

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, DECEMBER 21, 2015

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER

At 7:05 p.m., Mayor Lister called the regular City Council meeting to order.

II. ROLL CALL

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

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Jeff Heinz son of Deputy Fire Chief James Heinz led in the Pledge of Allegiance to the Flag.

PRESENTATIONS

1. Portsmouth Middle School Musical Performance

Students from the Portsmouth Middle School performed 4 Holiday selections for the City Council.

2. Presentation to Mayor and Outgoing City Councilors

City Manager Bohenko presented Mayor Lister, Councilors Shaheen, Kennedy, Morgan and Thorsen with City of Portsmouth rocking chairs in honor of their years of service to the City of Portsmouth. Mayor Lister and Councilors Shaheen, Kennedy, Morgan and Thorsen accepted the rocking chairs with thanks and appreciation.

3. Recognition of African Burying Ground Committee Members & Fundraising Volunteers

Mayor Lister presented the African Burying Ground Members & Fundraising Volunteers with the Portsmouth Rotary Christmas Ornament of the African Burying Ground in recognition of their years of service on the Committee and fundraising activities.

4. Community Advisory Board Haven Well Contamination Report

Rich DiPentima provided an update on the Contamination Report from the Community Advisory Board regarding Haven Well. He spoke to the 14 meetings held on this matter and addressed the blood tests that were taken. He recognized Portsmouth Regional Hospital for conducting the 1,500 blood tests at no charge. Mr. DiPentima reported that the blood test results would be available in January and spoke to the Air Force's compliance with the requirements set by DES.

Councilor Shaheen thanked the Board for their services and spoke to their importance in continuing their work on the Haven Well.

PROCLAMATION

1. Pro Portsmouth 30th Anniversary

Barbara Massar was presented with a Proclamation in recognition of Pro Portsmouth's 30th Anniversary. Barbara accepted the Proclamation with thanks and appreciation.

V. ACCEPTANCE OF MINUTES – DECEMBER 7, 2015

Councilor Shaheen moved to approve and accept the minutes of the December 7, 2015 City Council meeting. Seconded by Councilor Kennedy and voted.

VI. PUBLIC COMMENT SESSION

Beth Margeson spoke regarding Prescott Park and the significant improvements made over the years. She addressed the Prescott Deeds and her analysis and stated that the Park belongs to the people of the City.

Arthur Clough spoke regarding the contract of Corey MacDonald and said the severance package should be considered illegal as only one Police Commissioner signed off on the contract. He said the contract is not legal and not properly endorsed.

Patrick Doyle spoke in support of the NBT bank sign that is on the agenda for approval. He said he is available to answer questions for the replacement sign at 100 Market Street.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE II. SECTION 7.201 – TRANSPORTATION SERVICES BY THE ADDITION OF THE FOLLOWING TRANSPORTATION SERVICES MEANS THE PROVISION OF TRANSPORTATION BY A DRIVER TO A RIDER, BEGINNING WHEN A DRIVER ACCEPTS A RIDE REQUESTED BY A RIDER, CONTINUING WHILE THE DRIVER TRANSPORTS A REQUESTING RIDER, AND ENDING WHEN THE LAST REQUESTING RIDER DEPARTS FROM THE VEHICLE
- B. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.204 – BACKGROUND CHECK BY THE DELETION OF THE WORDS “OR MISDEMEANOR” IN ITEM C AND THE DELETION OF ITEM D IN ITS ENTIRETY
- C. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.211 – SIGNAGE BY THE ADDITION OF THE WORD “WHICH” IN ITEM A AND THE DELETION OF “FULL TEXT OF” IN ITEM B REPLACED WITH “FARE INFORMATION REQUIRED BY”

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

Peter Bresciano, Chair of Transportation Service Commission, said the minutes of the last Transportation Service Commission are in the packet for the Council’s review. He spoke to the considerable amount of time taken by the Committee regarding the UBER issue. He reviewed the votes on the ordinances by the Commission with the Council. He said that UBER does not want to comply they do not need to come to the City. The City Council should be concerned with the residents of the City.

David Speltz said safety and security of passengers is a concern as well for UBER. He spoke regarding background checks and said the Police Department should accept 7 year checks. He said he supports the ordinances.

