

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

Wednesday, February 9, 2011 6:00 PM  
City Council Chambers, Bath City Hall

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

Also in attendance were City Manager Bill Giroux, City Solicitor Roger Therriault and Deputy City Clerk Pam Gray.

Chairman Wyman led the Pledge of Allegiance and Deputy Clerk Gray called the Roll.

**C. Consent Agenda 6:03 PM**

Councilor Pagurko made a motion to accept the Consent Agenda as presented, which was seconded by Councilor Omo.

**Yeas: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass**

**Nays: 0**

**Motion Passed Unanimously: 8-0**

**D. Ordinances, Resolutions and Orders 6:05 PM**

**2) Bond Ordinance: Authorizing issuance of general obligation bonds for the City of Bath, Maine, in an amount up to, but not to exceed, \$2,000,000 for the purpose of funding sewer improvements and upgrades (first passage)**

Chairman Wyman read the following ordinance:

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, \$2,000,000.00, plus the sale premium of the bonds/notes authorized in Section 2 below, is hereby appropriated for the purpose of funding sewer improvements and upgrades and of paying the costs of issuance therefore (the "Project").

Section 2. That, for the purpose of funding the aforesaid appropriation, the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized, in the name of and on behalf of the City, to issue the City's bonds/notes or notes in anticipation thereof, in the stated principal amount of up to, but not to exceed \$2,000,000 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 twenty (20) years.

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

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

Section 8. That the bonds/notes issued pursuant to this Ordinance may be issued to the Maine Municipal Bond Bank (the "Bond Bank") through its Clean Water Revolving Loan Fund Program (CWSRF) and that the City enter into a loan agreement with the Bond Bank in conjunction with the issuance of such bonds/notes, in the aggregate principal amount not to exceed \$2,000,000, to be executed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager, in the name of and on behalf of the City, with a term not to exceed the term of the bonds/notes, said loan agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with either the State Revolving Loan Fund, which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the City may approve, such approval to be conclusively evidenced by the execution thereof.

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

Section 13. That if the City Treasurer, Chairman of the City Council, City Manager or Clerk are for any reason unavailable to approve and execute the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance, the Loan Agreement or any related financing documents, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.

Section 14. That if the bonds/notes or notes in anticipation thereof issued pursuant to this Ordinance are issued through the CWSRF Program, the following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and the Bond Bank (the "SRF Regulations"), and governing any loan to be made to the City under the State Revolving Loan Fund Program be and hereby are adopted:

- (1) that a Project Account shall be created for the Projects which shall be separate from all other accounts of the City. If operating revenues are to be used to retire the debt, a sub-account will be established.
- (2) that the Project Account shall be maintained in accordance with standards set forth by the Bond Bank and in accordance with generally accepted government account standards.
- (3) that a final accounting shall be made to the Bond Bank of the total cost of the project upon completion of the Project performance certification as set out in Section G(3) of the SRF Regulations and the City acknowledges that the Bond Bank reserves the right as its sole discretion to be provided with a cost certification of the Project as built.
- (4) that an annual audit of the City, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan.
- (5) that the City shall maintain insurance coverage on the Project in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee.

- (6) that the City will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged.
- (7) that the City certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment.
- (8) that the City establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient.
- (9) that the City must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project.
- (10) that the City abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine.

Councilor Pagurko made a motion to place this item on the floor for consideration and discussion, which was seconded by Councilor Omo and was passed unanimously.

Mr. Giroux explained that these were projects that the Council had prioritized seven or eight months ago in a workshop. Most of these had helped to relieve the Harward Street project and were compelled to be fixed by the EPA or the DEP.

Public Works Director Peter Owen referenced the Park St. area and explained that there are problems when there are sewer overflows, etc. In February of last year, seven projects were presented that would help alleviate the situation. To refresh the Council's memory, Mr. Owen enumerated these projects and indicated which ones would give the most bang for the buck. The BIW TIF and the sewer fund are the funding that would retire the debt service on these loans.

