

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 3, 2017

PORTSMOUTH, NH
TIME: 6:30PM

At 6:30 p.m., a Non Public Session was held pursuant to:

- RSA 91-A:3, paragraph II (c) for the purpose of discussing a matter, which, if discussed in public, would likely affect adversely the reputation of any person other than a member of the public body;
- RS 91-A:3, paragraph II (d) for the purpose of discussing the acquisition, sale or lease of property; and
- RSA 91-A:3, paragraph II (I) for the consideration of legal advice provided by legal counsel.

I. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Rus Wilson, Recreation Director led in the Pledge of Allegiance to the Flag.

PRESENTATIONS

1. Portsmouth High School Boys Basketball State Champions

Mayor Blalock presented each player and coach with a plaque in recognition of the 2017 State Championship. State Representative Jaqueline Cali-Pitts presented Coach Mulvey with a Proclamation in honor of the 2017 State Championship. Coach Mulvey accepted the plaques and Proclamation with thanks and appreciation.

Assistant Mayor Splaine moved that the Portsmouth City Council withhold and seal the minutes of the Non Public Session of April 3, 2017 because if publicly disclosed, it would adversely affect the reputation of another and render the actions that may be taken ineffective pursuant to RSA 91-A:3, paragraph III. Seconded by Councilor Cyr and voted.

2. Poet Laureate

Mayor Blalock read a Proclamation declaring Mike Nelson as the 11th Poet Laureate. Kate Lee the former Poet Laureate presented Mr. Nelson with a quill which is the symbol for the Poet Laureate. Mr. Nelson read a poem to the City Council and offered his thanks and appreciation for the recognition and the Proclamation.

3. One Sky Community Services

There was no Presentation this evening.

4. Update of New Website and Rollout of Viewpoint Re: Permits

Deputy City Manager Colbert Puff provided an overview of Viewpoint software for the issuance of permits in the Inspection Department.

Councilor Spear asked if the permits are public documents. Deputy City Manager Colbert Puff responded affirmatively.

Alan Brady, Information Technology Manager provided a presentation on the new website and spoke to its design and development.

5. Update on Revaluation

Rosann Maurice-Lentz, Assessor reported that Portsmouth's values are at 86.6% and that we will be going through a statistical revaluation this year. She reported that the new values will be for the 2017 tax year and that the process is in the beginning stages.

V. ACCEPTANCE OF MINUTES

There were no minutes on for acceptance this evening.

VI. PUBLIC COMMENT SESSION

Mark Brighton said he has reviewed the Financial Disclosure Ordinance and is in favor of it.

Dick Bagley spoke to the services provided by One Sky Community Services. He said it is difficult to provide these services when budgets are cut and asked the City Council to do what they are able to assist them in their endeavors for the developmentally disabled individuals.

VII. PUBLIC HEARINGS

A. ORDINANCE AMENDING CHAPTER 3, ARTICLE II, SECTION 3.208 –
REGULATION OF SINGLE-USE CARRYOUT PLASTIC BAGS

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

Christina Lusky spoke opposed to the ordinance and said it could increase littering. She spoke to the many ways people utilize plastic bags.

Meg Wangrove spoke in favor of the ordinance and addressed the harmful effects plastic bags have on the ocean. She said Portsmouth could be the leader of this by being the first in New Hampshire to pass this type of ordinance.

Nathalie Morison spoke in support of the ordinance and discussed the environmental benefits of banning single use carryout plastic bags. She said New Hampshire is falling behind other New England States which have passed such laws on this issue.

Kirsten Howard spoke in support of the ordinance and said that there are negative impacts from plastic bags on the environment. She said 80% of the ocean pollution is from plastic bags.

Liz Durfee spoke in support of the ordinance and said there are many negative impacts from plastic bags. She stated that this ordinance aligns with solid waste regulations. She urged the City to pass the ordinance and be a leader on this issue.

Linda Harvey spoke opposed to the ordinance and urged the City Council to not adopt the regulation.

Derek Horton thanked the City Council for taking this matter up. He spoke opposed to the ordinance and said it is not neighborly to make someone follow this ordinance if adopted. He said the ordinance will be difficult to enforce and we can expect a lawsuit to be filed on this matter.

Charles Griffin spoke opposed to the ordinance and addressed whether the City has any authority to adopt such an ordinance. He said by the Council voting for this ordinance it violates the City Councilor's Oath of Office taken. He said you cannot individually choose which laws you will follow and those you would not. Mr. Griffin asked the City Council to pause and not pass second reading this evening. He said the provision is nothing but punitive and there are many reasons not to pass the ordinance.

Kevin Lucey, Greenland, NH, said he supports the ordinance and is working with the Surf Rider Foundation on this matter. He said Portsmouth can manage its rights under the Ordinance. He said carry out bags are made of plastic and should be considered waste.

Adrienne Harrison urged the City Council to move forward with the ordinance as originally proposed. She said paper bags are provided as a single use option. She spoke to the impacts of plastic bags on the environments.

Jim Lee spoke to the multi-use of plastic bags. He said he is opposed to the ordinance and said that this is a solution looking for a problem.

Erik Anderson spoke opposed to the plastic bag ordinance and said he would like to know the changes the City Council is considering on this matter. He said he feels there are more important issues to the City to discuss other than plastic bags.

Fred Rice, Hampton, NH, spoke to protecting the environment but said he agrees with the stand of the City Attorney on this matter. He said the City does not have the authority to adopt such an ordinance and the City would be facing a lawsuit if it does adopt it. He also stated that any lawsuit brought forward would not be a quick and easy suit. He said the ordinance will drive up the costs at stores and drive some businesses away from the City.

Mark Brighton said the issue is about freedom of choice and 20,000 residents should be making their own choice. He stated that plastic bags do not kill wildlife and mammals, nets do. He said that plastic takes less time to recycle than bags and the ordinance signifies nothing.

Mike Teal spoke opposed to the ordinance and said it is bad for the City and will get the City into another lawsuit.

Rick Becksted said that this has been an educational process. He said more people are starting to use different types of bags because of this ordinance. He said he would not support a lawsuit coming from this matter. Mr. Becksted urged the City Council to not adopt the ordinance.

With no further speakers, Mayor Blalock declared the public hearing closed.

B. ORDINANCE AMENDING CHAPTER 7, ARTICLE VII, SECTION 7.704 AND 7.705 TO CLARIFY THE PROHIBITION OF TRUCK TRAFFIC ON BANFIELD ROAD

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

Eric Eby, Traffic Engineer provided a brief overview of the ordinance. He said this matter came before the Parking & Traffic Safety Committee and a couple of conflicts were found in the ordinance which needs to be cleaned up. He said no emergency vehicles would be allowed on the road with the way the ordinance currently reads. He recommended that the City Council move forward with the ordinance.

David Ecker said in 1984 the ordinance restricted the trucks on Banfield Road. He also spoke regarding signs that were changed in 2015 and then were recently taken down.

Frank McLane said the trucks need to come off of Banfield Road. He said he supports the ordinance and moving forward.

Rick Becksted said the signs do not depict the ordinance and the signs are misplaced. He spoke in support of the ordinance.

With no further speakers, Mayor Blalock declared the public hearing closed.

C. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF UP TO FIVE MILLION DOLLARS (\$5,000,000.00) FOR COSTS RELATED TO ELEMENTARY SCHOOL FACILITY IMPROVEMENTS

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

Superintendent Zdravec spoke in support of the Bonding Resolution for the continued renovations to the elementary schools. He spoke to energy efficiencies and there will be improvements to functional issues of the school.

With no speakers, Mayor Blalock declared the public hearing closed.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Ordinance amending Chapter 3, Article II, Section 3.208 – Regulation of Single Use Carryout Plastic Bags

Councilor Lown moved to accept all the amendments to the Plastic Bag Ordinance as set forth in the Memorandum from the Legal Department to the City Manager dated March 28, 2017, and further, to pass second reading and schedule a third and final reading of the proposed Ordinance at the April 17, 2017 City Council meeting. Seconded by Councilor Pearson.

Councilor Lown said the environment is affected by plastic bags and that this is a good faith effort to pass the ordinance. He said litigation is not likely to happen.