Ralph DiBernardo spoke against the ordinances and requested the City Council not eliminate the requirement of the 15 year background check.

John Palreiro spoke opposed to the ordinance amendments. He addressed the background and insurance requirements and said UBER needs to comply like the other companies and individuals operating.

Beth Margeson requested that the City Council not vote to pass second reading of the Ordinance as requested by the Police Department and the Transportation Service Commission.

Perry Mogul, Portland, Maine spoke in favor of the ordinances and the operation of UBER in the City.

Mark Brighton spoke opposed to the ordinances and said that UBER must comply with all requirements that have been put in place.

Jason Randall spoke in support of UBER and the ordinance amendments.

Joanne Pipkin spoke in support of UBER and the ordinance amendments as requested. She said that this is not an all or nothing scenario.

Christopher David, Dover, NH read a letter from Jason Walls in support of UBER. Mr. David spoke on his own behalf in favor of UBER.

Tim Maccanneil, spoke in support of the ordinances and UBER and stated he was a user of UBER.

Joel Valenzuela, Concord, NH spoke in support of the ordinances and UBER. He stated UBER is the transportation mode of the future.

Harrison deBree, Dover, NH spoke in support of the ordinances and said that transportation services should be deregulated in the City.

Duane Foster, Rye, NH spoke in support of the ordinances and said that UBER is a superior product over the current taxi services in the City.

Jonathan Loveland, Greenland, NH spoke in support of the ordinances and UBER. He said he trusts UBER's background checks.

Yury Polozou, Manchester, NH spoke in support of UBER and its services in the City. He said the service is convenient and should remain.

James Leslie Exeter, NH spoke in support of UBER and the ordinances. He spoke opposed to the clause whereby the insurance company must notify the City if the insurance is cancelled.

Arthur Clough said UBER is a service he uses and spoke in support of the ordinances. He said UBER provides a variety to the City.

Stephanie Franz said she serves as an independent contractor for UBER and spoke to the level of service provided in the City. She spoke to the level of safety requirements that UBER has in place for their drivers to follow.

Peter Towers spoke in support of the ordinance and background check requirements of UBER.

Curt Howland said he cannot be an UBER driver because his vehicle does not qualify due to its age. He said he favors the ordinances and supports UBER.

Christina Ferria said that this is a policy decision of the City Council. She said that this is new technology and urges the passage of the ordinances.

Clay Moore, Rye, NH said UBER is needed in the City and spoke in favor of the ordinances.

Merle White, Anchor Taxi, spoke opposed to the ordinance amendments and said they're to benefit UBER's will.

At 9:15 p.m., Mayor Lister declared a brief recess. Mayor Lister called the meeting back to order at 9:25 p.m.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation Prescott Park Arts Festival Re: City's 3D Computer Model - \$1,000.00

Councilor Kennedy moved to accept and approve the donation of \$1,000.00 from the Prescott Park Arts Festival for the expansion of the City's 3D computer model. Seconded by Councilor Spear and voted.

- B. Grant Agreement with the New Hampshire Public Utilities Commission - \$450,000.00

Councilor Kennedy moved to refer to the City Manager with power. Seconded by Councilor Lown.

Steve Bartlett, Business Administrator provided a brief overview of the grant to the City Council.

Councilor Dwyer asked if the agreement comes back to the City Council to understand the cost over time. City Manager Bohenko said he would bring it back to the City Council.

Councilor Lown said there is a desirability to have solar panels on all City buildings in the future.

Motion passed.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 7, Article II, Section 7.201 – Transportation Services by the addition of the following: Transportation Services means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle

Councilor Lown moved to pass second reading. Seconded by Councilor Dwyer.

City Manager Bohenko explained in order for the ordinances to be acted on by this Council it would require 6 votes to suspend the rules to take up third and final reading this evening.

Assistant Mayor Splaine spoke to the actions of the Transportation Service Commission and stated he feels that the ordinances should be rejected. He said it is important that our residents and tourists feel safe.

Councilor Kennedy said she wants to make it clear that the City Council has not banned UBER or ride sharing in the City. She said what we are asking for from UBER is insurance and the safety of the residents and tourists. She thanked the 2 UBER drivers that have complied with the ordinance.

