

CITY COUNCIL E-MAILS

Received: September 1, 2023 (after 9:00 a.m.) – September 5, 2023 (before 5:00 p.m.)

September 5, 2023 Council Meeting

ADDENDUM

Submitted on Thu, 08/31/2023 - 21:28

Full Name

Thomas Nies

Email

tnies@aol.com

Subject

Ethics Ordinance Revisions - Second Reading and Public Hearing

Address

419 Richards Avenue

Message

Dear Councilors

At the September 5, 2023 Council meeting, a public hearing will be held on proposed changes to the ethics ordinance. I will be unable to attend that meeting. Please consider the following comments in lieu of comments made at the hearing.

The current ethics ordinance needs to be updated. I support many of the draft changes suggested by the Governance Committee: for example, the addition of a preliminary statement that emphasizes the importance of ethical City government, the attempt to better define terms, the clarification of the relationship between gifts and campaign contributions, and edits that remove conflicting or unclear language. I do believe there is a need for additional work, and my letter focuses primarily on those issues.

One of the concerns that may have been addressed at the Committee but is not clear from the information presented to date to the public is whether the draft ordinance is fully consistent with the Section 3.8 of the City Charter: "No elective or appointive officer or employee of the City of Portsmouth shall take part in any decision concerning the business of the City in which that person has a direct pecuniary interest which is greater than any other citizen or taxpayer, aside from that officer or employee's salary." According to the NH Municipal Association (NHMA), if this language is in a charter it applies to both quasi-judicial and legislative actions (see https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/15701/conflict_of_interest_ethics.pdf). This is a higher standard than is implied by the draft ordinance's focus and arguably is stricter than guidance followed by the Council in some previous circumstances. It is also not consistent with comments made at the City Council meeting on August 21, which implied there is a different standard for legislative actions. Unless the NHMA guidance is in error, the Portsmouth Charter does not differentiate between legislative and quasi-judicial actions.

Definitions

Section 1.801 defines Direct Personal Interest solely in terms of real estate or financial gain. There may be other personal interests that do not result in a direct financial gain or affect real estate. This is implicitly recognized in Section 1.802(A) which addresses an officer or employee that has a "financial or other private interest, direct or indirect..." A definition of what constitutes a non-financial direct or indirect personal interest should be added to this section.

The ordinance is silent on a personal interest that is the result of employment or a position as an officer of an organization that has business with the city. The Council discussed this at first reading, but in my opinion that did not fully address the issue. An employee, elected official or board member may not have a direct financial impact from a decision that benefits or harms their employer. As a result, the employee would not have a direct personal or pecuniary interest as per the proposed definition on the draft ordinance. Similarly, an officer of a non-profit or other organization may not receive a direct pecuniary benefit or harm from a quasi-judicial or legislative decision. Nevertheless, the citizens of Portsmouth need to be confident that these relationships are not influencing decisions. Clarification of this issue would be helpful.

Gifts

I am concerned that the proposed increase to the limit on gifts – from \$100 to \$350 – is not well justified. At the Council meeting it was explained that this is meant to facilitate attendance by city staff at conferences or other public events. There are several issues that are being glossed over. I do not question the need for city staff, and perhaps elected officials, to attend conferences and other events. As the Executive Director of an organization that drafted management plans that affected businesses, I was routinely invited to conferences or other events as a speaker. My organization funded that travel and associated fees to avoid any appearance or suggestion that decisions would be influenced by the host organization. This was considered part of my duties and was not considered a gift. I suggest the Council consider that approach.

If, however, the concern is that city funds will not be available for these activities, NH Rev Statute section 15-B:5 does allow employees to accept contributions that defray the cost of these activities. The ordinance should make clear that this increase is authorized only for a limited purpose. It is far different to allow a gift that allows the City Manager to attend a conference than it is to allow someone to be gifted tickets to, for example, the Prescott Park Arts Festival VIP tables.

