

REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, December 5, 2012 7:30 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.

Presentation of Annual Report by Lawrence Dawson on behalf of the Board of Directors of the Old Customs House. Mr. Dawson reassured everyone that the plywood panels would be replaced with the permanent windows as soon as the sashes had been restored. City Planner Andrew Deci gave an update on the restoration project progress. Mr. Deci stated the project was under budget and doing well. He reported that there will be a public open house sometime in January or February.

C. Public Hearings: 7:38 PM

1) Liquor License Application for Front Street Public House at 102 Front Street.

Christopher Johnston, a partner of the establishment, stated that he planned to address the smoking issues that the previous establishment had by make a space behind the building for smoking. Mr. Johnston gave an overview of his experience and operating procedures in his other businesses. He reported on what activities would be part of the operation at the Front Street Public House.

Chairman Wyman opened the hearing to the public.

Jack Pennell of 77 Lincoln Street spoke in favor of the project.

Representing the owner, Jim Knight, property manager, of 102 Front Street, explained the process for deciding the choice of the applicant and built into the lease are some stringent regulations so that should any issues arise they would be addressed quickly.

William King stated that he had been involved with much of the revitalizing of the downtown and was very nervous about this establishment being at that location.

Jane Morse, of Sagadahock Realty, and a member of the Economic Restructuring Committee of Main Street Bath. stated that people would like to have an establishment in the downtown that provides evening entertainment and would not be disruptive to the residents of the building and neighbors and that she would be in favor of such a place.

Skip Taylor, owner of Winter's Gone Alpaca Fashions, spoke against having another bar on Front Street. He stated that if this license passes the City would gain one tenant and lose another.

Will Neilson, owner of Solo Bistro, and member of the Economic Restructuring Committee of Main Street Bath, spoke of his concern of this business being disruptive to the economic viability of the other shops around the establishment due to behavioral problems. He urged the Council to decline the license.

Beau Willey spoke regarding Christopher Johnston's credentials.

Jack Pennell of 77 Lincoln Street, stated that he didn't think another food and liquor establishment owner in the downtown should be speaking against this license.

Christopher Johnston responded to some of the concerns. He stated that he runs his businesses with very strict policies and urged Council to look into any problems that have occurred at his other establishments with the local law enforcement agencies and see that he had taken care of the issues.

Chairman Wyman closed the public hearing.

Councilor Winglass made a motion to accept the license for the Front Street Public House pursuant to the implementation of a back door to be reviewed one year from now. Councilor Brackett seconded the motion.

City Solicitor Therriault advised Council that they have no authority under State law to condition a liquor license in a building that meets code and use requirements.

Councilor Winglass withdrew his motion.

Councilor Winglass made a motion to pass the license as it stands to be reviewed in one year. Councilor Brackett seconded the motion.

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

NAYS: None

Liquor License passed unanimous.

D. Consent Agenda 8:28 PM

***2) Minutes of Previous Meetings - November 7, 2012 and Items F3, F4, F5, F6 and F7. (motion to accept)**

Councilor Sinclair asked that Item F3 be removed from Consent Agenda and taken up in its appropriate place on the agenda.

Councilor Sinclair made a motion to accept the Consent Agenda as amended. Councilor Eosco seconded the motion. All were in favor.

E. Time Devoted to Residents to Address The City Council 8:30 PM

No one spoke at this time.

F. Resolutions, Orders and Ordinances 8:30 PM

3) Order - setting regular meetings of the City Council (motion to pass Order)

Chairman Wyman read the following Order;

ORDER

Be It Ordered by the City Council, as follows:

That, in accordance with Section 214 of Chapter 2 of the Charter of the City of Bath, the City Council will conduct its regular meetings in the Council Room, Third Floor at City Hall, on the first Wednesday of each month at 6:00 o'clock PM.

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

Councilor Sinclair explained that he had this item removed from the Consent Agenda because he felt that Council should think about whether they are doing a sufficient job of doing the City's business by only meeting once a month.

