

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, July 3, 2013 6:00 PM
City Council Chambers, Bath City Hall**

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

Also in attendance were City Manager William Giroux, City Solicitor Roger Therriault and Deputy City Clerk Pam Gray.

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

Chairman Wyman then announced that Councilor Merrill and her husband Dana were the proud parents of a brand new 8 pound baby boy, Ezra Lincoln Merrill, and extended congratulations to them.

C. Public Hearing 6:03 P.M.

1) Ordinance: Prohibiting Smoking in City Parks and Recreation Facilities - Access Health (second passage)

Chairman Wyman read the following Ordinance:

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE CODE OF THE CITY OF BATH, ADOPTED FEBRUARY 2, 1977, AND SUBSEQUENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

CHAPTER 10. PUBLIC SAFETY

Add the following:

ARTICLE 4. TOBACCO-FREE PARKS AND RECREATION FACILITIES

Section 10.401. Title.

This article shall be known as the “City of Bath Tobacco-Free Parks and Recreation Facilities Ordinance.”

Section 10.402. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of Bath’s parks and outdoor recreation facilities. The purpose of this ordinance is to decrease exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

Section 10.403. Definitions.

Tobacco products means cigarettes, cigars, pipes, snuff, dip, chewing tobacco, weed, plant, and any other forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking, or both for chewing and smoking.

Section 10.404. Tobacco Product Use Prohibited.

It shall be unlawful for any person to use tobacco products, at any time, at or within twenty five (25) feet of all parks and outdoor recreation facilities owned and/or maintained by the City of Bath, including, but not limited to, the following:

Library Park
Waterfront Park

South End Park
All City Boat Launch Facilities
All City Trails and/or Easements
McMann Field Complex, inclusive of all Facilities, Track, Tennis/Basketball Courts, and Fields
Donnie Small Athletic Complex
Varnum Field

There will be no designated areas in the aforementioned properties allocated for use of tobacco products.

Section 10.405. Signage.

The Parks and Recreation Department shall post signage notifying the public of the prohibition of tobacco product use at or near the parks and outdoor recreation facilities specified herein, as well as such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary.

Section 10.406. Privately Owned Property.

Nothing in this ordinance shall prohibit smoking on privately owned property.

Section 10.407. Enforcement.

The City of Bath Police Department shall investigate and enforce the provisions contained in this ordinance. Nothing in this ordinance shall prevent the enforcement agent from obtaining voluntary compliance by way of warning, notice or education.

Section 10.408. Penalties.

Any person in violation of any provision of this ordinance shall be subject to a civil penalty and upon adjudication thereof shall be fined in the amount of one hundred dollars (\$100.00) for the first offense; two hundred fifty dollars (\$250.00) for a second offense; and five hundred (\$500.00) for each violation thereafter.

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

Councilor Sinclair pointed out that there was a mis-match between the Purpose and the Products as some of the Products mentioned don't involve second-hand smoke. He recommended the following amendment to the Purpose and suggested that the second sentence be amended to read as follows: "The purpose of this ordinance is to decrease exposure of individuals and children in particular to secondhand smoke and the associated detritus from the use of tobacco products as defined below." Councilor Brackett made a motion to approve the amendment as proposed, which was seconded by Councilor Paulhus and passed unanimously.

ROLL CALL VOTE on Amended Ordinance:

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

NAYS: None

Ordinance passed unanimously. 7-0

Chairman Wyman stated that the Ordinance would go into effect in 21 days.

D.Consent Agenda 6:10 P.M.

***2) Minutes of the Regular Council Meeting on 6/5/13 (Motion to accept as presented)**

Councilor Winglass made a motion to accept the Consent Agenda as presented, which was seconded by Councilor Paulhus and passed unanimously.

E. Time Devoted to Residents to Address the City Council 6:12 PM

Michael Wischkaemper of 17 York Street addressed the City Council and again expressed his dissatisfaction that Councilor Sinclair was the only Councilor who had responded to the questions he had submitted to the Council regarding the sale of the Midcoast Center for Higher Education property. He also took issue with the beliefs of some Councilors as to what should be dealt with privately before the public is informed.

He then stated that it was the City Manager's intent that this be kept secret, referencing how word had "got out" and pointed out that this was not a "full-price offer". Mr. Wischkaemper then expressed dismay that the buyer had asked the property be kept off the MLS so that other parties could not bid on it. He then asserted that someone had done something seriously wrong and pointed out that nobody – whether it was the agent, the broker or the City Manager – had the right to keep it off the MLS and expressed his belief that this was a breach of fiduciary duty.

Jim Strickland of 4 Park St. also addressed the City Council regarding the sale of the Midcoast Center for Higher Education property and expressed his belief that the sale price was borderline ridiculous, pointing out that value should be based on potential. He observed that very few people knew about the sale. He stated that he had asked a Councilor if the parking lot south of Park St. was included in the sale and said the Councilor did not know but would find out. He questioned how you could vote to sell something if you don't know what is included in the sale and asserted that the City Council had not acted in the City's best interests.

Larry Scott of 1486 Washington St. stated that it is a pattern that bothers him more than a specific transaction and caused him to question what else is secret. He then referenced the Waterfront Park and cruise ships, noting that the money was spent, the work was completed and observed that there are no ships and questioned why. He again questioned what was done incorrectly and by whom, asking why these questions couldn't be answered.

Mr. Scott asked if it wouldn't be better to have a policy that says you do the homework, you hold people responsible, you get the job done and you reap the rewards and asked if a job well done wasn't better than another mistaken hidden event. He concluded that the City Council was empowered to make the decisions, but it is the taxpayers who are empowered to get stuck with the bill.

F. Ordinances, Resolutions and Orders 6:25 p.m.

3) Order: Set Aside Funds for Landfill Closure or Remediation

Chairman Wyman read the following Order:

**ORDER TO SET ASIDE FUNDING FOR THE PURPOSE OF CITY LANDFILL
REMEDiation AND OR CLOSURE FUND**

WHEREAS, pursuant to an Order of the City Council dated April 4, 2012, the City Council requested the transfer of monies, from MainePERS, as administrator, designated as surplus funds under the Individual Unpooled Unfunded Actuarial Liability Fund (IUUAL); and

WHEREAS, the surplus funds were, upon receipt by the City, turned over to HM Payson & Co. to be managed under the terms of the City's Investment policy, also adopted by Council vote at its April 4, 2012 meeting; and

WHEREAS, the surplus funds have been designated by the City as "Reserve Funds", within the meaning of M.R.S. Title 30-A section 5801 et seq., to be used for all purposes contemplated therein including, but not limited to, necessary capital expenditures, both current and future; and

WHEREAS, the City is desirous of funding a capital account dedicated to offsetting, in part or entirely, future costs associated with remediation or closure of the City's landfill.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the earnings from \$1,000,000 of the City's Reserve monies be set aside, or otherwise accounted to fund a capital improvement account as contemplated by M.R.S. Title 30-A section 5801 (1) and entitled **City Landfill Remediation and/or Closure Fund**, for the singular purpose of addressing future costs associated with the closure or remediation of the City Landfill.

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

Vote on Order:

YEAS: 7

NAYS: 0

Order passed unanimously 7-0

4) Resolution: Adopting the Bath City Flag Design 6:27 PM

Chairman Wyman read the following Resolution:

RESOLUTION ADOPTING MUNICIPAL FLAG OF THE CITY OF BATH

WHEREAS, the City of Bath is a prestigious and historical city with an illustrious maritime history; and

WHEREAS, the citizens of the City of Bath have demonstrable pride for their community; and

WHEREAS, the designation of an official flag will provide a symbol of Bath's pride and a lasting and historical symbol for official use; and

WHEREAS, the proposed design has been developed by the City's Flag Committee, with the invaluable assistance of Jeremy Hammond, with the goal and intent to honor Bath's heritage and history; and

WHEREAS, the proposed design has been inspired by elements of the coat of arms of the English City of Bath, to honor the City's shipbuilding heritage, and to represent the two major water bodies flanking Bath's shores, the Kennebec River and Merrymeeting Bay; and

WHEREAS, David B. Martucci, flag expert and former President of the North American Vexillogical Association, has reviewed the flag proposed for adoption as the official City Flag by the City of Bath and, in his letter of August 8, 2012, made the following comments:

- "You have created an excellent vexillographic which meets NAVA's criteria as outlined in "Good Flag, Bad Flag".
- "This is a first-rate design for sure."
- "...your design would rank in the top ten of all US City flags in terms of the design criteria..."
- "...this design would be one of the most striking in the entire state."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bath, with appreciation to those involved in the development of an official flag for the City of Bath, which reflects the pride and heritage of the City and which presents an ongoing representation of this pride and heritage, that it does hereby adopt as the official flag for the City of Bath, a flag that shall be a rectangle in the ratio of three (3) units on the hoist to five (5) units on the fly, divided in half horizontally, Old Glory Red over white. Centered in the upper half, silhouetted in yellow (gold), is a three-masted, square-rigged ship under full

sail. In the lower half are two (2) wavy Old Glory Blue horizontal stripes. This flag, as described, shall be produced in conformance with the measurements, drawings, and color specifications annexed hereto, and made a part hereof.

SO RESOLVED the City Council of the City of Bath this 3rd day of July, 2013.

Councilor Paulhus made a motion to put this Resolution on the floor for discussion, which was seconded by Councilor Sinclair.

Councilors Mitchell stated that they had done an excellent job on the flag with the history behind it, and Councilor Brackett also expressed his approval on the design of the flag. Councilor Paulhus thanked Mr. Hammond, the Committee and everyone who had put in the hard work to make this a reality.

Vote on Resolution:

Yeas: 7

Nays: 0

Resolution passed unanimously 7-0

5) Order: Excavator Bid 6:32 PM

Chairman Wyman read the following Order:

ORDER APPROVING PURCHASE

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT THE BID OF WALLINGFORD EQUIPMENT COMPANY, AS SUPPLIER FOR AN 18,000 LB KUBOTA MINI-EXCAVATOR, FOR THE BASE BID PRICE OF \$96,547.00, BEING THE LOWEST QUALIFIED BID SUBMITTED, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SUCH DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE PURCHASE ON BEHALF OF THE CITY OF BATH. THE FUNDS FOR THIS PURCHASE ARE DESIGNATED AS PART OF A BORROWING ORDINANCE APPROVED BY COUNCIL ON JULY 9, 2012.

Councilor Lockwood made a motion to put the order on the floor for discussion, which was seconded by Councilor Paulhus.

Public Works Director Peter Owen explained that this was brought forth in 2012 and the borrowing order for it was passed on 7/9/2012. He stated that this is to replace a rubber-tired excavator. He pointed out that it is smaller but more efficient, explaining that the big excavator won't work at the landfill or the cemetery, as there are too many tight spaces. He added that they didn't accept the lowest bid, as it didn't meet the specs. Councilor Sinclair asked how this price fit in the budget. Peter Owen said that it was \$5,000 over budget but explained that they had money left over in the capital fund to cover the overage.

Vote on Order:

Yeas: 7

Nays: 0

Order passed unanimously 7-0

G. Petitions & Communications 6:36 PM

There were no petitions or communications.

H. City Manager's Report 6:37 PM

City Manager Giroux stated that the State Legislature over-rode the Governor's veto, resulting in \$235,000 less in revenue sharing. He said that the Council will need to spend 15 or 20 minutes talking about viable options and said they need to decide what adjustments to make to address the revenue shortfall. He said it is not an emergency but needs to be dealt with.

Councilor Winglass said that they need to know how the RSU came out and what they got. Mr. Giroux asked Justin Poirier if he could shed any light on this issue. Justin Poirier stated that the money has already been determined and that they can't raise their assessment to Bath. City Manager Giroux said that he would find out if they got more or less.

Councilor Paulhus suggested that they set up a budget workshop to discuss this. Councilor Eosco said she would like to hear what ideas the City Manager has to make up this shortfall. City Manager Giroux said they could do nothing, and the tax rate would be set higher, they could make cuts to cover the entire loss or somewhere in between, and said he would prefer to discuss any personnel cuts in Executive Session. He added that a road bond is a possibility, so parts could come from cuts in pavement. Councilor Sinclair requested that the City Manager prepare a public memo and be prepared to get information to the public, and that a workshop be scheduled. City Manager Giroux said that it is also important that a vote be taken on the Road Bond prior to the August meeting because the City Clerk's Office has time constraints that need to be complied with in order to get this on the ballot. It was determined that the Council Workshop will be set for July 24th at 6 p.m. to discuss budgetary issues and the Road Bond.

I. Committee Reports 6:50 PM

Councilor Eosco reported that the Parking Committee has been meeting. She said that they have made a parking brochure of top secret parking places in Bath. She said that they are pushing towards four hour parking spaces and pointed out that parking spots that are by permit are available to the general public after hours and on week-ends. She then gave a highlight of the Heritage Days activities. She said the carnival is set up and the chicken barbecue was going on at the Library Park. Councilor Eosco concluded that schedules are available and they are looking forward to a great week-end.

Councilor Lockwood reported that the next Economic Development Committee meeting would be on July 22, 2013 at 4 p.m. in the second floor conference room.

J. Unfinished Business 6:55 PM

Councilor Sinclair referenced the Idle Free Bath effort and said he hoped to see this ordinance put in place. He said he would meet with Chief Field and the City Solicitor to get a draft item for the August meeting. Councilor Sinclair then expressed his belief that the Council needs to respond to the citizen questions that were submitted to the Council through the Chair because it makes the Council look bad to not respond. Chairman Wyman said that he doesn't feel that they need to give them nine separate responses and that they should answer as a group. Councilor Sinclair said that there were issues raised that were not addressed in Executive Session that could be answered. Councilor Lockwood disagreed and said that the information they were looking for was indeed discussed in Executive Session.

Councilor Winglass suggested that information on the dock be included. City Manager Giroux explained that they did not re-build to accommodate cruise ships. He pointed out that the dolphins are stuck in the mud and these were not replaced. It was noted that the Maritime Museum did not want cruise ships to come in downtown, but Main Street Bath does.

Councilor Paulhus made mention of the ceremony at the Maine Maritime Museum and encouraged everyone to check out the new flagpoles there.

Councilor Winglass mentioned that there would be a meeting on the rehab of the viaduct at City Hall Auditorium at 6 p.m. on July 10th and encouraged people to attend.

K. New Business 7:05 PM

6)Appointment two members to the Old Bath Customs House Board of Directors with terms ending in August 2016

Councilor Eosco nominated Max Dawson for the first position. All were in favor of the nomination. Councilor Eosco then nominated John Voorhees for the second position. All were in favor of the nomination.

A motion was made by Councilor Mitchell to go into Executive Session to discuss real estate matters per 1 MRSA § 405 (6) (E) and to discuss a personnel matter per 1 MRSA § 405 (6) (A). The motion was seconded by Councilor Winglass and passed unanimously.

A motion was made by Councilor Winglass to adjourn from Executive Session at 7:45 p.m., which was seconded by Councilor Paulhus and was passed unanimously.

Attest:

Pamela J. Gray, Deputy City Clerk

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