Councilor Morgan thanked the Transportation Service Commission for their work. She said the ordinance does not infringe upon people's rights. She stated she is opposed to the ordinance amendments.

Councilor Thorsen said if there is no rider in the car than the safety issue does not apply and we only want to cover when someone is in the vehicle.

Councilor Dwyer said she does not agree with all 3 ordinances but does support this ordinance.

On a roll call 5-4, motion passed. Councilors Shaheen, Lown, Dwyer, Spear and Thorsen voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Morgan and Mayor Lister voted opposed.

Councilor Lown moved to suspend the rules in order to take up third and final reading. Seconded by Councilor Morgan.

On a roll call 5-4, motion failed to pass. Councilors Shaheen, Lown, Dwyer, Spear and Thorsen voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Morgan and Mayor Lister voted opposed. (6 votes required for passage of suspension of the rules).

- B. Second reading of Ordinance amending Chapter 7, Article II, Section 7.204 – Background Check by the deletion of the words “or misdemeanor” in Item C and the deletion of Item D in its entirety

Councilor Lown moved to table. Seconded by Councilor Shaheen.

On a roll call 5-4, motion passed. Assistant Mayor Splaine, Councilors Shaheen, Lown, Morgan and Spear voted in favor. Councilors Kennedy, Dwyer, Thorsen and Mayor Lister voted opposed.

- C. Second reading of Ordinance amending Chapter 7, Article II, Section 7.211 – Signage by the addition of the word “which” in Item A and the deletion of “full text of” in Item B replaced with “fare information required by”

Councilor Lown moved to table. Seconded by Councilor Shaheen.

Councilor Shaheen stated that the Police Department has expressed their opposition to all amendments to the Transportation Service Ordinance to ensure the safety of residents and tourists.

Councilor Thorsen spoke in favor of the ordinance and said the background checks should be for 7 years not 15 years.

On a roll call 7-2, motion passed. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Morgan, Spear and Mayor Lister voted in favor. Councilor Dwyer and Thorsen voted opposed.

- D. Third and Final 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 Thorsen moved to pass third and final reading of proposed Ordinance as presented. Councilors Kennedy and Morgan voted opposed.

- E. Third and Final 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 forms of gambling

Councilor Kennedy moved to pass third and final reading of proposed Ordinance, as presented. Seconded by Councilor Dwyer and voted.

X. CONSENT AGENDA

Councilor Lown moved to adopt the Consent Agenda. Seconded by Councilor Kennedy and voted.

- A. Letter from Kelly Bosco, Alzheimer’s Association, requesting permission to hold the 2016 Seacoast Walk to End Alzheimer’s on Sunday, September 25, 2016 (*Anticipated action – move to refer to the City Manager with power*)

- B. Requests for License to Install Projecting Signs:
- NBT Bank N.A., owner of NBT Bank, for property located at 100 Market Street
 - William Bixby, owner of Ganesh Imports, for property located at 57 Market Street

(Anticipated action – move to approve the aforementioned Projecting Sign Licenses as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreements for these requests)

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***
- C. Letter from Todd Hanson, St. Paddy’s 5 Miler, requesting permission to hold the 6th Annual Road Race on Sunday, April 3, 2016 at the Pease Tradeport
(Anticipated action – move to refer to the City Manager with power)
- D. Request for Approval of Conduit License Agreement #1501 for the installation of 35 feet of 1-4” conduit and underground fiber cable on Borthwick Avenue
(Anticipated action – move to approve the aforementioned Conduit 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 and further that all stipulations be met as outlined in the memorandum to the City Manager dated December 16, 2015)

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Attorney Doug Macdonald regarding Restoration of Separate Lots located at 268 & 276 Dennett Street

Councilor Lown moved to refer to the Planning Board for report back. Seconded by Councilor Shaheen and voted. Councilor Kennedy voted opposed.

- B. Letter from Frank S. Warchol, Deputy Police Chief (Acting); regarding proposed amendments to the Transportation Services Ordinance

Councilor Lown moved to accept and place on file. Seconded by Councilor Shaheen and voted.

