

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, September 5, 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.

Chairman Sinclair reported regarding the “Sail Away” for the USS Michael Murphy. He stated that it was an incredible endeavor and achievement by all those involved with the building of this ship.

Councilor Pagurko stated it was amazing to watch the ship sail down the river.

Chairman Sinclair made a motion there be an amendment to the agenda by moving the Executive Session dealing with a real estate matter item to the regular session and having a public conversation regarding what to do with the City’s interest in the property. Councilor Rogers seconded the motion.

VOTE ON MOTION:

YEAS: 7

NAYS: 1 (Eosco)

Presentation by Sagadahoc County EMA Director Misty Mixon regarding “CODE RED – Emergency Reverse Call System”.

Ms. Mixon explained there had been a trial run of the emergency notification system implemented on July 1st and a test call was made the last of August and the emergency notifications would be made to the public if there was a health threat, severe weather conditions, or an emergency evacuation was needed. She stated that these notifications can be done through land-line telephones, cell phones, through email addresses or get a text message. Ms. Mixon explained the details of the system and asked that everyone make sure their information is correct in the system by contacting them through the web or by phone.

C. Consent Agenda 6:12 PM

***1) Minutes of the Regular Council Meeting on August 1, 2012. (Motion to Accept as Presented)**

Councilor Paulhus motioned that minutes be amended by changing on Page 1 the reference of 30 students to 9 students and 4 adults. Councilor Rogers seconded the motion. All were in favor of the motion.

Councilor Winglass motioned that the minutes be amended on Page 5, Item 7, 3rd paragraph, that the name of Leslie Gallagher should be changed to Lesley Dolinger. Councilor Paulhus seconded the motion. All were in favor of the motion.

VOTE ON AMENDED MINUTES:

YEAS: 8

NAYS: 0

Amended Minutes passed unanimously.

D. Time Devoted to Residents to Address the City Council 6:15 PM

HOMEtgether update by Betty King. (Sponsored by Councilor Merrill)

Councilor Merrill explained that she had received calls from Ms. King who along with a group are heading up HOMEtgether, which would like to reuse the Nunnery Building next to the Recreation Department building. She stated that after speaking with Ms. King she thought that Council should hear what the group had come up with as a proposed way to save the City money by reusing the building at their expense and save it from demolition, which would cost the City money.

Ms. King explained at what point the group was at with the work on the issues associated with the building that had come up during her last visit to Council in May. She addressed the possibility of environmental hazard of asbestos that had been found in the building during an inspection done by environmental engineers. Ms. King stated that the Codes Enforcement Officers told her they wouldn't need to abate the asbestos problems as long as the asbestos is not disturbed and they have no plans to renovate. She next spoke regarding the question of zoning stating that they had met with the City Planner and have formulated a definition which describes what they want to do to the building and is ready to go to the Planning Board. The final issue she addressed was the Financial Feasibility Study. She explained they were still working on getting figures for the study but hoped to have that completed by the end of the month.

City Manager Giroux stated that he felt the group would need indication from Council that they are willing to move forward with the text amendment that would facilitate the project.

City Solicitor Therriault said that in order for this project to be put before the Planning Board there has to be an interest in the property worked out with the City that could be conditional on Planning Board approval.

City Planner Deci explained the process of getting the Land Use Code text amendment changed.

Chairman Sinclair stated that he would sponsor the Land Use Code text amendment to the Planning Board.

City Solicitor Therriault urged the group to develop an Interest in the Property Plan as to how they anticipate setting up and financing operations for the establishment. He stated this will be needed in order to develop the relationship needed between Council and the group in terms of the use of the building.

E. Ordinances, Resolutions and Orders 6:31 PM

2) Order: Appointing City Arborist/Tree Warden

Chairman 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 Pagurko seconded the motion.

Mr. Hoerth stated that he was officially appointed City Arborist in 1998 but had worked in that capacity since 1995.

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

3) Order: Lease renewal and addendum for Midcoast Center with Providence Corporation

Chairman read the following Order:

**ORDER
APPROVING LEASE**

WHEREAS, the City of Bath has had in place a Lease with the Merrymeeting Center for Child Development, and now known as Providence Service Corporation, Merrymeeting Center; and

WHEREAS, the Providence Service Corporation, Merrymeeting Center, wishes to renew the Lease on the current space occupied by the corporation and to acquire additional space; and

WHEREAS, a one-year Lease has been negotiated to accomplish these purposes.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the Lease with Providence Service Corporation, Merrymeeting Center, in substantially the form attached hereto, be and hereby is approved and the City Manager is authorized to execute said Lease on behalf of the City of Bath, together with any Renewals thereof.

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

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

4) CDBG Standards of Conduct

**STANDARDS OF CONDUCT
STATE OF MAINE COMMUNITY DEVELOPMENT BLOCK GRANT**

INTRODUCTION

Elected officials, appointed officials, employees of Community Development Block Grant (CDBG) recipients and contractors are those responsible for administering Maine's CDBG Program and are also responsible for its integrity. Following sound business practices, prescribed standards of conduct and Department of Housing and Urban Development (HUD) requirements will not only protect these grant funds, but also those who administer the program.

PURPOSE

This notice provides information on specific activities you must avoid and identifies essential HUD requirements that must be met. The requirements will help to prevent fraud and program abuse by alerting essential officials to appropriate standards of conduct.

AUTHORITIES

Pertinent laws and requirements that you should have copies of are:

Housing and Community Development Act of 1974 as amended in 1992. This is located in the Administrator's Guide.

Community Development Block Grant Regulations (24 CFR Part 570).

PROGRAM REQUIREMENTS & PROHIBITED ACTIVITIES

The following sections reviewed prohibited activities and administrative requirements that must be followed by all CDBG communities.

1. Prohibition against conflicts of interest

CDBG regulations (25 CFR, Part 570.489 (h)) prohibit conflicts of interest. For any CDBG activities under your control or influence you may not:

- a) Obtain personal or financial interest or benefits including money, favors, gratuities, entertainment or anything of value that might be interpreted as conflict of interest.
- b) Obtain a direct or indirect interest in any contract, subcontract or agreement for any CDBG activity. This prohibition extends to contract in which your spouse, minor child, dependent or business associate may have personal or financial interest. This prohibition extends for a period of one year after you leave your position with a CDBG activity or program.
- c) HUD may grant an exception to this conflict of interest provision if it determines that such exception will enhance the effectiveness of the CDBG project. Requests for such exceptions must be made in writing to this office.

2. Procurement and Contracting Requirements

Provisions of 24 CFR Part 85 and Part 36, Administrative Requirements apply to the CDBG Program grantees. These provisions prohibit the following practices in your procurement and contract administration.

- a) Circumventing competitive bidding requirements by:
 - 1) failing to advertise for sealed bids or soliciting proposals and engaging in noncompetitive negotiation;
 - 2) failing to use established evaluation criteria in negotiations;
 - 3) splitting bids by breaking down contracts into small parts so that purchase order procedures can be used except to meet Minority/Women Business Enterprise goals;
 - 4) favoring or providing a competitive advantage to any one firm or individual; identifying the names of those invited to bid; and preparing fictitious bids to simulate competition.

- b) Failing to adhere to contract award requirements by:
 - 1) allowing excessive price charges;
 - 2) awarding contract to other than low bidder without adequate justification; and
 - 3) accepting a bid that does not contain a price for all items or services included in the bid invitation.
- c) Failing to verify contractual and programmatic compliance by contractors by:
 - 1) authorizing payment for work not completed;
 - 2) falsifying inspection reports;
 - 3) altering contractor invoices; and
 - 4) misusing modification or change orders.

1. Financial Management and Recording Systems

You must comply with the following requirements of 24 CFR part 85.20 and .42 and CDBG regulations.

- a) Establish internal controls to safeguard cash, inventory and equipment.
- b) Establish a special ledger account for all CDBG monies.
- c) Maintain financial records including:
 - 1) A register of cash receipts and disbursements;
 - 2) record of all non-cash transactions;
 - 3) General ledger to show the status of each CDBG account;
 - 4) A fixed account ledger, and
 - 5) A record of drawdowns, funds received and balance of funds.
- d) Ensure you maintain financial records and maintain for three years.
- e) Use income generated from grant activities for other eligible activities.
- f) Use program income before drawing additional grant funds to pay for allowable program expenses.
- g) Not request or draw down more funds then needed.

4. Cost Allowance

You must comply with OMB Circular A-87, Cost Principles for State and Local Governments. You may not spend CDBG funds on ineligible activities including:

Expenses required to carry out the regular responsibilities of the general local government.

Partisan political activities (e.g. contributions towards political campaigns, voter registration or candidate forums).

5. Program Monitoring

Regulation CFR Part 85.40 states you must monitor the performance of grant supported activities to assure compliance with federal requirements and that performance goals are being achieved. It is suggested you:

Keep records for your on-site visits to sub-grantees and contractors.

Place special emphasis on your monitoring of the highest risk sub-recipients and contractors.

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

VOTE:

YEAS: 8

NAYS: 0

Item passed unanimously. 8-0

5) Order: Approving Contract - Jacobs Glass, Inc. - Custom's House Window Replacement Project

Chairman read the following Order:

**ORDER
APPROVING CONTRACT**

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE BID OF JACOBS GLASS, INC. FOR THE CUSTOM'S HOUSE WINDOW REPLACEMENT PROJECT, IN THE AMOUNT \$110,095.00, BE AND HEREBY IS APPROVED AND ACCEPTED, IT BEING THE LOWEST QUALIFIED BID SUBMITTED, AND A CONTRACT BY AND BETWEEN THE CITY OF BATH AND JACOBS GLASS, INC. 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 FROM CUSTOM'S HOUSE BOND PROCEEDS.

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

City Planner Deci and Community Development Coordinator Poirier explained the financing process for this project.

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

6) Order: Appropriating Funds for Improvements to the Library Park Pond (Sponsored by Councilors Eosco and Pagurko)

Councilor Eosco explained that the Friends of the Fountain group has done a wonderful job maintaining the Fountain and now the pond needs some renovations and she would like to see Council give the group some seed money to help with these improvements. Councilor Pagurko stated she thought it was a great project and that the statue and pond are a very important part of the Park and the City of Bath.

Chairman read the following Order:

**ORDER APPROPRIATING FUNDS
FOR IMPROVEMENTS TO THE LIBRARY PARK POND**

WHEREAS, the Friends of the Zorach Fountain have proposed improvements to the area immediately adjacent and around the Library Park Pond; and

WHEREAS, the City Council of the City of Bath approved a Resolution on July 9, 2012 supporting the efforts to renovate and improve the Library Park Pond and to encourage fundraising efforts by Friends of the Zorach Fountain; and

WHEREAS, it is appropriate for the City to contribute to the fundraising of the Library Park Pond improvements.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the sum of Ten Thousand Dollars (\$10,000.00) be and hereby is appropriated from the Council Contingency Account,

Account #012-402, said amount to be donated to the Friends of the Zorach Fountain for the specific purpose of Library Park Pond renovations and improvements.

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

Linda Wood, a member of the Bath Friends of the Fountain Committee, explained the scope of the work to be done. Ms. Wood stated that the Committee has accepted a proposal from a landscape architect, Bruce John Rodell, who has done pond work at the Maine Coastal Botanical Gardens along with Mark Jorgensen. She stated that the project is in the very beginning stages in regards to putting together a capital campaign committee and looking into grants and private donators. Ms. Woods reported that the estimated cost for the improvements to the pond is around \$300,000. She said since this is very early in the process there is no urgency in the receipt or commitment of the funds proposed by the City Council.

Councilor Rogers made a motion to table the Order to the June 2013 Council Meeting so this issue could be taken up during the May 2013 Budget Meetings. Councilor Pagurko seconded the motion.

VOTE ON Tabling Motion:

YEAS: 8

NAYS: 0

Tabling Motion passed unanimously. 8-0

7) Order: Approving Bid and Contract to Harry Crooker & Son's, Inc. - Bailey Street Infrastructure Improvement Project

Chairman 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 HARRY CROOKER & SONS, INC. FOR THE BAILEY STREET INFRASTRUCTURE IMPROVEMENT PROJECT IN THE AMOUNT OF \$213,841.40 IS ACCEPTED, IT BEING THE LOWEST QUALIFIED BID SUBMITTED, AND A CONTRACT BY AND BETWEEN THE CITY OF BATH AND HARRY CROOKER & SONS, INC. 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 COMMUNITY DEVELOPMENT BLOCK GRANT, WASTEWATER FEES AND THE PUBLIC WORKS STREET MAINTENANCE ACCOUNT.

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

Public Works Director Peter Owen explained this project was being done in cooperation with the Bath Water District so that all repairs to the sewer and water lines and repaving the roads will be finished and upgraded.

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

8) Order: Authorizing Annual Paving Bids

Chairman read the following Order:

**ORDER
AUTHORIZING ANNUAL PAVING BIDS**

WHEREAS, the City of Bath has sent out a request for proposals for the 2012/2013 City of Bath road paving projects; and

WHEREAS, the bid response date was August 21, 2012; and

WHEREAS, the bid response of Pike Industries, Inc. was the lowest bid received at \$125,026.19.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the bid of Pike Industries for the 2012/2013 fiscal year City of Bath paving program at a bid price of \$125,026.19 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-05 540.

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

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

9) Order: Approving PWD Purchase – Freightliner – Single Axle Truck

Chairman read the following Order:

ORDER APPROVING PURCHASE

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT THE BID OF FREIGHTLINER, AS SUPPLIER FOR A SINGLE AXLE TRUCK, FOR THE BASE BID PRICE OF \$117,880.00, BEING THE LOWEST QUALIFIED BID SUBMITTED, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SUCH DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE PURCHASE ON BEHALF OF THE CITY OF BATH. THE FUNDS FOR THIS PURCHASE ARE DESIGNATED AS PART OF A BORROWING ORDINANCE APPROVED BY COUNCIL ON JULY 9, 2012.

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

VOTE ON ORDER:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

F. Petitions & Communications 7:00 PM

Councilor Pagurko shared a letter she had received from Bonnie Beck of West Chops Point stating her concerns with the increase in her property taxes. *(A copy of this letter is on file with the agenda materials in the Bath City Clerk's Office.)*

Councilor Winglass shared the annual report from the City of Bath Bicycle & Pedestrian Committee that he had received.

G. City Manager's Report 7:03 PM

City Planner Andrew Deci reported on the transit grants received by the City and the scope of the project for improvements to downtown sidewalks the grants would facilitate.

H. Committee Reports 7:05 PM

Councilor Paulhus reported the Ad Hoc Flag Design Committee met and discussed proposals. He stated there were still more meetings planned and hoped that he would be back to Council soon with a design. Councilor Rogers reported that during the Economic Development Committee's Meeting in August they decided to have Don Spann and Justin Poirier look at Huse School for potential redevelopment. He stated that redevelopment would move forward soon.

Councilor Eosco reported that Main Street Bath was offering mums for sale in an effort to raise money for the downtown flowers for next year.

Councilor Winglass reported that during the meeting of the Bath Housing Authority, Joanne Marco was reappointed with very high marks. He stated the organization just got a \$100,000 grant for an energy upgrade to the Seacliff and Dikes Landing residences which will save money on energy costs.

Councilors Paulhus and Rogers reported on the Japanese exchange students' activities during their visit to Bath last month. Councilor Rogers stated that the visitors wanted to thank the City for its hospitality.

Chairman Sinclair gave an update regarding the RSU #1 Board's Budget Validation Meetings. Chairman Sinclair reported that the Committee was making good progress and hoped that by October he would have the Committee's final recommendations to the School Board regarding any changes to the funding methodology that has been adopted. He stated that all the municipalities had participated in good faith and have started to see points of agreement.

I. Unfinished Business 7:14 PM

There was no unfinished business.

J. New Business 7:14 PM

Councilor Paulhus made a motion to discuss the amended agenda item from the beginning of the meeting (From beginning of meeting: *Chairman Sinclair made a motion that there be an amendment to the agenda by moving the Executive Session dealing with a real estate matter item to the regular session and having a public conversation regarding what to do with the City's interest in the property. Councilor Rogers seconded the motion.*). Councilor Pagurko seconded the motion.

City Solicitor Roger Therriault explained that the piece of land that is not owned by anyone and in order to deal with an extraneous tax bill it has been listed as City owned property. He stated that the concern with the uncertainty of title for the land makes the sale of the property problematic.

City Assessor Paul Mateosian explained that in 1994 the City did new tax maps and the property owner to the north of the property in question stated that he did not own that parcel so the City listed the property with as unknown owner. He stated that because this caused a tax bill to go to an unknown owner and there was a value associated with it which caused accounting issues, he changed the owner to City of Bath and exempt property.

Chairman Sinclair stated that due to the recent interest in this land, this brings forth the need for a process to follow whenever a situation like this comes up.

Councilor Rogers stated that if City owned land comes up for sale the issue should go to the Economic Development Committee first and then on to Council. He said if the City isn't the owner of the property in question those who want to buy it should have a title search done at their expense to figure out who does own it.

Councilor Winglass stated that he felt that staff should be involved with the process.

City Manager William Giroux stated that he felt that the City Manager, City Assessor and City Solicitor should work as City Staff with the Economic Development Committee on these land issues and as a group would then bring forth a proposal to the Council.

Chairman Sinclair asked that at the next Economic Development Committee meeting this process be worked on with the City Manager, City Solicitor and City Assessor to develop a set of specific steps that will be brought to Council to decide on.

The meeting adjourned at 7:26 PM with a motion by Councilor Winglass, seconded by Councilor Pagurko. All were in favor of the motion to adjourn.

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.