

**REGULAR MEETING MINUTES  
CITY COUNCIL OF THE CITY OF BATH, MAINE**

Wednesday, May 1, 2013 6:00 PM  
City Council Chambers, Bath City Hall

Present: Councilors Brackett, Merrill, Paulhus, Lockwood, Eosco, Sinclair, Mitchell, Winglass and Chairman Wyman.

Late: Sinclair, Paulhus

Also in attendance were the City Manager – William Giroux, City Solicitor - Roger Therriault and City Clerk - Mary White.

Chairman Wyman led the Pledge of Allegiance and City Clerk White called the Roll.

**C. Consent Agenda 6:01 PM**

**\*1) Minutes of Previous Meetings – April 3 and 17, 2013. (motion to accept)**

Councilor Winglass made a motion to accept the Consent Agenda as presented. Councilor Mitchell seconded the motion. All were in favor of the motion.

Councilors Sinclair and Paulhus took their seats at this time.

**D. Time Devoted to Residents to Address The City Council 6:03 PM**

Gretchen Sibley, a resident and Bath physician, stated that she was addressing Council on behalf of a number of residents that were interested in the adoption of an Ordinance limiting the idling time of vehicles within the City. Ms. Sibley gave a presentation detailing the cost of energy used, the adverse effects on health that idling can cause and the enforcement possibilities.

Wendy Everham, another Bath resident, stated that she had spoken with two members of the Bar Harbor community where such an ordinance was in effect and these citizens stated that it had been a very helpful ordinance.

City Manager Giroux stated that he would arrange a meeting with Police Chief Field, City Solicitor Therriault and the Idle Free Bath Group to produce an Ordinance to bring to Council. The Council agreed.

**E. Ordinances, Orders and Resolutions 6:13 PM**

**2) Arbor Week Proclamation (motion to pass)**

Chairman Wyman read the following Proclamation:

**PROCLAMATION  
ARBOR WEEK**

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world (more often as a weekly observance), and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BATH, MAINE, HEREBY PROCLAIMS THE WEEK OF MAY 19<sup>th</sup> -25<sup>th</sup> AS

**ARBOR WEEK**

in the City of Bath, and we urge all citizens to celebrate Arbor Week and to support efforts to protect our trees and woodlands, and

FURTHER, We urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

DATED this 1<sup>st</sup> day of May 2013.

Councilor Paulhus made a motion to put this item on the floor for discussion. Councilor Mitchell seconded the motion.

**VOTE:**

**YEAS: 8**

**NAYS: 0**

**Proclamation passed unanimously. 8-0**

**3) Preservation Month Proclamation (motion to pass)**

Chairman Wyman read the following Proclamation:

**PROCLAMATION  
NATIONAL PRESERVATION MONTH**

WHEREAS, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, "See! Save! Celebrate!" is the theme for National Preservation Month 2013, co-sponsored by the City of Bath and the National Trust for Historic Preservation

NOW, THEREFORE, we, the Bath City Council, do proclaim May 2013 as National Preservation Month, and call upon the people of Bath to join their fellow citizens across the United States in recognizing and participating in this special observance.

DATED this 1<sup>st</sup> day of May 2013.

Councilor Paulhus made a motion to put this item on the floor for discussion. Councilor Lockwood seconded the motion.

**VOTE:**

**YEAS: 8**

**NAYS: 0**

**Proclamation passed unanimously. 8-0**

**4) National Bike Month Proclamation (motion to pass)**

Chairman Wyman read the following Proclamation:

**PROCLAMATION  
NATIONAL BIKE MONTH**

WHEREAS, for more than a century, the bicycle has been an important part of the lives of most Americans; and

WHEREAS, today, millions of Americans engage in bicycling as an environmentally sound form of transportation, an excellent form of fitness, and pleasurable family recreation; and

WHEREAS, the education of cyclists and motorists as to the proper and safe operation of bicycles is important to ensure the safety and comfort of all users; and

WHEREAS, the City of Bath Bicycle and Pedestrian Committee, in conjunction with the Bicycle Coalition of Maine, the League of American Bicyclists, and independent cyclists throughout our area are promoting greater public awareness of bicycle operation and safety education in an effort to reduce accidents, injuries and fatalities; and

WHEREAS, the City of Bath recognizes the economic, quality of life, health and recreational benefits of being a bicycle friendly community,

NOW, THEREFORE, the City Council of the City of Bath does hereby proclaim the month of May 2013 as National Bike Month in Bath and command its observance to all citizens.

