal disputation.

Councilor Lown stated he appreciates the update and hopes that this clears up the mistaken idea that the city is dragging this out as clearly we are not and asked if it is reasonable to expect an extension of the May 2017 date stated in the Consent Decree if a federal judge becomes involved.

Assistant City Attorney Woodland stated she does not want to speculate, but the EPA has until January 24, 2016 to submit their statement of opposition.

Councilor Dwyer stated she supports a formal dispute as well but asked if we are also looking at the costs of the shorter time frame.

City Manager Bohenko stated yes, but we would have to waive the ability to have sanctions on contractors for delays, but reiterated that we are committed to 100% design by end of December 2015.

Councilor Dwyer stated this is a complex issue and feels it needs to be reported correctly in the newspaper and suggested that we meet with the Editorial Board to clarify the facts.

Councilor Kennedy asked if it is still going to remain in the current fence line even with the 3.0 nitrogen level requirement.

City Manager Bohenko stated yes and that is why there have been the delays and we have to keep the plant running during construction.

Councilor Shaheen stated that one of the challenges is the EPA monthly average total nitrogen limit being based on seasonal average or monthly average and has that been decided yet. City Engineer Desmarais stated that in the most recent conversations with the EPA, there will be a monthly average from June-October with monitoring of the wet weather months of April and May, and a seasonal average of 8 months. Councilor Shaheen stated it is worth noting that we were at 80% design approval before this issue came up.

Councilor Kennedy asked if we can meet the 3 parts per million and still stay within the fence line. City Engineer Desmarais stated there is no need to go outside of the fence line to meet the lower limit.

V. ACCEPTANCE OF MINUTES – OCTOBER 5, 2015 AND OCTOBER 19, 2015

Councilor Lown moved to accept the minutes of October 5 and 19, 2015 City Council meetings. Seconded by Councilor Spear and passed on a 9-0 roll call vote.

VI. PUBLIC COMMENT SESSION

Michael Berman, Portsmouth resident and Uber driver – read into the record a letter from Christopher David, Uber Driver, regarding the “turf war” occurring between Uber and Taxi Drivers and urged suspension of the ordinance until it has been resolved.

John Palreiro, Taxi Company owner/driver – stated that the Transportation Services Commission Chairman Peter Bresciano asked him to relay to the Council that they should refer the requested changes by Uber to the Transportation Services Commission for review. Mr. Palreiro continued that he doesn't feel any more amendments should be made to the ordinance as they have already done everything that had been requested by Uber but they still do not comply and are running their business illegally. He stated that this is a matter of safety and fairness and he would rather see deregulation entirely than anymore concessions to Uber.

Ralph DiBernardo – spoke opposed to any further changes to the Transportations Services ordinance stating that the ordinance is meant to meet the needs of the City of Portsmouth, not Uber. He continued by listing various misdemeanors that fall under that category that Uber wants eliminated from the background check requirement and stated it is a matter of safety of the people using the service.

Peter Sommsich – stated he also opposes any further changes to the Transportation Services ordinance or suspending the current ordinance. He stated he appreciates the work that went into the ordinance by the Council and city staff and feels that more time needs to be given to see if it will work. He concluded that Uber needs the City of Portsmouth more than we need Uber.

Brendan Dubois – resident of Exeter, NH, introduced himself as the brother of Police Chief Stephen Dubois. He discussed the recent Police Commission meeting where 2 vendors were invited to attend and make presentations and received what he feels was rude treatment as they announced an interim Police Chief instead of going through the process. He stated that City Manager Bohenko commented that he had never seen such behavior in his years in government. He continued by detailing the personal relationship between Commissioner Cavanaugh and David Mara as well as relating an incident of a police cover up during then Chief Mara's term in Manchester. He concluded by asking the City Council to intervene before this situation gets worse.

VII. APPROVAL OF GRANTS/DONATIONS – *There were none on the agenda*

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading amending Zoning Ordinance so that Certain Described Property on Sagamore Grove Road be Rezoned from Waterfront Business (WB) to Single Residence B (SRB)

Councilor Lown moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the December 7, 2015 City Council meeting, seconded by Councilor Spear.

Planning Director Taintor reviewed the proposed change and stated that there has been a minor revision since the ordinance was drafted, increasing the square footage to 25,678 and the revision date to November 6, 2015.

Councilor Spear stated that he defers to the Planning Board in doing the research of an ordinance change and impacts, but wonders if the maritime businesses, who need water access, will be impacted and lose their access and what is the long-term vision.

Planning Director Taintor stated that maritime businesses have been struggling, but clarified that this particular lot does not go to the water because of the steep drop. He stated the rest of it will remain waterfront.

Councilor Morgan asked about the revision in square footage. Planning Director Taintor explained that the DES requirements for septic system changed to 25,000 sq. feet so they had to move the lot line 11 feet closer to the water.

Councilor Kennedy asked what happens when communities give up their waterfronts. Planning Director Taintor reiterated that this isn't usable for that purpose.

Councilor Spear moved to amend the revision date to November 6, 2015 and square footage to 25,678. Seconded by Councilor Thorsen and passed on an 8-1 roll call vote. Councilor Kennedy voted opposed.

Main motion as amended passed on an 8-1 roll call vote, Councilor Kennedy voted opposed.

- B. First Reading amending Zoning Ordinance - Chapter 10, Section 10.1530 – Term of General Applicability, amend the definitions of “hotel” and “motels as follows – shall not include casino gambling, keno or other games of chance

Assistant Mayor Splaine moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the December 7, 2015 City Council meeting, seconded by Councilor Morgan.

Planning Director Taintor explained the request from Attorney Zelin to add Hotels and Motels to the definition of not allowing gambling.

Motion passed on a 9-0 roll call vote.

Councilor Dwyer asked if “game of chance” is defined anywhere in the ordinance. Planning Director Taintor stated no. Councilor Dwyer stated that if a local group wanted to hold a Bingo game in a hotel, they wouldn’t be able to do so, and feels that this needs to be taken into account.

Assistant Mayor Splaine moved to suspend the rules to move up Item XI.C.1. on the agenda for action. Seconded by Councilor Spear and passed on a 9-0 roll call vote.

1. Possible Solution to UBER Application Process

Assistant Mayor Splaine moved to authorize the City Attorney to prepare an ordinance for first reading at the December 7, 2015 City Council meeting that includes the technical amendments to the Transportation Services ordinance that have been requested by UBER in its letter of October 19, 2015, seconded by Councilor Lown.

Assistant Mayor Splaine explained that this issue needs to be resolved as we are entering into the holiday season and then the tourist season will start again in early spring and we need to have enough transportation services in place. He stated this is meant to level the playing field, simplify the process, and maintain the safety of the residents and visitors.

Councilor Spear asked for a friendly amendment that the 3 requests be brought forward separately and that there also be a report back from the Transportation Services Commission.

Assistant Mayor Splaine agreed stating that the Commission is meeting on 11/18/2015 and he would like the City Attorney and Police Chief to give their input as well. Councilor Lown stated as the seconder of the motion, he agrees with the friendly amendment.

Discussion ensued regarding the ride-sharing issue.

Councilor Thorsen stated that he wonders why this particular service is singled out for background checks as we do not require them for other businesses and feels there should be consistency and fairness.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister stated he agrees that we need ride-sharing services as well as taxis in the City of Portsmouth, but his main concern is public safety. He continued that a lot of time has been spent on working out the ordinance as it currently exists which took into consideration Ubers' concerns at the time. He concluded by stating that we have rules to operate in the City that includes insurance and background checks.

Assistant Mayor Splaine passed the gavel back to Mayor Lister.

Motion as amended passed on a 7-2 roll call vote. Councilor Kennedy and Mayor Lister voted opposed.

Councilor Lown asked if there is enough time to bring this forward before the Council term ends. City Manager Bohenko explained that the Council can suspend the rules to do the third and final reading after the public hearing and second reading on the same evening.

