

MANAGER'S CONFERENCE MINUTES
Portsmouth City Council Meeting on
February 22, 2016 – 7:05 p.m.

Present were all members of Council, Solicitor Haas, Manager Allen, Auditor Williams
and the City Clerk.

1. Chapter 771 & 773 Pawnbrokers & Second Hand

CM-16-06

Manager Allen explained the reason that this was brought forward at this meeting was because Solicitor Haas was unable to attend the last meeting. There were some questions at the last meeting and he would like to answer them.

Solicitor Haas stated that he received the request from the Police Department to propose legislation. One of the problems in the city was theft from car break-ins and in many cases the items end up in pawnshops. To crack down on this crime, it was proposed to use LeadsOnline which was currently being used in the scrapyards facilities. In an effort to cut down on scrap metal theft, a person must show identification, what they're selling and where they got it. If applied to pawnshops and second hand stores which buy used goods and then turn around and resell them, this would help with theft in general with things that were being pawned. If something was brought to one of the local pawn shops the item and serial number would be recorded, once recorded the Police would be able to go to the LeadsOnline and find the location of the item. He addressed the Ex Post Facto question that Councilman Meadows had at the last meeting. He explained that the City was not outlawing Pawn Shops, they're just having them report in a different manner. Currently the shops give a written report to the Police Department once a week, but the reports were very hard to go through and don't help someone who had something stolen in another county and pawned in our city, but with LeadsOnline, the information could be run through the system to find out if the item had been reported as stolen. With respect to changing the requirement, he does not see this as a constitutional issue. He added that a consignment shop was not included in the legislation nor was Goodwill. In the matter of a consignment shop, generally that person still owns the goods until it is sold by the owner, so there was no ownership interest while it was being sold. He believed that this proposal was a good thing and would like Council to consider it. Councilman Lowe asked about the time limit, as it currently states that it was 7 days and he believed that it should be 10-14 days. Solicitor Haas said that this was the best that could be done, because when someone comes in to pawn something, it had to be input right then and if your stuff was stolen the night before, then you could call the Police Department to see if they could recover it, but if you're on vacation and can't report it, there's nothing they can do. Mr. Lowe said that's why he wanted to extend the time that the shops have to hold the item before it's passed on. Solicitor Haas stated that would be up to Council and stated that one of the local pawn shops had already signed up and were being pro-active. Councilman Kevin W. Johnson asked if it was B&B Loan and Solicitor Haas replied that it was. Councilman Meadows asked if it was in place in other cities in the State and if so, have we spoken with any other cities to inquire if they've had any problems, Solicitor Haas replied "yes" and that it was all over the country and he had spoken with LeadsOnline to see if they've had any issues with constitutional challenges and they replied "no". They have had people complain about having to get an internet connection. Solicitor Haas stated that if he were a business owner he believed that it would be a lot easier to get on the internet as opposed to writing everything out and keeping track of note cards, he also added that it would be a better way to track the inventory and believed that eventually it would be mandatory everywhere. There was no cost to the store other than to install an internet connection and the cost to the city was determined to be \$7,800 per year and it would provide a good public service.

Manager Allen stated that he would still like to have a Public Hearing to give them an opportunity to speak about any opposition. Solicitor Haas stated that would be his recommendation.

Councilwoman Aeh asked Solicitor Haas if a person had something stolen and it was pawned, does the dealer have to give it up. Solicitor Haas stated that if it was beyond the 7 day hold, the person would have to buy it back. Mayor Kalb thought that the pawn broker or second hand shop would be the one to suffer the loss. Councilman Meadows said that if the person that stole the item is caught, then the owner of the stolen item could get restitution.

Mayor Kalb asked if it was the wish of Council to schedule a public hearing for March 14, 2016.

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

2. Flood Defense Levy Renewal CM-16-10

Auditor Williams stated that the flood defense levy needed to be put back on the ballot for renewal and this was the first step in the process. The County Auditor would certify what the renewal of a 1 mil levy would generate. The County Auditor would give us a renewal or a replacement and then it's up to Council to take the next step. Mayor Kalb ask what kind of shape would we be in if the levy didn't pass and Manager Allen replied that we'd be in really bad shape. Councilman Meadows stated that this was just for homeowners, but everyone benefits from the flood defense; the hospitals, schools, churches but they don't pay for it and ask if there were some way that the City could get everyone to pony up. Solicitor Haas stated that we could not levy a tax on folks that are exempt and Mr. Meadows said it wasn't really fair for those of us paying for it. Manager Allen mentioned a storm water utility tax everyone would pay but at the same time, everyone's sewer rates would be raised. There was much more discussion regarding this topic on the pros and cons and Councilman Kevin E. Johnson stated that Council had gotten off course of the topic.

Councilman Kevin E. Johnson motioned to accept Alternative #1 to authorize the request.

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

3. Taser Grant Fund Transfer CM-16-11

Manager Allen stated that this was a reimbursement grant for tasers and the money would need to be transferred into a fund, spent and then reimbursed. These three grants would be split into two items; one was the actual funding and the second was the acceptance of the grant. Currently, a high majority of the Police Departments tasers do not work and there's money in the CIP for them, but this would help bring down the need to spend that money out of CIP.

Councilman Kevin W. Johnson motioned to accept Alternative #1 for CM-16-11 and CM-16-12.

Councilman Kevin E. Johnson asked if we had just approve \$75,000 in the CIP budget money for tasers, Manager Allen stated that this would reduce that number.

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

4. Taser Grant Acceptance CM-16-12

Councilman Kevin W. Johnson motioned to accept Alternative #1 in the above.

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

5. Safety/Investigative Equipment Fund Transfer CM-16-13

Manager Allen stated that he would do CM-16-13 and CM-16-14 together. He said that this was a grant for 29 gun mounts for vehicles along with clamps and items to hold the weapons in the car. This would be a financial transaction, we spend it, file for the grant and be reimbursed and CM-16-14 would be to accept the grant. Mayor Kalb asked if these were examples of where the rules could be suspended. Manager Allen stated that they didn't ask for the waiving of the readings.

Councilman Kevin W. Johnson motioned to accept Alternative #1 to authorize the request for CM-16-13 and CM-16-14.

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

6. Safety/Investigative Equipment Grant Acceptance CM-16-14

Councilman Kevin W. Johnson motioned to accept Alternative #1 in the above.

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

7. Task Force Grant Fund Transfer CM-16-15

Manager Allen reviewed CM-16-15 and CM-16-16 and stated that they were for the drug task force grant, which was money to help cover the operation, such as the drug task force.

Councilman Kevin W. Johnson motioned to accept Alternative #1 to authorize the request for CM-16-15 and CM-16-16.

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

8. Task Force Grant Acceptance CM-16-16

Councilman Kevin W. Johnson motioned to accept Alternative #1 in the above.

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

9. 2016 Salary Ordinance CM-16-17

Solicitor Haas stated that the reason for the amendment to the salary ordinance was because there was a new secretary to the Civil Service Commission and she was also his secretary. Because she's already an employee, this was the easiest way to make the transition. As long as the Civil Service Commission keeps her in that position or until she decides to resign the position she would get a raise to the minimum of \$5,000 which was what we we're paying an Executive Secretary. If she decides she wants to resign or if the Civil Service appoints a different secretary the increase would fall off of her pay and would go back to the other part of the salary ordinance where the Executive Secretary was listed. Councilwoman Aeh stated that she would like the ordinance to actually say what the Solicitor just pointed out, because Civil Service rules state that they get to hire their secretary. Mayor Kalb ask what the benefit was with merging the two and Solicitor Haas said that it was a pension issue and Auditor Williams confirmed that it was a software issue in trying to put one person with the same social security number in two different positions. Mrs. Aeh said that confused her because when you pay out longevity, two separate checks are received and when you do record pay you get two separate checks. Auditor Williams said it wasn't the same issue and that this was one person, one social security number, but yet doing two different jobs and can't be accounted for. Mrs. Aeh said that it made sense to combine the two positions for right now as she wouldn't have to try to decide how much time was spent on Civil Service and how much time for the Solicitor but it would still only be while she had that position. Solicitor Haas said that the one job description would have both and will weigh out that she was both and that's what the pay range would cover. There would be three lines: Administrative Assistant – Administrative Assistant/Executive Secretary for Civil Service - Executive Secretary for Civil Service, so when she is no longer the Executive Secretary she would lose that pay and would revert back to her regular pay. Councilman Kevin E. Johnson asked if there was a conflict of interest in the legal secretary to the Solicitor being the Executive Secretary to the Civil Service. Solicitor Haas stated that there was no conflict, in fact she'd been doing part of the job for a while and Mrs. Aeh said that when she was City Clerk she did the applications for years and didn't receive any pay for it. She added that there used to be a sign over top of the Solicitor's door that said "Civil Service" and had always been

through that office. Mayor Kalb said that when he was Mayor of Portsmouth, he had looked into his assistant doing the Civil Service stuff and it was a conflict: Mrs. Aeh said “yes” that would have been a conflict because back then Mr. Kalb would have been the one who hired and fired employees. Solicitor Haas added that the two positions that had been advertised had already generated 103 applications of which those people would be taking the Civil Service exam. Mrs. Aeh said that the deposit was a good thing because that offsets some of the cost and Solicitor Haas stated that if they show up to take the test, the deposit was returned to them. Mrs. Aeh said that is was a good thing to go that route because it used to be, years ago, and then with the union stopped doing it, but then found that without hiring under Civil Service, there was nepotism happening, but now we would get qualified people and if they go into the Union after their 6 months, they waive their right to Civil Service and won’t get protection from both.

Councilman Kevin E. Johnson motioned to accept Alternative #1 to authorize the request.

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

10. Waterline Relocation Agreement

CM-16-18

Manager Allen reviewed CM-16-18 and CM-16-19 and stated that one was the relocation agreement and the other was for the appropriation and per the agreement that Solicitor Haas composed, we would be reimbursed 100%. Solicitor Haas stated that he laid the new draft of the final agreement out for Council to review and once approved the Commissioners have already indicated that they would sign off on it. He said basically it’s an agreement that we need and have to have in place as the County is basically hiring the City to do this work and then the State will pay the County and the County would reimburse the City. Manager Allen stated that ODOT would not reimburse the City but they would reimburse the County, we then found the agreement where the waterline served a Children’s Home whose well ran dry in 1931 and Ordinance #61 of 1931 was put into place and proved that it had a County purpose. At this point this would need to be bid and then ODOT or Portsmouth Group project would reimburse us. Manager Allen suggested waiving the readings on this particular item as they are waiting on this to move forward. Mayor Kalb asked if the money was there to appropriate, Manager Allen said “not really” but we would be reimbursed and Auditor Williams stated that you can appropriate on anticipated revenue. Manager Allen stated that he needed the agreement to be passed but the appropriations could go three readings. Solicitor Haas stated that he would have to check to see if he could put “emergency” language in the Ordinance. Mrs. Aeh said that sections 10 and 12 of the Charter give you the opportunity to suspend the rules and section 12 deals with emergencies and it had the definition of emergency. She added that the preamble must state the reason for the emergency wording. Councilman Kevin W. Johnson stated that it should be a consent agenda. Mrs. Aeh stated that she doesn’t object to being aware that something needed to be passed and the rules suspended. Mayor Kalb said for time sake and to this point, it was currently part of Council rules, until the rules are otherwise amended.

Councilman Kevin W. Johnson motioned to accept Alternative #1 for CM-16-18 and CM-16-19 to authorize the request and authorize CM-16-18 only as a consent agenda.

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

11. Waterline Relocation Appropriation

CM-16-19

Councilman Kevin W. Johnson motioned to accept Alternative #1 in the above.

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

12. Definition of Consent Agenda (Aeh)

Councilwoman Aeh stated that she had no problem suspending the rules and since 1930 City Council had suspended the rules for housekeeping or because it was an emergency and all of the sudden it was being called “Consent Agenda”. She said there was a “Consent Agenda” and that’s not what’s being done and if someone would come in with a records request and want copies of all of our Consent Agenda’s what would

we give them because we don't have one. She added that she had sat around the Council table for 26 years and the rules were suspended. She researched back to 2009 and there had only been twice that someone had brought up and objected to the rule suspension. Director Sutherland had asked Council to suspend the rule. Councilman Meadows interjected "only twice" and Mrs. Aeh said "yes" since 2009 since the "Consent Agenda" went into effect. Mr. Meadows stated that he voted against it all the time. Mrs. Aeh said there were people that used to believe that when we suspended the rule, you could only suspend it if it were an emergency and they accused Council of calling everything an emergency which wasn't true. Once it was understood that the rules could be suspended to save time or suspend the rule for an emergency. She said that everything you suspend the rules for isn't an emergency and she would like to see it called what it truly is and not called something that really exists but was not what was being done. We're not doing a "Consent Agenda". She explained that section 4 of the Charter prevents us from doing that because it says that we have to give the public an opportunity to speak on anything on the agenda and if it's on a TRUE "Consent Agenda" there would be no discussion because it is a bunch of things on an agenda that's pooled together and you vote one time to accept them. Councilman Kevin W. Johnson said that would require a Charter change to have a true consent agenda, Mrs. Aeh said yes you would have to do away with section 4 where it *(Mrs. Aeh and Mr. Johnson both speaking at the same time, I could not decipher what was said)*. Councilman Kevin W. Johnson said Council wasn't willing to make the Charter change but was willing to call it Consent Agenda. Mrs. Aeh said that it wasn't being called what it was and Mr. Johnson replied that we called it what Council chose to call it. Mrs. Aeh said there is a true consent agenda and you're calling it something that it is not, and she said that if someone came in to read our minutes and they see consent agenda, they know what a consent agenda is and they can't find it in the minutes, and they're saying what are those hillbillies doing. Solicitor Haas asked if Councilwoman had a proposal of a different name, Mrs. Aeh said if you feel that something needs suspended, to put in the Council letters and Manager Allen stated that every one of his letters state "it could go three readings" or "please suspend the rules". Mrs. Aeh said that it could read "suspension of the rules requested". *Many people were talking at once couldn't decipher*. Councilman Meadows asked the Mayor if he could speak and he was granted the opportunity. He asked Councilman Kevin W. Johnson if consent agenda was in our Council Rules that had been adopted and Mr. Johnson replied "yes". Mr. Meadows said that if someone wanted to come in and read our ordinances or consent agendas, it should be incumbent upon them to look at the Council Rules. What's in a name, you can call yourself whatever you want to as long as you're not trying to perpetrate a fraud, we could call it a "pig in a poke" if that's what we've chosen to call it and if this was the biggest problem we've got to worry about then congratulations Derek we're in pretty good shape. Councilman Kevin E. Johnson stated that he appreciated what Councilwoman Aeh was saying and according to Roberts Rules there was something called consent agenda and we're doing something else that isn't consent agenda by definition; he asked what it would hurt to call it something else. *Solicitor Haas spoke but had turned off his microphone and couldn't be heard*. There was much more discussion. Mayor Kalb asked the City Manager to request in his Council Letters when the situation called for it, that the rules be suspended along with the reason for the request. *There was a lot of conversation going on all at once and could not be discerned*. Councilman Kevin W. Johnson requested something in writing because it's already written in the rules. City Clerk Ratliff asked if Section #5 of the Council Rules where it says the term "consent agenda" could that be changed to "Rule Suspension", the actual wording is "If approved, such legislation shall include, immediately following the condensed legislative language on the Agenda and in this fashion, the term "Consent Agenda" to maybe change it to "Rules Suspension". Mrs. Aeh said that she was going to make a motion during the legislative session but the meeting adjourned, but she would have something at the next meeting. It was decided that it would remain as Consent Agenda until a vote for new Council rules was taken.

13. Change of Mayor to City Manager Codification (Aeh)

Mrs. Aeh said that at the end of 1989 when the City went to the Mayor form of government, there was an Ordinance passed that directed Walter Drane to change the codified ordinance to reflect the Mayor form of government. She added that at the end of 2013 an Ordinance should have been done to have all the ordinances reflect the City Manager form of government. She explained that in two years only half of the ordinances had been changed, they've been done piecemeal and she would like to see legislation that would direct Walter Drane to do the other half of our ordinances in one shot and then everything would be up to

date because we're operating on ordinances in which half speak to a Mayor form of Government and the other half to a City Manager form of government.

Manager Allen stated that he would like to go through Chapter by Chapter to bring the ordinances up to date. Mrs. Aeh said he could still do that but they need to be up to date and she believed that there were only 4 sections completed and Walter Drane was a corporation of lawyers and their main thing was to codify ordinances. When the City changed to Mayor form of government there wasn't one hitch. Councilman Kevin E. Johnson asked about the expense and Mrs. Aeh said that if it was done by piecemeal the same ones would be changed at the same cost. Mr. Johnson said that he believed the City Manager was making all the changes and Mrs. Aeh said that it would be another 2 years to bring the codified ordinances up to date. Manager Allen explained his reasons for wanting to do it individually because in one section the Ordinance referenced a "Section B" and there was no Section B and as time permits he would be updating all kinds of those types of situations in the codified ordinances. Councilman Meadows called the question.

Councilman Meadows motioned to accept Alternative #3 to take no action.

There were no questions or comments. VOTE: 5 Ayes – 1 Nays (J. Aeh)

14. Council Appointments

Mayor Kalb stated that in our adopted rules, it stated that all appointments must be brought to the Conference Agenda, he stated that Councilwoman Aeh pointed out that it doesn't include Council appointments in which each member of Council appoints one citizen such as in the Traffic Committee in which the Councilmember doesn't need Council's approval. If the Mayor was appointing someone to a committee that needed Council's approval then Council should be made aware and have time to discuss and have input. Solicitor Haas stated that as the rules stands right now it doesn't affect any of Council appointments and all Council was doing was notifying the rest of Council and if there would be an objection it could be addressed. Mrs. Aeh read from the rules "Appointments made by other members should also be announced at a Conference Agenda for potential advice, feedback and potentially further consideration. She stated that nobody needed to further consider an appointment that she made. Councilman Meadows gave an example of potentially appointing someone with a criminal record that the appointing Councilmember may not be aware of to which this could be brought to the appointing Councilmember attention off the floor where as not to humiliate anyone. Mayor Kalb concluded that others could object but he could still appoint whom he wanted, it's just more for informational purposes.

The meeting adjourned at 8:00 p.m. on a motion by Councilman Kevin W. Johnson.

Submitted by: *Diana Ratliff* – City Clerk