

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, SEPTEMBER 16, 2019

PORTSMOUTH, NH
TIME: 7:00PM

At 5:00 p.m., an Anticipated Non-Public Session regarding the City Manager Search was conducted per RSA 91-A:3, II (b).

At 6:15 p.m., an Anticipated Non-Public Session was held regarding the Boyle Supreme Court Appeal per RSA 91-A:3, II (e).

I. WORK SESSION

(There is no Work Session this evening)

II. CALL TO ORDER [7:00 p.m. or thereafter]

At 7:20 p.m., Mayor Blalock called the meeting to order.

III. ROLL CALL

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Raynolds and Becksted

ABSENT: Councilor Perkins

IV. INVOCATION

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

V. PLEDGE OF ALLEGIANCE

Mayor Blalock led the Pledge of Allegiance to the Flag.

VI. ACCEPTANCE OF MINUTES

(There are no minutes on for acceptance this evening)

VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

(There are no Recognitions or Volunteer Committee Reports this evening)

VIII. PUBLIC COMMENT SESSION

Paige Trace spoke regarding the sewer system matter on Sagamore Avenue. She said in the second modification of the consent decree it did not single out Sagamore Creek as a defendant and she spoke to the mitigation project.

Robin Husslage spoke to the idling of trains by Pan Am Railways. She said there our parking problems with no solution to the issues. She addressed the significant issues arising from idling trains and asked for the City Council's help with this matter.

Nicole LaPierre said she is tired because the train comes at 2:00 a.m. and the noise and air pollution are harmful to our health. She strongly urged the City Council to assist in this matter.

Mayor Blalock asked if the City has any way to deal with these issues. City Attorney Sullivan said it is a matter of federal law and the City cannot deal with any issues without appeals to our federal officials. Mayor Blalock stated he would call Senators Shaheen and Hassan regarding this matter and asked if there is anything we can do to assist the neighborhoods.

Councilor Denton moved to suspend the rules to take up Item XI. D.1. – Encouraging Pan Am to apply to the State Clean Diesel program for locomotive anti-idling technology. Seconded by Councilor Roberts and voted.

Councilor Denton said there are two grants that we could reach out and make necessary upgrades to older trains. He also spoke to a grant through the EPA that could deal with the air quality issues.

IX. PUBLIC HEARING AND VOTE ON ORDINANCE AND/OR RESOLUTION

Public Hearing

A. Public Hearing on Chapter 3, Article IX – Distribution of Single-Use Disposables

ORDINANCE AMENDING CHAPTER 3, ARTICLE IX – DISTRIBUTION OF SINGLE-USE DISPOSABLES

• PRESENTATION

Councilor Denton stated that the ordinance would have the City of Portsmouth recognize that limiting the distribution of single-use disposables is necessary for the protection of both the environment of the municipality and the public health, safety, and welfare of its citizens. He spoke to differences between prohibited carryout bags and permitted carryout bags. He said that this would encourage people to bring their own bags or a customer would be charged a minimum of a ten cents Cost Pass-Through for each Single-Use Carryout Bag provided by the store on City property. Councilor Denton reported that compostable facilities are currently located in Maine. He also advised the Council under the ordinance Styrofoam would be banned City-wide. He addressed penalties and remedies and stated the amount of the fee that will accompany the citation will be determined by the Fee Schedule Study Committee. In addition, he announced that the ordinance would not become effective until December 31, 2020, which would allow for the Council to make any necessary amendments over the next year.

- **CITY COUNCIL QUESTIONS**

The City Council wanted to hear from speakers before asking questions.

- **PUBLIC HEARING SPEAKERS**

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

Brady Baum spoke in support of the ordinance and said it will effect public safety and health.

Sue Polidura spoke against the ordinance. She asked who would be enforcing the ordinance and said she is afraid of what comes next. She feels that the ordinance is micro-managing the residents and suggested making it a policy and not an ordinance.

Keith Tharp said we need an ordinance like this in the City. He spoke to Portland banning plastic cups and that this type of action is happening around the country. He stated that this country uses more plastic than anyone else because we send it overseas.

Cindi Rohwer said that Portsmouth is a leader in New Hampshire and we need to make our environment cleaner and supports the ordinance.

Christina Dubin said it is important to start at some point and there are businesses that are voluntarily doing this.

