

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Monday, July 9, 2012 6:00 PM
City Council Chambers, Bath City Hall**

Present: Councilors Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass and Chairman Sinclair.

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

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

C. Public Hearings 6:01 PM

1) Ordinance: Moratorium on Smart Meters (second passage)

Councilor Rogers made a motion to waive the reading of this Ordinance. Councilor Pagurko seconded the motion. All were in favor of the waiving motion.

**MORATORIUM ORDINANCE
PROHIBITING THE INSTALLATION OF SO-CALLED “SMART METERS”**

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

1. Authority

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

2. Purpose

The purpose of this Ordinance is to prohibit the installation of so-called “smart meters” within the City of Bath until such time as the factors listed in Paragraph 3, Statement of Necessity, below, are properly addressed by the Maine Public Utilities Commission.

3. Statement of Necessity

A number of concerns regarding the installation and operation of “smart meters” have been raised, several of which have been addressed in a Resolution previously adopted by the City Council of the City of Bath. They include the following:

- Health concerns regarding medical devices and the effect of radiofrequency and microwave radiation associated with “smart meters” upon such medical devices; and
- Cyber safety concerns with respect to electronic devices within the home resulting in potential invasion of personal privacy and the compromise of confidential and secure information; and
- A potential fire hazard.

The City Council of the City of Bath believes that these concerns have not been properly addressed, although they are items within the scope of enabling Legislation under Title 35-A M.R.S.A. Section 3143.

In addition, the Commission has not adequately addressed the issues of opting out and costs associated with that decision. The City Council of the City of Bath is not in favor of proceeding with installation of “smart meters” within the City of Bath until the Public Utilities Commission has fully addressed the issues and concerns outlined in this Moratorium Ordinance and those expressed in Complaints currently pending before the Public Utilities Commission regarding the installation of “smart meters” and implementation of the “smart grid.” Based on these circumstances, the City Council finds that it is premature to install “smart meters” until these issues and concerns have been properly addressed.

4. Applicability

This Ordinance applies in order to prohibit the installation of any “smart meter” within the City of Bath.

5. Conflict With Other Ordinances

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

6. Moratorium on Installation of “Smart Meters”

During the time that this Ordinance is in effect, no “smart meters” shall be installed on any property within the City of Bath.

7. Effective Date and Duration

This Moratorium Ordinance will become effective on the 21st day after the final approval by City Council in accordance with the provisions of Section 221 of the Charter of the City of Bath and shall remain in effect for a period of one hundred and eighty (180) days, after which it shall be repealed, unless extended in accordance with Section 8 below.

8. Extension

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

9. Separability

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

10. Violation

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

Councilor Rogers glass made a motion to put the item on the floor for discussion. Councilor Pagurko seconded the motion.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Rogers, Pagurko, Sinclair

NAYS: Paulhus, Wyman, Eosco, Winglass

Ordinance passed. 5-4

Chairman Sinclair stated that the Ordinance will become law in 21 days.

2) Ordinance: Chapter 14.Sewers, Article 6. Charges for Sewer Service, Section 14-52. Use Charges. (second passage)

Chairman Sinclair 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 14. SEWERS

Article 6. Charges for Sewer Service

Section 14-52. Use Charges.

Amend as follows:

(a) ...In addition, the City Council, by Resolution, is also authorized to establish an interest charge for all sewer user charges or surcharges which have not been paid. If the billing is on a monthly basis, then the interest shall be assessed thirty (30) days from the date of billing; if the billing is on a quarterly basis, then the interest shall be assessed within sixty (60) days from of the date of billing. The , said interest rate shall to be set from time to time by Resolution of the City Council.

Councilor Wyman made a motion to put the item on the floor for discussion. Councilor Pagurko seconded the motion.

Finance Director Juli Millett explained this change just for monthly billing customers and changes their due date from 60 days to 30 days.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Sinclair stated this would become law in 21 days.

3) Ordinance: Changing GA Maximums per State of Maine (second passage)

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

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 8A. GENERAL ASSISTANCE

Amend Article VI, Section 6.8 (B) to read as follows:

- B) **Housing.** The administrator will provide assistance with rent or mortgage payments that are reasonable ~~and/or~~ within the allowed maximum levels and in accordance with the housing assistance limits and exceptions provided in Title 22, section 4308, subsections 1-A and 1-B. See Appendix C of this ordinance for the current year's housing maximums. It is the applicant's responsibility to find suitable housing, although the administrator may help the applicant find housing when appropriate. The administrator will inform the applicant of the allowed housing maximums to assist the applicant in his or her search for housing. The allowed maximum for any applicant will be the categorical housing maximum representing the minimum dwelling unit space necessary to adequately shelter the applicant household. Applicants requesting assistance for housing that contains more bedrooms than are necessary for the number of household members will be provided assistance according to the maximum level of the number of rooms actually needed.

Also to delete appendices to the Ordinance dealing with maximums allowances and replace with newly attached allowance summary sheets, schedules and appendices, Appendix A – Total Allowed GA Maximums. Maximums shall be effective as of July 1, 2012.

Summary is on file with the agenda materials for the July 9, 2012 meeting in the Bath City Clerk's Office.

Councilor Wyman made a motion to put the item on the floor for discussion. Councilor Pagurko seconded the motion.

Finance Director Juli Millett explained the new General Assistance Maximums have just come from the State and they will replace the maximums adopted in October 2011.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Sinclair state this would become law in 21 days.

4) Bond Ordinance: Authorizing issuance of General Obligation Bonds in the amount not to exceed \$302,000 for the purpose of funding certain vehicles, recreation track and tennis court surface and gas collection system at the Landfill. (second passage)

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

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$302,000 FOR THE PURPOSE OF FUNDING CERTAIN VEHICLES, RECREATION TRACK AND TENNIS COURT SERVICES AND GAS COLLECTION SYSTEM AT THE LANDFILL

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

- Section 1. That a sum up to, but not to exceed, \$302,000, plus the sale premium of and investment earnings on the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of funding the following:
- 1 Police vehicles
 - Repairs / Replacement of recreation track and tennis court surface
 - 1 public works truck
 - Gas collection system at the landfill
- Section 2. That, for the purpose of funding the aforesaid appropriation, the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized, in the name of and on behalf of the City, to issue the City's bonds/notes or notes in anticipation thereof, in the stated principal amount of up to, but not to exceed, \$302,000 under and pursuant the City Charter and 30-A MRSA §5772.
- Section 3. That any and all bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance are issued pursuant to Chapter 8 of the City Charter and shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager.
- Section 4. That any and all bonds/notes issued pursuant to this Ordinance shall be payable in annual installments, which need not be equal, pursuant to Section 807 of the City Charter.
- Section 5. That the term of any bonds/notes issued pursuant to this Ordinance shall not exceed ten (10) years.
- Section 6. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, shall determine the date or dates, maturities (not to exceed the maximum term specified above), denominations, interest rate or rates and any other details of any bonds/notes or any notes in anticipation thereof to be issued pursuant to this Ordinance, such approval to be conclusively evidenced by the execution thereof.
- Section 7. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized to make any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance subject to call for redemption with or without premium prior to the stated maturity date at the election of the City.
- Section 8. That the City Treasurer is hereby authorized to take all such action as may be necessary to designate any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance (to the extent such designation is available) as qualified tax-exempt obligations for purposes of Section 265(b) of the Code.
- Section 9. That the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance shall be general obligations of the City, backed by the full faith and credit and taxing power of the City.
- Section 10. That in the event the City Treasurer elects to issue such bonds/notes or notes in anticipation thereof through the Maine Municipal Bond Bank (the "Bond Bank"), that the City Treasurer and the Chairman of the City Council and the City Manager be and hereby are authorized, on behalf of the City, to enter into a loan agreement with the Bond Bank in conjunction with the issuance of the bonds or notes, in the aggregate principal amount not to exceed \$302,000 with a term not to exceed the term of the bonds or notes, said loan agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with its General Resolution Program, which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the Treasurer, the Chairman of the City Council and the City Manager may approve, their approval to be conclusively evidenced by the execution thereof.
- Section 11. That the City Treasurer is authorized to do or cause to be done all such acts and things, and to execute and deliver any and all contracts, agreements, certificates, and other documents as may be necessary or advisable, including but not limited to an Arbitrage and Use of Proceeds Certificate and a Continuing Disclosure Certificate, to carry out the provisions of this Ordinance in connection with the issuance and delivery by the City of the bonds/notes or notes in anticipation thereof.