DATED this 1<sup>st</sup> day of May 2013.

Councilor Paulhus made a motion to put this item on the floor for discussion. Councilor Winglass seconded the motion.

Councilor Sinclair made a motion to amend the Proclamation by changing the word “command” to “commend” in the last paragraph. Councilor Paulhus seconded the motion.

**VOTE ON AMENDMENT:**

**YEAS: 8**

**NAYS: 0**

**Amendment passed unanimously. 8-0**

Chairman of the Bath Bike and Pedestrian Committee Robert McChesney spoke on behalf of the Committee thanking Council for their support and for letting the group put a banner over Front Street celebrating “Bike to Work”. He stated that this banner had been designed by Tony Gregoire, Jordan Omo, and Autumn Thompson, who are students at the Bath Regional Career and Technical Center, Julie Kenny’s Graphics Arts Class. Mr. McChesney elaborated on the health and environmental benefits gained through biking.

**VOTE:**

**YEAS: 8**

**NAYS: 0**

**Amended Proclamation passed unanimously. 8-0**

**5) Order: Lease Train Station**

Chairman Wyman read the following Order:

**ORDER APPROVING LEASE**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LEASE BY AND BETWEEN THE CITY OF BATH AND MAIN STREET BATH, FOR A PORTION OF THE PROPERTY KNOWN AS THE BATH TRAIN STATION, FOR A PERIOD OF FOUR (4) YEARS COMMENCING APRIL 1, 2013 AND RUNNING THROUGH MARCH 31, 2017, SAID LEASE BEING ATTACHED HERETO, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE THE LEASE AND ANY OTHER DOCUMENTS NECESSARY TO ITS IMPLEMENTATION ON BEHALF OF THE CITY OF BATH.

Councilor Winglass made a motion to put this item on the floor for discussion. Councilor Mitchell seconded the motion.

**VOTE ON ORDER:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

**6) Order: Lease Castine Avenue Parking Lot**

Chairman Wyman read the following Order:

**ORDER**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE AGREEMENT TO RENEW LEASE WITH JEFFREY CROSMAN AS IT RELATES TO THE LEASE FOR PROPERTY KNOWN AS THE CASTINE AVENUE PARKING FACILITY FOR THE PURPOSE OF OPERATING A COMMERCIAL PARKING LOT, FOR A PERIOD OF THREE (3) YEARS COMMENCING APRIL 1, 2013 AND RUNNING THROUGH MARCH 31, 2016, IN ACCORDANCE WITH TERMS AND CONDITIONS OF THE AGREEMENT TO RENEW LEASE ATTACHED HERETO, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SAID AGREEMENT TO RENEW LEASE ON BEHALF OF THE CITY OF BATH. (NOTE: THE ORIGINAL LEASE CONTAINS A PROVISION FOR ONE YEAR EXTENSIONS BY AGREEMENT OF THE PARTIES AND EXECUTED BY THE MANAGER. THE PROPOSED EXTENSION IS FOR THREE YEARS.)

Councilor Merrill made a motion to put this item on the floor for discussion. Councilor Winglass seconded the motion.

**VOTE ON ORDER:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

**7) Moratorium Ordinance: Prohibiting the Issuance of any Licenses or Permits for the Establishment or Operation of an Adult Use Establishment (first passage)**

Councilor Winglass made a motion to waive the reading of the Ordinance. Councilor Lockwood seconded the motion. All were in favor of the waiving motion.

**MORATORIUM ORDINANCE  
PROHIBITING THE ISSUANCE OF ANY LICENSES OR PERMITS  
FOR THE ESTABLISHMENT OR OPERATION OF AN ADULT USE ESTABLISHMENT**

The City Council of the City of Bath, Maine hereby Ordains as follows:

**1. Authority**

This Moratorium Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of 30-A M.R.S.A. Section 301 (Home Rule), 30-A M.R.S.A. Section 3001 (Ordinance Power), and 30-A M.R.S.A. Section 4356 (Moratoria).

**2. Purpose**

The purpose of this Moratorium Ordinance is to prohibit the location, operation, licensing or permitting of any activity defined as an adult use establishment until such time as the factors listed in Section 3, Statement of Necessity below, are properly addressed by the City of Bath.

**3. Statement of Necessity**

The City has been made aware that current police power ordinances are inadequate to address the issue of certain types of establishments known in general as adult use establishments, as that term is defined below in Section 4. At present, it is unclear whether the City's definition of an adult business includes anything beyond the provision of materials or devices. Therefore, the location of any establishments dealing with adult uses defined as adult entertainment cabarets in Section 4 below may not be permitted in the City since they are not part of the Table of Land Uses, or may be permitted City wide where the use might be included generally within another type of

business use. It is also clear that the regulation of adult use establishments in terms of its operation is inadequate and does not properly protect often incompatible surrounding uses.

It has been said:

There is convincing documented evidence, based on research and studies by municipalities throughout the nation, that adult use establishments, because of their very nature, have negative secondary effects on the areas surrounding these types of business uses, that these types of uses are consistently and strongly associated with perceived decreases in the value of both residential and commercial properties, and that they facilitate illicit and undesirable and, in some cases, criminal activities that are detrimental to the City and to its inhabitants. Such adult business establishments can often be incompatible with surrounding uses particularly where a number of these types of uses are concentrated within a limited geographical area or are located in close proximity to residential, daycare, school, house of worship, public parks or recreational areas, or other similar types of uses. A police power ordinance of this nature is a proper, reasonable and necessary means of controlling the negative secondary effects of such adult use establishments.

It is appropriate to develop requirements and regulations directed toward controlling negative secondary effects of adult use establishments while not interfering with or intending to address, limit or otherwise curtail protected speech or expression. The City of Bath needs to have an opportunity to examine the subject matter relating to adult use establishments and to provide performance standards and regulations relating to the time, place and manner of operation of adult use establishments. It is also appropriate to consider prohibiting and preventing the location of adult business establishments in proximity to other types of uses that are incompatible, in order to minimize the negative secondary effects, protect incompatible uses from exposure to adult use establishment operations and to prevent concentration of these types of uses in one geographical location. The present state of ordinances and regulations within the City of Bath Codes is inadequate to properly locate and regulate adult use establishments.

#### **4. Applicability**

This Moratorium Ordinance applies to the issuance of any land use or business license or permit that would allow for the establishment or operation of an adult use establishment.

#### **5. Definitions**

A. An adult use establishment is defined as: Adult use establishments include, but are not limited to, adult amusement stores, adult movie theaters, adult entertainment cabarets, adult relaxation spas or adult spas.

B. An adult amusement store is defined as: An establishment having as a substantial or significant portion of its sales or stock in trade "sexual devices" or films for sale or viewing on premises that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin-operated booths, the exclusion of minors from the establishment's premises, or any other factors showing that the establishment's primary purpose is to purvey such material.

C. An adult motion picture theater is defined as: An enclosed building used regularly and routinely for presenting motion picture material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.

D. An adult entertainment cabaret is defined as: A public or private establishment which:

- (1) Features topless dancers, strippers, male or female impersonators, or erotic dancers;
- (2) Not infrequently features entertainers who display "specified anatomical areas";
- (3) Features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in explicit simulation of, "specified sexual activities"; or
- (4) Offers sadomasochistic acts or bondage and discipline to patrons.

E. An adult relaxation spa or adult spa is defined as: An establishment or place primarily in the business of providing:

- (1) A steam bath or sauna;
- (2) Other bathing or hot tub services; or

(3) "Rub-down" or other pseudo-massage services by a person or persons not licensed or exempt from licensing under any ordinances required by the City of Bath.

F. An erotic dance is defined as: A form of dance which seeks, through one or more dancers, to arouse or excite the sexual desire of a patron or patrons.

G. Public indecency is defined as: the knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact or nudity in a public place.

#### **6. Conflict With Other Ordinances**

The provisions of this Moratorium Ordinance supersede any conflicting provisions of the Ordinances of the City of Bath.

#### **7. Moratorium on Adult Use Establishments**

During the time that this Moratorium Ordinance is in effect, no licenses or permits shall be issued regarding the establishment, location, or operation of any adult use establishment on any property within the City of Bath.

#### **8. Effective Date and Duration**

This Moratorium Ordinance will become effective on the date of first passage by the City Council, assuming approval after public hearing and second passage, as required under the provisions of Section 221 of the Charter of the City of Bath. The Moratorium shall remain in effect for a period of one hundred and eighty (180) days, after which it shall be repealed, unless extended in accordance with Section 9 below.

#### **9. Extension**

Where the circumstances giving rise to the need for this Moratorium continue to exist and have not been fully resolved, this Moratorium may be extended by vote of the City Council for additional one hundred and eighty (180) day periods after appropriate notice and hearing and in accordance with the provisions of 30-A M.R.S.A. Section 4356(3) and Section 221 of the Charter of the City of Bath.

#### **10. Separability**

If any section, subsection, or provision of this Ordinance is declared to be invalid for any reason by any competent court, such a decision shall not affect the validity of any other section, subsection, or provision of this Ordinance.

#### **11. Violation**

Any violation of the terms of this Moratorium Ordinance shall be subject to the enforcement penalties under 30-A M.R.S.A. Section 4452. The violator shall be subject to the civil penalties contained therein and the City shall have the specific authority to obtain injunctive relief to prevent the location, establishment or operation of any adult use establishment within the City of Bath. This provision shall be in addition to, and not in lieu of, any other violation provisions or penalty provisions of applicable City Ordinances or State Law.

City Solicitor Roger Therriault explained there were two competing interests happening here. One of the interests was the right of expression and the other interest was a state statute that can call a time-out on certain types of regulations. Mr. Therriault said because of the confusion of the two laws, he suggested the passage of the moratorium ordinance to give City Staff and Planning Board time to review these complicated areas of the law and make sure the City properly regulates and locates these type of uses and not infringe on the rights of the establishments.

Councilor Sinclair made a motion to put this item on the floor for discussion. Councilor Mitchell seconded the motion.

Gretchen Sibley, a Bath resident, asked what the time frame was for the Moratorium and if it would cost the City money should there be a court case.

City Solicitor Therriault responded that the Moratorium would be in effect for 180 days from second passage and there would be costs if a case went to court.

**VOTE ON ORDINANCE:**

**YEAS: Brackett, Merrill, Paulhus, Lockwood, Eosco, Mitchell**

**NAYS: Sinclair, Winglass**

**Ordinance passed. 6-2**

Chairman Wyman set second passage for May 22, 2013 at 6:00 PM.

**F. Petitions & Communications 6:42 PM**

Councilor Sinclair stated that on Sunday, May 5<sup>th</sup>, 75 plus members of the community took part in “Keep Bath Beautiful Day” and collected more than a half ton of garbage off City streets.

Councilor Winglass reported that the main mast raising for the sculpture Wyoming at the Maine Maritime Museum would be taking place on Friday, May 10<sup>th</sup> at 10:00AM.

Councilor Eosco reported that the Bath Customs House held an Open House celebrating the restorations that have been done to the building on Friday, May 3<sup>rd</sup>.

**G. City Manager’s Report 6:44 PM**

There was no City Manager’s report.

**H. Committee Reports 6:44 PM**

Councilor Paulhus reported the Flag Committee will have a recommended “City Flag” for Council to view at next month’s meeting.

Councilor Winglass reported that he and his son were at the Red Sox Baseball Game on the previous Sunday for “Maine Day” at the Park. He stated that during the flag ceremony for the National Anthem the Bath Fire Department was the Color Guard representing the State of Maine and it was pretty cool.

Councilor Eosco reminded everyone that “Main Street - May Fair Weekend” would be held this weekend with many events planned for the downtown, as well at the City-wide Yard sale on Saturday.

**I. Unfinished Business 6.:45 PM**

There was no unfinished business.

**J. New Business 6:57 PM**

On behalf of the Council Appointment Interview Committee, Councilor Mitchell nominated George Waldman and Wendy Everham for the two vacant positions on the Bath Community Forestry Committee. All were in favor of the nominations.

Councilor Mitchell nominated Perain Moore to the vacant position on the Bath Bike and Pedestrian Committee. All were in favor of the nomination.



Councilor Mitchell then made the following nominations to the Sidewalk Vending Committee: Bruce Goodwin to the At Large position, Robby Soares of “JR Maxwell Co.” to the Food Vendor position (Councilor Lockwood abstained from voting on this position, citing a conflict of interest) and Michael Fear of “Now You’re Cooking” to the Retailer position. All were in favor of the nominations.

Councilor Eosco made a motion to go into Executive Session at 7:03 PM to discuss Personnel Matters per 1 MRSA §405(6)(A) and Labor Negotiations per 1 MRSA §405(6)(D). Councilor Lockwood seconded the motion. All were in favor of the motion.

Councilor Paulhus made a motion at 7:43 PM to come out of Executive Session. Councilor Lockwood seconded the motion. All were in favor of the motion.

The meeting adjourned at 7:44 PM with a motion by Councilor Lockwood, seconded by Councilor Paulhus. All were in favor of the adjournment.

Attest:

Mary J. White, City Clerk

*Please note: These minutes are not recorded verbatim. A DVD recording of the portion of the meeting is available for review in the City Clerk’s office during regular business hours by appointment.*