

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, September 4, 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.

Councilor Eosco gave a presentation regarding her recent visit to Japan representing the City of Bath. She gave a brief history of the sinking of the Cheseborough, a Bath built ship, and how this has brought about this exchange of cultures between the two cities. Councilor Eosco gave a photo presentation of the points of interest, signs & symbols, political signage, equipment, gardens, shrines, historic places, schools, bicycle parking lot, playground, bathrooms, parades, and foods.

C. Public Hearings 6:23PM

1) Ordinance: Chapter 17. Vehicles and Traffic, Article 7. Offenses, Section 17-314. Idling Motor Vehicles. (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 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 C1 and C4 Zones 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 C1 and C4 Zones.
- 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.

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

City Solicitor Therriault explained that Council should amend the Ordinance to include the dollar amount of the fine.

Police Chief Field stated that the State fines are set at \$100.

Councilor Eosco made a motion to amend the Ordinance to set the fine at \$10. Councilor Mitchell seconded the motion.

After a brief discussion, Councilor Eosco withdrew her motion

Councilor Paulhus made a motion to amend the Ordinance to set the fine at \$35. Councilor Lockwood seconded the motion.

VOTE on Motion:

YEAS: Paulhus, Lockwood, Eosco

NAYS: Brackett, Merrill, Sinclair, Mitchell, Winglass

Motion failed. 3-5

Councilor Merrill made a motion to amend the Ordinance to set the fine at \$100. There was no second to the motion.

Councilor Winglass made a motion to amend the Ordinance to set the fine at \$50. Councilor Lockwood seconded the motion.

VOTE on Motion:

YEAS: Paulhus, Lockwood, Eosco, Sinclair, Winglass

NAYS: Brackett, Merrill, Mitchell

Motion passed. 5-3

Rabyrne Hutton of 195 High Street spoke against the Ordinance as he doesn't see this as a problem.

Christel Cornish of Middle Street spoke against the Ordinance and stated she doesn't believe there is a problem with cars idling in the downtown.

Wendy Everham stated that she and Gretchen Sibley brought this Ordinance forward because of health and monetary issues.

Councilor Sinclair made a motion to amend the Ordinance in Section B5 by striking the words "school buses" and replace them with "vehicles". Councilor Merrill seconded the motion.

VOTE on Motion:

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

NAYS: Brackett, Mitchell

Motion passed. 6-2

ROLL CALL VOTE on Amended Ordinance:
YEAS: Merrill, Paulhus, Lockwood, Sinclair, Winglass
NAYS: Brackett, Eosco, Mitchell
Ordinance passed. 5-3

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

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

Councilor Mitchell made a motion to waive the reading of the Ordinance. Councilor Merrill seconded the motion.

VOTE on Waiving Motion:
YEAS: Brackett, Merrill, Paulhus, Eosco, Sinclair, Mitchell, Winglass
NAYS: Lockwood
Motion passed: 7-1

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
7.5 Soup kitchen	1 space per 600 square feet of building gross floor area

* * *

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 six hours a day.

ARTICLE 9: USES

* * *

	ZONING DISTRICTS																	
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
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
7.5 Soup kitchen	<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 Winglass made a motion to put this Ordinance on the floor for discussion. Councilor Paulhus seconded the motion.

City Planner Deci gave the history and an overview of the content of the Ordinance.

Councilor Sinclair made a motion to amend the Ordinance by striking Section 11.40 in its entirety. Councilor Lockwood seconded the motion.

VOTE on Amendment:

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

NAYS: None

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 stated this Ordinance would become law in 21 days.

D. Consent Agenda 6:54 PM

***3) Minutes of the previous Council meetings of August 7, 21 and 28, 2013. (motion to Accept as Presented)**

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

E. Time Devoted to Residents to Address the City Council 6:54 PM

Philip Maione of 103 South Street spoke in support of the City Council for the work that they do and have done.

Diane Plummer of 677 Middle Street stated “ditto” to Mr. Maione’s comments.

Michael Wischkaemper of 17 York Street spoke regarding the timeline and history of the formation of the group behind the investigation into the sale of the Mid Coast Hospital property and their future intentions.

Richard Hill of 71 South Street spoke in support of the Council.