Chairman Wyman stated that when he first went on Council they did meet twice a month, but it stopped as the Council thought they only needed the one meeting to do what they needed to do.

Councilor Paulhus made a motion to amend the Order to add after "on the first Wednesday of each month at 6:00 o'clock PM" the wording "and a Special Meeting/Workshop on the third Wednesday of each month at 6:00 PM in Council Chambers, as needed." Councilor Mitchell seconded the motion.

VOTE ON ORDER:

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

NAYS: Eosco

Order passed. 7-1

***4) Order - adopting Robert's Rules of Order for parliamentary procedure (motion to pass Order)**

ORDER

Be It Ordered by the City Council, as follows:

That, the Rules of Parliamentary Practice comprised in Robert's Rules of Order, Newly Revised, shall govern the City Council in all cases to which they are applicable, and in which they are not inconsistent with the City Charter, and any Orders or Resolutions passed or adopted by the City Council to govern certain procedures or polices, or as may be amended by this Council.

This was passed on the Consent Agenda.

***5) Adoption Working Rules and Regulations for Council (motion to pass)**

A complete copy of this Order is on file with the agenda materials for the December 5, 2012 Council Meeting in the Bath City Clerk's Office.

This Order was passed on the Consent Agenda.

- *6) Order - Council approval on annual Blanket Letter of Approval on all renewals to operate Games of Chance and/or Beano Games (private clubs, etc.) (motion to grant approval)**

ORDER

Be It Ordered by the City Council of the City of Bath,

That, the City Clerk be authorized to send a “Blanket Letter of Approval” on all renewals to operate Games of Chance and/or Beano Games in accordance with the provisions of the State.

Bath Area Senior Citizens	Veteran’s of Foreign Wars (VFW) Auxiliary #7738
American Legion,	Lincoln Club of Bath, Inc.
Smith Tobey Post #21	Knights of Columbus
Bath Lodge of Elks	Lincoln Club of Bath, Inc.

This Order was passed on the Consent Agenda.

- *7) Order – Appointing Registrar of Voters for January 2013- December 2014 (motion to pass Order)**

**ORDER
APPOINTING REGISTRAR OF VOTERS**

WHEREAS, Title 21-A Section 101 requires the Municipal Officers shall appoint a qualified Registrar of Voters by January 1 of each odd numbered year.

NOW, THEREFORE, be it ordered by the City Council of the City of Bath that Mary Jane White be and hereby is appointed Registrar of Voters for the City of Bath with a term to expire December 31, 2014.

This Order was passed on the Consent Agenda.

- 8) Order - Approving Authorization BIW Tax Increment Financing District (FY 2013)**

Chairman Wyman read the following Order:

**ORDER
APPROVING AUTHORIZATION
BIW TAX INCREMENT FINANCING DISTRICT (FY 2013)**

Be It Hereby Ordered By the City Council of the City of Bath that nine hundred nineteen thousand and seven hundred sixty-five and 00/100 (\$919,765) be and hereby is authorized to be spent from the Tax Increment Financing District Development Program Fund Project Costs Accounts from the fiscal year commencing July 1, 2012 and terminating on June 30, 2013 for the following purposes:

TIF REVENUE	
INCREMENT	\$927,386
TRANSFER IN FROM RESERVE	
TOTAL REVENUE	<u>\$927,386</u>

EXPENSES

DEBT SERVICE	\$664,865
CONTRIBUTION TO BATH LOCAL DEVELOPMENT CORPORATION	\$133,900
CONTRIBUTION TO MAIN STREET BATH	\$28,000
ECONOMIC DEVELOPMENT PROJECTS ACCOUNT	\$55,000
TRAIN STATION FUNDING-TRANSFER	\$18,000
HISTORIC MARKER PROGRAM	<u>\$20,000</u>

TOTAL **\$919,765**

SURPLUS **\$7,621**

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

Councilor Sinclair made a motion to table the Order to the Regular Meeting in January and schedule a workshop on December 19th at 6:00 PM. Councilor Brackett seconded the motion.

After a brief discussion of the tabling motion, Councilor Sinclair withdrew his motion.

Councilor Eosco motion that Council pass the debt service, Main Street Bath and holiday lights portions of the TIF. Councilor Lockwood seconded the motion.

VOTE ON MOTION:

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

NAYS: Brackett

Motion passed. 7-1

Councilor Sinclair made a motion to table the rest of the BIW TIF Budget to the Regular meeting in January 2013. Councilor Lockwood seconded the motion.

Councilor Paulhus motioned to continue the meeting past 9:00PM. Councilor Mitchell seconded the motion. All were in favor of the motion.

Councilor Eosco made a motion to bring agenda Item 12 forward for discussion. Councilor Sinclair seconded the motion. All were in favor of the motion.

12) Dangerous Building (hearing) (8:55 PM)

Codes Enforcement Officer Scott Davis explained the State law and process by which a building is determined dangerous. Mr. Davis made reference to a packet that had been prepared with photos, engineer's report and other information regarding the building. *A copy of this information is on file with the agenda materials for the December 5th Council Meeting in the City Clerk's Office.* He gave a timeline of events and details that have brought this item to the agenda.

City Solicitor Roger Therriault advised Council of their responsibilities and the process for determining whether the structure is indeed a dangerous building.

Professional Engineer, Helen Watts gave a brief overview of her findings and her recommendations.

David Foster an area citizen asked what the bare minimum of repairs would be needed to make the house able to withstand the winter conditions.

Ms. Watts read the following repairs from her report:

- The back of the building needs to be re-supported such that the joists are 9” minimum about the soil in the crawl space.
- The rotted joist framing should be sistered as needed and attached to the floor sheathing.
- The broken 6X6 beam supporting the first floor joists should be repaired.
- The roof framing needs to be repaired, including sistering rafters as needed. And applying new roof sheathing where the sheathing is damaged. New roofing is needed.
- The ceiling over the stair should be sheathed.

Alan Orchard of 45 Windjammer Way, owner of the building, addressed some of the issues that had been stated. Mr. Orchard stated that they would be willing to leave the residence if they were financial able.

City Manager Giroux stated there had been a meeting scheduled for Friday, December 7th with the Orchards, City staff and any others that would like to help in this situation.

David Foster asked that Council postpone their vote on designating this building as dangerous until some alternatives had been looked into during the scheduled meeting on December 19th.

City Solicitor Therriault advised Council that they need to 1) determine the Orchard’s safety and what needs to be done regarding their safety given the evidence; and, 2) what to do with the building.

Councilor Winglass made a motion that the building had been determined unsafe due to the evidence presented. Councilor Mitchell seconded the motion.

VOTE ON MOTION:

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

NAYS: Sinclair

Motion passed. 7-1

Councilor Winglass made a motion to table the remaining discussion regarding this item to a December 19, 2012 Special Council Meeting to be held at 6:00 PM. Councilor Brackett seconded this motion.

VOTE ON MOTION:

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

NAYS: None

Motion passed unanimously. 8-0

9) Order – Extending Pine Tree Waste Inc. Contract (9:56 PM)

Chairman Wyman read the following Order:

ORDER EXTENDING PINE TREE WASTE, INC. CONTRACT

WHEREAS, the City of Bath, through its City Council, approved, by Ordinance, with second passage on May 7, 2008, a Contract with Pine Tree Waste, Inc. for curbside trash pickup, recycling pickup, and other specialty collections; and

WHEREAS, the Contract, so approved, is scheduled to expire on December 31, 2012; and

WHEREAS, the City Council approved an Addendum to the Contract regarding a change in the tipping fee provision, Section 4(E), said amendment having been approved by the City Council on June 3, 2009; and

WHEREAS, the City of Bath and Pine Tree Waste, Inc. are in agreement that the existing Contract and Addendum should be continued for a Six (6) month period, through June 30, 2013.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that an extension of the Pine Tree Waste, Inc. Contract, together with the above referenced Addendum, be and hereby is extended until June 30, 2013 or until such time as Council takes other affirmative action with regard to the Contract, whichever occurs first.

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

Director of the Landfill Lee Leiner stated that Pine Tree Waste Inc. is putting forth a proposal to go to a tote based system for the City.

City Manager Giroux stated that he will be looking into establishing a committee to look into this proposal to see if it is something that will work for the City.

VOTE ON ORDER:

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

NAYS: Winglass

Order passed. 7-1

10) Order - Approving Lease Mid Coast Medical Group

Chairman Wyman read the following Order:

ORDER APPROVING LEASE

WHEREAS, the City of Bath has had in place a Lease with the Mid Coast Medical Group, a Maine corporation affiliated with Mid Coast Health Services, Inc.; and

WHEREAS, the Mid Coast Medical Group wishes to renew the Lease on the current space occupied by them, being a portion of the property located in Bath, in the County of Sagadahoc, and State of Maine, formerly known as the Mid Coast Hospital of Bath and previously referred to as the Bath Memorial Hospital; and

WHEREAS, a one-year Lease, with the option of renewing for two additional one year terms, 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 Mid Coast Medical Group, a Maine corporation affiliated with Mid Coast Health Services, Inc., 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 Paulhus made a motion to put this item on the floor for discussion. Councilor Eosco seconded the motion.

VOTE ON ORDER:

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

NAYS: None

Order passed unanimously. 8-0

11) Ordinance - Smart Meter Moratorium (first passage)

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

**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 by the Public Utilities Commission, although they are items within the scope of enabling Legislation under Title 35-A M.R.S.A. Section 3143. Since the adoption of the Moratorium Ordinance currently in affect by action of the Bath City Council on July 9, 2012, the Maine Supreme Judicial Court has rendered its Opinion in the matter of Ed Friedman et al. v. Public Utilities Commission et al., 2012 ME 90. In its Decision, the Court indicated that there were concerns about the health and safety of smart-meter technology, particularly the health effects of radio frequency (RF) radiation emitted by the wireless smart meters and regarding the technology’s potential to violate individuals’ privacy rights. The Court found that matters addressing health and safety issues were not properly addressed by the

Public Utilities Commission and remanded the matter back to the Commission for further proceedings consistent with the Court opinion. The Public Utilities consideration of these matters remains pending and the safety and instillation of smart meters remains an outstanding issue. 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 remanded to the Commission by the Maine Supreme Court. Based on these circumstances, the City Council finds that the rationale for continuation of the Moratorium still persists.

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.

John Carroll, Manager of Public Affairs for Central Maine Power addressed Council offering three points for consideration: first point, the ordinance makes the opt-out the default, which costs customers money; the default meter should always be the no-cost option the second point, the ordinance doesn’t give Bath customers any rights or obligations beyond those already provided by the Public Utilities Commission or PUC, and the third point, the ordinance does nothing for Bath residents to change the outcome of any PUC proceeding in the future; any Commission action would apply to all customers equally.

A complete copy of Mr. Carroll’s remarks is on file with the agenda materials for the December 5, 2012 meeting.

ROLL CALL VOTE ON ORDINANCE:

YEAS: Brackett, Merrill, Sinclair

NAYS: Paulhus, Lockwood, Eosco, Mitchell Winglass

Ordinance failed. 3-5

G. Petitions & Communications 10:16 PM

Chairman Wyman read a resignation letter from Edmond Benedikt from the Forestry Committee. *A copy of this letter is on file with the agenda materials for the December 5, 2012 meeting.*

H. City Manager's Report 10:17 PM

There was no City Manager's Report

I. Committee Reports 10:18 PM

Councilor Paulhus reported that the Flag Committee would be meeting next week.

J. Unfinished Business 10:19 PM

There was no unfinished business.

K. New Business 10:19 PM

13) Nominations for the Election of Council Representative to attend the Bath Water District Board of Directors' meetings.

Councilor Eosco nominated Councilor Wyman to fill this position. All were in favor of the nomination.

The meeting adjourned at 10:20 PM with a motion by Councilor Winglass, seconded by Councilor Bracket. 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 a portion of the meeting is available for review in the City Clerk's office during regular business hours by appointment.