Finance Director Juli Millett gave an update on the sewer fund. She stated that they are on target and are at about 50% of the revenue. She said that they are looking at SRF for the lowest rate.

Councilor Omo asked for an update on the timeline for putting these out to bid. Mr. Owen stated that they started design on the Harward force main last summer and hoped to go out to bid in the spring, with the Harward St. interceptor at the same time. He explained that there is a three year time period with two projects a year, with possibly three in 2012.

Chairman Wyman opened the hearing to the public for comment.

Aaron Park stressed the importance of moving ahead with this project and expressed appreciation for all that has been done.

Hearing no more public comment, Chairman Wyman closed the public hearing.

**ROLL CALL VOTE:**

**Yeas: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass**

**Nays: None**

**Ordinance Passed: 8-0**

Second passage will be on 3/2/2011 at 6:01 p.m.

3) **Order Authorizing City Treasurer to Designate Previously Authorized Bonds as “Bank Qualified) 6:25 p.m.**

Councilor Omo made a motion to waive the reading of the order, which was seconded by Councilor Pagurko and was passed unanimously.

WHEREAS, the Bath City Council previously authorized issuance of the City’s general obligation bonds in the principal not to exceed \$1,285,000, for various purposes, including a Ladder Fire Truck, pursuant to an ordinance duly adopted by the City Council at a meeting thereof duly called and held on July 7, 2010 and

WHEREAS, the anticipated debt service on the borrowing authorized by the Bond Ordinance will be reduced if such bonds are designated under Section 265(b) of the Internal Revenue Code of 1986, as amended (the “Code”);

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, 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 the Bond Ordinance (to the extent such designation is available) as qualified tax-exempt obligations for purposes of Section 265(b) of the Code, and any prior such action taken by the City Treasurer be and hereby is ratified and approved.

Councilor Omo made a motion to place the item on the floor for consideration and discussion, which was seconded by Councilor Pagurko and was passed unanimously.

Mr. Giroux explained that this was just a routine housekeeping item cleaning up the language for the bond counsel.

**VOTE:**

**Yeas: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass**

**Nays: None**

**Order Passed: 8-0**

**F. Petitions and Communications**

There were no petitions or communications.

**G. City Manager's Report**

There was no City Manager's report.

**H. Committee Reports 6:30 p.m.**

Councilor Sean Paulhus wished the Council and the public a Happy Governor William King Day. He said that District 19 Senator Seth Goodall and House District 62 Representative Mike Clarke were here this evening to present a proclamation from the Governor. Senator Goodall thanked Councilor Paulhus for being a champion of this effort and then read the following proclamation:

WHEREAS, William King was born in Scarborough, then in Massachusetts, February 9, 1768; and

WHEREAS, William King was a hard worker who performed several trades, opened both his own saw-mill and Maine's first cotton mill, and was founder and president of the first bank of Bath; and

WHEREAS, William King's public service career started in 1795, representing Topsham in the Massachusetts House of Representatives; and

WHEREAS, King was re-elected to the Massachusetts House of Representatives in 1799 and after he moved to Bath in 1804, and represented Lincoln County in the Massachusetts Senate from 1807-1811 and was re-elected in 1816; and

WHEREAS, King was the leader of the Separation Movement from Massachusetts and presided over the convention that wrote the Maine State Constitution; and

WHEREAS, the people of Maine rewarded King's effort by nearly unanimously electing him as the State's first governor in 1820; and

WHEREAS, Governor William King later served for years as a trustee at Bowdoin College in Brunswick and the school now known as Colby College in Waterville; and

WHEREAS, Governor William King set a high standard for all Governors of Maine who would follow in his footsteps – hard work, honesty, integrity, and doing what is in the best interest of the people of Maine,

NOW, THEREFORE, I, PAUL R. LEPAGE, Governor of the State of Maine, do hereby proclaim February 9, 2011 as

**GOVERNOR WILLIAM KING DAY**

Throughout the State of Maine, and urge all citizens to recognize the observance of the birthday of Maine's first Governor.

