

MANAGER’S CONFERENCE MINUTES
Portsmouth City Council Meeting on
January 11, 2021 – 6:31 p.m.

Members present:

Sean Dunne	1 st Ward
Charlotte Gordon	2 nd Ward
Kevin E. Johnson	3 rd Ward
Lyvette Mosley	4 th Ward
Edwin Martell	5 th Ward
Dennis Packard	6 th Ward

Also present was City Manager Sam Sutherland, City Clerk Diana Ratliff, Solicitor John Haas and Auditor M. Trent Williams.

1. **Codified Ordinance Revision** **CM-21-01**

Manager Sutherland stated that this was the annual codification of the City Ordinances and he was asked by Clerk Ratliff to include it on his Manager’s Agenda for legislation.

Vice President Dunne motioned to adopt alternative #1.

There were no questions or comments: **VOTE: 6 Ayes – 0 Nays**

2. **Tree Removal at Greenlawn Cemetery** **CM-21-02**

Manager Sutherland stated that there were approximately a dozen dead or diseased trees that need taken out of the grounds at Greenlawn Cemetery. The cost included removing the tree, grinding the stumps and putting soil back. Mayor Johnson asked if they replant a tree when one was removed and Manager Sutherland replied that they could but wanted to work with the Tree Commission.

Vice President Dunne motioned to adopt alternative #1.

There were no questions or comments: **VOTE: 6 Ayes – 0 Nays**

Discussion –

Storefront Registrations – Councilwoman Gordon asked if this should be an Arts Commission item and Councilman Martell replied that he thought that it should be worked on by the Arts Commission. He would like to see them begin with the Marting’s Building as a trial space to make these empty storefronts not look so decrepit. Ms. Gordon gave a summary of what had happen so far with this project, she had communicated with the Akron group who had activated all of their empty storefronts and used them as exhibition spaces for Artists. It is a very involved program; they’ve got paid staff; the Artists receive stipends and they have a very financially and aesthetic established program. She said that the city would have to start small and work big and starting with Marting’s would be good because it would have to be all volunteer at first. She said that it could be removed and brought back at a later time.

Grant Process for Community Agency Funding – Councilwoman Gordon stated that the city had grant money that they allot to different groups and so far, it had been a very informal procedure. She said there had been a flow of money out of the city and felt that City Council had a fiduciary responsibility for the city to oversee the funds and that there should be more accounting for that money. She said that she had distributed to Council an application that the Cultural Affairs Committee used to distribute the Hotel/Motel tax funds using the grant process and that committee was appointed by City Council. When a person comes to Portsmouth and stays in a hotel or motel, they pay a hotel/motel tax and those taxes were collected by the city and put into an account to be used as a grant. The Cultural Affairs Committee receives applications from different 501c3 organizations and monies from the grant were distributed to those organizations that met the requirements. She stated that the community agency account had no process in which organizations

could apply for the money, they simply come to the city and ask for money and if we have it, an Ordinance was prepared and if it passed, it was allotted to that organization. She said the application for the hotel/motel grant process was just to be used as a guideline but she would like each councilmember to review the application and make applicable changes for the information they would like to see on the application to suit the community agency fund. She said that before the city hands out money, she would like to see how these organizations will be using the money, when it will be used and provide a final report on how the money was actually used. She said that there would need to be deadlines albeit rolling, quarterly or semi annual and that should be coordinated with the City Manager, Auditor and the Community Development Director because they're a big part of this also. Auditor Williams pointed out differences in some of what Councilwoman Gordon had spoken about. He said the only actual grant money that the city has, is the Cultural Affairs money that was given out from the Hotel tax money and that makes the difference being that it was grant money already approved by ordinance as a program and was limited to the amount that we receive from the hotel/motel tax, however, the organization that had received from that fund were not limited. He suggested considering the budget for next year and set a budget amount that Council would like to be able to disperse for the year because currently it is open-ended. He said if there were a process where you're setting this system up and have an accountability for it, you probably should consider a budget for that program too, so that it is not entirely open-ended and there would be some idea of how much money would be dispersed in the year. Councilman Martell ask if a report could be generated of how the money had been spent in the past and would give them a collective look at an amount to set in the budget. Auditor Williams stated that he could get that for them.

Confederate Flags – Councilwoman Gordon stated that she dispersed to Council the wording that the State of New York passed as law and you're not allowed to sell on city property or display on city and state property any hate symbol including the Confederate Flag. Councilman Martell stated that there were multiple states that had these laws in place. She said the second page was what the City Solicitor emailed to Council which outlined what speech was not protected by the first amendment. Since this discussion has been ongoing, she had received a whole lot of supporting calls regarding this issue by people who really want to see this passed. She wasn't sure where the city stood in light of the events that happened at the Capitol in the past week and if the Confederate flag was still protected under the first amendment. She had a couple of constituents who suggested that she get outside legal opinions as to how other places have passed it. Solicitor Haas stated that Council could pass anything they wanted, but if this is passed, the city would get sued and doesn't believe the city would win. He is advising Council against this legislation. He said that just because you pass a law doesn't mean that it won't be challenged and had already been told that it would be challenged.

Councilman Martell explained that Landlords were capable of dictating what went on in a lease agreement such as you cannot have two or more cars or paint walls etc. The City leased out the Martings Annex to a Museum and the city put terms in that lease agreement and dictated what they could and could not do to the building through the lease agreement. He asked if there was a lease agreement for the campgrounds? Solicitor Haas stated that they could not act to violate someone's first amendment right, if you're a private landlord you could put whatever restriction you want in the lease as long as they're not violating some other law which is the difference. As a city, the city could say, we the city are not to be displaying Confederate flags on our city building or in city parks, the city can't do it that's fine, you can restrict the city and the government itself from doing it, but you cannot restrict an individual from displaying a flag because it violates their first amendment.

Ms. Gordon gave an example: If a whole group of people showed up with neo-Nazi flags in Tracy Park, there's nothing we can do about that? Solicitor Haas said that would be fine as long as they had a permit from the city to be in the park but he didn't know why you wouldn't unless you restrict everyone from having meetings in the park. You cannot base your decisions on content unless it falls into one of the nine categories (Obscenity, fighting words, Defamation "including libel and slander", Child pornography, Perjury, Blackmail, Incitement to imminent lawless action, True threats, Solicitations to commit crimes), that's the law. The government cannot impose its will on people in violation of the first amendment. He understood that Ms. Gordon doesn't agree with what he's telling her and he's not saying he agrees with it but that's the law. He said flip it around and gave the following example: Say you don't want the Christian flag or the American flag in the campground, you couldn't do that. Ms. Gordon stated that in his handout, the word treason could be argued and that certainly that flag represents treason. Solicitor Haas stated that if Council passed this, they would be imposing their views on someone else's ideology or their belief system because they don't agree with it and it would be a violation of the first amendment. He said Council could

pass it, but if sued, the city would lose; California passed it and it was rejected and it ended up being settled because their Attorney General knew it was wrong and New York will be in the same boat.

Ms. Gordon said we just passed an ordinance giving permission for land to be used by the Watch Me Grow Ohio program and part of the motivation for doing that was that we have a city that cultivates a welcome mat in all parts of the city to all people. The WMGO program will have kids down there this summer and the land adjacent to where this program is being held has a campground that displays a confederate flag. Councilwoman Mosley stated that as an African American woman, she loved to fish and when she goes down to the river and if she sees the Confederate flag, she gets the fear and thinks to herself “there’s trouble” and goes another way to avoid trouble because to her that flag represents “hate” and “trouble”. She said that because of what it has stood for people with those thoughts and mindsets would be proud to carry a flag like that or post it, but when she sees it, she knew there would be trouble for her if she went to those areas, but chooses to shun it when she sees those flags. Solicitor Haas stated that he understood and he wasn’t arguing that he supported the display of the Confederate flag, to him you have to flip it around to what if Council were trying to ban the Rainbow flag, it’s the same thing, you cannot discriminate. Ms. Gordon stated that it wasn’t the same thing because it doesn’t represent hate, the Rainbow flag was an inclusive symbol. Solicitor Haas said that it offends a lot of people based on their religious beliefs and it was just as offensive to them. He looked at it as a marker, because those people would still be down there, but with that flag, they’re putting a sign out in front of their camper that says “we’re racist” etc. and it would still be there, but now you know where they’re at because the flag identifies them.