- C. Memorandum from Peter Bresciano, Chair of Transportation Service Commission regarding proposed amendments to the Transportation Services Ordinance

Councilor Kennedy moved to accept and place on file. Seconded by Councilor Lown and voted.

Councilor Kennedy asked how a variance can be given to a project from years ago without going to the Historic District Commission. Planning Director Taintor said the project has a site plan that was approved in the 1990's. City Attorney Sullivan stated what is vested is the plan that was done in the 1990's.

City Manager's Informational Item

- *65 Mendum Avenue – Zoning Board of Adjustment Reversal of City Council Approval to "Unmerge" Lots*

Councilor Dwyer said she has asked the Legislative Delegation to look into the matter of the law regarding unmerged lots. She said we should seek criteria through an amendment of the law.

B. MAYOR LISTER

1. Appointments to be Voted:
 - Appointment of Dexter Legg to the Planning Board effective January 1, 2016
 - Appointment of Jim Lee as an alternate to the Zoning Board of Adjustment
 - Appointment of Jeremiah Johnson as a regular member to the Zoning Board of Adjustment

Councilor Spear moved to appoint Dexter Legg to the Planning Board effective January 1, 2016 until December 31, 2018; appointment of Jim Lee as an alternate to the Zoning Board of Adjustment filling the unexpired term of Jeremiah Johnson until December 1, 2018; and appointment of Jeremiah Johnson as a regular member to the Zoning Board of Adjustment until December 1, 2020. Seconded by Councilor Lown and voted.

2. Report Back Re: Corey MacDonald Severance Agreement

Assistant Mayor moved that the full report be released to the public. Seconded by Councilor Kennedy.

Assistant Mayor Splaine said there is no reason why the public should not see all parts of the report. He said this is not about Corey MacDonald, it is about the process.

Councilor Lown said he respectfully disagrees with Assistant Mayor Splaine. He said 5% of the memorandum consists of legal advice to the City Council.

Councilor Spear said he agrees with Councilor Lown and feels it is a disservice to the new City Council. Councilor Thorsen said he would like to receive the report with only the attorney issues redacted. Councilor Dwyer said the only parts we are talking about redacting are the recommendations by Attorney Closson. She said she is not willing to make the decision that no action will be taken on this matter.

Councilor Kennedy said that the report came to the City Council through e-mail and asked, does that make it public. City Manager Bohenko said not if it is privileged, it is confidential.

Councilor Shaheen said she thought we were asking for a summary and finding of facts. She said it was to bring to light the items that were facts and omitted for legal items.

Councilor Morgan said she would like the full report released as soon as a course of action can be decided.

Councilor Thorsen moved to amend the motion to redact the legal analysis from the report prior to release to the public. Seconded by Councilor Thorsen. On a roll call 5-4, motion passed. Councilors Lown, Dwyer, Spear, Thorsen and Mayor Lister voted in favor. Assistant Mayor Splaine, Councilors Shaheen, Kennedy and Morgan voted opposed. On a unanimous roll call 9-0, main motion passed as amended.

C. ASSISTANT MAYOR SPLAINE

1. Process for Creating A "Board of Ethics"

Assistant Mayor Splaine said we are not following the Code of Ethics in the City and feels we need to resolve this matter and create the Board. City Attorney Sullivan said the reason for non-compliance is no matters have been brought to the City Council for the creation of the Board. He stated he would bring these ordinances forward to the School Board, Fire and Police Commissions.

Councilor Morgan asked if the creation of the Board is optional. City Attorney Sullivan stated it is not optional.

Councilor Lown said the City has done nothing wrong, it was a board as needed and it was not needed.

Councilor Dwyer said there is more that needs to go with it. She said there is a difference between what the City Council will do concerning a whistle blower and that of complaints about the process. She said there needs to be some substance before putting this on an agenda.

City Attorney Sullivan said sitting on the board is a representative from the City Council, School Board, Police and Fire Commission which shall be drawn by lots. He stated nothing happens until a complaint is made.

2. Transportation Service Commission – Information Item

Assistant Mayor Splaine spoke to his letter regarding Lt. Cummings. He said he gives his strongest thanks, and commendation, to Lt. Chris Cummings, who has served as the Police Department “representative” on the Transportation Services Commission, per city ordinance, for the past year. He stated Lt. Cummings has had a very professional attitude in all that he said and did on the Commission.