IX. CONSENT AGENDA

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

- A. Letter from Donald Allison, Eastern States 20 Mile requesting permission to hold the Eastern States 20 Mile Road Race on Sunday, March 26, 2016 ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Emily Christian, National Multiple Sclerosis requesting permission to hold the 2016 Walk MS Portsmouth on Saturday, April 16, 2016 from 10:00 a.m. to 2:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Matt Junkin, Seacoast Rotary, requesting permission to hold the Seacoast Rotary Turkey Trot 5k on Thursday, November 24, 2016 at 7:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from St. Patrick School requesting to host its 3rd annual 5k Road Race on Saturday, March 12, 2016 at 10:30 a.m.; route from Peirce Island and end in front of Strawberry Banke on Marcy Street ***(Anticipated action – move to refer to the City Manager with power)***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Michael Potori, Beara Irish Brewing Co., requesting permission to hold a 5k run and Brewfest at 2800 Lafayette Road on March 19, 2016 and provide 4 oz samples to paying attendees with a portion of proceeds will go to a local charity

Councilor Spear moved to refer to the City Manager for report back, seconded by Councilor Dwyer.

City Manager Bohenko stated he has not had the opportunity to talk with the requestor so he will report back in December regarding the request for providing the alcohol samples as he doesn't want to set a precedent. Mayor Lister asked that the charity should be clarified as well.

Motion passed on a 9-0 roll call vote.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request Partial Waiver of Municipal Service Fee for 31-32 Rochester Avenue, Portsmouth

Lynn Marie Hinchee, Attorney, Pease Development Authority, stated she has been asked to attend in order to answer any questions the Council may have regarding this request. She explained the history of the initial sublease agreement with the Dept. of State in 1992 for 20 years, which did not require any rent to the PDA but did require them to pay the Municipal Services Fee. After the 20 years, the PDA tried to then collect rent, but were unsuccessful at which time the PDA began negotiations with the General Services Administration (GSA) on a new lease at fair market value for a 10 year period, but they argued that they don't have to pay any municipal service fee. At that point, they went out and got 2 appraisals of the property, but couldn't see the appraisals because it is a government property. Finally, in order to avoid litigation, and because it is the sole Visa Processing Center in the United States, the property was leased to the GSA for \$6.00 a foot with the PDA paying the city 75 cents of the \$6 a foot for the municipal service fee.

City Manager Bohenko explained that the City will be waiving approximately \$36,751 in fees annually over the next 10 years but will be guaranteed \$88,000 a year going forward.

Councilor Lown moved to authorize the partial waiver under Section 2.9 of the Municipal Services Agreement between the City and the PDA and allow for payment of the Municipal Service Fee in the amount described for 31-32 Rochester Avenue, seconded by Councilor Dwyer.

Councilor Dwyer asked if this agreement is for the next 20 years with the two 5-year options. Ms. Hinchee stated potentially 20 years, but it is only fixed for the first 10 years.

Discussion ensued regarding the appraisals and the practice of governmental agencies working with each other.

City Manager Bohenko stated that this does not set a precedent and also this building employs over 700 people.

Motion passed on an 8-0 roll call vote.

(City Manager Bohenko attempted to reconnect with Councilor Kennedy as she was no longer responding to the roll call, but was unable to connect with her.)

2. Letter from Attorney Bruton Re: Unmerge Lots at 75 Monroe Street Nathan Aviezri Revocable Trust

City Manager Bohenko stated that this had been referred to the Planning Board for a public hearing and there were no objections.

Councilor Lown moved to accept the Planning Board's aforementioned recommendation. Seconded by Councilor Spear and passed on an 8-0 roll call vote.

3. Report Back Re: Request for License for Trash Enclosure on City Property at 319 Vaughan Street

Councilor Thorsen moved to approve a License for the trash enclosure based upon the two approval processes by City land use boards and City staff determination that the health and safety issues have been adequately addressed, and further, to enter into a License Agreement as drafted by the Legal Department, seconded by Councilor Lown.

Councilor Thorsen stated that when the Planning Board reviewed this there was an issue because they were no longer going to be dumpsters but totes and people would be walking by them but there was no other place to locate them.

City Manager Bohenko stated that the Health Department and Zoning Enforcement will ensure they are cleaned by making it a part of the licensing agreement, which can be revoked if they become unsanitary.

Councilor Thorsen asked about the drain in the pad. Planning Director Taintor stated no drain is required with totes, but they wanted a water source for cleaning.

Councilor Morgan asked if 3S Art Space is using city property, does it impact ownership of the land by their using it. City Attorney Sullivan explained that it is not the same as private property.

Motion passed on an 8-0 roll call vote.

4. Parking Agreement with Piscataqua Bank

Councilor Lown moved to authorize the City Manager to negotiate and enter into an Agreement with Piscataqua Bank for the public's use of 19 parking spaces for which the City will provide parking enforcement services, seconded by Councilor Spear.

Parking and Transportation Director Joey Giordano explained the agreement with Piscataqua Bank for 19 spaces for \$1.00 a year and enforcement of the lot by the City.

Assistant Mayor Splaine asked if the City would be responsible for snow removal. Mr. Giordano responded no.

Motion passed on an 8-0 roll call vote.

5. Ratify Agreement Re: Gundalow Company

Councilor Lown moved to ratify the one (1) year Agreement entered into between the Trustees of Trust Funds and Gundalow Company. Seconded by Councilor Spear and passed on an 8-0 roll call vote.

Informational items

1. Events Listing
2. Charter Committee
3. Haven School Playground Improvement Project

Assistant Mayor Splaine requested that Item 2, Charter Committee, be brought back to the next meeting as Councilor Kennedy was not available to address any questions or comments.

B. MAYOR LISTER

1. Appointments to be Considered:
 - Appointment of Jamie Baker to the Citizens Advisory Committee

The appointment of Jamie Baker to the Citizens Advisory Committee was considered and will be voted at the December 7, 2015 City Council meeting.

2. Appointments to be Voted:
 - Appointment of Anne Poubeau to the Portsmouth Housing Endowment Fund Advisory Board
 - Appointment of Hannah K. Dahlgren to the Citizen Advisory Committee

Assistant Mayor Splaine moved to approve the appointment of Anne Poubeau to the Portsmouth Housing Endowment Fund Advisory Board and Hannah K. Dahlgren to the Citizens Advisory Committee. Seconded by Councilor Lown and passed on an 8-0 roll call vote.

C. ASSISTANT MAYOR SPLAINE

1. Possible Solution to UBER Application Process (*Previously addressed*)

D. COUNCILOR MORGAN

1. Right-to-Know Law: City Council's Official Position

Councilor Morgan stated she will bring a motion back at the next meeting.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Dwyer stated that she would like clarification regarding and issue brought up during public comment about the role of "interim" chief versus "acting" and when the appointment comes to the Council etc. City Attorney Sullivan stated that in terms of the position of Chief, either term would make the position a Department Head, but if they are not called "Chief" then they may not be a Department Head.

Councilor Spear stated that "Chief" is in the term "Deputy Chief" and there is currently an interim Deputy Chief. City Attorney Sullivan clarified there is an "acting" Deputy Chief which is not the same as a regular Chief.

Councilor Thorsen clarified that the Police Commission makes the appointments and the City Council approve the contracts.

Councilor Morgan stated that she understands that the contract for the Chief will come to the Council for the financial aspect, but asked why when the Deputy Chief recently left, that did not come before the City Council. City Attorney Sullivan stated it was a severance agreement. He stated there are currently no agreements drafted for the Council to review.

Councilor Morgan asked if the Short-term rental issue will be coming back to this Council. City Manager Bohenko stated that there will be a Work Session on November 23, 2015 which will include that issue as well as recycling/solid waste and renaming of the Lafayette Playground. Councilor Morgan stated she would like public comment added to the Work Session agenda for the Short-term rental issue. City Manager Bohenko stated that the Council can choose to suspend the rules that night.

Councilor Dwyer stated there is not enough time for the current Council to take action on that issue by the end of the year. Councilor Morgan stated she requested the Work Session so the information is available for the next Council and so they can have a precise picture of the city's position.

XIII. ADJOURNMENT

Councilor Lown moved to adjourn at 9:00 p.m. Seconded and passed unanimously.



Valerie A. French
Deputy City Clerk