Jerry Provencer of 15 Winslow Court spoke against support of the BIW TIF.

Howard Waxman of 945 High Street asked that Council explore, as fully and deeply as possible, to see what is best for the City regarding the BIW TIF.

Dallas Denery of 144 North Street stated that he seconded what was just stated and said the public would see the comparison of the revenue amount the City got from the 1988 BIW TIF, what the revenue amount would have been had the City not given BIW the TIF, and asked what the projection of revenues for this TIF request would be.

Jim Strickland of 4 Park Street stated that he had participated in the recall petition process and agreed with what Mr. Wischkaemper had to say. He stated that their actions were not a vendetta and were almost impersonal. He said the group has a web site at Citizens for Bath.org for anyone who wants to get involved in helping the City.

Robbie Soars of 59 Lincoln Street spoke in support of Council.

Karen Wainberg of 212 Centre Street spoke against the BIW TIF and stated the group had collected 370 signatures of Bath citizens against the granting of the BIW TIF at the polls on August 27th, 2013.

John James of 30 Garden Street spoke in support of the Council and hoped the Council would go forth with the investigation so that all details of the sale of the hospital property would be made clear to the public.

F. Ordinances, Resolutions and Orders 7:30 PM

4) Order: Annual Appointing of City Arborist/Tree Warden

Chairman Wyman read the following Order:

ORDER APPOINTING CITY ARBORIST/TREE WARDEN

WHEREAS, the City, through the Forestry Division and Community Forestry Committee, has shown concern with the community forest as a valuable part of the Cities infrastructure and,

WHEREAS, State law Title 30A § 3282 provides municipalities the power to appoint a City Arborist/Tree Warden annually and,

WHEREAS, said law gives the Arborist/Warden control of the care of the municipal trees and the power to enforce all laws relating to the preservation of those trees and,

WHEREAS, Bath City Council adopted a forestry ordinance May 7, 1993 and,

WHEREAS, Thomas Hoerth has worked in the capacity of the City Arborist and has shown his abilities in the care and concern for the City's trees and,

WHEREAS, Thomas Hoerth is qualified by virtue of his experience, licensure and position as City Arborist/Tree Warden,

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that Thomas Hoerth is hereby appointed as the City Arborist/Tree Warden for one year from this date.

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

Jerry Provencer of 15 Winslow Street stated that he had worked with and known Tom Hoerth as the City Arborist for a long time and that he does a wonderful job for the City interacting with the school system that has made our community a much better place to live in and survive in.

Council thanked Mr. Hoerth for all the good work he does for the City.

VOTE on Order:

YEAS: 8


NAYS: 0

Order passed unanimously. 8-0

5) Appointment of CPL. Nathan Gould as Harbor Master for a five-year term.

Chairman Wyman read the following memo:

FS




**CITY OF BATH
POLICE DEPARTMENT**

MICHAEL W. FIELD
CHIEF of POLICE

250 Water StreetBath, Maine 04530(207) 443-5563

Memorandum

To: City Council
Fr: Chief Michael Field 
Ref: Harbor Master Appointment
Date: August 27th, 2013

Due to the upcoming retirement of Sgt. Jeff Shiers from the Bath Police Department, I would like to nominate Cpl. Nathan Gould as the new Harbor Master.

Cpl. Gould has been serving as the assistant to the Harbor Master for the past few years. He has also attended the Harbor Master training that is held annually at Maine Maritime Academy. Cpl. Gould is knowledgeable of our systems and will be a good fit for this position.

I respectfully ask the City Council to appoint Cpl. Nathan Gould as Harbor Master for the City of Bath.

Thank you.

Councilor Paulhus made a motion to appoint Cpl. Nathan Gould as the new Harbor Master. Councilor Mitchell seconded the motion.

VOTE:

YEAS: 8

NAYS: 0

Appointment passed unanimously. 8-0

6) Order: Road Bond Referendum

Chairman Wyman read the following Order:

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH AS FOLLOWS:

PURSUANT TO THE AUTHORITY OF THE CITY COUNCIL UNDER SECTION 1014 OF THE CHARTER OF THE CITY OF BATH AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 617 OF THE CHARTER OF THE CITY OF BATH, THE FOLLOWING PROPOSITION FOR THE ENACTMENT OF AN ORDINANCE FUNDING CITY STREET REPAIRS AND IMPROVEMENTS, SAID BOND ORDINANCE BEING ATTACHED HERETO, BE SUBMITTED TO

THE VOTERS OF THE CITY OF BATH AT A MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013:

“SHALL A BOND ORDINANCE BE AUTHORIZED IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$2,500,000.00 FOR THE PURPOSE OF FUNDING CITY STREET REPAIRS AND IMPROVEMENTS?”

THE BOND QUESTION SHALL ALSO CONTAIN A TREASURER’S STATEMENT AS REQUIRED UNDER 30-A MRSA § 5772 (2-A).

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

City Manager Giroux stated that a grant from the State for \$500,000.00 to fix lower High Street had been given to Bath and part of this bond would be used as the matching funds for the grant.

Jerry Provencer of 15 Winslow Court stated he thought Council and City has done an incredible job with very limited resources over a number of years to improve things in Bath. He asked where the City stood in the terms of indebtedness.

Finance Director Millet stated that the financial statements are on the City Web Site.

City Manager Giroux told Mr. Provencer if he had further questions to just contact Ms. Millet.

VOTE on Order:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

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

A complete copy of this Ordinance is on file in the Bath City Clerk’s Office with the Agenda materials for the 9/4/2013 meeting.

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

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

City Solicitor Roger Therriault gave an overview of the amendments to the contents of the Ordinance that had been made since the August 7, 2013 meeting version.

Councilor Sinclair made a motion to make the following amendments to the Ordinance:

- Section C. Purpose in the first sentence strike the word “affects” and replace with word “effects”.
- Section F.2.b. Add the wording “The Affidavit shall not be a public record and shall not be available to the public.” at the end.
- Section K. In the first sentence strike the word “shall” and insert the word “may”.
- Section N. Page 6. In the section header strike the words “prominently displayed” insert the wording “be available on site”. In text, it should state that the list of names and owners “shall be available on site to law enforcement personnel” and not “display at all times in an open and conspicuous place”.
- Strike Section S. in its entirety.

- Section W. Add “Fire Chief” after “the Codes Enforcement Officer”.
- Including amendments listed in the Solicitor’s Draft.

Councilor Winglass seconded the motion for the amendments.

VOTE on Amendments to Ordinance:

YEAS: Lockwood, Sinclair, Mitchell, Winglass, Wyman

NAYS: Brackett, Merrill, Paulhus, Eosco

Amendments passed. 5-4

Michael Wischkaemper of 17 York Street asked that he might get a copy of the Ordinance prior to the next meeting.

ROLL CALL VOTE on amended Ordinance:

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

NAYS: Merrill

Ordinance passed. 7-1

Chairman Wyman set second passage for the October 2, 2013 at 6:01 PM

8) Order: Contract Truck Purchase

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 DAIGLE & HOUGHLTON COMPANY, AS SUPPLIER FOR A WESTERN STAR DOUBLE AXLE DUMP TRUCK, THE BID PRICE OF \$149,999.26, 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 Winglass made a motion to put this Order on the floor for discussion. Councilor Mitchell seconded the motion.

Public Works Director Owen gave an overview of the details of the purchase. Mr. Owen stated the date should be June 5, 2013 not July 9, 2012.

Councilor Paulhus made a motion to amend the Order to reflect the correct date of June 5, 2013.

Councilor Winglass seconded the motion. All were in favor of the motion.

Councilor Sinclair left his seat at this time.

VOTE on amended Order:

YEAS: 7

NAYS: 0

Order passed unanimously. 7-0

Councilor Sinclair returned to his seat at this time.

9) Order: Contract Willow Street Construction

Chairman Wyman read the following Order:

**ORDER
APPROVING BID AND CONTRACT**

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT THE BID OF ST. LAURENT & SONS FOR THE WILLOW STREET/ RAILROAD TRACK SEWER AND STORMWATER MODIFICATIONS PROJECT IN THE AMOUNT OF \$654,705.00 IS ACCEPTED, IT BEING THE LOWEST QUALIFIED BID SUBMITTED, AND A CONTRACT BY AND BETWEEN THE CITY OF BATH AND ST. LAURENT & SONS IS HEREBY APPROVED AND THE MANAGER IS AUTHORIZED TO EXECUTE THE CONTRACT AND ANY OTHER DOCUMENTS NECESSARY TO ITS IMPLEMENTATION ON BEHALF OF THE CITY OF BATH. THE PROJECT SHALL BE FUNDED BY A SRF LOAN APPROVED BY COUNCIL ON JULY 9, 2012.

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

Public Works Director Peter Owen spoke regarding the issues being experienced on Willow Street and that the project should be completed this Fall.

City Manager Giroux explained that the State (DOT) didn't feel that any of the changes done in that area by the railroad were resulting in the flooding issues so they would not be helping with the improvements.

VOTE on Order:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

10) Order: Contract Paving Bid.

Chairman Wyman read the following Order:

ORDER AUTHORIZING ANNUAL PAVING BIDS

WHEREAS, the City of Bath has sent out a request for proposals for the 2013/2014 City of Bath road paving projects; and

WHEREAS, the bid response date was September 4, 2013; and

WHEREAS, the bid response of Pike Industries was the lowest bid received at \$415,670.00.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the bid of Pike Industries for the 2013/2014 fiscal year City of Bath paving program at a bid price of \$415,670.00 be and hereby is awarded and the City Manager is authorized to execute contract documents and other documents related to the project. This project is being funded from the Public Works Street Maintenance Account PW-05-0520-531.

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

Public Works Director Peter Owen explained the timeline of the bid process.

VOTE on Order:
YEAS: 8
NAYS: 0
Order passed unanimously. 8-0

11) Order: Lease Renewal for Lambert Park

Chairman Wyman read the following Order:

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE AGREEMENT TO RENEW A LEASE WITH TERRI CROCKER FOR USE OF A PORTION OF THE LAMBERT PARK COMMUNITY CENTER FOR THE CONDUCT OF A DAY CARE PROGRAM AND A BEFORE/AFTER SCHOOL PROGRAM, FOR A PERIOD OF THREE (3) YEARS COMMENCING JULY 1, 2013 AND RUNNING THROUGH JUNE 30, 2016, IN ACCORDANCE WITH TERMS AND CONDITIONS OF THE RENEWAL AGREEMENT 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.

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

VOTE on Order:
YEAS: 8
NAYS: 0
Order passed unanimously. 8-0

12) Discussion of whether or not Council will vote to waive the appraisal requirement in Section C2(c)(i) of the Procedure for Disposition of Interests in City Owned Real Property.

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

City Manager Giroux explained that the item was dealing with the sale of the Huse School property. He stated that he would like to speak to Council in Executive Session regarding a potential buyer and that he would like Council to decide whether they would like an appraisal per the newly passed Policy.

City Solicitor Therriault said “just a short word to indicate that this follows the policy that you adopted back in August and you need to consider whether or not you want to just let it go to appraisal or vote to waive it.”

Councilor Lockwood stated she felt the appraisal should be done and asked what the cost for an appraisal might be. She stated that since the Council had established the policy, it should be followed.

City Assessor Mateosian stated that the appraisal might cost \$4,000.

Councilor Winglass stated he would agree to have the property appraised.

Councilor Merrill spoke in favor of having the appraisal done.

Councilor Sinclair spoke in favor of having the appraisal done.

Rabyrne Hutton of 195 High Street spoke in favor of the appraisal.

Michael Wischkemper of 15 York Street spoke against the need for an appraisal.

Jim Strickland of 4 Park Street spoke in favor of the appraisal.

Councilor Lockwood stated that she felt that Council was not qualified to do an appraisal of Huse School as was proven by the situation with the Mid Coast Center and would be in favor of a professional appraisal.

VOTE to waive the Appraisal:

Yeas: 0

Nays: 8

Appraisal waiver failed. 0-8

G. Petitions & Communications 8:58 PM

Councilor Sinclair read an email from Justin Francisco of the Quansigamog Handtub Association, which had participated in the last Keep Bath Beautiful event, with an offer to do some community service projects. Councilor Sinclair asked if Mr. Francisco could contact the City Manager's Office to arrange these projects. Mr. Giroux stated that his Assistant Erika Benson would be the person to contact.

Councilor Winglass made a motion to waive the rules to go past 9:00 PM. Councilor Paulhus seconded the motion. All were in favor of the motion.

H. City Manager's Report 9:01PM

- The Manager informed Council that Daniel Donovan had approached him with an interest in sponsoring the relocation of the plaque honoring Lt. John E. L. Huse now located at the Huse School to City Hall. Mr. Giroux stated that he would have Mr. Donovan work with the City Clerk and the Facilities Director on the relocation project. Council was in favor of this effort.

I. Committee Reports 9:03 PM

There were no Committee Reports.

J. Unfinished Business 9:03 PM

13) City of Bath Council Investigation

*** *The following is verbatim:***

Chairman Wyman: Unfinished Business City of Bath Council Investigation.

Councilor Eosco: Motion to put this item on the floor.

City Clerk White: Yes, please.

Councilor Lockwood: Second.

City Clerk White: Thank you.

Chairman Wyman: Motion made and second to put the item on the floor, Councilor Eosco.

Councilor Eosco: Before we get too much into the investigation, I wanted to make another motion: My motion is for us to reconsider the confidentiality of our Executive Session relating to Mid Coast Center for Higher Education property that we discussed last month. I would like to talk about it again tonight.

Councilor Merrill: I second.

Chairman Wyman: Motion made and seconded.

City Clerk White: To waive the confidentiality of the Executive Session.

Chairman Wyman: Waive the confidentiality of the Executive Session. Any specific one?

City Clerk White: February 6th.

Councilor Eosco: I'm sorry I don't know.

City Clerk White: Yes, 2013, Yes. That's the one.

Chairman Wyman: Any preliminary Council comment? Councilor Eosco.

Councilor Eosco: This whole situation, I know has weighed on us all. It's certainly affected us publicly and privately and it's been a terrible process to have to live through. This last decision that we made in the last meeting is one that I kept toying with in my mind and I had. There are groups of people like "Don't give up" and I don't: I don't know what that means, but then I tried to find some rational people to talk to about this who think, who I think some very good advice that I had was the more disclosure the better. This is not for people who are angry with us or who want to say what they want to say. This is for the citizens of Bath and I want to make it clear and maybe I need to reword my motion. This is for us to wave the confidentiality about the Executive Session with an investigator. This is not for us to talk about with people on the street. This is for us to specifically talk about with the investigator that is chosen whoever, that person is, chosen. I have thought about it long and hard. I have reached out to Councilors to talk about this and that's why I'm bringing it up again tonight. It's for the citizens of Bath.

Chairman Wyman: Councilor Lockwood.

Councilor Lockwood: The only question I have about that, Councilor Eosco, is why are we limiting it to only February 6th?

City Clerk White: That is the only one.

Councilor Lockwood: That's the only Executive Session that we had where we discussed it?

City Clerk White: Regarding this issue.

Councilor Lockwood: Just making that clear after that's come up.

Chairman Wyman: Councilor Merrill

Councilor Merrill: I am in agreement with Councilor Eosco. The reason I voted not to disclose the conversation we had in Executive Session was because of the third party involved, not the buyer, the tenants, but I thought information has already come out in the newspapers to see that far more harm is being done in our City than keeping the information that was discussed at that meeting private rather than opening it up to investigation. I am in favor of the investigation. I am in favor of allowing this process to go forward so that the accusations that are being lobbied against City Staff and Councilors will be laid to rest and that the individual harm is being done to business people on this Council will be stopped. Now our culture, teaches us to stand up for what we believe is right and when I sit in an Executive Session I don't go home and whisper to my husband what we talked about at that meeting. That is why I voted to keep the meeting private because I believe in the privacy and the right to the Council to do that, but

seeing how far people are willing to go to speak against members of this Council, some of whom have served this City with honor for two decades, I am in favor of opening up that meeting to investigation.

Councilor Mitchell: Mr. Chairman, would it be appropriate at this time to make a motion to revisit that vote?

City Clerk White/Chairman Wyman: That is what she (Councilor Eosco) has already on the floor.

Councilor Mitchell: So I would like to make a motion that we take a vote.

Chairman Wyman: We have a motion on the floor.

City Manager Giroux: He wants to move the vote.

Councilor Winglass: I think there is still discussion.

Councilor Lockwood: I just want to make it clear to the public that if we decide to waive Executive Session there has been some talk about releasing the documents. There are no documents. It's Executive Session, we don't take minutes, we don't take notes, there's no recordings so I just want to make that clear to the people that any documents that do exist are already available to the public. So this would be our recollections of meetings of a meeting that happened and we will talk to the investigator about it as best we can. There is also talk about early on about our answers not matching each other and we're human beings, our answers aren't going to match each other but hopefully an investigator will be able to collect and collaborate all the information he gets from the Councilors, the Staff, the people who wrote emails so that it will give a clear picture of what transpired with the sale of this property and, and as we admitted and as we talked about earlier tonight we are working on a process that we feel is transparent and serves the City well and we're not realtors so we can't make it, I don't feel comfortable as I said making a decision on whether that property at the Huse School is appraised properly or not. I don't want to go forward. I learned my lesson really. So I don't want to do it again. I will support waiving the Executive Session, it won't happen again, in my time, hopefully, let's not make a habit of this. So that's all I have to say just wanted to make sure people know there aren't any documents and that's true of any Executive Session.

Chairman Wyman: Councilor Paulhus

Councilor Paulhus: Thank you Mr. Chairman. I have to agree with some of the other Councilors that this is an issue that I've thought about since the last meeting, a lot of things have happened since then. However, I still think that there's a principle and here and my feelings about this, opening up for a working precedent, is still there. I understand people are going to disagree with that. As I've said, previously, we all disagree on things and I hold it against no one who disagrees with my feelings on it, that is how I feel and I'm not going to change that.

Councilor Brackett: I'll have to say that this issue has weighed heavily on me this week too as far as "Did we do the right thing? or Did we do the wrong thing?" I looked at some things. I read over some things. I looked over the Council's Working Rules, I looked over the City Charter, I went to the web and found the Maine Right-To-Know law and looked over that. I have no legal background so I sought opinions – I wouldn't say legal counsel – I sought opinions from two people who have much experience in this that I respect. Then I had to weigh the fact that what I know – that nothing that happened in that Executive Session is going to have any bearing on what we're being attacked for, but of course the "secret meetings" certainly made good headlines, so that's what we seem to be attacking and throwing out there, so that's just great. That said, I feel I have an ethical and moral obligation to not go along and release the Executive Session, and that's how I feel. If folks have a problem with that, then they can voice that in November. I was elected to do a job and seek input. I used my judgment and that's the best I can do. We don't all agree here but I respect every one of them, and with that said it will be my decision here tonight.

Chairman Wyman: Any other comments.

Councilor Winglass: I would just like to add that as one of these business owners that has been targeted as a boycott situation you know I really feel disappointed in a group that would take something like this to a personal level. I feel bad for my employees and their families and their children who have absolutely nothing to do with what I do on this Council. It's really, it's sad.

Councilor Brackett: Thank you for saying that.

Chairman Wyman: Any other comment? Open this for public comment.

**** End of Verbatim Section.***

Raybyrne Hutton of 195 High Street said that he has not been party to boycotting any Bath businesses and felt that if the Council opens up the information from the Executive Session for the referenced City Council meeting to an investigator that it would resolve everything. He felt that it was an unfortunate happenstance of a lot of different factors, mistakes or whatever the case may be but that this would go a long way towards clearing up the matter.

Phil Maione of 103 South Street reiterated that he does not want to see his tax dollars spent on an independent investigator. He didn't feel it was necessary or worth it and would be a waste of the taxpayers' money. He urged the Council to not believe that hiring an investigator would give them closure unless they got the results they are looking for and speculated that if not, this issue would go on and on and then urged the Council to kill it now.

Jackie Dwinal of 1552 Washington Street stated that she has always attended budget workshops but had to leave early at this particular workshop to go to a RSU workshop but said that she knows that something was said at this particular budget hearing and felt that this information should be made public. She said that she is aware that there are no printed materials for this but felt strongly that the information should be made public. She said she felt that would be appreciated by all the citizens of Bath and reiterated that this was not a private meeting but a public budget workshop. She said that she submitted some simple questions to three Councilors and said she has heard back from one of them. She urged the Council to make this information public and put this issue to rest.

Jim Strickland of 4 Park Street made reference to the boycott that was mentioned and said that he was offended and expressed dismay that his name was associated with a boycott that he has never heard anything about. He was informed by several Councilors that this came from a letter from Mr. Scott and that this was printed in the newspaper. He reiterated that he didn't know anything about the boycott and said he was offended that his name was associated with it.

Robert Westlake of 1484 Washington Street stated that we live in a democracy and pointed out that if we don't think our government is doing right, then we speak up and said that is what they did.

Michael Wischkaemper said that he understands privileges about things like personnel matters, and the statutes talk about things like disciplinary actions against children in school that might be decided in Executive Session. He then said that first privileges should never be waived and pointed out that the purpose for protecting that information never goes away. Mr. Wischkaemper then said that the purpose for protecting the information from the Executive Session on February 6th in respect to this property is to prevent premature disclosure which might prejudice the bargaining position of the City and said that is the only basis for having an Executive Session. He said that unlike the situation of discipline against a school child or personnel matters or discipline against employees, that reason went away and it went away when the sale became closed on May 31. He added that there is no longer the potential for any premature disclosure of the bargaining position of the City in this circumstance. Mr. Wischkaemper pointed out that he knows of no circumstance in the last 30 years where the City has been asked to waive executive privilege and said that in 30 years, the City Solicitor said they had never been asked to waive it. He said that he doesn't see a reason to request this in other circumstances and pointed out that unlike the Huse

School which has been on the MLS for five months, a circumstance where price has been set by the open market. He said that fair market price is all about what the market will offer for a property.

Mr. Wischkaemper then noted that this property has never been put on the MLS, and the fair open market was never given the opportunity to help the City determine what the appropriate price was. He stated that precedent in respect to other privileges in other circumstances isn't an issue here and when the City Solicitor first talked about this, said he thought it was appropriate that the City waive this privilege. Mr. Wischkaemper pointed out that Councilors have said that they pay the Solicitor a lot of money to give them advice, and said that he felt that in this case it would be prudent to follow his advice.

****This the following is Verbatim.***

Councilor Wyman: Any other public comment? Any final Council comment? OK. We're going to do a roll call vote.

City Clerk White: Councilor Brackett.

Interruption here by Councilor Winglass.

Councilor Winglass: Mr. Chairman. Just a second. I think it should be made clear that the information that the investigator gleans from the remembrances of the collective minds of the Council during that Executive Session or "secret meeting" should also be allowed into the report, and that should be made clear. Otherwise, it's fairly pointless and I'd like the press and everyone else to understand that. Did you catch that? I just want the information made clear and available through the report from the Executive Session that we go over with the investigator, determined by him.

City Clerk White: So you're amending Councilor Eosco's motion?

Councilor Winglass: I'm just making a statement.

City Clerk White: What I've got for a motion is that Councilor Eosco has asked to waive the confidentiality of the Executive Session of the February 6, 2013 meeting with the investigator only.

Councilor Winglass: Well, no. He has to be able to do something with the information.

Councilor Eosco: The investigator will do with that information as he or she sees fit.

Councilor Winglass: To allow the investigator to do what he or she sees fit.

City Clerk White: Do you want to amend yours (speaking to Councilor Eosco) to encompass his?

Councilor Eosco: I'm not sure that my...

Councilor Winglass: Yours does that. I want to make it crystal clear for anyone else.

Councilor Eosco: Is it necessary to change it?

Councilor Winglass: We don't have to change it as long as we all understand it.

City Manager Giroux: Inaudible.....

City Clerk White: OK. I think we're ready now. Councilor Brackett: No. Councilor Merrill: Yes. Councilor Paulhus: No. Councilor Lockwood: Yes. Councilor Eosco: Yes. Councilor Sinclair: Yes. Councilor Mitchell: Yes. Councilor Winglass: Yes.

City Clerk White: It has passed. It's a vote. So it will be waived – to the investigator.

**** End of Verbatim Section.***

Councilor Lockwood made a motion to have City Solicitor Therriault put together an RFP to get it out to the list of qualified people that had been previous gathered. Councilor Brackett seconded the motion.

Councilor Mitchell agreed with Councilor Lockwood.

Councilor Brackett asked what the selection process would be.

Chairman Wyman explained that the Maine Municipal Association and the State Attorney General's Office had sent names of suggested people to be the investigator. He stated that the City Solicitor would write to these people and see what people would be interested in the task and how much their fees would be. Mr. Wyman stated that he would give the people two weeks to return the RFP's and in three weeks for Council to go over the RFP's and choose the people to be considered.

Councilor Merrill explained that the suggestions from Maine Municipal Association and State Attorney General's Office were 1- the Council would chose, 2- have a group made up of the Council Chairman and one person from each side of the situation and 3 - have the City Solicitor make a recommendation based on qualifications from the RFP's. She stated that she would be alright with just drawing the name from a hat.

Councilor Brackett stated he had no problem with the drawing of a qualified person from a hat with all the names in it and that he would like to see the process be moved along.

Councilor Winglass agreed with that process.

City Solicitor Therriault suggested that the list be only people that had nothing to do with the City now or in the past and have impeccable credentials, which would result in six to eight names. He stated the RFP would consist of the following: A. Do you want to do it? B. How are you going to do it? C. What is the rate you are going to charge for doing the investigation and can you do it in a timely manner?

Councilor Brackett seconded Councilor Lockwood's motion for the RFP's.

Michael Wischkaemper of 15 York Street asked for clarification of names that have been suggested. He stated that he would like to see the list of names and the memorandums received from the Maine Municipal Association and State Attorney General's Office. Mr. Wischkaemper asked that the RFP specifically ask the person making the proposal to identify any connection with City employees, City Council, Mr. Smith and Mr. Spann and his office.

VOTE on Councilor Lockwood's RFP Motion:

YEAS: 8

NAYS: 0

Motion passed unanimously. 8-0

Chairman Wyman pulled the Executive Session regarding the Labor Matter per 1 MRSA § 405(6)(D) from the agenda.

Councilor Sinclair made a motion to recess for three minutes. Councilor Paulhus seconded the motion. All were in favor of the motion.

K. New Business 9:50 PM

14) Appointment 1 member to the Bath Bicycle and Pedestrian Committee with a term to expire in 5/2015.

Councilor Eosco nominated Travis J. Wolfel for this position. All were in favor of the nomination.

15) Appointment 2 members to the Bath Planning Board with terms to expire in 9/2016.

Councilor Eosco nominated Robert Oxton and John Sunderland for those positions. All were in favor of the nominations.

16) Appointment 2 members to the Bath Zoning Board of Appeals with a terms to expire in 9/2016.

Councilor Eosco nominated William Truesdell and Thomas Watson for those positions. All were in favor of the nominations.

Councilor Sinclair made a motion to table the Workshop to the October Regular Meeting and said that because of the late hour, it would not promote public participation. Councilor Brackett seconded the motion.

After a brief discussion, Councilor Brackett withdrew his second.

Councilor Lockwood stated she would second the motion if the Workshop was tabled to the middle of September.

Councilor Sinclair amended his motion to the table the Workshop to the September 18th meeting. Councilor Lockwood seconded the motion.

Councilor Winglass stated that the City's attorney would be out of State on that date.

The next date discussed was September 11th. Councilor Sinclair withdrew his motion due to a conflict in his schedule.

Councilor Winglass made a motion to recess to Workshop regarding Bath Iron Works Tax Increment Financing at 10:00 PM. Councilor Brackett seconded the motion.

VOTE on Motion:

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

NAYS: Paulhus, Lockwood

Motion passed. 6-2

Councilor Winglass made a motion at 11:00 PM to go into Executive Session to discuss a Real Estate Matter per Title 1 M.R.S.A Section 405(6)(C), a Legal Matter per Title 1 M.R.S.A. Section 405(6)(E) and Protection by Statute per Title 1 M.R.S.A. Section 405(6)(F). Councilor Brackett seconded the motion. All were in favor of the motion.

Councilor Sinclair made a motion at 11:46 PM to come out of Executive Session. Councilor Winglass seconded the motion. All were in favor of the motion.

The meeting adjourned at 11:47 PM with a motion by Councilor Mitchell, seconded by Councilor Winglass. 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. You can also view them on Townhallstreams.com for up to a year.