D. COUNCILORS SHAHEEN, LOWN, SPEAR

1. Update on McIntyre Federal Building

Councilor Shaheen said in May 2014 we received confirmation that the building would be transitioning and the reality that the building would just transfer to the City was not what happened. She said the City convinced the GSA that this was an obligation they had to meet. She stated the primary objective is to find suitable locations for businesses in the building with the exception of the post office.

Councilor Shaheen said the GSA determined the businesses needed 40,000 square feet and wanted to remain in the downtown and currently they are looking at a suitable location. She explained the 3 options before the GSA:

- Exchange of the McIntyre property for Construction Services of the New Facility within the City of Portsmouth Central Business District

Under this approach, the GSA would exchange the Federal McIntyre Property to a developer for fee ownership in another property and this would also include the design and construction of a New Federal Facility in combination with a cash payment to equalize value if necessary.

- Exchange of the McIntyre property for Fee Ownership of the New Facility in the form of an existing building within the City of Portsmouth Central Business District

Under this approach, the GSA would exchange the Federal McIntyre Property for fee ownership to a parcel within the Delineated Area (Downtown) that is improved with an existing building that meets the GSA’s space requirements in combination with a cash payment to equalize value if necessary.

- Exchange of the McIntyre property for New Facility on City of Portsmouth owned Property

Under this approach, the GSA would exchange the Federal McIntyre property for the design and construction of a New Facility on a property owned by the City of Portsmouth.

Councilor Shaheen reported that the Working Group proposes the 3rd option because it gives the City the ability to control the scale and design of the building. She said the City Council identified the Bridge Street Lot for the new location for GSA.

Councilor Lown commended Senator Shaheen and City Manager Bohenko with the idea for option 3. He said this idea will not expend one tax dollar.

Councilor Thorsen said he would support the 3rd option and asked if the building is on federal property. City Manager Bohenko said on the 3rd option it would be owned by the Federal Government. He said the Bridge Street lot is an example of a location.

Councilor Kennedy said we need to get more information out to the public on this matter and a possible site. City Manager Bohenko said he would put the memorandum on the website when the Request for Information (RFI) comes out.

City Manager Bohenko said the idea under option 3 would be a long term lease on the land. The idea of the memorandum was to give context to the RFI.

Assistant Mayor Splaine thanked Mayor Lister for his work on this matter and the creation of the Working Group.

E. COUNCILOR DWYER

1. Working Group Report for Prescott Park

Councilor Dwyer spoke to the RFQ for a Prescott Park Master Plan which provides an overview of the processes for qualifications. She reported that the Historic District Commission has had 2 work sessions on the stage and there will be another work session. She stated the earliest anything will be done with the stage is 2017.

Councilor Kennedy said the Prescott Park deeds need to be brought to the attention of the Working Group. She stated Beth Margeson has done a great deal of work on reviewing the deeds and her findings need to be brought to the public. She asked that the City Council look at her work and the original deed and its intent.

Councilor Dwyer said it is pretty clear that Beth came to her own conclusion. She recommended if anyone wants to read about the Prescott sisters should read Mr. Robinson's book on them.

Councilor Morgan said she is concerned that we are talking about a permanent structure before a Master Plan is done for the park. She would strongly suggest the Master Plan be put in place. She said everyone should be brought to the table to discuss these matters. Councilor Morgan said she would like Portsmouth Listens to be part of the process. She said Beth's research should be part of the information on Prescott Park and the list of documents. Councilor Dwyer stated that Beth's memorandum should go to the City Attorney.

F. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the December 3, 2015 meeting

Councilor Lown moved to approve and accept the Action Sheet and Minutes of the December 3, 2015 Parking & Traffic Safety Committee meeting. Seconded by Councilor Spear and voted. Councilor Kennedy voted opposed.

Councilor Lown explained that there will be a 4-way stop installed at Pleasant and Court Street.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Spear thanked Mayor Lister for his work over the last 2 years.

XIV. ADJOURNMENT

At 11:35 p.m. Assistant Mayor Splaine moved to adjourn. Seconded by Councilor Shaheen and voted.



Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk