

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

Presentation of plaque to former Councilor James Omo for his dedicated service to the citizens of Bath.

C. Public Hearings: 6:03 PM

1) Ordinance: Chapter 10. Public Safety, Article 7. Fireworks, Section 10-701. Sale and Use of Consumer Fireworks. (second passage)

Councilor Eosco made a motion to waive the reading of the Ordinance. Councilor Pagurko seconded the motion. All were in favor of the 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 10. PUBLIC SAFETY

Add a new Article as follows:

Article 7. Fireworks

Section 10-701. Sale and Use of Consumer Fireworks.

(a) *Definitions.* The following definitions shall apply in this section:

(1) *Consumer fireworks* shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provisions, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards in accordance with 15 United State Code, Chapter 47. “Consumer fireworks” does not include the following products:

- a. Missile-type rockets, as defined by the State Fire Marshal by rule;
- b. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
- c. Sky rockets and bottle rockets. For purposes of this paragraph, “sky rockets and bottle rockets” means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability, that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

(2) *Person* shall mean any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization.

(3) *Display* means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects.

(b) *Prohibition.* The use, discharge, ignition, sale, or offer for sale, of consumer fireworks in the City of Bath is prohibited.*

(c) *Exception.* This section does not apply to a person issued a fireworks display permit by the City of Bath and/or the State of Maine pursuant to 8 M.R.S.A. § 227-A.

(d) *Penalties.*

(1) Any person who uses, discharges or ignites consumer fireworks in the City of Bath shall be punished by a penalty of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a penalty of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed.

(2) Any person who sells or offers for sale consumer fireworks in the City of Bath shall be punished by a penalty of not less than five hundred dollars (\$500.00) plus costs. For second and subsequent offenses, a penalty of not less than one thousand dollars (\$1,000.00) per violation plus costs shall be imposed.

(3) Any penalty assessed under this Ordinance shall inure to the benefit of the City of Bath. In addition to any penalty, the City shall also recover any costs of prosecution of a violation of this Ordinance, including its reasonable attorney's fees.

(e) *Seizure and disposal of fireworks.* The City may seize consumer fireworks that the City has probable cause to believe are used, offered for sale or sold in violation of this section. Upon conviction of the person from whom the fireworks were seized of violating this section with respect to those fireworks, the fireworks shall be forfeited to the City. Upon forfeiture, seized fireworks shall be forwarded to the State for disposal.

* Editor's note: State law prohibits the sale and possession of all fireworks, with the exception of consumer fireworks, see 8 M.R.S.A. § 223. By prohibiting the sale and use of consumer fireworks, the City is effectively prohibiting the use of all fireworks in the City of Bath.

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

Chairman Sinclair opened the hearing to the public. Seeing no comment he closed the public hearing.

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.

2) **Special Amusement License for The Beale Street Grill Inc. at 215 Water Street, Michael C. Quigg, President.**

NOTICE

THE MUNICIPAL OFFICERS OF THE CITY OF BATH WILL CONDUCT A PUBLIC HEARING FOR APPROVING:

A SPECIAL AMUSEMENT LICENSE FOR:
The Beale Street Grill Inc. 215 Water Street
Michael C. Quigg, President

SAID PUBLIC HEARING WILL BE HELD ON WEDNESDAY, JANUARY 4, 2012 AT 6:02 P.M. IN THE COUNCIL CHAMBERS, 3RD FLOOR, AT CITY HALL, BATH, MAINE, AND ALL PERSON(S) MAY APPEAR TO SHOW CAUSE WHY SAID APPLICATION SHOULD OR SHOULD NOT BE APPROVED.

Chairman Sinclair opened the Public Hearing. Seeing no comment he closed the hearing.

Councilor Brackett made a motion to table this item until the owner can attend a meeting and speak regarding any questions. Councilor Pagurko seconded the motion.

VOTE on tabling:

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

NAYS: None

Passed unanimously. 8-0

D. Consent Agenda 6:05 PM

*3) Minutes of the previous meetings of December 7 and 19, 2011 Council Meetings and Items K7 and K8. (Motion to Accept as Presented)

Councilor Paulhus made a motion to amend the minutes to the Organizational Meeting held on December 7th in Section II, Ward Two Councilor to read “3 years completed and commencing the third year of a 3-year term. Councilor Rogers seconded the motion.

VOTE on amendment:

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

NAYS: None

Passed unanimously. 8-0

The Consent Agenda passed unanimously.

E. Time Devoted to Residents to Address The City Council 6:15 PM

There was no one that addressed Council at this time.

F. Ordinances, Resolutions and Orders 6:15 PM

4) Ordinance: LUC Add Article 17 – Wireless Communications Facilities (first passage)

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

A complete copy of this Ordinance is on file with the January 4, 2012 Council Meeting Agenda materials 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.

City Planner Andrew Deci stated the purpose of the Ordinance is to regulate the location of wireless communication facilities. He explained that the Land Use Code does not regulate the location of cell towers or what the submission requirements or criteria are. Mr. Deci said in the past applications had been reviewed using the standard site plan criteria. Because they are wireless communication devices they can have adverse effects on the community and could conflict public safety frequencies. This amendment to the Land Use Code would provide a set of regulations that identify what an applicant needs to submit, criteria for approval and review and exactly where wireless towers can be placed within the City.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Sinclair set second passage for February 1, 2012 at 6:01 PM.

5) Order: Rescind Order Rescinding Creation of Non-Profit for Armory Operations

Sinclair read the order:

**ORDER RESCINDING
CREATION OF NON-PROFIT FOR ARMORY OPERATIONS**

WHEREAS, the City Council of the City of Bath on December 7, 2011 considered and approved an Order directing the Bath Development Corporation to create a non-profit named the Bath Armory, Inc.; and

WHEREAS, that non-profit would be run by a Board of Directors consisting of five (5) persons individually elected by a majority vote of the City Council; and

WHEREAS, said non-profit would be set up similarly to the Old Bath Customs House, Inc. using their current By-Laws as a guideline for operations of the Armory; and

WHEREAS, the Councilors have been afforded additional time to research the idea of creating the non-profit; and

WHEREAS, certain points were not brought up or made available to the Councilors at the meeting on December 7, 2011 in order to provide them with all the information available in order for them to make an informed decision on whether the creation of such a non-profit corporation to handle the operations of the Armory is in the best interests of the Inhabitants of the City of Bath in both the long and short term.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the previous Order of December 7, 2011 approving the creation of a non-profit corporation for Armory operations be and hereby is rescinded.

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

Councilor Eosco explained she had brought this item forward as she felt that not enough information had been presented when this was passed at the last meeting and that more discussion was needed before an informed decision could be made on this matter.

Richard Recknagel of 943 Middle Street expressed concerns regarding the storage of Box 19 in the Armory Building such as the means of generating revenue to be put towards utilities and maintenance, how much space would be required, whether the space for the skateboarding and biking would be reduced from what the Skatepark had in their former location, and if user fees would be reduced from those activities. He questioned what the use of the building would be for Box 19 in terms of storage, mechanical work, bodywork, and painting and also what building code requirements are associated with those uses. He also inquired as to how they would be funded and insured. Mr. Recknagel suggested that the best course of action would be to rescind the order to form a new board and to workshop to clarify what would go where with those two tenants. He recommended that the thing to do might be to form a board representing all the stakeholders to hammer out the details.

Councilor Merrill made a motion to table this Order to the next meeting on February 1, 2012. Councilor Brackett seconded the motion.

VOTE on tabling:

YEAS: 8

NAYS: 0

Motion passed unanimously.

6) Review Armory Building Board of Directors By-Laws

Councilor Rogers made a motion to table this item to workshop to be held on Thursday, January 19, 2012 at 6:00 PM. Councilor Eosco seconded the motion.

VOTE on Tabling Motion:

YEAS: 8

NAYS: 0

Motion passed unanimously. 8-0

G. Petitions & Communications 6:20 PM

There were no petitions or communications.

H. City Manager's Report 6:20 PM

The following topics were discussed:

- Workshops regarding: Bath Landfill/ Pine Hill Drive and Willow Street flooding issues

I. Committee Reports 6:22 PM

Councilor Rogers stated that the mission statement for the Armory Board had been completed and asked that the City Clerk forward the statement on to the rest of Council. He asked to have Rob Kerr included in the February 19th workshop regarding the Armory Building Board by laws. The Council unanimously agreed to have Mr. Kerr participate in the Workshop.

J. Unfinished Business 6:25 PM

There was no unfinished business.

K. New Business 6:25 PM

***7) Annual Appointment of J. Scott Davis as Codes Enforcement Officer, Health Officer and Plumbing Inspector for one year, pursuant to State Statutes.**

Passed under the Consent Agenda.

***8) Annual Appointment of Tom Lister as the Alternate Codes Enforcement Officer and Plumbing Inspector for one year, pursuant to State Statutes.**

Passed under the Consent Agenda.

9) Annual Appointments to Committees by Council Nominees:

- Bath Housing Authority Board of Directors – Andrew Winglass
- Midcoast Council of Governments - David Sinclair, Sean Paulhus, Kyle Rogers
- Patten Free Library Board of Directors – Steve Brackett
- Recreation Commission – Meadow Rue Merrill
- Sidewalk Vending License Committee – Ruthe Pagurko
- Student Community Liaison Council – David Sinclair
- Welfare Review Board – Bernard Wyman, Andrew Winglass, Steve Brackett

Chairman Sinclair read the list.

The meeting adjourned at 6:27 PM with a motion by Councilor Pagurko, seconded by Councilor Rogers. 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.