

SPECIAL MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, May 22, 2013
Followed the Public Budget Hearing
Bath City Hall Auditorium

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

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

I. Moratorium Ordinance: Prohibiting the Issuance of any Licenses or Permits for the Establishment or Operation of an Adult Use Establishment (second passage) 6:35PM

Councilor Lockwood made a motion to waive the reading of the following Ordinance. Councilor Winglass 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 Manager Giroux explained the Business Ordinance for Adult Entertainment had been drafted and was being worked on by City Staff and would be brought to Council at the June 5th meeting.

Councilor Merrill made a motion to put this Ordinance on the floor for discussion. Councilor Mitchell seconded the motion.

ROLL CALL VOTE:

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

NAYS: Sinclair

Ordinance passed. 7-1

Chairman Wyman stated this Ordinance would become law in 21 days.

II. BOND ORDINANCE: Authorizing Issuance of General Obligation Bonds in the amount not to exceed \$222,000 for the purpose of funding certain vehicles, City Hall repairs and natural gas conversion project. (first passage) 6:40PM

Councilor Paulhus made a motion to waive the reading of the following Ordinance. Councilor Brackett seconded the motion. All were in favor of the waiving motion.

Chairman Wyman read the following Bond Ordinance:

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$222,000 FOR THE PURPOSE OF FUNDING CERTAIN VEHICLES, CITY HALL REPAIRS AND NATURAL GAS CONVERSION PROJECT

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH, AS FOLLOWS:

Section 1. That a sum up to, but not to exceed, \$222,000, plus the sale premium of and investment earnings on the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of funding the following:

- 1 Police vehicles
- Repairs / Replacement of City Hall exterior wall envelope
- 1 public works dump truck with plow gear
- Natural gas conversion project
- One-ton pick-up truck

Section 2. That, for the purpose of funding the aforesaid appropriation, the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized, in the name of and on behalf of the City, to issue the City’s bonds/notes or notes in anticipation thereof, in the stated principal amount of up to, but not to exceed, \$222,000 under and pursuant the City Charter and 30-A MRSA §5772.

Section 3. That any and all bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance are issued pursuant to Chapter 8 of the City Charter and shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager.

Section 4. That any and all bonds/notes issued pursuant to this Ordinance shall be payable in annual installments, which need not be equal, pursuant to Section 807 of the City Charter.

Section 5. That the term of any bonds/notes issued pursuant to this Ordinance shall not exceed ten (10) years.

Section 6. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, shall determine the date or dates, maturities (not to exceed the maximum term specified above), denominations, interest rate or rates and any other details of any bonds/notes or any notes in anticipation thereof to be issued pursuant to this Ordinance, such approval to be conclusively evidenced by the execution thereof.

Section 7. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized to make any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance subject to call for redemption with or without premium prior to the stated maturity date at the election of the City.

Section 8. That the City Treasurer is hereby authorized to take all such action as may be necessary to designate any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance (to the extent such designation is available) as qualified tax-exempt obligations for purposes of Section 265(b) of the Code.

Section 9. That the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance shall be general obligations of the City, backed by the full faith and credit and taxing power of the City.

Section 10. That in the event the City Treasurer elects to issue such bonds/notes or notes in anticipation thereof through the Maine Municipal Bond Bank (the "Bond Bank"), that the City Treasurer and the Chairman of the City Council and the City Manager be and hereby are authorized, on behalf of the City, to enter into a loan agreement with the Bond Bank in conjunction with the issuance of the bonds or notes, in the aggregate principal amount not to exceed \$222,000 with a term not to exceed the term of the bonds or notes, said loan agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with its General Resolution Program, which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the Treasurer, the Chairman of the City Council and the City Manager may approve, their approval to be conclusively evidenced by the execution thereof.

Section 11. That the City Treasurer is authorized to do or cause to be done all such acts and things, and to execute and deliver any and all contracts, agreements, certificates, and other documents as may be necessary or advisable, including but not limited to an Arbitrage and Use of Proceeds Certificate and a Continuing Disclosure Certificate, to carry out the provisions of this Ordinance in connection with the issuance and delivery by the City of the bonds/notes or notes in anticipation thereof.

Section 12. That if the City Treasurer, Chairman of the City Council, City Manager, or Clerk are for any reason unavailable to approve and execute the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance, any loan agreement or any related financing documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.

Section 13. That during the term any of the bonds authorized hereby are outstanding, the City Treasurer is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed 10 years from the date of issuance of the original bonds) and all other details of such refunding bonds, including the form and manner of their sale and award. The City Treasurer is hereby further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager, sealed with the seal of the City, and attested by its Clerk.

Section 14. That any suit questioning the validity of this Ordinance shall be barred unless commenced within forty-five (45) days following publication of the Ordinance in accordance with Section 805 of the City Charter.

City Manager Giroux stated that this Ordinance covered the Capital budget project discussed during the Budget Workshops.

Councilor Paulhus made a motion to put this Ordinance on the floor for discussion. Councilor Eosco seconded the motion.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Lockwood, Eosco, Sinclair, Mitchell, Winglass

NAYS: None

Bond Ordinance passed unanimously. 8-0

Chairman Wyman set second passage of this Ordinance for June 5, 2013 at 6:01 PM.

III. Ordinance: Supplemental Appropriation: Unanticipated Expenditures in the amount of \$545,000.00. (first passage) 6:44PM

Chairman Wyman read the following Ordinance:

**ORDINANCE
SUPPLEMENTAL APPROPRIATION**

WHEREAS, the City Council desires to set aside additional funds for unanticipated expenditures; and

WHEREAS, surplus funds in the General Fund Undesignated Fund Balance Account, constituting revenue in excess of those estimated in the Budget for the current fiscal year, are available for this purpose; and

WHEREAS, the sum proposed to be appropriated by this Supplemental Appropriation, totaling Five Hundred Forty Five Thousand Dollars (\$545,000.00), will not exceed the expenditure limits for the current fiscal year pursuant to Section 617 of the Charter of the City of Bath;

NOW THEREFORE, be it ordained by the City Council of the City of Bath that the total sum of Five Hundred Forty Five Thousand Dollars (\$545,000.00) be and hereby is supplementally appropriated from the General Fund Undesignated Fund Balance (Account GF-2500) to the Council Contingency Account (Account 012-402).

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

City Manager Giroux explained the role this Ordinance has on the City Budget and the Spending Limitation.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Lockwood, Eosco, Sinclair, Mitchell, Winglass

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman set second passage of this Ordinance for June 5, 2013 at 6:02 PM.

III. Order: Notice to prepare and post warrant for Regional School Unit #1 Budget Validation/Referendum Election. 6:48 PM

Chairman Wyman read the following Order:

In City Council
May 22, 2013

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT:

Warrants be prepared and issued to notify and summons the inhabitants of the City of Bath, qualified to vote, that the School Budget Districts Election will be held at Bath Middle School, 6 Old Brunswick Road (Districts 1-7) inclusive, on the 4th day of June, in the year of our Lord Two Thousand Thirteen, at eight O'clock in the forenoon, then and there, to cast their votes at the School Budget Validation/Referendum Election in their respective Districts for:

Regional School Unit # 1 Budget:
District One - District Seven

and, be it further ordered, that polls are to be kept open until eight O'clock in the afternoon of day and then be closed.

Councilor Sinclair motioned to put this Order on the floor for discussion. Councilor Mitchell seconded the motion.

VOTE on Order:

YEAS: Brackett, Merrill, Paulhus, Lockwood, Eosco, Sinclair, Mitchell Winglass

NAYS: None

Order passed unanimously. 8-0

IV. Appointment of two General Assembly Representatives for the City of Bath to the Midcoast Economic Development District. 6:50 PM

Councilor Winglass nominated William Giroux and John James IV to the positions. Councilor Mitchell seconded the nomination. All were in favor of the nominations.

Councilor Lockwood made a motion to go into Executive Session at 6:51 PM to discuss a Real Estate Matter per 1 MRSA §405(6)(E). Councilor Paulhus seconded the motion.

VOTE on Motion:

YEAS: 7

NAYS: 1 (Sinclair)

Motion passed. 7-1

Councilor Winglass made a motion at 7:30 PM to come out of Executive Session. Councilor Paulhus seconded the motion. All were in favor of the motion.

The meeting adjourned at 7:30 PM with a motion from Councilor Brackett and a second from Councilor Paulhus. All were in favor of the motion to adjourn.

Attest:

Mary J. White, City Clerk

Please note: These minutes are not recorded verbatim. A tape recording of the meeting is available for review in the City Clerk's Office during regular business hours.