Petra Huda said she supports the ordinance in theory but she is concerned with how it would work. She stated she has many questions when looking at the ordinance, such as how will the ordinance be enforced and what is the costs to the residents. She asked how this would work on food trucks and what the costs benefits would be.

P. Leigh Woodbury spoke in support of the ordinance and said she uses recyclable bags, which can hold twenty pounds worth of items. She stated she would like the City to adopt the ordinance and be an example to other towns.

Missy Hudlin spoke in support of the ordinance and to take a stand where we can. She said it is important to consider our future generations.

David Meuse, State Representative, spoke on laws being considered on the State level. He said you seldom see litter in the City which will allow us to control one facet with the ordinance. He said three bills were considered by the State this year but no solution will come until 2020.

Valerie Rochon said the Chamber of Commerce polled more than 300 hospitality businesses and most are in support of the idea and a policy versus an ordinance. She stated more businesses are already heading towards single-use disposables but they would like to keep their inventory until 2020. She said it is critical that we educate the people on this matter.

Phoebe Luneau, Rye, NH, said plastic is the most dangerous threat to our waters. She stated 8 million tons are dumped into the ocean and this is responsible to 8% of our carbon footprint. She said pollution is causing ocean temperatures to rise and that means sharks are coming closer to the north.

Ella Doyle, PHS Eco Club, spoke in support of the ordinance. She said as a sustainable leader we have made such progress and we need to continue and take the next steps forward.

Gretchen Greene, PHS Eco Club, said this is an important step and ordinance. She urged the City Council to adopt the ordinance and to think about what the ban on these items would do and what would happen if we did not move forward.

Ms. Lewis spoke in support of the Ordinance and its adoption. She said the ocean temperatures are rising and will continue to do so if we do not do something to stop the littering of plastic in our oceans.

Erin Marsden & Victoria Watson spoke regarding the large amount of plastics found in a sperm whale's stomach. Ms. Marsden and Ms. Watson said that plastic is toxic and reported that 60 plastic bags will be used on four trips to the grocery store. Ms. Marsden and Ms. Watson said we need a plastic free revolution.

Melissa Paly spoke in strong support of the ordinance and for the reasons explained today. She said it is National Estuaries Week and urges Portsmouth to become a leader in prohibiting the use of plastics.

Steve Detrollo thanked Councilor Denton for his continued work and efforts on this matter. He said it is important to move forward and pass the ordinance.

Mark Brighton said he is more confused by what the ordinance does or what it doesn't do now than at the start of the meeting. He said 4 years ago he had a petition to stop the banning of plastic bags and collected 500 signatures against that ordinance which was not adopted. He said there are people that are against such regulations.

Charlie Griffin spoke opposed to the ordinance and said it is too complex when it comes to the implementation. He said a question should be can the average person determine what plastic container they could use in the City. He stated the ordinance raises questions on the cost factors. He urged the City Council to adopt a policy versus the ordinance.

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

- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Councilor Denton moved to pass second reading and schedule third and final reading of the proposed Ordinance at the October 7, 2019 City Council meeting. Seconded by Councilor Pearson.

Councilor Denton moved to amend second reading with Amendment 1, Amendment 2 and Amendment 3. Seconded by Assistant Mayor Lazenby.

Amendment 1: by the addition of a Single-Use Container Definition to Section 3.902: Single-Use Container: a container that is distributed for the purpose of transporting Prepared Food on a single occasion inside or outside of a Store.

Amendment 2: Clarifying Penalties and Remedies: Starting on line 20, on page 11, replace 'he/she will issue a written warning notice to the Operator of a Store on City property and the potential penalties that will apply for future violations' with 'a written warning that includes the potential penalties for future violations will be issued to the Operator.' So that sentence in Section 3.907 reads:

- 1. If the City determines that a violation of this Section has occurred, a written warning that includes the potential penalties for future violations will be issued to the Operator.**

Amendment 3: Clarifying Purpose

Starting on line 12, on page 1, replace the language of 3.901 with the following:

The City of Portsmouth recognizes that limiting the distribution of single-use disposables through source reduction is necessary to protect human health, to preserve the natural environment, and to conserve precious and dwindling natural resources through the proper and integrated management of solid waste.

Councilor Becksted said he agrees with many issues but we have not clarified some of the enforcement issues and the cost to enact the ordinance.