Councilor Spear said he agrees with most of what was said but wants to postpone the ordinance.

Councilor Spear moved to postpone second reading of the ordinance. Seconded by Councilor Perkins.

Councilor Spear said he has two problems with the ordinance because we did not draft the ordinance and it is not New Hampshire or Portsmouth specific. He feels we need to put the ordinance aside and would like to have the City Manager come back with a plan to substantially reduce plastic bag use in the City.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he supports the motion by Councilor Spear. He said he feels we should spend our time educating and reducing the use of plastic bags. He also stated it is time to clean up those bags that are hanging around.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Denton said the ordinance was drafted by input from City residents. He asked the City Council to vote against the motion to postpone.

Assistant Mayor Splaine said that he learned a lot from the speakers this evening. He said plastic bags affect our wildlife negatively, affects our oceans and rivers. He said we need to keep lobbying the legislature. Assistant Mayor Splaine said he would support the motion to postpone because we can't ignore our City Attorney. He said without clear authority from the legislature we can't move forward on this matter.

Councilor Perkins said she agrees with Councilor Spear and would support the motion he has brought forward. She said she would like to see us do something with a leadership role.

Councilor Dwyer said we need the authority to do these things. She said it is important to bring things to a public hearing and second reading to receive input from residents.

Councilor Cyr said he would like more answers from other approaches and said we are all trying to get to a better end. He asked Deputy City Attorney Woodland what it would take for the court to weigh in on this matter without any lawsuit being filed. Deputy City Attorney Woodland said a suit would need to be brought forward for the court to weigh in on this matter.

On a roll call 6-3, voted to postpone second reading of the ordinance. Assistant Mayor Splaine, Councilors Perkins, Dwyer, Spear, Cyr and Mayor Blalock voted in favor. Councilors Lown, Pearson and Denton voted opposed.

Councilor Spear moved that the City Manager report back with a plan to substantially reduce plastic bag use in the City. Seconded by Assistant Mayor Splaine.

Councilor Spear said he wants the ordinance to be broad. He said some form of an education plan could be brought forward on this matter.

Mayor Blalock said he would like the Sustainability Committee to look at this. Councilor Spear said the Sustainability Committee could offer guidance.

Assistant Mayor Splaine said the motion is good. He said the State has some litter laws we can use on the local level.

Motion passed.

- B. Second reading of Proposed Ordinance amending Chapter 7, Article VII, Section 7.704 and 7.705 to clarify the Prohibition of Truck Traffic on Banfield Road

Assistant Mayor Splaine moved to pass second reading and schedule a third and final reading of the proposed Ordinance at the April 17, 2017 City Council meeting, as presented. Seconded by Councilor Cyr and voted.

- C. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Five Million Dollars (\$5,000,000.00) for Costs related to Elementary School Facility Improvements (*two-thirds vote required for passed by roll call*)

Assistant Mayor Splaine moved to adopt the Resolution authorizing a Bond Issue and/or Notes of Five Million (\$5,000,000.00) Dollars for costs related to Elementary School Facility Improvements. Seconded by Councilor Dwyer.

Assistant Mayor Splaine said the life safety issues are more important than walls. He said we need to get in front of asbestos removal and sprinklers to make sure our schools are as good as possible. He said he would like things done this year.

Councilor Dwyer said the School Committee should look at the long term plans for the school at Sherburne.

City Manager Bohenko said we are on a path of renovating elementary schools. He said the asbestos is tiles at Dondero School and you would need to mitigate that process with a contractor.

On a roll call 8-0, voted to adopt the Resolution authorizing a Bond Issue and/or Notes of Five Million (\$5,000,000.00) Dollars for costs related to Elementary School Facility Improvements. *Councilor Denton stepped out of the Chambers and was not present for this vote.*

Councilor Dwyer moved to suspend the rules to continue the meeting beyond 10:30 p.m. Seconded by Councilor Spear and voted.

