

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE**

Wednesday, December 7, 2011 7:30 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.

Councilor Rogers made a motion to add an agenda item prior to Item 19 to discuss the management of the Armory Building prior to making any decisions on the use of the Armory Building. This item will be further known as Item 18.5.

Vote on motion:

Yeas: Brackett, Merrill, Rogers, Pagurko, Sinclair

Nays: Paulhus, Wyman, Eosco, Winglass

Motion passed. 5-4

Councilor Eosco made a motion to take items 18.5 and 19 out of order and putting them after Item C5 to let the teens that had come to speak regarding the Skatepark be able to get home at a reasonable time.

Vote on motion:

Yeas: 8

Nays: 0

Motion passed unanimously. 8-0

C. Public Hearings: 7:43 PM

1. Bond Ordinance – Authorizing issuance of general obligation refunding bonds for the City of Bath in an amount up to, but not to exceed \$4,315,000 for the purpose of refunding outstanding debt of the City. (second passage)

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

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS FOR THE CITY OF BATH, MAINE, IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$4,315,000 FOR THE PURPOSE OF REFUNDING OUTSTANDING DEBT OF THE CITY.

RECITALS

WHEREAS, on or about February 1, 2001, the City of Bath issued its 2001 General Obligation Bonds in the stated principal amount of \$6,620,000 to finance the costs of the Bath Middle School, certain ADA improvements, a new garage facility and a contribution to the Bath Area Family YMCA (the “2001 Bonds”); and

WHEREAS, in 2009 and 2010, the City of Bath issued entered into a variety of borrowings and issued promissory notes therefore (the “Prior Notes”) to finance the costs of certain improvements including the purchase of the Bath Armory, renovations to the Customs House, purchase of a landfill compactor, a rolloff truck, a progator tractor, and a fire truck pumper (the “Prior Notes” and together with the 2001 Bonds, the “Prior Obligations”); and

WHEREAS, due to a drop in interest rates since the Prior Obligations were issued, the City desires to refund and refinance the outstanding principal the Prior Obligations through issuance of its general obligation refunding bonds;

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, \$4,315,000, plus the sale premium of the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of refunding the Prior Obligations and of paying interest and redemption premium thereon and the costs of issuance therefore.
- 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, in the stated principal amount of up to, but not to exceed, \$4,315,000 under and pursuant to the City Charter and 30-A MRSA §5772.
- Section 3. That any and all bonds/notes 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 twelve (12) 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 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 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 some or all of the bonds/notes 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 proceeds of any bonds/notes issued pursuant to this Ordinance shall be used only for those purposes specified in Section 1 above and any proceeds not used for such purposes shall be applied to repayment of the principal and/or interest of such bonds/notes.

Section 10. That the bonds/notes 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 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 refunding of the Prior Obligations and the issuance and delivery by the City of the bonds/notes.

Section 12. That if the City Treasurer, Chairman of the City Council, the City Manager, or Clerk are for any reason unavailable to approve and execute the bonds/notes or any related financing documents, as authorized by this Ordinance, the person or persons then acting in 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 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 Paulhus made a motion to put this Ordinance on the floor for discussion. Councilor Pagurko seconded the motion.

Finance Director Juli Millett explained this is coming back because of a mistake in the publishing of the Bond Ordinance in the newspaper according to the Charter.

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. Bond Ordinance – Authorizing issuance of general obligation bonds for the City of Bath in an amount up to, but not to exceed \$450,000 for the purpose of funding demolition of the old YMCA building. (second passage)

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

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE CITY OF BATH, MAINE, IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$450,000 FOR THE PURPOSE OF FUNDING DEMOLITION OF THE OLD YMCA BUILDING

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, \$450,000, plus the sale premium of the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of funding the demolition and removal of the old YMCA building and of paying the costs of issuance therefore.
- 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, \$450,000 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 eleven (11) 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 proceeds of any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance shall be used only for those purposes specified in Section 1 above and any proceeds not used for such purposes shall be applied to repayment of the principal and/or interest of such bonds.
- Section 10. 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 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, the City Manager, or Clerk are for any reason unavailable to approve and execute the bonds/notes or any related financing documents, as authorized by this Ordinance, the person or persons then acting in 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 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.

City Manager William Giroux explained the amount that is not used can't be used to pay back the Old YMCA Demolition Bond principal but might be used to pay back another principal.

Councilor Rogers 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.

3. Ordinance: LUC Amendment Article 8, Section 8.22 D. Contract Rezoning - Plant Home Zone (second passage)

Chairman Sinclair read the following Ordinance:

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS:

Amend Article 8, Section 8.22, by adding the following:

D. Contract Rezoning

Contract rezoning is allowed in the PH District (see Section 8.20).

And amend Article 8, Section 8.20, B, by adding the following:

8. Plant Home Zone.

(Note: Additions are underlined.)

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

City Planner Andrew Deci explained the Council was considering a text amendment to the Land Use Code to allow the tool of contract rezoning within the Plant Home Zoning District and not approving a contract rezoning or a site plan.

Chairman Sinclair opened the hearing to the public.

Janice Burow of 1 Washington Street spoke in favor of the ordinance amendment to the Plant Home Zoning District.

Henry Hall of 18 Riverview Road spoke regarding space and bulk standards for this zone and asked who had done the application for these text amendments. Mr. Hall entered a photo into record, which depicted the impact of the proposed project to the critical natural areas and view-sheds.

City Manager William Giroux explained that the City made the application for these amendments.

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.

4) Ordinance: Chapter 8A. General Assistance Maximums for October 1, 2011 to September 30, 2012 (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 8A. GENERAL ASSISTANCE

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, Appendix B – Food Maximums, Appendix C – Housing Maximums. Maximums shall be effective as of October 1, 2011.

A complete copy of the Appendices are filed in the agenda materials for the December 7, 2011 meeting in the City Clerk's Office.

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

City Manager Giroux explained this is an annual item and the State sets the maximums.

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

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Sinclair stated this Ordinance would be retroactive to October 1, 2011.

5) Bond Ordinance: Authorizing issuance of general obligation bonds for the City of Bath, Maine in an amount up to, but not to exceed, \$308,000 for the purpose of funding renovations to the Armory Building. (second passage)

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

Vote on waiving motion:

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

NAYS: Paulhus, Rogers

Motion passed. 6-2

BOND ORDINANCE

AUTHORIZING ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE CITY OF BATH, MAINE, IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$308,000 FOR THE PURPOSE OF FUNDING RENOVATIONS TO THE ARMORY BUILDING

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, \$308,000, plus the sale premium of the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of funding renovations to the Armory building and of paying the costs of issuance therefore.

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, \$308,000 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 eleven (11) 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 proceeds of any bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance shall be used only for those purposes specified in Section 1 above and any proceeds not used for such purposes shall be applied to repayment of the principal and/or interest of such bonds.

Section 10. 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 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, the City Manager, or Clerk are for any reason unavailable to approve and execute the bonds/notes or any related financing documents, as authorized by this Ordinance, the person or persons then acting in 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 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.

Recreation Director Steve Balboni asked Council to go forward with this Ordinance.

Chairman Sinclair opened the hearing to the public.

The following people spoke in favor of moving the Skatepark/Meeting House to the Armory Building: Scott Gassner of 22 Central Avenue, Steven Recknagel of 943 Middle Street, Evan Miller of 5 East Milan Street, Zachary Pilgrim of 4 Matty Way, Kathleen London of West Bath, Justin Johnson of 14 Denny Road, Ms. Rodriguez of 2 Tarbox Street, Lillian Foster of 34 Robinson Street, Jessica Homan of 32 B Seafarer Lane, Rowan Horton of West Milan Street, Keegan Denery of 144 North Street, Evelyn Underwood of 79 Pine Street, Crisandra McCulloch of 70 High Street, Joseph Streb of 6 Dike Road, Wayne McMann of 47 Middle Street, Heather Hook of West Bath, Caitlin Bennett of 981 Middle Street, Cory Isles of Topsham, Louis "Roo" Dunn of 57 Green Street, Brett Bowman of 32 Chestnut Street, Amos Wright of 1485 Washington Street, Mary McCauley of 84 Academy Street and Andy McKeller, who lives in the area.

The following reasons were cited by the speakers to support the move of the Skatepark/Meeting House to the Armory Building: a safe place for children to go and talk to adults and other children about personal issues, a place where children can skate, ride bikes, watch movies, play pool and games and socialize under responsible supervision, the staff and children are considered a second family/home, and it brings happiness to the children and helps keep children from causing problems within the City.

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

Rabyrne Hutton of 195 High Street asked if the Bond is just to bring the Armory up to code or does it include renovations for the Skatepark.

Recreation Director Steve Balboni stated that the Bond is to bring the building up to code only.

Claire Berkowitz of 18 Seekins Drive, Chair of the Skatepark/Youth Meetinghouse Board, stated that an unofficial group got 152 signatures of area adults stating they support the relocating of the Skatepark/Meetinghouse to the Armory Building.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed. 8-0

Chairman Sinclair stated this would become law in 21 days.

F 18.5 Councilor Rogers made a motion to adopt an Order that would have the City Council direct the Bath Development Corporation to create a non-profit named Bath Armory Inc. The non-profit shall be run by a Board of Directors consisting of five (5) persons individually elected by a majority vote of the City Council and the organization should be set up similarly to the Old Bath Customs House Inc. using their current by-laws as a guideline for operations of the Armory. Councilor Brackett seconded the motion.

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

City Solicitor Roger Therriault explained how this process would take place. Mr. Therriault stated that the Old Customs House Board came about because the City didn't want to have to act as landlords.

Vote on suspending rules with respect to allowing further staff comment on the question of establishing a Board of Directors for the Armory Building:

YEAS: 5

NAYS: 4

Recreation Director Steve Balboni spoke stating that the Recreation Department is willing to take on the care of the building and had worked an agreement with Box 19 for use of the building. Mr. Balboni stated that they were already a "501" and already have the ability to get grants. He explained that the Skatepark couldn't afford to pay the rent.

Councilor Eosco made a motion to table the vote on the Order motion from Councilor Rogers. Councilor Paulhus seconded the motion.

Vote on tabling:

YEAS: 4

NAYS: 5

Tabling motion failed.

YEAS: Brackett, Merrill, Rogers, Pagurko, Sinclair

NAYS: Paulhus, Wyman, Eosco, Winglass

Order motion passed. 5-4

Item F19 was taken up at this time

D. Consent Agenda 9:52 PM

***6) Minutes of Previous Meetings - November 2 and 9, 2011 and Items F7, F8, F9 and F10. (motion to accept)**

Councilor Pagurko made a motion to accept as presented. Councilor Winglass seconded the motion. All were in favor.

A three -minute break took place at this time.

E. Time Devoted to Residents to Address The City Council 9:55PM

Rabyrne Hutton of 195 High Street had a complaint regarding an elevated manhole and potholes in the driveway and back lot of the Fire Department.

Fire Chief Steve Hinds stated the Public Works Department has looked into this situation but isn't sure when they plan to address the issue.

F. Resolutions, Orders and Ordinances 10:00 PM

***7) Order - setting regular meetings of the City Council (motion to pass 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.

This Order was passed on the Consent Agenda.

***8) 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 Order was passed on the Consent Agenda.

***9) Adoption of Working Rules and Regulations for Council year 2010-2011 (motion to pass)**

A complete copy of these Rules are on file with the agenda materials for December 1, 2010 in the Bath City Clerk's Office.

This Item was passed on the Consent Agenda.

***10) 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.

This Order was passed on the Consent Agenda.

11) Great American Main Street Letter

Councilor Eosco explained the reason for this letter being brought forward.
Councilor Eosco read the following letter:

Dear Great American Main Street Awards Jury,

The Bath City Council fully supports Main Street Bath in their application for Bath to be recognized as a Great American Main Street. Storefronts have been continually occupied and flowers and lights decorate the downtown welcoming people in for the countless events throughout the year. While we had a hard working business association prior to Main Street Bath, it had been years since city officials, business owners and citizens had been brought together to work as a team of the benefit of the city and the downtown.

The Bath City Council thanks Main Street Bath for all it has done for the city and wishes them luck in the GAMSA process.

The Council was unanimous in endorsing this letter.

12) Acceptance of Drug Forfeiture

Chief Mike Field explained that the reasons this item was on the agenda.

VOTE:

YEAS: 8

NAYS: 0

Passed 8-0

13) Appointment of the firm of Therriault & Therriault as City Solicitor:

Chairman Sinclair read the following:

APPOINTMENT

PURSUANT TO THE PROVISIONS OF SECTION 403 OF THE CHARTER OF THE CITY OF BATH, THE FIRM OF THERRIAULT & THERRIAULT BE AND HEREBY IS APPOINTED AS CITY SOLICITOR JOINTLY BY THE CITY COUNCIL AND THE CITY MANAGER.

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

Councilor Rogers made a motion to amend the appointment by adding the wording “for a period of one year” to follow the word “appointed”. There was no second to this motion.

After a brief discussion of what is meant by not having the wording “for a period of one year” in the Appointment, Councilor Merrill made a motion to amend to add “for a term of one year”. Councilor Rogers seconded the motion.

VOTE on amendment:

YEAS: Brackett, Merrill, Rogers, Pagurko

NAYS: Paulhus, Wyman, Eosco, Winglass, Sinclair

Amendment failed.

VOTE:

YEAS: 8

NAYS: 0

Appointment Passed Unanimous.

14) Resolution: CDBG Brownfield Loan

Chairman Sinclair read the following Resolution:

**CITY of BATH
BROWNFIELD CLEANUP REVOLVING LOAN FUND
COUNCIL RESOLUTION**

WHEREAS, the City of Bath is the recipient of U.S EPA Brownfield’s American Recovery and Reinvestment Act (ARRA) Brownfield’s Cleanup Revolving Loan Fund (BCRLF) and authorized to make certain subgrants from these funds (Loan Funds); and

WHEREAS, these funds are to be used to undertake cleanup of Brownfield’s sites by making both loans and certain subgrants to nonprofits parties willing to undertake cleanup of these sites; and

WHEREAS, the Bath Development Corporation is the owner of title on real property located in Bath, Maine at 26 Summer Street, Bath, Maine. This property consists of Map 26 and lot 218 and will requires remediation, which must be done prior to the removal of the property.

NOW THEREFOR BE IT RESOLVE BY THE CITY COUNCIL THAT, William D. Giroux, City Manager, is authorized to carry out the duties and responsibilities to execute the subgrant and related documents, consistent with the City Charter of the City of Bath and the laws and the regulations governing the Brownfield’s Cleanup Revolving Loan Fund Program.

Signed this 7th day of December, 2011 on behalf of the City Council of the City of Bath.

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

Community Development Director Al Smith stated this is to be used for catch up on asbestos materials removal.

VOTE on Resolution:
YEAS: 8
NAYS: 0
Resolution passed. 8 to 0

15) Resolution: Approving County Emergency Mitigation Plan

Chairman Sinclair read the following Resolution:

RESOLUTION
Sagadahoc County Hazard Mitigation Plan
2011 Final Revision

Whereas, the cities and towns of Sagadahoc County, in the State of Maine, recognize that natural hazards create a risk of harm to persons and damage to property; and

Whereas, the cities and towns of Sagadahoc County recognize that implementing certain measures may reduce the risk of harm to persons and damage to property resulting from these natural hazards; and

Whereas, this multi-jurisdictional county of one city, nine towns and a portion of Maine's Unorganized Territory (Perkins Township) is committed to the mitigation goals and measures as presented in this plan;

Therefore the Bath City Council and the Select Boards of the nine incorporated Towns hereby adopt the 2011 Sagadahoc County Multi-Jurisdictional Hazard Mitigation Plan; and

Therefore, Sagadahoc County, acting on behalf of the County and the portion of the Unorganized Territory within its boundaries, hereby adopts the 2011 Sagadahoc County Multi-Jurisdictional Hazard Mitigation Plan.

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

Fire Chief Steve Hinds explained it's a five-year Plan and adoption will continue the Plan for another five years. The Plan was put together through multiple meetings between the communities and the County. This Plan will allow for grants and continue with the Federal by-laws.

VOTE:
YEAS: 8
NAYS: 0
Resolution passed unanimously. 8 to 0

16) Order: Contract for Demolition of Old YMCA

Chairman Sinclair 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 MCGEE CONSTRUCTION FOR THE DEMOLITION WORK TO BE DONE AT THE OLD YMCA BUILDING IN THE AMOUNT OF \$217,777.00 IS ACCEPTED, IT BEING THE LOWEST QUALIFIED BID SUBMITTED, AND A CONTRACT BY AND BETWEEN THE CITY OF BATH AND MCGEE CONSTRUCTION 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 IS BEING FUNDED THROUGH A BOND ISSUE APPROVED BY COUNCIL ON DECEMBER 7, 2011.

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

VOTE:

YEAS: 8

NAYS: 0

Order passed unanimously. 8 to 0

17) Order: Approving Bid for Trolley

Chairman Sinclair read the following Order:

ORDER APPROVING PURCHASE OF TROLLEY

IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE BID OF CABLE CAR CONCEPTS TO PURCHASE A TROLLEY IN THE AMOUNT OF \$127,481.00 (CONTRACT PRICE PLUS ALTERNATE 1) BE AND HEREBY IS ACCEPTED, IT BEING THE LOWEST QUALIFIED BID SUBMITTED, AND A CONTRACT BY AND BETWEEN THE CITY OF BATH AND CABLE CAR CONCEPTS 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 IS BEING FUNDED THROUGH THE CITY'S CAPITOL BUDGET, ACCOUNT DESIGNATED AS TROLLEY-804.

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

City Manager William Giroux explained the process.

VOTE on Order:

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

NAYS: Rogers

Order passed. 7 to 1

18) Order: Approving Lease for 2 Town Landing Property

Chairman Sinclair read the following Order:

ORDER APPROVING LEASE

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT A LEASE BY AND BETWEEN THE CITY OF BATH AND HODGDON DEFENSE COMPOSITES, LLC, FOR SPACE AT 2 TOWN LANDING, ESSENTIALLY IN THE FORM ATTACHED HERETO, BE AND HEREBY IS APPROVED, AND THE MANAGER IS AUTHORIZED TO EXECUTE THE LEASE AND ANY OTHER DOCUMENTS NECESSARY TO ITS IMPLEMENTATION ON BEHALF OF THE CITY OF BATH.

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

City Manager William Giroux stated that the City is very excited about the possible jobs that could come to Bath through this employer.

VOTE:

YEAS: 8

NAYS: 0

Order passed unanimously. 8 to 0

The following item F19 was taken up earlier in the meeting.

19) Order: Authorize the use of the Armory Building by the Recreation Department for the purpose of housing a Skatepark and Youth Meeting House and any other community related purposes.

Chairman Sinclair read the following Order:

ORDER

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

THAT THE USE OF THE OLD ARMORY BUILDING BY THE RECREATION DEPARTMENT FOR THE PURPOSE OF HOUSING A SKATEPARK AND YOUTH MEETING HOUSE, AND ANY OTHER COMMUNITY RELATED PURPOSES, IS HEREBY AUTHORIZED, SUBJECT TO AUTHORIZATION AND APPROVAL VIA CORPORATE RESOLUTION OF THE BATH DEVELOPMENT CORPORATION.

THE CITY MANAGER SHALL BE AUTHORIZED TO EXECUTE ANY AND ALL DOCUMENTS ON BEHALF OF THE CITY OF BATH TO EFFECTUATE THIS PURPOSE.

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

Councilor Rogers made a motion to strike this item from the Agenda based on the approval of F18.5. Councilor Brackett seconded the motion.

Vote on striking the item from the agenda:

YEAS: Brackett, Rogers, Pagurko

NAYS: Merrill, Paulhus, Wyman, Eosco, Winglass

Motion failed. 3-5

VOTE on Order:

YEAS: 8

NAYS: 0

Order passed unanimous. 8 to 0

20) Ordinance: Chapter 10. Public Safety, Article 7. Fireworks (first 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 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 Pagurko made a motion to put this Ordinance on the floor for discussion. Councilor Paulhus seconded the motion.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Sinclair stated second passage of this Ordinance would be on January 4, 2012 at 6:01 PM.

21) Ordinance: Smart Meter Moratorium

Chairman Sinclair read the following Ordinance:

**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, without the prior approval of the owner/resident, 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 and finally 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 and finally 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, without the prior approval of the owner/resident.

4. Applicability

This Ordinance applies in order to prohibit the installation of any “smart meter” within the City of Bath, prior to receiving express authority from the property owner/resident.

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 without the prior approval of the owner/resident of the property.

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 that are not approved prior to installation by the owner/resident. 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 Pagurko made a motion to put this Ordinance on the floor for discussion. Councilor Merrill seconded the motion.

Louise Sharp 65 Denny Road spoke in favor of renewal of the Moratorium Ordinance.

John Sunderland of 1062 Washington Street spoke against the Ordinance citing a question of authority or jurisdiction which could result in a court case that is indefensible and that there was no single peer review study done that will support any of the threats or positions that are articulated by the people that don't want Smart Meters.

James Omo of 130 Middle Street spoke against the Ordinance explaining that if there is a lawsuit by CMP, it would waste taxpayers' dollars.

John Carroll of Central Maine Power spoke against the Ordinance stating the Commission has met the issues the City has had with these meters.

Rabyrne Hutton of 195 High Street spoke against the Ordinance.

ROLL CALL VOTE:

YEAS: Brackett, Merrill, Rogers, Pagurko, Sinclair

NAYS: Paulhus, Wyman, Eosco, Winglass

Ordinance passed. 5-4

Chairman Sinclair set the second passage of the Ordinance for December 19, 2011 at 6:01 pm.

G. Petitions & Communications 11:07 PM

There were no petitions or communications.

H. City Manager's Report 11:07 PM

There was no City Manager's Report

I. Committee Reports 11:07 PM

There were no committee reports.

J. Unfinished Business 11:07 PM

There was no unfinished business.

K. New Business 11:07 PM

22) Appointment 1 member to the Bath Water District Board of Directors term expiration November 2013 (to fill unexpired term).

Councilor Paulhus nominated Councilor Wyman for the position of Council Representative to the Bath Water District Board of Directors. All were in favor of the nomination.

23) Appointment 1 member to the Bath Recreation Commission term expiration November 2014.

Councilor Pagurko nominated Jessica Avery for the position on the Bath Recreation Commission. All were in favor of the nomination.

24) Appointment 1 member to the Bath Zoning Board of Appeals term to expire September 2014.

Councilor Pagurko nominated Joseph Marcehetti Jr. for the position on the Bath Zoning Board of Appeals. All were in favor of the nomination.

25) Appointment 1 member to the Bath Bike and Pedestrian Committee term to expire May 2013.

Councilor Pagurko nominated Rebecca Farnham for the position on the Bath Bike and Pedestrian Committee. All were in favor of the nomination.

The meeting adjourned at 11:10 PM with a motion by Councilor Wyman, 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.