Councilor Dwyer said she would support the amendments. She stated she supports the intention but does not want to confuse ordinance versus policy versus resolution. She said the language is complex and how do we right size the issue to implement the items. Councilor Dwyer said she would support the Styrofoam ban which is ordinance worthy. She stated that a resolution speaks to larger issues.

Motion passed with Councilor Becksted opposed.

Councilor Denton moved to adopt amendment 4. Seconded by Councilor Pearson.

Amendment 4: Delay implementation until December 31, 2020

Starting on line 25, on page 6, replace 2019 Single-Use Plastic Bag inventory with 2020 Single-Use Plastic Bag inventory so that sentence in Section 3.903 B reads:

All Stores may distribute their remaining 2020 Single-Use Carryout Plastic Bag inventory.

Starting on line 21, on page 8, replace 2019 Single-Use Cup inventory with 2020 Single-Use Cup inventory so that sentence in Section 3.904 B. reads:

All Stores may distribute their remaining 2020 Single Use Cup inventory.

Starting on line 28, on page 9, replace 2019 Single-Use Container inventory with 2020 Single-Use Container inventory so that sentence in Section 3.905 B. reads:

All Stores may distribute their remaining 2020 Single-Use Container inventory

Starting on line 28, on page 10, replace 2019 Single-Use Straw inventory with 2020 Single-Use Straw inventory so that sentence in Section 3.906 B. reads:

All Stores may distribute their remaining 2020 Single-Use Straw inventory.

Starting on line 5, on page 12, replace December 31, 2019 with December 31, 2020, so the Effective Date section reads:

This ordinance shall take effect on December 31, 2020.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said we can do this through a policy. He stated we need to take a step forward and do the right thing and take time to implement things as there as many moving parts.

Assistant Mayor Lazenby return the gavel to Mayor Blalock.

Councilor Denton said that this was written to be amended city-wide and enact on City property. He said we have no idea if the new City Council would support the Ordinance. He stated the ordinance would not take effect until December 31, 2020, then adopt a policy to abide by parts of the policy and see how it works. He stated at the next meeting he would bring forward the policy if we get to third reading.

Motion passed with Councilor Becksted opposed.

Councilor Becksted moved to amend #5. Seconded by Councilor Denton.

Councilor Denton said if the PTA has bake sales you would not need to abide by the ordinance. He would not support the motion because he feels there is a year for implementation.

Councilor Becksted said he appreciates what Councilor Denton is doing.

Councilor Dwyer said she would vote against the motion to amend #5.

Councilor Becksted withdrew the amendment and Councilor Denton the second to the motion.

Councilor Dwyer said amendment #6 gets lost in the ordinance. She said would it make sense to have this be its own ordinance self-standing.

Councilor Denton said when it comes to citywide ban we are not sure if we have the right to adopt such an ordinance. He said he would like to move forward with a ban on Styrofoam.

Councilor Pearson asked who wrote the proposal. Councilor Denton said he wrote the entire ordinance.

Assistant Mayor Lazenby said he would support the ordinance as amended.

Councilor Dwyer moved to amend second reading with separating Amendment 6 Elimination of the citywide Styrofoam cup ban. Seconded by Councilor Roberts.

City Attorney Sullivan said since the ordinance is not going to become effective for a year can he carve out the motion that Councilor Dwyer wants to make and he would bring that back for the City Council at the next meeting.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said he would like to see us walk before we run. He is compelled to support the motion and would vote in favor. He said that he is now compelled by the individuals that spoke during the public hearing.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Councilor Dwyer moved to postpone motion regarding amendment 6 Elimination of the citywide Styrofoam cup ban. Seconded by Assistant Mayor Lazenby and voted. Councilors Denton and Pearson voted opposed.

Main motion passed, as amended. Councilor Becksted voted opposed.

Councilor Denton said he would bring a policy forward for the next meeting.

City Attorney Sullivan said the ordinance as amended will come forward for the next meeting and be available for adoption with a two-thirds vote.

At 9:12 p.m., Mayor Blalock declared a brief recess. At 9:27 p.m., Mayor Blalock called the meeting back to order.

- B. Third and Final reading of Ordinance amending Chapter 7, Article III, Section 7.328 – Limited Parking – Three Hours – Maplewood Avenue: Both Sides, Between Raynes Avenue and Vaughan Street

Councilor Becksted moved to pass third and final reading, as recommended by the Parking and Traffic Safety Committee. Seconded by Assistant Mayor Lazenby and voted.

Councilor Becksted moved to suspend the rules in order to take up Item XIII. A.1. & A.2. – Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers Association & Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters. Seconded by Assistant Mayor Lazenby and voted.

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

- 1. Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers Association

City Manager Bohenko said we need a motion to approve the agreement and it has been on-line for the public to review.

Assistant Mayor Lazenby moved to approve the proposed Four (4) Year Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Officers Association from July 1, 2019 to expire on June 30, 2023. Seconded by Councilor Becksted and voted.

- 2. Request for Approval of Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters

City Manager Bohenko said it is a 4 year contract and on the website for 2 weeks.

Assistant Mayor Lazenby moved to approve the proposed Four (4) Year Agreement between the Portsmouth Fire Commission and the Portsmouth Professional Fire Fighters from July 1, 2019 to expire on June 30, 2023. Seconded by Councilor Becksted and voted.

- C. Third and Final Reading of Ordinance Chapter 7, Article III, Section 7.326 – Limited Parking – Fifteen Minutes by the ~~Deletion of Maplewood Avenue: Easterly Side, the First Two Spaces Commencing 140 Feet Northerly from Vaughan Street~~

Councilor Reynolds move to pass third and final reading, as recommended by the Parking and Traffic Safety Committee. Seconded by Assistant Mayor Lazenby and voted.

Assistant Mayor Lazenby moved to seal the minutes of the City Manager Search Non-Public Session. Seconded by Councilor Dwyer and voted.

Assistant Mayor Lazenby moved to seal the minutes of the Boyle Supreme Court Appeal Non-Public Session. Seconded by Councilor Dwyer and voted.

X. MAYOR BLALOCK

1. Appointments to be Voted:
 - Maryellen Burke to be appointed to the Board of Library Trustees
 - Janaki Fonseka to be appointed to the Board of Library Trustees
 - Lori Soloway to be appointed to the Citywide Neighborhood Blue Ribbon Committee

Assistant Mayor Lazenby moved the appointment of Maryellen Burke to the Board of Library Trustees until October 1, 2022; appointment of Janaki Fonseka to the Board of Library Trustees until October 1, 2022 and appointment of Lori Soloway to the Citywide Neighborhood Blue Ribbon Committee until December 31, 2019. Seconded by Councilor Becksted and voted.

2. City Manager Search (Not on Agenda)

Deputy City Manager Colbert Puff announced that the City Council has selected a group of semi-finalists for the City Manager Search and interviews will take place by the City Council on Tuesday, October 1, 2019 whereby two or three finalists will be selected. No action required.

XI. CITY COUNCIL MEMBERS

A. COUNCILOR ROBERTS

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the August 1, 2019 meeting

Councilor Roberts moved to approve and accept the minutes of the August 1, 2019 Parking and Traffic Safety Committee meeting. Seconded by Assistant Mayor Lazenby.

Councilor Roberts explained the new way the minutes will be handled, they will be submitted to members and approved in three days.

Motion passed.

B. COUNCILOR PEARSON

1. Share the Square

Councilor Pearson announced that Share the Square will be held on Sunday, September 29th and Sunday, October 6th from 1:00 p.m. – 4:00 p.m. in Market Square.

FEE COMMITTEE

C. COUNCILOR DWYER & COUNCILOR RAYNOLDS

1. Report Back on Meeting with SIPP and Proposed Motion to Approve License Fees for Prescott Park License Agreements

Councilor Raynolds indicated that SIPP has not raised fees in many years and we discussed that issue and that swim teams never needed to pay. He stated SIPP agreed to proposal of the rates and the Recreation Department would affirm the rates.

City Manager Bohenko said SIPP implemented the rates and we met with them and came to an agreement on those rates.

Councilor Dwyer spoke to Prescott Park and the criteria for fees and what an increase in fees would be for year 2, fees would remain the same additional years would use the Boston based market for annual license fee increases.

Assistant Mayor Lazenby moved to accept the recommendation of the Fee Committee regarding annual license fees and any adjustments for years 2-5 of the License Agreements with the Prescott Park Arts Festival, the NH Art Association and the Gundalow Company. Seconded by Councilor Becksted and voted.

A. CITY MANAGER

3. Report Back Re: Contact Information (*Deferred Action at the September 3, 2019 City Council meeting*)

Councilor Person said we would like to extend the contact information to speakers. She said she would like to consult with City staff and report back at the next meeting.

Councilor Becksted said he would like to know what other communications do the speakers provide other than name and address to the Council.

4. Vaughan Street Hotel LLC Amendment to Easement Agreement

City Attorney Sullivan said Vaughan Street Hotel received an easement for a canopy over the sidewalk. He further stated that now land use approvals would erect a sign and approvals have been granted to provide the City Manager with authority to approve the sign.

Councilor Raynolds moved to grant the City Manager the authority to negotiate, execute and deliver a sign easement as requested by Vaughan Street Hotel, LLC, for recording. Seconded by Councilor Roberts and voted.

5. 799 South Street Sidewalk Easement

City Manager Bohenko stated this is an easement to the City by the Clews family.

Councilor Dwyer moved to accept a sidewalk easement for 799 South Street, as presented. Seconded by Assistant Mayor Lazenby and voted.

6. Polling Hours – November 5, 2019 Municipal Election

City Clerk Barnaby requested the polling hours be set from 8:00 a.m. to 7:00 p.m. for the Municipal Election. She indicated that she is aware of the City Council's desire to change the polling hours and she would prefer waiting until the September State Primary Election.

Councilor Denton moved to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Municipal Election on Tuesday, November 5, 2019 and beginning with the September Primary Election in 2020 the polling hours would be set from 7:00 a.m. to 7:00 p.m. Seconded by Councilor Roberts and voted.

XIV. CONSENT AGENDA

(There are no items under the Consent Agenda this evening)

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

A. Email Correspondence

Assistant Mayor Lazenby moved to accept and place on file. Seconded by Councilor Denton and voted.

B. Letter from Barbara Massar, Executive Director, Pro Portsmouth, regarding proposed Distribution of Single-Use Disposables Ordinance

Councilor Denton moved to accept and place on file. Seconded by Assistant Mayor Lazenby and voted.

C. Letter from Joshua P. Lanzetta, Counsel to the Surfrider Foundation, NH, regarding proposed Distribution of Single-Use Disposables Ordinance

Councilor Roberts moved to accept and place on file. Seconded by Assistant Mayor Lazenby and voted.

XVI. CITY MANAGER'S INFORMATIONAL ITEMS

1. Household Hazardous Waste Day

City Manager Bohenko announced that Household Hazardous Waste Day will be taking place on October 5, 2019 from 8:00 a.m. to Noon.

2. Sagamore Sewer Project

City Manager Bohenko said we are gathering information on what level the City Council may set for appropriation from the sewer fund and that our consultant David Hyder is working on this matter.

Councilor Raynolds said the Sagamore Creek neighborhood are concerned with the project. He said we wanted to gather information on costs and have a policy decision by the City Council and allow public input. He said the meeting that was held was more about the construction of the project. He said residents would be charged to hook up with figures as high as \$50,000.00.

City Manager Bohenko said typically people do pay that kind of fee. He said he could come forward with apportion by the Sewer Department and not to apportion full costs.

Councilor Becksted said the City bonded \$4.5 million and some money should go towards this project. City Manager Bohenko said we need the appropriation to spend funds. He suggested that every house would pay a fee over 10 years with no interest. Councilor Becksted said he would like to know a base and a formula for what it would cost.

Mayor Blalock said residents are concerned and looked on the surface to bring the services to the resident, and if a pipe going down the street and you would need to consent when your sewer fails. He said the \$4.5 million will be spent to get the pipe to your area.

Councilor Roberts said he would like City Manager Bohenko to tell if other sewer extensions have come to this. City Manager Bohenko said look at the price for construction now and we would need to make sure we are on solid ground.

Councilor Dwyer said she would like a set of working principles for doing this. She would like to know what the principles are.

City Manager Bohenko said he would have David Hyder come to explain this matter to the City Council and come forward with a reasonable solution.

Councilor Denton announced that the Electric Vehicle Show will be held on Sunday from 9:00 a.m. to Noon.

Councilor Pearson announced that Logan was born to Rebecca Perkins Kwoka and baby and mom are fine.

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XVIII. ADJOURNMENT [at 10:00 p.m. or earlier]

At 10:10 p.m., Assistant Mayor Lazenby moved to adjourn. Seconded by Councilor Denton 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, MMC/CNHMC
CITY CLERK