Ms. Gordon ask how much the spaces rent for, Manager Sutherland thought it to be around \$700 for the summer but could find out for sure. Ms. Gordon requested that this be moved onto the Manager’s agenda for legislation because everyone’s heard both sides. Councilman Packard asked what the cost would be to defend a lawsuit such as this, Mr. Haas responded that initially if the insurance carrier would cover the suit, the city’s deductible was \$10,000 and it would be at least that much and then any settlement amount or jury verdict could be the city’s responsibility. He asked what the settlement amount was for the other lawsuits, Solicitor Haas stated he didn’t know the amount of money that was involved but they ended up letting the person display the flag, but he wasn’t sure of a dollar amount. Mayor Johnson asked Solicitor Haas if he was Council’s legal defense and if in his legal opinion, he would advise Council not to enact this legislation and he replied “yes” that would be his advice. He said when this first was proposed it was just the campground but with the new proposal it was even broader with it being any city-owned property. There was more discussion regarding the differences between private and public sectors and the rules each must follow.

Vice President Dunne asked when the leases get renewed for the campground and Manager Sutherland stated that it runs April through October. Mr. Dunne asked when prices were set and Manager Sutherland said that it was evaluated every year, but thought the cost was \$250 per month and the lease is signed through the Service Department. Mr. Dunne asked where the money goes that is collected from the campground? Manager Sutherland said that it was used to pay the caretaker and the maintenance of the campground and it also helps subsidize McKinley Pool. Mr. Dunne suggested an increase in the monthly fee to \$325 per month and the increase would be solely used toward organizations fighting for racial equality as long as there was a Confederate flag and hate symbols at the campgrounds there will be a hate tax. Mayor Johnson said that wasn’t really fair because another camper was against the Confederate flag, you’re penalizing them for being down there. Mr. Dunne said “talk to your neighbor”. Mayor Johnson said that you shouldn’t penalize others because of the actions of one or two people. Mr. Dunne said that the city could raise the rate and the money could be contributed towards McKinley Pool and that would avoid legal entanglements. He said that the money could pay for lifeguard training and repairs to the pool. Mayor Johnson said that he wouldn’t support that at all because there were too many good people down there that want nothing to do with a Confederate flag flying, but they would be penalized because of someone that does. Mr. Dunne said that one way that racism worked was when people were quiet about it and this would encourage them not to be quiet about it and probably a lot of the good people down there probably don’t even like that flag down there. Solicitor Haas stated that this might also entice more people to fly the Confederate flag. Mayor Johnson suggested using the artwork that was being created across from it to fight the hate with love from the other side. Solicitor Haas stated that it would be nice if it were just as easy to ban racism by banning a flag, but that flag was just a symbol, and if the person still had that hate in their heart, banning a flag wouldn’t do anything. Mr. Dunne suggested raising the rates as long as the city sees hateful symbols being displayed and the money would go to places like McKinley Pool and their hate would fund things for kids because all they’re doing with their hate was making our city look bad.

Councilwoman Mosley stated that if Council did raise the rates, they wouldn't have to be told that was the reason, because the cost of everything is going up. Manager Sutherland asked for clarification on whether to move it to the conference agenda and Ms. Gordon stated that they probably should have a copy of the lease to discuss.

Auditor Williams said that something Council hadn't considered was that if the rates were raised, the city may end up making less money by people deciding that they don't need the campground. Mayor Johnson asked exactly what was being carried over to the Manager's agenda. Manager Sutherland responded that he thought it was legislation to enact the prohibition of hate symbols and Mr. Haas thought that they had asked for the rates to be raised. Ms. Gordon asked Council if they do not want to enter into changing any language or doing anything with the language. Mr. Dunne said that for him, it was what could produce results and he doesn't want to see a Confederate flag down there and he would like everyone in the city to feel welcomed in various areas of the city and he would like to know how various cities have done this because there would have been legal opinions. Solicitor Haas asked what cities have done this and if they could name one, he would research it because across the U.S. it had been litigated and the answer was still the same, you can't restrict people's freedom of speech. Ms. Gordon said that she would try to find someone from New York to get a little bit of background. Mr. Haas said that legislators sometimes pass things against the advice of their Counsel and they get sued. Manager Sutherland clarified what Council was wanting was to increase the fees at the campground. Mr. Dunne asked Ms. Gordon if we could have it as a discussion one more time to discuss the two options and she said that she would try to find someone that had background on the New York legislation. Mr. Sutherland stated that he would have the lease agreement and what the monthly charge was at the campground for the next meeting.

