

REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, August 7, 2013 6:00 PM
City Council Chambers, Bath City Hall

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.

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

C. Public Hearings 6:00 PM

1) Maine Department of Transportation Grant/High Street – Public Works Director Peter Owen

Public Works Director Peter Owen opened the Public Hearing by explaining that the Public Hearing was part of the application process for the Municipal Partnership Initiative Grant with the Maine Department of Transportation's. He stated the grant is to help municipalities improve State Aide Roads and are usually capped at \$500,000 with limited amount of funding for municipalities and the grant guidelines are that the road is a state aid road and would have a safety and economic benefit to the municipality. Mr. Owen explained that should the City get the grant, the funding would be used for Lower High Street improvements.

Mr. Owen stated should the City be successful the funding would be for 2014-2015 so the work would be done next summer.

D. Consent Agenda 6:07PM

***2) Minutes of the previous Council meetings' of July 3 and 24, 2013. (motion to Accept as Presented)**

Councilor Paulhus made a motion to accept the Consent Agenda as presented. Councilor Merrill seconded the motion. Councilor Sinclair stated he felt the Minutes to the July 24th meeting were too limited with content and was not in favor of them. City Clerk White explained that a verbatim version of comments were also available and would be filed with the presented minutes. Councilor Sinclair approved of this option. All were in favor of the minutes.

E. Time Devoted to Residents to Address the City Council 6:09 PM

Bruce Gagnon of 212 Centre Street addressed the City Council and said he was speaking against the request by General Dynamics and to fork over another round of tax breaks for this wealthy corporation. This is in regards to the tax increment financing for an expansion by BIW. He expressed his feeling that this is corporate welfare that the State cannot afford. He spoke against large corporations and speculated that they take money away from where it is needed and make empty promises of more employment. He then proceeded to cite figures of salaries of top executives of this corporation. He also made reference to Lockheed Martin and cited how they had gotten exemptions from paying occupancy taxes for the hotel that they had built. He then spoke against corporate greed and government spending. He felt that the money would be better spent on things such as rail systems and said that military spending is capital-intensive. He expressed his belief that the public is tired of seeing public funds go for more corporate welfare and concluded that democracy has been trumped by corporate welfare.

Mary Beth Sullivan of 212 Centre Street addressed the City Council and said she has the same concerns as Bruce and was also concerned about creating an infrastructure to build warships. She said if we

continue making warships, we will continue making war. She made reference to other issues such as global warming and running out of resources, and expressed her belief that China is not our enemy but our competitor and that both of our countries are looking for things that we want to extract for our countries – the oil, the gas, the cobalt and whatever other minerals are under the earth. She said we would use our Aegis destroyers that are built at BIW to do that work for us and said it is time for us to build renewable energy structures in our world. She questioned why Bath Iron Works is not building rail systems and subway trains and said that it is because this would not generate as much profit. She said if you pay for an infrastructure that is only designed to build more Aegis destroyers and naval ships that will be parked in other countries all around the world, that's what will happen and will create an unstable world. She then invited everyone to the Episcopal Church at 3:00 p.m. on August 18th where they will be showing a video that features a small community in South Korea where they are building a Navy port that will house Aegis destroyers built by BIW. She urged the Council that if they are going to continue to support that work to come and see the consequences.

Rabyrne Hutton of 195 High Street addressed the City Council and read a letter pertaining to the Bath Development Committee. He made reference to the sale of the old hospital and to procedures that he had seen written that afforded too much authority to one position. Minor revisions were made that were e-mailed out to the Committee and other interested parties, where input was given. He pointed out that recent meetings have included five City Councilors, which represents a quorum. He pointed out that since the meeting was advertised, business could have been accomplished. He added that he is the only citizen member on this Committee and said that maybe he misunderstands what this Committee is for. He questioned the reason for the Committee and said that a mission statement is now being developed. Mr. Hutton then said that with the Council's lack of openness and refusal to answer questions, he said he could no longer remain on the Committee and support the Council in the future. He said he has uneasiness with future controversies that may arise and said that therefore, he is submitting his resignation from the Bath Development Committee effective immediately.

Councilor Sinclair then said that he had some comments pertaining to the "800 pound gorilla that is in the room" and sought guidance from the Chair if he would prefer that he make his comments now or later in the meeting. Chairman Wyman said that he could make his comments now.

Councilor Sinclair said that he has spoken with several other City Councilors and said that he feels that it is important to develop a method of addressing the questions raised pertaining to the sale of the old hospital. He said that he has made his feelings known in regards to this issue for the past several months and said that he has answered the questions submitted because he felt that it was the right thing to do despite what others have chosen to do. Councilor Sinclair expressed his feeling that it is abundantly clear that what they have been doing is insufficient. He said he is making a motion to hire an independent investigator for the specific limited purpose of talking with each Councilor, talking with the City Manager, talking with the City Solicitor, talking with Mr. Spann, and collecting documents and people's remembrance of these events, putting together a document that describes exactly what happened relative to the sale, who knew what when, and that this document be made public in hopes of restoring some of the trust that has clearly been either damaged or lost in the course of these proceedings.

Chairman Wyman asked Councilor Sinclair if he had anybody in mind. Councilor Sinclair said that he had thought about that and said that the first person who came to mind was Pat Scully, who is an attorney who has done some work for the City previously and has done quality work. He said he didn't know if Pat Scully would be willing to do it, but he was the first name that came to his mind.

Councilor Brackett asked City Solicitor Therriault if that is something that would be permissible, and City Solicitor Therriault confirmed that the City Charter does have provisions for this and that it would be within the scope of Council's authority. Councilor Merrill said that she would be in favor of this. Councilor Brackett said that it is unfortunate that the Council finds themselves in this situation but he said that he would support Councilor Sinclair's proposal. It was then confirmed that there was a motion on the floor and Councilor Brackett said that he would second it. The vote was unanimous to proceed with this

proposal. Chairman Wyman asked Councilor Sinclair if he was going to contact Mr. Scully, but Councilor Sinclair felt that it would be more appropriate coming from the Chair.

Larry Scott of 1486 Washington Street addressed the City Council and said he felt the City was going in the right direction with this and that he wanted to applaud that in every way possible. He expressed his belief that he feels it is imperative in the collection of this data to have the e-mail address of the individual who is doing this investigation because he has over a thousand e-mails and probably three or four hundred pages of material that he wants to submit to that individual. He felt that if this investigation is going to take place, the investigator should have all of the information and not just one side or the other.

Mr. Scott then said that he also felt that the Council should decide what rules they are going to follow for public comment. He pointed out that there was one set of rules on the agenda, there was a set of rules in the newspaper, and then Chairman Wyman read a set of rules, and Mr. Scott stated that they do not agree. He said that here it says nothing about only being able to address the agenda items and that he feels they need to make some decisions about what their rules are and that they are clear and concise and Chairman Wyman assured him they would do that.

Robert Westlake of 1484 Washington St. addressed the Council saying that at the last City Council workshop the City Council invoked restrictions as to what could be said, how it could be said and expressed his feeling that this is a violation of their expression of free speech guaranteed by the First Amendment. He said the City Council additionally voted and agreed that this would be first on the agenda, followed by the Councilors' portion to speak. He felt that this restricted any comments from the public regarding the comments made by the Councilors about questions asked relative to the actions taken prior to and subsequent to the sale of the Bath hospital. The duration of time to not answer the questions has only served to add to the mistrust of the way the sale was conducted. The Council members, as a whole, stated that they did nothing wrong. If so, why can't they answer the questions, instead of stonewalling, he asked. The Councilors told answers to their constituents, that they are not obligated to answer. In closing we can assume the Councilors were advised to not answer the questions eliminating them all from incrimination. This has the trappings of a back room deal. Shame on you!

Jim Strickland of 4 Park St. addressed the City Council and said he was confused that they are willing to talk to an investigator now and last week they wouldn't talk to anyone. I would like more information about who this lawyer is and his relationship with the City, said Strickland. I would like to agree that this party is the right person for the job and agreeable to all parties.

Michael Wischkaemper of 17 York St. addressed the City Council. He asked Chairman Wyman to please tell Mr. Sinclair thank you for proposing a third party intervention. I did not know he was going to do this. I think it's a terrific step forward, said Wischkaemper. Wischkaemper said he was prepared to give questions to the Council, but will not, since it seems they are prepared to give answers to a third party. Wischkaemper continued by saying he would like to comment on the rules question that Mr. Scott mentioned. Council has two periods of time in which members of the public can speak – the initial period when they can speak on general matters and later when they can speak on agenda items. It appears that the rules relate to the discussion of agenda items. Wischkaemper said he assumed that this was the case tonight when he spoke – that he did not have to refer to an agenda item. In going forward, you might want to look at that in the future, he added. Finally, Wischkaemper said, I'd like to make a comment since my name is associated with the new improved provisions that have come out of the Development Committee. Some of the changes I proposed have been incorporated and some have not. He said that one change that he tried to propose was that the Council should use the default that things not be done in executive session. Executive session is perfectly appropriate at times. If there is a broad item to discuss, the City Council should discuss only the items that need to be in executive session, but continue with the other items openly. With the respect to the sale of public property, there is a State Statute that says when City Council may use Executive Session - that is when premature disclosure of the information may disadvantage the City in the negotiation for the sale or purchase of the real property. That may not be a quote, but it's close, said Wischkaemper. With the hospital transaction, this is no longer an opinion transaction, the deal is done. If there was a reason to keep the transaction secret, it no longer exists since

the transaction is done. To make Mr. Sinclair's suggestion effective, I suggest the Council remove this transaction from the privilege of Executive Session. If notes are being kept by City staff, I suggest that they be made available to the investigating officer. Again, the reason Maine allows Executive Session no longer applies to this transaction. Thank you, said Wischkaemper in closing.

F. Ordinances, Resolutions and Orders 6:35 PM

3) Order – Prepare Election Warrant to notify inhabitants of the City of Bath of a State of Maine Senate District 19 Candidate Special Election to be held on Tuesday, August 27, 2013 (motion to pass Order)

Chairman Wyman read the following Order:

ORDER

In City Council
August 7, 2013

BE IT HEREBY ORDERED BY THE CITY COUNCIL, AS FOLLOWS:

That, the Notice of State of Maine Senate District 19 Special Election be prepared and issued to notify and summons the inhabitants of the City of Bath, qualified to vote, that the State of Maine Senate District 19 Special Election will be held at Bath Middle School Cafeteria, 6 Old Brunswick Road, on Tuesday, August 27, 2013 for the purpose of determining the following Candidate Position:

State Office to be Voted on:

State Senator, District 19

A person may register to vote and/or enroll in a political party on or before election day. Pursuant to Title 21-A, Section 759(7), absentee ballots will be processed on August 27, 2013 starting 10AM through 8PM at the Bath Middle School Cafeteria, 6 Old Brunswick Road.

The polls shall be opened at 8:00AM and closed at 8:00PM.

Councilor Mitchell made a motion to put this Order on the floor for discussion. Councilor Lockwood seconded the motion.

VOTE

YEAS: 8

NAYS: 0

Motion passed. 8-0

4) Order: Appointment of Warden and Deputy Warden for State of Maine Senate District 19 Candidate Special Election to be held on Tuesday, August 27, 2013.

Chairman Wyman read the following Order:

ORDER

Be It Ordered by the City Council of the City of Bath, that the following be appointed for the State of Maine Senate District 19 Special Election to be held on Tuesday, August 27, 2013 at the Bath Middle School Cafeteria, 6 Old Brunswick Road.

<u>State Warden</u>	<u>State Deputy Warden</u>
Darlene Compton	Mary Arsenault

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

VOTE
YEAS: 8
NAYS: 0
Motion passed. 8-0

5) Order: Setting Voter Registrar's Hours for the State of Maine Senate District 19 Candidate Special Election to be held on Tuesday, August 27, 2013

Chairman Wyman read the following Order:

ORDER

Be It Ordered by the City Council of the City of Bath, that the hourly schedule for the office of the Registrar of Voters shall be from 8:30am to 4:30pm Monday through Friday prior to the election to be held Tuesday, August 27, 2013 State of Maine Senate District 19 Special Election at the City Clerk's Office, 55 Front Street, Bath, Maine.

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

VOTE
YEAS: 8
NAYS: 0
Motion passed. 8-0

6) Drug Forfeiture

A copy of this paperwork is filed with the Agenda Materials in the City Clerk's Office.

Chief of Police Field explained the events that resulted in this forfeiture.

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

VOTE
YEAS: 7
NAYS: 0
ABSTENTION: 1 (Sinclair)
Motion passed. 7-0-1

7) Order: Procedures for Sale of City Owned Property

Councilor Sinclair made a motion to waive the reading of the Order. Councilor Mitchell seconded the motion. All were in favor of the waiving motion.

**PROCEDURE FOR DISPOSITION OF
INTERESTS IN CITY OWNED REAL PROPERTY**

A. Purpose

It is the purpose of this Procedure to outline the process for handling the disposition of interests in City owned real property. It is the further intent to provide a procedure that will be open to public scrutiny except in those cases where public disclosure of information relating to the disposition of the property would prejudice the competition or bargaining position of the City. Additionally, it is the intent of this procedure to provide for public notification of any sale in all cases where premature disclosure of information is not prejudicial to the City and to determine the appropriate method of disposing of the property in order to realize the best return on the sale.

The list of procedures herein is not all inclusive and the disposition of individual properties may require additional steps outside this process. Similarly, individual sales may not require all of the steps outlined below.

B. City Manager Level

Transfers of interests in City owned real estate shall initiate with the City Manager, subject to the following:

1. Internal Requests
 - a. Conduct an annual review for presentation to Council (which may occur in written form unless otherwise requested by Council), of the status of all such property, noting any changes in the status of City owned property and in order to determine whether or not it is appropriate to market for sale, any interests in any of the City owned properties.
 - b. Communicate with the staff to determine whether or not the City has any interest in retaining the property for any present or future City purpose.
 - c. Advise Council of City owned property that may be offered for sale together with supporting documentation as may be necessary to support the decision to recommend the sale and recommendations as to the methodology of sale.
2. Requests for Purchase
 - a. All requests for purchase of any interest in City owned real estate, regardless of the type of interest being sought (i.e. title, easement, etc.), shall initially be referred to the City Manager.
 - b. The City Manager shall determine the purpose of the request and the proposed use of the property by the person or entity making the request.
 - c. The City Manager shall determine the nature and source of the City's interest in the property, review available documentation in the City's files and, with the help of the City Solicitor and/or City Staff, if required, to determine whether or not the City has adequate title to the property to satisfy the request.
 - d. The City Manager shall determine if any additional information/documentation is required from the applicant or any other source.
 - e. The City Manager shall circulate the request among City Department Heads and appropriate other City Staff, to determine whether the City has any interest in retaining all or any portion of the property for any present or future purpose. He shall also determine whether or not there are any particular interests of the City, abutters, or other interested parties that need to be considered and protected as part of the transaction.
 - f. The City Manager shall advise the Council of the request to acquire an interest in City property and provide supporting documentation.

C. City Council Level

Upon receipt from the City Manager of his recommendation to dispose of any interest in City owned property, the Council will then proceed as follows:

1. Executive Session
 - a. Pursuant to the provisions of 1 M.R.S.A. Section 405(6)(C), the City Council may meet in Executive Session to consider the information provided by the City Manager regarding the transfer of the City's interests in any real estate, for the initial purpose of determining whether or not the release of any or all the information regarding the disposition of property would prejudice the competitive or bargaining position of the City. If it is determined by Council that all or certain portions of the information relating to the disposition of publicly owned property would not prejudice the competitive or bargaining position of the City, then such information determined to not prejudice the competitive or bargaining position of the City will be available to the public and the Council will conduct open deliberations as it relates to that information. Nothing shall prohibit the Council, however, from convening in Executive Session to consider information that may develop during the course of the disposition process the disclosure of which would prejudice the competitive or bargaining position of the City (e.g. negotiating sales price with multiple purchasers).
2. Determine the following:
 - a. Determine if additional information is required and/or whether reference to City Staff, outside experts, or City resources (e.g. Economic Development Committee, Economic Development Corporation, etc.) for additional input.
 - b. Determine whether or not it is in the best interests of the City to transfer any interest in the subject property and the form of that transfer. The decision whether or not to entertain transfer of the property interest shall be made in open session at a meeting of the Bath City Council.

- c. If it is determined by the City Council to be in the best interests of the City, to transfer its interest in a particular parcel of land, then the City Council shall determine the following:
- i. Determine and establish a price for the property interest based on the market for and the nature of the property, with the intent to provide the most accurate and appropriate pricing.
 - ii. Determine whether or not the transfer or the disposition of the property requires any special conditions, covenants or restrictions that need to be imposed on the transfer in order to protect the interests of the City, interests of abutters, and interest of any other parties who might be affected by the transfer.
 - iii. Determine the method of sale in accordance with provisions of Section 7.14(B) of the Code of the City of Bath.
 - iv. Determine the appropriate level of marketing with regard to the property being offered for sale or requested for sale subject to the following:
 - If the property is to be conventionally marketed, Council shall approve the method of marketing, the employment of realtors, real estate professionals, appraisers and the like.
 - Be advised of and approve listing practices regarding general marketing procedures.
 - If the property is to be advertised via bids or RFP's, Council shall determine the bid procedure and bid period.
 - If a sale to abutters is appropriate due to the nature of the property, the Council shall determine the notice to the abutters and any bid procedures to be followed.
 - Council shall determine the nature and extent of public notification of the sale of a property, if to be generally marketed, in conjunction with real estate professionals.
 - The intent to offer a property for sale may be included in City publications as determined by the City Council, which may include the City website and such other media to which the public has access.

City Solicitor Therriault gave an overview and explanation of the substance of the procedures.

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

Councilor Sinclair made a motion to amend Section C, Subsection 1.a., to delete the word “shall” and replace with the word “may”. Councilor Paulhus seconded the motion.

VOTE on Amendment:
YEAS: 8
NAYS: 0
Motion passed unanimously. 8-0

Councilor Sinclair made a motion to amend Section C, Subsection 2.a. by add the wording “is appropriate” at the end of the sentence. Councilor Merrill seconded the motion.

VOTE on Amendment:
YEAS: 8
NAYS: 0
Motion passed unanimously. 8-0

Councilor Merrill made a motion to amend Section C., Subsection c.i., by adding at the end, the wording “and an independent appraisal of all property unless deemed unnecessary by the City Council shall be conducted”. Councilor Paulhus seconded the motion.

VOTE on amendment:
YEAS: 8
NAYS: 0
Motion passed unanimously. 8-0

VOTE on amended document:
YEAS: 8
NAYS: 0

Motion passed unanimously. 8-0

8) Ordinance: Idle Free (first 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 17. VEHICLES AND TRAFFIC
Article 7. Offenses

Add a new Section 17-314 as follows:

Section 17-314. Idling Motor Vehicles.

Notwithstanding the provisions of 38 M.R.S. Section 585-L, in order to further protect and preserve the natural environment, reduce vehicle emissions, and improve the air quality in the City of Bath, owners or operators of motor vehicles within the City of Bath municipal boundaries shall be subject to the following:

- A. Five-minute limitation. No person may cause or allow a motor vehicle to idle for more than five consecutive minutes while that vehicle is parked within City of Bath municipal boundaries.
- B. Exceptions. The limitation set forth in the preceding subsection shall not apply to:
 1. Fire trucks, police cars, ambulances, and other emergency vehicles while being used in the course of official business. This provision shall specifically include Public Works vehicles when operating to clear City streets due to inclement weather. Further, for the health and safety of municipal operators, there will be occurrences when vehicles will be left running. Examples include protection from the elements, or for the use of vehicle safety features.
 2. Utility vehicles, including contractor's equipment, while engaged in the construction, maintenance, or repair of utility facilities.
 3. Motor vehicles idling while in a traffic lane, as the result of congested traffic conditions beyond the driver's control (traffic jams).
 4. Refrigeration units of delivery vehicles.
 5. School buses while warming up in temperatures 20 degrees F and below.
- C. Prima facie evidence. The fact that a parked motor vehicle is idling in violation of this section shall be prima facie evidence that the unlawful idling was caused or allowed by the person in whose name that vehicle is registered, unless the operator of the vehicle is present and can be identified as the person responsible for the idling.
- D. Penalties. Any owner or operator of a motor vehicle idling in violation of this section shall first receive a warning, written or oral. A second offense may receive a fine not to exceed ___ dollars (\$___), which violation shall be a civil infraction only.

Police Chief Field explained the history of this ordinance and stated his concerns with enforcement. He felt education and conversation is very important. He stated he would use the Traffic Safety Officer to talk to businesses and they in turn talk to their vendors, use Maine Street Bath and social media and signage to educate the public in the downtown. Chief Field stated the enforcement would be more difficult in the outlying areas.

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

Gretchen Sibley of 900 High Street stated that she felt the Ordinance was needed to be able to enforce the process and the importance of signage.

Wendy Everham of 12 Sewall Lane stated that she agreed with Ms. Sibley's comments on signage and she was concerned more about the downtown and commercial areas than residential areas.

Harold Eames of 69 Academy Street stated that commercial and passenger vehicles have to be running to be able to work correctly and to use the air conditioning and he felt that signage reminding citizens of the State idling law would be helpful.

Councilor Winglass made a motion to replace the wording "municipal boundaries" in all places with the wording "C1 and C4 Zones" Councilor Paulhus seconded the motion.

VOTE on Amendment:

YEA: Merrill, Paulhus, Lockwood, Eosco, Mitchell, Winglass

NAYS: Brackett, Sinclair

Giroux explained the process that will be used in the formation of signs.

Chief Fields gave an overview of the educational process for the implementation of the Ordinance.

ROLL CALL VOTE on Amended Ordinance:

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

NAYS: Brackett

Ordinance passed. 7-1

Chairman Wyman set second passage for this Ordinance for September 4, 2013 at 6:01PM.

9) Ordinance: Chapter 5. Businesses, Article 9. Special Business Regulations, Section 5-96 Adult Businesses (first passage)

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

A complete copy of this Ordinance is on file with the Agenda Materials in the City Clerk's Office.

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

City Solicitor Roger Therriault gave an overview of the content of the Ordinance.

Council Sinclair stated that he had a number of amendments that he would like to make to the Ordinance. Since there were so many amendments, Councilor Sinclair made a motion to table the Ordinance to the September 4th meeting so that he could pass the changes on to the City Solicitor to include them in the Ordinance for September meeting.

VOTE on Motion to Table:

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

NAYS: Winglass

Tabling Motion passed. 7-1

10) Ordinance: Land Use Code Amendment – Soup Kitchen Definition and Associated Amendments (first passage)

Chairman Wyman read the first section of the Ordinance.

Councilor Eosco made a motion to waive the reading of the remainder of the Ordinance. Councilor Paulhus seconded the motion. All were in favor of the waving motion.

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS:

ARTICLE 2: DEFINITIONS

* * *

SECTION 2.02 DEFINITIONS

For the purpose of interpreting this Code, the following terms, phrases, words, and their derivations have the meaning given herein.

* * *

Soup Kitchen. A facility that distributes food (prepared and unprepared) and/or clothing to the public on a regular basis, without cost or at a low cost insufficient to generate a profit. *Soup kitchens are not restaurants.*

* * *

SECTION 10.06 PARKING AND LOADING

A. Off-street Parking, Number of Spaces Required

This Section applies to new or expanded uses.

1. Land may not be used and buildings and structures may not be erected, enlarged, or used unless the requirements of this section are met. Parking spaces can be provided by means of parking lot spaces or parking garage spaces.
2. The requirement to provide off-street parking does not apply in the C1 District.
3. Uses required to provide more than 100 parking spaces may request a reduction in the parking requirement if evidence is presented that programs such as car-pooling, van-pooling, bus service provided by the user, or similar activities result in a reduced demand for parking. The Planning Board may grant such a reduction but may require that land be reserved to provide additional parking, if experience shows that it is necessary.
4. The following minimum off-street parking must be provided and maintained in cases of new construction, expansions, or changes in use. In computing the number of spaces required, lots with 2 or more principal uses must meet the combined requirement of the different uses. Where the applicant or Planning Board finds that the following table is not appropriate for the proposed use, the applicant may provide the Planning Board with an analysis of parking consistent with recognized, appropriate methodology. Such an analysis should include, at a minimum, occupancy demand, duration and turnover, possibility of sharing parking with other land uses that have different time-of-day parking demand, and assessment of alternative uses. The Planning Board is not bound by the findings of an applicant’s study and may provide its own evidence to the contrary.

LAND USE CATEGORY	PARKING REQUIREMENT
7.0 Assembly or Meeting Facility	
7.1 Private meeting facility	1 space per 400 square feet of building gross floor area
7.2 Function or assembly facility	1 space per 200 square feet of building gross floor area
7.3 Community activity center	1 space per 300 square feet of building gross floor area
<u>7.5 Soup kitchen</u>	<u>1 space per 600 square feet of building gross floor area</u>

* * *

**ARTICLE 11: PERFORMANCE STANDARDS,
SPECIFIC ACTIVITIES AND LAND USES**

SECTION 11.01 APPLICABILITY

- A. The following performance standards apply to the following specific activities and land uses. New activities or land uses are not permitted if the applicable performance standards in this article are not met.
- B. If an applicant can meet the intent and purpose of the performance standard by an equivalent method, that equivalent method may be approved. The burden of proof as to whether the performance standard, and the intent and purpose of the performance standard, is met is that of the applicant. The Review Authority may waive the requirement to meet a standard if the applicant or landowner requests the waiver, in writing, and the

Review Authority finds that, due to special circumstances, meeting the standard is not required in the interest of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions, and may be subject to conditions.

- C. The general performance standards in Article 10 that may be applicable to the specific activities or land uses contained in this article also apply.
- D. Where the Section calls for review by, or allows a waiver by, the Planning Board such review or waiver may be by the Staff Review Committee if the Staff Review Committee is allowed to act on the application.

* * *

SECTION 11.40 SOUP KITCHENS

Soup kitchens shall conform to the following performance standards:

- A. Soup kitchens shall not be open to the public for more than three hours a day.
- B. Deliveries to soup kitchens shall not take place before 8:00am or after 6:00pm.

ARTICLE 9: USES

* * *

LAND USE CATEGORY	ZONING DISTRICTS															NRPO	TMC	
	R 1	R 2	R 3	R4 & R6	R 5	C 1	C 2	C 3	C 4	C 5	N C	I	G C	P H	M			R P
7.0 Assembly or Meeting Facility																		
7.1 Private meeting facility	N	N	N	N	N	S	S	N	S	N	N	S	N	N	N	N	N	N
7.2 Function or assembly facility	N	N	N	N	N	S	S	N	S	N	N	N	N	N	S	N	N	N
7.3 Community activity center	S	S	S	N	N	S	S	N	N	N	N	N	N	N	S	N	N	N
7.4 Place of Assembly																		
7.4.1 With seating for fewer than 200 persons	S	S	S	N	N	S	S	N	N	N	N	N	N	S	S	N	N	N
7.4.2 With seating for 200 or more persons	N	N	S	N	N	S	N	S	N	N	N	N	N	N	S	N	N	N
<u>7.5 Soup kitchen</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
LAND USE CATEGORY	R 1	R 2	R 3	R4 & R6	R 5	C 1	C 2	C 3	C 4	C 5	N C	I	G C	P H	M	R P	NRPO	TMC

* * *

¹ Allowed with permit from the CEO as part of a mixed-use development.
² See performance standard in Section 11.27.
³ See performance standard in Section 11.36.
⁴ Lot must have been vacant for 10 years prior to construction of the parking lot.
 (*) must be placed within an existing or proposed non-tower structure
 [Land Use Table amended May 5, 2004, February 24, 2010, August 25, 2010 and February 22, 2012]

* * *

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

City Planner Deci gave the history and an overview of the content of the Ordinance. He stated that this Ordinance was recommended by the Planning Board.

Councilor Sinclair made a motion to make an amendment on Page 3, Section 11.40 a., Performance Standards, to strike the word “three” and insert the word “six”. Councilor Lockwood seconded the motion.

Vote on Amendment
YEAS: 8
NAYS: 0

Amendment passed unanimously. 8-0

Councilor Sinclair made a motion to make an amendment on Page 3, Section 11.40 b., Performance Standards, by adding the wording “without cause” after the 6:00pm. Councilor Mitchell seconded the motion.

Councilor Sinclair withdrew his motion to amend the Ordinance.

Councilor Lockwood made a motion to amend the Ordinance on Page 3, Section 11.40 b., Performance Standards by striking it entirely. Councilor Sinclair seconded the motion.

Vote on Amendment

YEAS: 8

NAYS: 0

Amendment passed unanimously. 8-0

ROLL CALL VOTE on amended Ordinance:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman set second passage for this Ordinance for September 4, 2013 at 6:02PM.

11) Disposition of Winter Street Court Property

Paperwork for this item is filed with the Agenda Materials in the City Clerk's Office.

Councilor Eosco made a motion to put this Item on the floor for discussion. Councilor Merrill seconded the motion.

City Manager Giroux gave a brief history and overview of the content of this item.

Andria Benedetto of 16 Winter Street Court stated the she was very highly motivated in purchasing the property and asked that the bidding be done in an open bid.

Mr. Serban of 785 High Street stated that he was very interested in purchasing the property to provide additional parking for his property.

City Manager Giroux suggested that City Staff work with the interested parties to work out an agreement for the sale of the property.

Councilor Merrill made a motion to table this item until the October Regular Council Meeting. Councilor Paulhus seconded the motion.

VOTE on Tabling Item:

YEAS: 8

NAYS: 0

Motion passed. 8-0

G. Petitions & Communications 8:24 PM

12) Petition - Reduce Volume of Church Bells at First Baptist Church

City Clerk presented Council with a petition regarding the “Reduce Volume of Church Bells at First Baptist Church” brought to the City Clerk’s Office on July 9, 2013.

The Council had a brief discussion of the cost to making alterations to the bell to stop the bell from ringing from evening to morning and the recommendation not to make the alterations from the Balzer Family Clock Works.

H. City Manager's Report 8:30 PM

- Update on Natural Gas Project in the downtown area.

13) Road Bond Information

City Manager Giroux gave an overview of a proposed Road Bond to be considered at the September Regular Meeting to go on the ballot as a referendum at the November Election.

I. Committee Reports 8:40 PM

Councilor Eosco gave a brief update on her Japan trip and stated she would like to do a presentation at the September Meeting.

Councilor Winglass reported the Field of the Future turf project has been completed and there will be a Grand Opening and Ribbon Cutting in scheduled for the first football game at the end of the month.

J. Unfinished Business 8:40 PM

Councilor Sinclair asked that the Council resolve to waive the executive privilege that had been earlier asserted with respect to Executive Session discussions regarding the sale of the Midcoast Center for Higher Education.

City Solicitor explained that he would like to look into that possibility and do a memo for a future meeting.

Councilor Lockwood asked who would be paying for the investigation.

Chairman Wyman stated that he believed the financing of the investigation would come out of Council Contingency.

Councilor Merrill asked to be excused from the meeting at this time. The request was granted.

Councilor Sinclair asked that a Special Meeting be held in two weeks to discuss the matter of the investigation. It was agreed to hold the Special Meeting.

K. New Business 8:45 PM

14) Appointment 1 member to the Bath Zoning Board of Appeals with a term to expire in 9/2015.

Councilor Eosco nominated Albert Ferguson, Jr. for this position. All were in favor of the nomination.

Councilor Winglass made a motion to recess to Workshop regarding Bath Iron Works Tax Increment Financing at 8:50 PM. Councilor Mitchell seconded the motion. All were in favor of the motion.

Councilor Sinclair made a motion at 8:56 PM to come back into session to vote to go past 9:00 PM and then recess back into Workshop. Councilor Paulhus seconded the motion.

VOTE on Motion:

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

NAYS: None

Motion passed. 6-0 (Councilors Winglass and Merrill were absent from this vote.)

The Council came back into session from the Workshop at 9:23 PM.

Councilor Lockwood made a motion to go into Executive Session to discuss a Labor Matter per 1 MRSA § 405(6)(D). Councilor Mitchell seconded the motion. All were in favor of the motion.

Councilor Sinclair made a motion at 9:50 PM to come out of Executive Session. Councilor Paulhus seconded the motion. All were in favor of the motion.

The meeting adjourned at 9:50 PM with a motion by Councilor Paulhus, seconded by Councilor Lockwood. 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 meeting is available for review in the City Clerk's office during regular business hours by appointment and at www.townhallstreams.com.