District 62 Representative Mike Clarke also thanked and praised Councilor Paulhus for his hard work on this effort.

Senator Goodall then presented the proclamation, which is now on display at Bath City Hall, to Council Chairman Bernard Wyman.

Under the topic of Committee Reports, Councilor Eosco stated that she is not comfortable with the way the selection of committees was handled and expressed her feeling that they should be done in person, not by e-mail.

**I. Unfinished Business**

Councilor Winglass stated that the Morse High School Girls Basketball Team plays their last game tomorrow and encouraged people to come out and support them. Their record is currently 16-1.

**J. New Business 6:35 PM**

4)Annual Appointment of City Solicitor

Councilor Omo made a motion to put this agenda item on the floor, which was seconded by Councilor Winglass and was passed unanimously.

Councilor Omo then made a motion to nominate Roger Therriault as City Solicitor for another year and expressed his feeling that Mr. Therriault has served the City well in the five years Councilor Omo has been on the Council.

Councilor Sinclair stated that under State law, appointments of City officials have a default term of one year. He felt that it was important to figure out if this applies and thought that the earlier stage is whether this needs to be done at all.

Roger Therriault said that he would like to follow up on this and gave his reason for concerns. He stated that the Maine Municipal attorney that he has spoken with has been uncertain as to whether this applies. He pointed out that this has to do with Charter communities, of which there are about 35 in the state of Maine. He said that all have indefinite terms, with the exception of Brunswick. He also noted that no former Solicitors were appointed. Roger Therriault stated that according to our Charter, this provision may apply to other municipal officers as well. He felt that this needs to be looked at in some detail and possibly get an outside opinion.

Roger Therriault suggested tabling this agenda item until there is an answer to this question. David Sinclair felt that if this is done, it should be tabled to a date certain. City Manager Giroux felt that it is important to find out how to frame the question. Roger Therriault stated that the question is whether this section applies to a charter community and if this applies to all municipal-appointed employees. City Manager Giroux expressed agreement with this. Councilor Omo questioned whether this should be sent on to the Maine Municipal attorneys. Councilor Sinclair expressed his feeling that MMA may have a conflict of interest and may have a problem being objective due to having a large number of clients who are doing the same thing.

Councilor Omo then withdrew his motion in regards to nominating Roger Therriault for another year. He said that he would like the Maine Municipal Association to look at this again. Councilor Eosco questioned who is monitoring this if we are not following State law. City Manager Giroux did not feel that this is an emergency since it has not been done since 1977. Councilor Omo then made a motion to give MMA three months to come back with an answer. Roger Therriault said he doesn't feel it is necessary to give them three months and said that they can usually get an answer prompter than that and suggested one month. The point was made that since the next meeting is less than a month away, that it be put on the agenda for the April Council meeting. Councilor Paulhus questioned whether it needs to even be listed as an agenda item and whether it couldn't just be brought up as new business.

Councilor Omo again withdrew his motion and said he would like to table this agenda item to when they can get an answer to this question prior to the April meeting. Councilor Sinclair seconded the motion, pending review from MMA. City Manager Giroux suggested that Roger Therriault send this question off to the Maine Municipal Association. Councilor Sinclair stated that he would rather see the City Council Chairman send the question off, pending comments from the rest of the City Council individually.

**Vote:**

**Yeas: 8**

**Nays: 0**

**Passed unanimously.**

**The meeting adjourned to Workshop at 6:55 p.m. with a motion by Councilor Omo, which was seconded by Councilor Pagurko and was passed unanimously.**

**Councilor Pagurko made a motion to go into Executive Session at 7:05 p.m., which was seconded by Councilor Rogers and was passed unanimously.**

**Councilor Omo made a motion to come out of Executive Session at 8:45 p.m., which was seconded by Councilor Pagurko and was passed unanimously.**

**Councilor Pagurko then made a motion to adjourn at 8:45 p.m., which was seconded by Councilor Winglass and was passed unanimously.**

Attest:

Pamela J. Gray, Deputy 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.*