Portsmouth Edition Monopoly – Vice Dunne stated that there would be down payment of \$5,000 toward a 1,000-unit order. He said that he envisioned the city would start the process by paying them \$5,000 and then we could sell the spaces to different business as sponsorship money. It would be anywhere from \$350-\$450 per space and there were other things they could do to recoup the cost of the payment of the board and then the board could be sold. He said that the money from the sponsorships could be put into an ACORN account as well as the sell of the games. Hopefully if an organization wanted to raise money by selling the boards, we could give it to them at cost or a little above the cost and they could take it and make money for their organization. The financial end result would be \$5,000 paid to the manufacturer could result in a \$10,000 or more ACORN account that was now paying dividends. He said that we could get more money by selling the games individually but wasn't sure we wanted to do that within the city. He said the dividends could help pay for street maintenance and curb painting. He would like to have all the spaces on the board finalized and the money collected by the time the legislation passes and, if by the third reading we don't have the money, it could be voted down. He will spell out the full details in an email to Manager Sutherland for the next meeting. He said there was a QR code that could be on the board and could be scanned by anyone. For example, if the Art Museum was on the board, they could scan the QR code and it would bring up the website of the Art Museum and learn about the new exhibitions for that month or a specific company's page such as Coffee at the Lofts, Patties & Pints, the Brew Pub, Pizza Pub just to name a few. He said students would benefit from this, people who lived outside of Portsmouth would benefit by using the QR code, you could go to their website and order online. He would like this moved onto the City Manager's agenda.

Renewable Energy – He said this would be a plan that would move the city into a greener future and he had been contacted by a group that has signed contracts with Chillicothe, Ironton, Athens and a variety of cities in southeast Ohio and one of the things they do was to allow for the residents of the city to pool together to get more wholesale prices for energy which they could provide through green energy. It allows for residents to opt out if they don't want to be a part of it. He said other City Council have discussed this and voted on it to go onto a ballot for the citizens to decide. He would like to see City Council put this on the ballot for the voters in Portsmouth.

Sanitation Rates – He said that he copied Council with the two ordinances that were passed, one was in 2013 which laid out how to get the sanitation fund into the black and then when Former City Manager Allen came in 2014, he asked Council to repeal that ordinance and pass another one which was probably fiscally a good idea. He said that the city would need to address this to come out of the fiscal watch situation. He said currently the fund was doing alright, but in looking at the financial forecast, it would begin to get into the red again. He advised Council when he submitted the budget that Sanitation rates would need to be raised.

Strategic Planning Session – Councilwoman Gordon would like to set a time and date for a strategic planning session because the majority of Council were new to city government. She said the whole idea of making these large decisions was to get our arms around the city and would like to get together on a Saturday morning for 2-3 hours. She will find someone to run the meeting so that it's none of us and we could all be participants without worrying about facilitating the meeting. She would like to figure out what each department would be needing, the Water Department needs a lot of work, the Police Department wants things, the Fire Department wants things and this would be a good way to map out the city and know the need of each department. She would also like to know what Council would like to accomplish in this next calendar year and perhaps what they want for the future. It was decided that February 20th would work from 9:00 a.m. until noon. She asked that Sean get in touch with the University to see if Council could use the room on that date and also it would need to be streamed on facebook. Also, Manager Sutherland will check with each of the Department Heads to have them be in attendance for their input. Ms. Gordon said that we have about a month to hear from our constituents on what they would like to see in the city and if they have solutions to the city's current problems or if they have ideas. Auditor Williams said forward thinking and long-term planning.

The meeting adjourned at 7:35 p.m. on a motion by Vice President Dunne.

Submitted by: *Diana Ratliff* – City Clerk