Other

There was considerable discussion at the Council meeting about Section 1.802(J). I support the draft ordinance language. This is very similar to language adopted in other organizations – for example, for federal employees. It is necessary so the public can be confident that board or elected officials with a personal interest are not influencing decisions. I find the concerns raised by some Council members and the public unconvincing and urge the Council to adopt this section without major changes.

I can't help but notice the lack of guidance on recusal for Council members and employees. Perhaps this is planned for later action or a policy document, but there has been some discussion that recusal cannot be mandated. This seems odd to me. While I recognize that state and federal law can differ, there are federal regulations that require appointed board members to recuse themselves from regulatory decisions in some instances (see, for example, 50 CFR 600.235(c)). Another example is the requirement for Department of Commerce employees to disqualify or recuse themselves from some actions (see <https://ogc.commerce.gov/sites/default/files/disqualifications-awae-2022.pdf>). New Hampshire statutes allow ordinances to be more strict than state law, which would appear to allow a defined recusal requirement.

Please consider my comments as you review this ordinance. Thank you for providing me this opportunity to comment.

Tom Nies

Portsmouth, NH

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

Submitted on Mon, 09/04/2023 - 10:17

Full Name

Robin Albert Lehman

Email

ralbert52@hotmail.com

Subject

The Safe Place Initiative

Address

401 State St #M304

Message

Dear Councilors,

First, thank you all for serving our City.

I wanted to share information regarding a program I recently learned about. (You may already know of it.)

The Safe Place program is a partnership between police departments and business/schools and other city partners to address hate and hate crimes. (When you google "Safe Place Initiative," you'll see police departments all over the country.)

This is the basic idea:

"The Safe Place Program is an initiative promoting safety and encouraging the reporting of all hate crimes to the local police. Members of the community can find a Safe Place by looking for the Safe Place sticker and each Safe Place partner provides victims of bias crimes, discrimination, or harassment with a safe environment, assistance with contacting local law enforcement, and a place to safely wait for help to arrive."

This description of the program in Seattle is well explained, so I hope you'll take a look:

<https://www.seattle.gov/spd-safe-place/the-safe-place-program-and-spd>

I'm sharing this thinking it might be a good fit for our City of the Open Door.

Thanks.

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

Submitted on Mon, 09/04/2023 - 14:24

Full Name

charlie griffin

Email

charlesgriffinesq@gmail.com

Subject

\$890,000 Supplemental Appropriation

Address

210 Hillside Drive

Message

Mayor McEachern and Members of the Council

Sorry to trouble you on Labor Day, but the article in today's e-edition of the Herald on the proposed \$890,000 supplemental appropriation to fund several Police and Fire Department contracts got my juices flowing and promoted me to e-mail you and voice my concerns.

1. While the Mayor may be correct in stating that the additional money will come from the unassigned fund balance and not increase the tax rate, he failed to add that his statement will apply only to this fiscal year. The larger question you need to answer is what will these contacts do to the tax rate in the coming fiscal years? You need to answer this question as part of your deliberations tomorrow night. Also, by approving this supplemental appropriation for contracts that run 3 to 4 years, you will be tying the hands of future Councils as well as locking in 75% to 80% of future budgets, resulting in the City Manager reciting this fact in future budget messages and correctly concluding that this percentage of the budget is contractual over which the City has no control.

While I recognize that negotiating shorter term collective bargaining agreements can be a pain in the neck, given the uncertain economic times in which we find ourselves, I feel that shorter term i.e. 2 year as opposed to 4 year, agreements would be more responsible.

2. The Mayor states that more than 70 pages of documents are in your packet relating to these tentative contract agreements making it difficult for some residents to understand exactly what they represent which is why attorney Thomas Closson will be making a presentation to the Council before Tuesday's public hearing to make the contracts more understandable.

I trust that attorney Closson's presentation will be made in public and not part of your non-public session. Assuming I am correct, I would ask you to table voting on this item until your next meeting to give the public time to digest Attorney Closson's comments and submit further comments.