IX. CONSENT AGENDA

- A. Letter from Caroline Amport Piper, Friends of the South End requesting permission to hold the annual Fairy House Tour event on Saturday, September 23, 2017 and Sunday, September 24, 2017 from 11:00 a.m. to 3:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Allan Scholtz, Portsmouth Professional Firefighters Local 1313 requesting permission to hold two boot drives, the first on Saturday, July 8th, and the second on Saturday, August 19th ***(Anticipated action – move to refer to the City Manager with power)***
- C. Approval of Pole License Requests:
- License Agreement #63-0634 – Sagamore Road 1 new pole
 - License Agreement #63-0639 – Broad Street 1 new pole
 - License Agreement #63-0644 – Marsh Lane 1 new pole
 - License Agreement #63-0622 – Borthwick Avenue 1 new pole
 - License Agreement #63-0637 – Robert Avenue 1 new pole
 - License Agreement #63-0641 – Maplewood Avenue 1 new pole
 - License Agreement #63-0645 – Spinney Road 1 new pole
 - License Agreement #63-0624 – Central Avenue 1 new pole
 - License Agreement #63-0631 – McKinley Road 1 new pole
 - License Agreement #63-0633 – Sagamore Road 1 new pole
 - License Agreement #63-0632 – Hampshire Road 1 new pole
- (Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold the annual 5K Race on April 8th at 8:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- E. Letter from Sister Mary Agnes, St. Charles Children's Home requesting permission to hold the St. Charles 5K Road Race on September 4, 2017 at 9:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***

- F. Letter from Richard Mason, Seacoast Veterans Count requesting permission to hold the Pack & Boots 5K Road Race on July 4, 2017 at 8:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)
- G. Letter from Jenelle Dolan, March of Dimes New Hampshire requesting permission to hold the 2017 Seacoast March for Babies on June 17, 2017 (***Anticipated action – move to refer to the City Manager with power***)

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

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Stephen & Gina Kennedy Re: Food Truck Pilot Program

Councilor Lown moved to refer to the Parking & Traffic Safety Committee. Seconded by Councilor Spear and voted.

- B. Letter from Lorena Arnold regarding the Single-Use Plastic Bag Issue

Councilor Spear moved to accept and place the letter on file. Seconded by Councilor Cyr and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

In accordance with City Council Rule and Order #37 Hour City Council Meetings To Conclude the City Manager's Items become Consent after 10:00 p.m.

The City Council agreed to remove Item 3. – Request for First Reading of Proposed Ordinance amending Chapter 1, Article IX, Section 1.902 – Election Candidate Financial Disclosures from Consent items.

1. New Street Name – “Foundry Place” (***Anticipated action – move to accept the recommendation of the Planning Board, as presented***)
2. Request to Transfer Funds Re: 400th Anniversary Trust (***Anticipated action – move to transfer the remaining balance from the City's 375th Celebration account to the Portsmouth 400th Anniversary Trust***)

4. Proposed amendment to the City Ordinances, Chapter 10 – Zoning Ordinance, Article 5A – Character-Based Zoning, Section 10.5A46 – Incentive Overlay Districts, to allow excess community space provided by a development to be credited for use in another development in the same Incentive Overlay District (***Anticipated action – move to refer this matter to the Planning Board for report back to the City Council***)

5. Applications for Sidewalk Cafes providing Alcohol Service
 - State Street Saloon (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor alcohol service on City land for the 2017 season subject to City Council Policy No. 2012-02***)

 - Popovers (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor alcohol service on City land for the 2017 season subject to City Council Policy No. 2012-02***)

 - Ri Ra Irish Pub (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with Ri Ra Irish Pub for outdoor alcohol service on City land for the 2017 season subject to City Council Policy No. 2012-02***)

 - The District (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with The District for outdoor alcohol service on City land for the 2017 season subject to City Council Policy No. 2012-02***)

 - Fezziwig's Food & Fountain (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with Fezziwig's Food & Fountain for outdoor alcohol service on City land for the 2017 season subject to City Council Policy No. 2012-02***)

6. Applications for Sidewalk Cafes providing Alcohol Service-private sidewalk
 - British Beer Company (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with British Beer Company for outdoor alcohol service for the 2017 season subject to City operating conditions contained in Council Policy 2012-02***)

 - The BRGR Bar (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with The BRGR Bar for outdoor alcohol service for the 2017 season subject to City operating conditions contained in Council Policy 2012-02***)

- Row 34 (***Anticipated action – move to authorize the City Manager to enter into an Area Service Agreement with Row 34 for outdoor alcohol service for the 2017 season subject to City operating conditions contained in Council Policy 2012-02***)
7. Draft Complete Street Demonstration Project Policy (Tactical Urbanism Policy) (***Anticipated action – moved to authorize the City Manager to bring back the proposed Policy for action at the April 17, 2017 City Council meeting***)

Councilor Dwyer moved to adopt the City Manager’s Consent Agenda, as presented. Seconded by Councilor Spear and voted.

3. Request for First Reading of Proposed Ordinance amending Chapter 1, Article IX, Section 1.902 – Election Candidate Financial Disclosures

Councilor Perkins moved to postpone and bring back at the April 17th City Council meeting. Seconded by Councilor Cyr and voted.

Assistant Mayor Splaine spoke to a recent problem between a local restaurant and members of staff. He said the City should have a work session or forum to welcome people to talk with us on the ordinance. He said maybe the issue of not being able to do local inspections requires additional staff. He said these are businesses in the service industry and we need to look into this matter as soon as possible.

City Manager Bohenko said we have had discussions internally on a regular basis on these kinds of issues. He said public meetings have been held as well. He requested that the Council give him some time and allow him to work and come forward with ideas on Inspection, Fire and Health Departments.

Assistant Mayor Splaine said that is fine.

Councilor Perkins said people need to understand the process better. City Manager said we need to look at the health code.

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Reappointment of Adrienne Harrison to the Conservation Commission
 - Reappointment of Kate Zamarchi to the Conservation Commission
 - Reappointment of Rick Becksted to the Recreation Board
 - Reappointment of Jacqueline Cali-Pitts to the Recreation Board
 - Reappointment of Lisa Louttit to the Recreation Board

The City Council considered the above listed reappointments to be voted on at the April 17th City Council meeting.

2. Strategic Planning Committee for Vaughan-Worth-Bridge Revitalization

Assistant Mayor Splaine moved to propose the Council endorse the formation of a five-member Committee to explore the reuse and revitalization opportunities associated with the City's properties noted above. Seconded by Councilor Dwyer.

Councilor Dwyer suggested that a downtown resident or two be added to the Committee to think of the residential aspect.

Assistant Mayor Splaine said whatever goes in that area would affect the west end. He wants to make sure the Committee follows the New Hampshire Right to Know law. City Manager Bohenko confirmed that the requirements under the Right to Know law would be followed. City Manager Bohenko suggested to add a business owner to the Committee so you could have 1 resident of the downtown and a business owner.

The City Council decided to add two more members to the Committee: 1 Downtown resident and 1 Downtown Business Owner.

Proposed Membership:

2 City Councilors

1 Planning Board Member

1 Historic District Commission Member

1 Economic Development Commission Member

1 Ex-officio Member with Appointment by City Manager for Staff Liaison

1 Downtown Resident

1 Downtown Business Owner

Committee Charge – *to develop options for future use of City-owned property in these areas and report back to the City Council with strategic recommendations as to how the City can best use its property in service of the community. Topics to be covered should address land use, urban design, public infrastructure, and timing. The Committee should make semi-annual reports to the Council until it has reached completion of its charge.*

Councilor Perkins said we need to think about the Islington Creek Neighborhood in the revitalization process.

Motion passed.

Councilor Denton moved to suspend the rules in order to take up item XI. E.1. – Resolution and Energize 360 Seacoast NH Presentation. Seconded by Assistant Mayor Splaine and voted.

E. COUNCILOR DENTON

1. Resolution and Energize 360 Seacoast NH Presentation

Councilor Denton moved to adopt the Resolution. Seconded by Assistant Mayor Splaine. On a unanimous roll call 9-0, voted to adopt the Resolution.

C. ASSISTANT MAYOR SPLAINE

1. Welcoming Cities Resolution

Assistant Mayor Splaine withdrew the Resolution.

D. COUNCILOR SPEAR


1. Surface Parking

Councilor Spear postponed this item until the April 17th City Council meeting.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

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



KELLI L. BARNABY, MMC, CMC, CNHMC
CITY CLERK