- Section 12. That if the City Treasurer, Chairman of the City Council, City Manager, or Clerk are for any reason unavailable to approve and execute the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance, any loan agreement or any related financing documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.
- Section 13. That during the term any of the bonds authorized hereby are outstanding, the City Treasurer is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed 10 years from the date of issuance of the original bonds) and all other details of such refunding bonds, including the form and manner of their sale and award. The City Treasurer is hereby further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager, sealed with the seal of the City, and attested by its Clerk.
- Section 14. That any suit questioning the validity of this Ordinance shall be barred unless commenced within forty-five (45) days following publication of the Ordinance in accordance with Section 805 of the City Charter.

Councilor Pagurko made a motion to put the item on the floor for discussion. Councilor Rogers seconded the motion.

Juli explained that Council is authorizing borrowing for the capital items that were included in the budget.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Bond Ordinance passed unanimously. 8-0

Chairman Sinclair stated this would become effective in 21 days.

- 5) Bond Ordinance: Authorizing issuance of General Obligation Bonds in an amount not to exceed \$651,500 for the purpose of funding Willow Street sanitary sewer and stormwater collection system modifications. (second passage)**

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

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$651,500 FOR THE PURPOSE OF FUNDING WILLOW STREET SANITARY SEWER AND STORMWATER COLLECTION SYSTEM MODIFICATIONS

WHEREAS, on March 2, 2011, the City Council of the City of Bath adopted a Bond Ordinance (the “Prior Ordinance”) which authorized issuance of the City’s bonds in the amount of \$2,000,000 for the purpose of providing funding for sewer improvements and upgrades; and

WHEREAS, on September 14, 2011, the City issued \$1,883,600 of the bonds authorized by the Prior Ordinance through the Maine Municipal Bond Bank’s State Revolving Fund Program (the “2011 Bonds”); and

WHEREAS, the City Council now desires to authorize additional bonds of the City in the amount of \$651,500 additional sewer improvements and upgrades as set forth below;

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

Section 1. That a sum up to, but not to exceed, \$651,500, plus the sale premium of the bonds/notes authorized in below, is hereby appropriated for the purpose of funding Willow Street sanitary sewer and stormwater collection system modifications and of paying the costs of issuance therefore (the "Project").

Section 2. That, for the purpose of funding the aforesaid appropriation, the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized, in the name of and on behalf of the City, to issue the City's bonds/notes or notes in anticipation thereof, in the stated principal amount of up to, but not to exceed, \$651,500 under and pursuant the City Charter and 30-A MRSA §5772.

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

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

Section 5. That the term of any bonds/notes issued pursuant to this Ordinance shall not exceed twenty (20) years.

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

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

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

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

Section 10. That in the event the City Treasurer elects to issue such bonds/notes or notes in anticipation thereof through the Maine Municipal Bond Bank (the "Bond Bank"), that the City Treasurer and the Chairman of the City Council and the City Manager be and hereby are authorized, on behalf of the City, to enter into a loan agreement with the Bond Bank in conjunction with the issuance of the bonds or notes, in the aggregate principal amount not to exceed \$651,500, with a term not to exceed the term of the bonds/notes, said loan agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with either the State Revolving Loan Fund program or its General Resolution Program, which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the Treasurer, the Chairman of the City Council and the City Manager may approve, their approval to be conclusively evidenced by the execution thereof.

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

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

Section 13. That during the term any of the bonds authorized hereby are outstanding, the City Treasurer is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed 20 years from the date of issuance of the original bonds) and all other details of such refunding bonds, including the form and manner of their sale and award. The City Treasurer is hereby further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager, sealed with the seal of the City, and attested by its Clerk.

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

Section 15. That if the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance are issued through the CWSRF Program, the following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and the Bond Bank (the "SRF Regulations"), and governing any loan to be made to the City under the State Revolving Loan Fund Program be and hereby are adopted:

- (1) that a Project Account shall be created for the Projects which shall be separate from all other accounts of the City. If operating revenues are to be used to retire the debt, a sub-account will be established.
- (2) that the Project Account shall be maintained in accordance with standards set forth by the Bond Bank and in accordance with generally accepted government account standards.
- (3) that a final accounting shall be made to the Bond Bank of the total cost of the project upon completion of the Project performance certification as set out in Section G(3) of the SRF Regulations and the City acknowledges that the Bond Bank reserves the right at its sole discretion to be provided with a cost certification of the Project as built.
- (4) that an annual audit of the City, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan.
- (5) that the City shall maintain insurance coverage on the Project in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee.
- (6) that the City will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged.
- (7) that the City certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment.
- (8) that the City establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient.
- (9) that the City must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project.
- (10) that the City abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine.

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

Finance Director Juli Millett explained this would fund the Willow Street project as passed in the Budget and this action would add the amount to the \$2,000,000 loan the City already has for other sewer projects.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Bond Ordinance passed unanimously. 8-0

Chairman Sinclair stated this would be effective in 21 days.

6) Bond Ordinance: Reallocating excess bond proceeds from previously issued bonds for the purpose of funding street paving, a public works vehicle and a roof. (second passage)

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

VOTE on waiving the reading:

YEAS: Brackett, Merrill, Wyman, Eosco, Pagurko, Winglass

NAYS: Paulhus, Rogers

Waiving motion passed. 6-2

BOND ORDINANCE

REALLOCATING EXCESS BOND PROCEEDS FROM PREVIOUSLY ISSUED BONDS FOR THE PURPOSE OF FUNDING STREET PAVING, A PUBLIC WORKS VEHICLE, AND A ROOF

WHEREAS, on December 7, 2011, the City Council of the City of Bath adopted a Bond Ordinance (the “Original Ordinance”) which authorized issuance of the City’s bonds in the amount of \$450,000 to finance the costs of demolition of the old YMCA building (the “Original Project”); and

WHEREAS, the City issued the bonds authorized by the Original Ordinance as part of its \$5,275,000 2011 Series B General Obligation Bonds dated December 1, 2011 (the “2011 Series B Bonds”); and

WHEREAS, the Original Project is now expected to come in under budget and the City Council desires to amend the Original Ordinance to amend the scope of the Original Project to be financed with the proceeds of the 2011 Bonds to include additional improvements, as set forth below;

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

Section 1. That the description of the Original Projects in the Original Ordinance be and hereby is amended to include:

- street paving,
- the acquisition of a public works truck and
- roof repairs

as additional projects to be financed with the proceeds of the authorized bonds issued as part of the 2011 Series B Bonds;

Section 2. That in all other respects the Original Ordinance be and hereby is confirmed and ratified as if more fully set forth herein, and remains in full force and effect.

Councilor Rogers asked the Finance Director to explain what vehicle the funding was for. The Finance Director stated a portion of the amount would be for partially funding the Public Works snow plow.

Councilor Rogers made a motion to amend the Bond Ordinance to include fire turnout gear. Councilor Paulhus seconded the motion. All were in favor of the motion.

ROLL CALL VOTE on amended Ordinance:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Bond Ordinance passed unanimously. 8-0

Chairman Sinclair stated this would become effective in 21 days.

D. Consent Agenda 6:19 PM

***7) Minutes of the Regular Council Meeting on June 6, 2012, and Special Council Meeting on June 13, 2012. (Motion to Accept as Presented)**

Councilor Wyman made a motion to accept the Consent Agenda as presented. Councilor Merrill seconded the motion.

Chairman Sinclair proposed one amendment to the June 6, 2012 minutes on Page 3 to change the Hyde School Representative's name from 'Safkin' to "Saffian". Councilor Wyman seconded the amendment. All were in favor of the proposed amendment.

All were in favor of the amended minutes.

E. Time Devoted to Residents to Address the City Council 6:20 PM

Jayne Morse of Sagadahock Real Estate spoke to Council regarding some of the issues that are being experienced at this location and the possibility of granting an easement so they might maintain the rear of the building and/or the purchasing of a part of the old YMCA property to be used as parking space for tenants of their properties. Ms. Morse suggested a workshop in July to have a discussion regarding this matter.

The Council set a workshop on site at 6 PM on Wednesday, July 25, 2012.

F. Ordinances, Resolutions and Orders 6:30 PM

8) Resolution and Letter of Support for the Androscoggin River Bicycle and Pedestrian Path - Engineering Phase

Chairman Sinclair read the following Resolution:

RESOLUTION AUTHORIZING LETTER IN SUPPORT OF ENGINEERING GRANT FOR REGIONAL TRAILS

WHEREAS, the Planning Department has identified the potential for an engineering grant through the Maine Department of Transportation to address engineering for the planning of the expansion of Regional Trails and, in particular, for the Androscoggin River Bicycle and Pedestrian Path; and

WHEREAS, the City of Bath wishes to express this explicit support for the Regional Trail System in general and, in particular, for the Androscoggin River Bicycle and Pedestrian Path proposed to connect the existing trail in Brunswick, through West Bath, to the Kennebec River.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bath that the City authorize correspondence to be sent to the Maine Department of Transportation and any other appropriate parties in support of the trail expansion and the engineering grant and to authorize the Chairman of the Bath City Council to execute such letter on behalf of the City

City Planner Andrew Deci explained the history of the project, the processes for applying for the grant and the funding.

VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Resolution passed unanimously. 8-0

Councilor Paulhus made a motion to amend the agenda to insert an item to consider rescinding the earlier vote from the 6-13-2012 Special Meeting regarding the Black Barnacle's request for liquor and special amusement licenses. Councilor Rogers seconded this motion.

Chairman Sinclair made a statement regarding his disappointment with the level of attendance at the 6-13-2012 Special Meeting and comments made after the meeting. He thanked the Councilors that had attended the meeting for doing the hard work of making the decisions necessary.

City Solicitor Roger Therriault explained the first step would be to determine as a Council if they want to reconsider the matter and put it on the agenda for discussion. If the Council decides to rescind the vote, a motion would need to be made to do so. He stated that should the vote be yes, that would wipe out the vote from the previous meeting. Mr. Therriault said that at that point it would be as though Council had not taken any action and the Council would have to decide what to do regarding these licenses.

VOTE:

YEAS: Brackett, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: Merrill

Motion passed. 7-1

Councilor Paulhus made a motion to rescind the Council's decision from the June 13, 2012 Special Council Meeting in regards to the Black Barnacle liquor and special amusement licenses. Councilor Rogers seconded the motion.

There was a brief discussion among Council regarding their views on the outcome of the June 13th meeting. *This discussion is available for viewing on DVD.*

Jack Barnicle of the law firm of Moncure and Barnicle, Mr. Tisdale's lawyer, stated that after reevaluating the situation, the Superior Court Judge granted Mr. Tisdale a Stay so he could remain in business. He explained the information Council had heard at the last meeting was not complete. Mr. Barnicle felt that the Council should be looking at the Police Department's recommendation. He pointed out that Main Street Bath took no stand on the issue and that the neighbor moved into his store knowing the bar was next door. He stated that Mr. Tisdale was trying to handle the smoking issue to the best of his ability and put photos of the "No Smoking" signage that is posted at the Black Barnacle into the record. Mr. Barnicle also put correspondence regarding the dumpster matter into the record.

Greg Tisdale, owner of the Black Barnacle, stated that he takes care of issues as they are brought to his attention.

Brian Boldoc of Sysco Foods stated that he is at the Black Barnacle frequently with deliveries and he also eats there and observed that food sales have increased drastically since last year. Mr. Boldoc said that the daily operation that he witnessed was done in a professional manner.

Carl Farris, who runs the "Open Mic" on Wednesday nights at the Black Barnacle, stated that everything is going very well and said there are usually 7-8 musicians that take part. He pointed out that it is attended well and said there have been no problems.

Jamie Kirschner, a bartender at the Black Barnacle, stated there had been positive changes since Mr. Tisdale had taken over. She said when she makes him aware of an issue, he takes care of it immediately. Ms. Kirschner reported that patrons enjoy the atmosphere and said she has never had to call the Police with an issue. She stated that she works 40 hours a week and has not had any complaints from other business owners. Ms. Kirschner said her brother is the cook and he goes outside and makes sure the

sidewalk is clean before they open for business. She stated that she didn't feel that the Black Barnacle was the only business with an issue of litter on Front Street. She felt that the smoking problem should be resolved as a blanket situation because to say one business should be shut down in large part due to the smoking is targeting that business and felt that the issue is a general issue throughout the City.

Bill King, a long-time Bath merchant and property owner, stated that he was speaking for himself. He said he saw two options. The first was for Council to let the liquor and special amusement remain revoked. He said this might put the Black Barnacle out of business but didn't think it needed to as they could serve meals and they could do well. Mr. King stated he had spoke with people on Front Street and said they didn't think that the Black Barnacle should be in the middle of Front Street with the smoking and bad language issues around it. His second option was to restore the Black Barnacle's licenses with conditions that can be enforced. He suggested that these conditions could be no smoking on the sidewalk, cigarette butts and vomit need to be cleaned up at closing time and not in the morning, noise and bad language must be controlled and Police reporting must be clarified. Mr. King stated that the goal of each business should be to attract new and different customers that can be shared with all the businesses on Front Street.

Robby Simson, who performs at the Black Barnacle on Wednesday nights, stated the Black Barnacle has a similar atmosphere to places in Bar Harbor and Camden. He stated that patrons are quite diverse and still everyone gets along.

Jayne Palmer, of 330 Front Street, stated that she was speaking for herself and that she stood by her remarks from the first meeting. She made a point that the letter she got from the neighboring business wasn't hearsay but was in the business owner's own handwriting. Ms. Palmer thanked the Council for addressing a difficult issue with respect for all and voting their conscience on what is best for Bath. She offered to research how other Main Street Communities address the problem of smoking in the downtown and reported that the National Trust for the Main Street organization is seeking funding to undertake a healthy community initiative.

Skip Taylor, of Winter's Gone Fashion, spoke in reference to his letter to Council. Mr. Taylor reported that there had been an improvement with noise and cigarette butts on the sidewalk but said that bad language and vandalism is becoming a problem.

Jane Morse, of Sagadahock Real Estate, spoke regarding having a bar in the downtown not being a good idea. She stated that her brother spoke against having a bar in the downtown when the first owner came in front of Council for a liquor license. Ms. Morse reported that her tenants have complained about the smoking in the downtown. She asked that the owner of the Black Barnacle not just clean up the cigarette butts but the litter also.

Councilor Rogers asked that it be put on the record that he voted against the original license.

Brian Hatch, Chairman of the Board of Main Street Bath, stated that they have had representatives working with Mr. Tisdale to resolve the issues but said they will not be taking a side in this matter.

Marne Robinson of 906 High Street and owner of the former Marne's Cookies said she would like to see everyone try to work together to help the Black Barnacle succeed.

Mr. Tisdale stated that he would not make his worker stay after work to clean up but would make sure the cleaning is done early in the morning.

Mr. Barnicle stated they would accept a morning clean-up condition placed on the liquor license.

Police Chief Field explained how incident calls are recorded and clarified the non-smoking law dealing with sidewalks. He stated that the sidewalks belonged to the City and not to the businesses and that it would be very hard to enforce a non-smoking rule.

City Solicitor Roger Therriault stated that people can smoke or put a table in the public way and it doesn't change anything. It would remain a public way and private interests cannot develop rights by use over time with respect to public property. He said enforcement would remain with the City with respect to the sidewalks.

The City Solicitor explained that should the Council vote to rescind the vote, then the determination to not approve the licenses did not happen and would be back to square one with a license application that had been stayed by the court and doesn't affect the owner's ability to do business. He stated the Council's options would be to decide whether to go through the Public Hearing process again or just vote on the applications again with the options to accept them or reject them, with or without conditions or with time-limits or without time-limits. Mr. Therriault noted for the record that there is no requirement for a Public Hearing on a liquor license renewal. He said if Council felt they wanted to deal with the vote tonight they could do so or if they feel they need more information, hearings and input from the public they could wait but if they decide to do that the Council should do a temporary extension to the licenses to comply with the court.

ROLL CALL VOTE on Rescind Motion:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Rescinding motion passed unanimously. 8-0

Councilor Rogers made a motion to remove Item 9 - Consideration of "Draft" Written Decision and Finding of Fact for The Black Barnacle Pub from the agenda. Councilor Pagurko seconded the motion. All were in favor of the motion.

Councilor Rogers made a motion that the Council act upon the outstanding application for renewal of the liquor and special amusement licenses for the Black Barnacle. Councilor Paulhus seconded the motion. All were in favor of the motion.

Councilor Rogers made a motion to approve the liquor and special amusement licenses for the Black Barnacle.

Councilor Rogers rescinded his motion and then made a motion to consider the liquor license for approval with the condition that Mr. Tisdale ensure that the litter is cleaned up prior to 8 AM the next business day. Councilor Paulhus seconded the motion. All were in favor of the motion.

Councilor Rogers made a motion to approve the special amusement license with existing conditions. Councilor Pagurko seconded the motion.

City Codes Officer Scott Davis explained to Council that the only acoustics music condition on the license would mean there could be no amplification.

Councilor Rogers stated that he would make a motion to remove the condition of only acoustic music from his motion and made a motion to approve the special amusement license without conditions as they had all the other businesses on Front Street. Councilor Eosco seconded the motion.

Councilor Brackett made a motion to amend Councilor Rogers' motion to add a condition of "music after 7PM only". Councilor Rogers seconded the motion. All were in favor of the amendment.

Vote on Amended Special Amusement License:

YEAS: 8

NAYS: 0

Amended License passed unanimously. 8-0

9) Consideration of "Draft" Written Decision and Finding of Fact for The Black Barnacle Pub

A copy of this document is on file with the agenda materials for the July 9, 2012 Council Meeting in the Bath City Clerk's Office.

This item was pulled from the agenda due to the action taken in the previous agenda item.

Council took a 2-minute break at 8:41 PM.

Council went back into session at 8:43 PM.

10) Acceptance of Drug Forfeiture

A copy of this document is on file with the agenda materials for the July 9, 2012 Council Meeting in the Bath City Clerk's Office.

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

Police Chief Michael Field explained the details of this case.

VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Passed unanimously. 8-0

11) Order: Approving Lease for Box 19

Chairman Sinclair read the following Order:

ORDER APPROVING LEASE

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE STORAGE SPACE LEASE BY AND BETWEEN THE CITY OF BATH AND BOX 19 CLUB, FOR A PORTION OF PREMISES LOCATED IN THE GARAGE ON PROPERTY KNOWN AS THE BATH ARMORY, SAID LEASE BEING ATTACHED HERETO, BE AND HEREBY IS APPROVED FOR THE TERM BEGINNING AUGUST 1, 2012 AND EXTENDING THROUGH JULY 31, 2014. THE LEASE CONTAINS A PROVISION FOR ADDITIONAL TWO YEAR EXTENSIONS BY AGREEMENT OF THE PARTIES AND THE MANAGER IS HEREBY AUTHORIZED TO EXERCISE THAT EXTENSION AUTHORITY. THE MANAGER IS FURTHER AUTHORIZED TO EXECUTE THE ORIGINAL LEASE ATTACHED HERETO ON BEHALF OF THE CITY OF BATH.

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

VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

12) Order: Approving Operations and Standards for the Armory

Chairman Sinclair read the following Order:

**ORDER APPROVING STANDARDS OF OPERATION
FOR THE ARMORY BUILDING**

WHEREAS, the City of Bath seeks to standardize the operation of the building and property known as the Bath Armory; and

WHEREAS, it is appropriate for a framework to be put in place under which the City, through its Recreation Department, will provide all necessary operation and maintenance of the facility and grounds.

NOW, THEREFORE BE IT ORDERED by the City Council of the City of Bath that the Standards of Operation for the Armory Building, substantially in the form presented with and attached to this Order, be and hereby are approved, said Standards of Operation to become effective upon approval by Council.

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

VOTE:

YEAS: Brackett, Merrill, Paulhus, Wyman, Eosco, Pagurko, Winglass

NAYS: Rogers

Order passed. 7-1

13) Order: Approving Transfer of Donald Small School to the Bath Development Corporation

Chairman Sinclair read the following Order:

**ORDER
TRANSFER OF DONALD SMALL SCHOOL PROPERTY**

WHEREAS, the City of Bath is the owner of certain property described as the Donald Small School, acquired by the City of Bath, along with the Nunnery Property, from the Roman Catholic Bishop of Portland; and

WHEREAS, this Council has approved an Order transferring the Nunnery Property, along with Huse School, to the Bath Development Corporation for the purpose of accessing Brownfield monies to perform environmental investigation and remediation; and

WHEREAS, the Bath Development Corporation has met and authorized the transfer of the property to the Corporation of the Huse School and the Nunnery Property as well as the Donald Small School; and

WHEREAS, repairs, renovations and environmental remediation issues need to be addressed with regard to the Donald Small School structure.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the property known as the Donald Small School, together with the Huse School and Nunnery Properties previously authorized, be transferred to the Bath Development Corporation and that the City Manager be and hereby is authorized to execute such Deed(s) and any all other documents necessary, appropriate or convenient to complete the transfer of the property.

Councilor Pagurko made a motion to put the item on the floor for discussion. Councilor Rogers seconded the motion.

VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

14) Resolution: Supporting the Restoration of the Pond in City Park

Chairman Sinclair read the following Resolution:

**RESOLUTION IN SUPPORT OF FUNDRAISING FOR
IMPROVEMENTS TO THE CITY PARK POND**

WHEREAS, the City of Bath is fortunate to have a Zorach bronze statue and fountain located in its City (Library) Park; and

WHEREAS, the City has undergone significant restoration activities regarding the statue; and

WHEREAS, the pond itself is now in need of significant renovation and restoration; and

WHEREAS, the Friends of the Zorach Foundation are willing to conduct fundraising in support of renovations to the pond.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bath that they hereby support the efforts to renovate and improve the pond in the City (Library) Park where the Zorach “Spirit of the Sea” statue is located and further support and encourage the efforts of the Friends of the Zorach Foundation in any fundraising efforts that may provide funding for the improvements.

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

Recreation and Parks Director Steve Balboni explained a brief history of the statue and its maintenance. Mr. Balboni reported that this would be a \$200,000 fundraising effort to restore the pond area. He introduced Linda Wood, President of the Friends of the Zorach Fountain.

Linda Wood reported to Council regarding the 50th year celebration of the statue being in the park on August 5th from 3-5PM. She explained how the statue came to be in the park and what improvements the group has made to the site. Ms. Wood stated they have Bruce Rydal, a landscape architect, will be doing the restoration work and said the plans for restoration will be displayed at the Birthday Party.

Councilor Rogers left his seat at this time.

VOTE:

YEAS: Brackett, Merrill, Paulhus, Wyman, Eosco, Pagurko, Winglass

NAYS: None

Resolution passed unanimously. 7-0

Councilor Paulhus made a motion to extend the meeting past 9 PM. Councilor Pagurko seconded the motion.

VOTE on Extending the Meeting:

YEAS: Brackett, Merrill, Paulhus, Wyman, Eosco, Pagurko

NAYS: Winglass

Motion passed. 6-1

15) Order: Relating to Dresden Land Exchange

Chairman Sinclair read the following Order:

ORDER

WHEREAS, the City Council, at its meeting on May 5, 2012 approved an Order providing for an exchange of certain properties in Dresden and Wiscasset where the City's gravel pit is located with the abutting owner, the Stella L. Hammond Trust; and

WHEREAS, the exchange did not include a small triangle of land that abuts property of Douglas L. Schmal, Jr.; and

WHEREAS, the Hammond Trust has requested that this triangle of land on the northeast side of the Schmal property be included in the transfers, said land being approximately 8,277 square feet; and

WHEREAS, the inclusion of this property in the transfer of the exchange property with the Hammond Trust, will allow the Trust to develop a boundary agreement between the Trust property and the property of Schmal.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the property adjacent to Schmal be included in the transfer of the property to the Stella L. Hammond Trust and that the City Manager be authorized to execute any and all documents required, necessary or convenient to include the property in the exchange of deeds and to carry out the exchange.

Councilor Rogers returned to his seat at this time.

Councilor Winglass left his seat at this time.

Councilor Rogers made a motion to put the item on the floor for discussion. Councilor Pagurko seconded the motion.

VOTE:

YEAS: Brackett, Merrill, Paulhus, Rogers, Wyman, Eosco, Pagurko,

NAYS: None

Order passed unanimously. 7-0

Councilor Winglass returned to his seat at this time.

G. Petitions & Communications 8:58 PM

Councilor Eosco stated that Heritage Days was wonderful and wanted to extend a huge thank you to volunteers that make it happen and to City Staff for making the City look fantastic.

H. City Manager's Report 8:58 PM

William Giroux reported that the City had worked with Main Street Bath personnel to take care of the garbage issues at Heritage Days and will follow up with the issues next year.

I. Committee Reports 8:58 PM

There were no Committee Reports

J. Unfinished Business 8:59 PM

There was no unfinished business.

K. New Business 8:59 PM

16) Appointment of two members to the Bath Board of Assessment Review with a term to expire in July 2015.

The Council Interview Committee had a short meeting and decided not to fill both positions at this time.

Councilor Pagurko nominated Bruce Goodwin for one of the positions. All were in favor of the nomination.

17) Appointment of one member to the Bath Recreation Commission with a term to expire in November 2015.

Councilor Pagurko nominated Joseph Marchetti, Jr. for this position. All were in favor of the nomination.

Councilor Paulhus asked if Council could set a date to do the tour of City owned property under the supervision of the Recreation and Cemeteries Department. The meeting was set for August 23rd with Council to meet at 6 PM at City Hall side entrance and would be riding the new trolley on the tour.

The meeting adjourned at 9:03 PM with a motion by Councilor Paulhus, seconded by Councilor Pagurko. 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.