Another reason for making this request is that tomorrow night's meeting is on a Tuesday as opposed to your regular meeting night of Monday and also follows the Labor Day holiday. Significant members of the public may still be away or unaware of the change in meeting date and thus deprived of the opportunity to provide their input through no fault of their own.

3. The Mayor also says that salaries have to be competitive with other municipalities some of which are providing more money for those positions than they historically have. and that the tentative agreements represent a significant increase in pay for city employees.

In June of last year in response to the City Manager's proposed 4% salary increase for all city employees in which she made the same argument, I e-mailed you indicating that based on my research Portsmouth had more employees making over \$100,000 than did Dover, Rochester, Derry, Concord and Keene, all of whom had populations comparable to or larger than ours.

While I have not updated my research, I doubt those facts have changed. In any event I invite you to prove me wrong by disclosing the names of those communities of comparable size that are paying their firefighters and police officers more than Portsmouth does.

4. The article states the health insurance split of 82%/18% for the Fire Department contracts, but does not indicate what the splits are for the Police contracts which you also need to disclose. Nor does it say whether the Fire Department splits represent the existing percentages or the newly negotiated ones. In addition, while both sets of contracts contain COLAs, do they also contain an adjustment in the health insurance splits going forward or do the current splits remain locked in over the term of the contracts? I believe there should be some increased adjustment in the splits based upon the COLAs

As always, I thank you for your consideration.

Charlie Griffin

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

Submitted values are:

Full Name

Jane Shouse

Email

Shouse555@comcast.net

Subject

Fire & Police Department Contracts

Address

555 Dennett Street

Message

Mr. Mayor and City Councilors: I have been a resident of Portsmouth since 1978. I have worked in the City the entire time and own my home on Dennett Street. I am now retired and widowed. I STRUGGLE to get by financially. I do not go to the Music Hall as the tickets are too expensive. I rarely eat downtown because my budget does not allow. I don't take vacations. I live a modest lifestyle and have come to terms with that. However, I am SO VERY SICK AND TIRED OF THE FIRE AND POLICE DEPARTMENTS BULLYING THE CITY FOR HIGHER SALARIES AND BENEFITS. They are consistently the highest paid employees in the City. An increase of \$890,000 for the upcoming budget is INSANE and for once I would like to see this rejected. I do not believe fire and police personnel will go running to other towns and cities as Portsmouth will still be the "creme de la creme" of cities and jobs in New Hampshire. Portsmouth still has a lot of retired, financially strained residents who will be greatly effected by this. I sincerely urge you to think long and hard about this for the "little people" who never seem to get any breaks. Sincerely, Jane Shouse

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

Submitted on Tue, 09/05/2023 - 14:32

Full Name

charlie griffin

Email

charlesgriffinesq@gmail.com

Subject

\$890,000 Supplemental Appropriation

Address

210 Hillside Drive

Message

Mayor McEachern and Members of the Council,

In my haste to e-mail you yesterday I now realize that I lost sight of the forest and instead focused entirely on the trees. By that I mean that the real issue is not so much the individual points that I referenced, but rather why the City find itself in the position of needing to request a Supplemental Appropriation in the first place ?

In her August 25, 2023 Memorandum to the City Manager ,Judie Belanger states "Each TA had a separate pro forma prepared and presented to the City Council."

To me the statement means that you knew the cost of each TA as it was presented to you and at some point you needed to ask or someone needed to tell you how the negotiated cost of each TA stacked up against the amount included in the budget to fund the TAs. Apparently that did not happen and you now find yourselves in the embarrassing position of having to approve a supplemental appropriation to cover the shortfall.

Someone had to know or should have known before now that the money to fund these TAs was not in the budget .Judie Belanger' memo suggests that you should have been made aware of this fact from the pro-format.

Either way, the situation does not look good and raises the question as to who, if anyone, is minding the store.

You need to explain how this mess arose in the first place during your deliberations tonight.

Thank you.

Charlie Griffin

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes