

REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, April 7, 2010 6:00pm
City Council Chambers, Bath City Hall

Present: Councilors Omo, Rogers, Eosco, Sinclair, Pagurko, Winglass, Chairman Wyman.
Excused: Councilors Cochrane, Paulhus

Also in attendance was 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 by William Neilson on behalf of “Greater Bath Elder Outreach Network”.

Mr. Neilson informed Council that the Network’s mission is to assist the disabled and older members of the community. The Network receives support from Bath Housing Authority, Bath Police Department, Sagadahoc Sheriff’s Department, Grace Episcopal Church, The United Church of Christ and The Elim Community Church. The Network takes average people of all ages and matches them with older people that are isolated by physical, mental or financial challenges that degrade our lives and allows the pair to work together how best to counter those challenges. The Network is operated locally but it is administered by Catholic Charities of Maine and funded by the United Way of Mid Coast Maine and other groups and individuals. Mr. Neilson thanked the Council and the City of Bath for their continued support.

Presentation by “Maine Campaign to Bring War Dollars Home”

Various group members spoke to Council stating the money spent on the war effort would be better used here at home to fund school programs, support climate change controls and to maintain social service levels.

C. Public Hearings: 6:20PM

1) Liquor License application for The Black Barnacle at 102 Front Street

Chairman Wyman opened the public hearing.

Gregory Burns, Co-owner, stated the plan is to open mid-May and will possibly employ up to 12 people. John Morse, a real estate owner in the downtown, asked Council to consider the effect this license will have on Front Street. James Knight, owner of the building, said the plan is to keep Front Street to the high standards it now exhibits.

Seeing no other comments, Chairman Wyman closed the Public Hearing.

Motion by Councilor Omo, second by Councilor Sinclair to approve this liquor license.

Vote:

Yeas: Omo, Eosco, Sinclair, Winglass

Nays: Rogers, Pagurko

License approved 4-2

2) CDBG of \$500,000 for Public Infrastructure Grant for the Centre Street project

Chairman Wyman opened the Public Hearing.

Al Smith, Community Development Director, gave an overview of the project. Mr. Smith stated that the project would go from the Bath Area YMCA to High Street along Centre Street and would consist of upgrades to the water lines, sidewalks, paving and a new sewer force main. The project would go to bid in May and the money would be available in July.

Susan Goodfellow of 5 Regatta Lane asked Council to make sure there would be other projects to address the flooding issues throughout the city.

Seeing no other comments, Chairman Wyman closed the Public Hearing.

D. Consent Agenda 6:35 PM

3&4)* Councilor Pagurko motioned to accept the minutes to the March 3, 2010 Council Meeting as presented and to appoint the Republican and Democratic Parties' Nominees for Election Clerks for two year terms pursuant to Maine State Law. Councilor Rogers seconded the motion. All were in favor of the motion.

E. Time Devoted to Residents to Address The City Council 6:37 PM

Jackie Dwinall of 1552 Washington Street thanked all the people for signing the petition to put the turf funding on the ballot. She stated that there should be serious planning for the replacement and repairs to this turf.

F. Ordinances, Resolutions and Orders 6:39 PM

5) Resolution: to accept CDBG of \$500,000 for Public Infrastructure Grant for the Centre Street project

BATH CITY COUNCIL RESOLUTION
STATE OF MAINE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

WHEREAS, the City of Bath wishes to apply to the Department of Economic and Community Development for a Community Development Block Grant to carry out a community development program; and

WHEREAS, the planning process required by Maine Law and the CDBG Program have been complied with, including participation in the planning process by low and moderate income families and individuals and the community has conducted at least one duly advertised public hearing; and

WHEREAS, the City of Bath is cognizant of the requirement that should the intended National Objective of the CDBG program not be met all CDBG funds must be repaid to the State of Maine CDBG program; and

NOW THEREFORE, be it resolved by the Council of the Community of Bath that the City Manager:

- 1) Is authorized and directed to submit all application materials for the following program and dollar amount within the State of Maine's CDBG Program:

Program: Public Infrastructure Grant Amount: \$500,000.00

To the Department of Economic and Community Development on behalf of the Community of Bath, Maine, substantially in the form presented to this council;

- 2) Is authorized to make assurances on behalf of the Community of Bath required as part of such applications, and
- 3) Is authorized and directed, upon acceptance of said funds to carry out the duties and responsibilities for implementing and said program, consistent with the Charter of the Community of Bath and the laws and regulations governing planning and implementation of community development programs in the State of Maine.

Councilor Omo made a motion to waive the reading of this Resolution. Councilor Pagurko seconded the motion. All were in favor of the motion.

Councilor Pagurko motioned to put this Resolution on the floor for discussion. The motion was seconded by Councilor Omo.

VOTE:

YEAS: 6

NAYS: 0

Resolution passed unanimously. 6-0

6) Police Department Forfeiture of Property

Lieutenant Stan Cielinski explained that this forfeiture of property was due to a joint investigation and arrest by the Cumberland County Sheriff's Department, Sagadahoc County Sheriff's Department and the Bath Police Department. Lt. Cielinski stated Bath's share would be a portion of the \$11,800, but the amount is unknown at this time.

Councilor Pagurko motioned to accept the forfeiture. Councilor Omo seconded the motion.

VOTE to accept forfeiture:

YEAS: 6

NAYS: 0

Passed unanimously. 6-0

7) Consideration of Recommendation from the Recognition Committee

Elena Vandervoort, Chairperson of the Recognition Committee explained that the Committee had received several letters supporting the naming of the area containing the Hawkes and Kimball fields be known as the "Donnie Small Athletic Complex". Ms. Vandervoort stated that the present fields would still retain their names.

Councilor Omo made a motion to waive the reading of the Resolution. The motion was seconded by Councilor Pagurko. All were in favor of the motion.

RESOLUTION TO ESTABLISH THE DONNIE SMALL ATHLETIC COMPLEX

WHEREAS, the City of Bath has established a Recognition Committee to review applications seeking to honor individuals, businesses, groups or any other entities who have performed valuable or extraordinary services benefiting the City of Bath, and

WHEREAS, due to the unfortunate and untimely death of Donald N. Small, Jr. ("Donnie") in December, 2009, the Recognition Committee has received an application, with supporting

documentation, seeking to honor him for his unwavering dedication, commitment, and service to the youth of the City of Bath, and

WHEREAS, Donnie Small played Little League Baseball on the Hawkes and Kimball fields in his early years and continued that affiliation through his life, returning as an adult to those fields to coach numerous teams and umpire countless games, over the next fifty years, and

WHEREAS, his contribution to the City of Bath and its inhabitants, specifically its youth, was recognized at his funeral where several players spoke of their fond memories of being coached by Donnie not only in the game of baseball but also in life lessons, and

WHEREAS, the area now known as the Hawkes and Kimball fields is directly adjacent to the Donald N. Small School which was named decades ago for Donnie's father who was also a dedicated public servant and who was a life long resident of Bath, and

WHEREAS, on March 22, 2010 the Recognition Committee formally voted to approve and recommend to the Bath City Council, at their regular meeting on April 7, 2010, the recognition of Donnie Small, by honoring his outstanding contributions to the youth of the City of Bath by naming the area comprising Hawkes and Kimball fields the "Donnie Small Athletic Complex", with the Hawkes and Kimball fields retaining their respective identities, and

WHEREAS, through the generosity of his many friends, both in Bath and beyond, together with that of his family, there is funding available for appropriate signage, which shall be approved by the City Recognition Committee, for "The Donnie Small Athletic Complex" as well as signage identifying the two fields as Hawkes and Kimball Fields, to proudly serve both purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bath that the area comprising Hawkes and Kimball Fields shall be henceforth known as the "Donnie Small Athletic Complex," and that appropriate signage be erected accordingly.

VOTE:

YEAS: 6

NAYS: 0

Resolution passed unanimously. 6-0

8) Ordinance: LUC Amendment Article 7, Article 8, Article 9, and the Zoning Map. This would establish the Neighborhood Commercial Zone. One of the Land Use Code amendments to implement the Comprehensive Plan. (first passage)

A complete copy of this Ordinance is on file in the Bath City Clerk's Office with the agenda materials.

City Planner James Upham explained that this amendment is needed to comply with the Comprehensive Plan. This amendment creates the space and bulk regulations, the land use table, landscaping and screening standards and zoning map amendments for this new Neighborhood Commercial Zone.

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

ROLL CALL VOTE:

YEAS: Omo, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 6-0

Chairman Wyman set second passage for May 5, 2010 at 6:01 PM in Council Chambers.

9) Ordinance: LUC Amendment Article 8 making Daycare Facilities a permitted use in the C5 Zone. (first passage)

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE

LAND USE CATEGORY	ZONING DISTRICTS														
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	I	GC	RP	NRPO	TM C
24.0 Day-care Uses															
24.1 Day-care home	C	C	C	C	N	N	C	N	N	N	N	N	N	N	N
24.2 Day-care facility	S	S	S	S	N	S	S	S	S	N S	N	N	N	N	N
25.0 Temporary Uses	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N
26.0 Commercial Greenhouse Operations															
26.1 No on-premises sales	N	S	C	N	N	N	N	N	S	N	N	N	N	N	N
26.2 With on-premises sales	N	N	S	N	N	N	N	N	S	N	N	N	N	N	N
27.0 Camping Areas															
27.1 Campgrounds	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N
27.2 Individual private camp sites	N	N	C	N	N	N	N	N	N	N	N	N	C	C	N
28.0 ATM, Not Attached to a Bank or Other Building	N	N	N	N	N	N	N	N	S	N	S	N	N	N	N
29.0 Marina	N	N	N	N	S	S	N	N	N	S	S	N	N	N	N
30.0 Art Studio	C	C	C	C	C	C	C	N	C	N	N	N	N	N	N
31.0 City Park	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	I	GC	RP	NRPO	TM C

CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS:

Amend Article 9, Section 9.01 – Land Use Table, as follows:

(Note: Additions are underlined, and deletions are ~~crossed out~~.)

City Planner James Upham explained that this amendment is being brought forward due to the Day-care issue brought up at the Bath Council Meeting on January 6, 2010 and will allow day-care facilities in the C5 zone.

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

Maine Maritime Museum Director Amy Lent encouraged Council to support the Ordinance amendment.

ROLL CALL VOTE:

YEAS: Omo, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 6-0

Chairman Wyman set second passage for May 5, 2010 at 6:02 PM in Council Chambers.

10) Ordinance: LUC Amendment Article 11, Section 11.09 – Day-care Homes and Day-care Facilities for Children and Adults. (first passage)

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 11, Section 11.09, as follows:

SECTION 11.09 DAY-CARE HOMES AND DAY-CARE FACILITIES FOR CHILDREN OR ADULTS

In addition to all other requirements of the Code, day-care homes and day-care facilities are subject to the following standards.

A. Approval of Day-care Homes

A day-care home is allowed, as per the Land Use Table in Section 9.02, only if it has received a permit in accordance with requirements of this section. Upon receipt of a permit application, the CEO must notify by regular mail the abutters of the subject parcel of the pending application. The notice must advise the abutters that the permit will be issued if the application conforms to the standards in Item C following, and that the abutter can provide written information as to the conformance of the request with these standards within 30 days of mailing the notice. If the CEO finds that the application conforms to the standards and no information to the contrary is received during the 30-day period, the permit is to be issued.

1. If the CEO receives information that the application may not conform to the standards, the CEO will:
 - (a) notify the applicant
 - (b) refer the applicant to the Planning Board for consideration
 - (c) notify the parties providing the information of the referral

2. The Planning Board must hold a meeting in accordance with Site Plan Review requirements to consider the application for a day-care home within 45 days of the referral from the CEO. The Planning Board must determine if the applicant meets the requirements of Item C following. If the Planning Board finds that the application does meet the requirements, it will direct the CEO to issue the permit.

B. Approval of Day-care Facilities

A day-care facility is allowed only after Site Plan Approval from the Planning Board, and it must meet the requirements in Item C following.

C. Requirements for Day-care Homes and Day-care Facilities

All day-care homes and day-care facilities must conform to the following requirements:

1. A fenced outdoor play area must be provided with a minimum of 75 square feet per child. The fence must be of a material that is compatible with the neighborhood and must be at least 4 feet in height.
2. Outside play may not be allowed before 9 a.m. or after 8 p.m. on Saturdays, Sundays, and holidays and before 7 a.m. or after 8 p.m. other days.
3. Adequate lighting must be provided. If the day-care home or day-care facility is in or abuts a residential zone, security lighting must be turned off when the day-care home or day-care facility is not operating.
4. Hazardous traffic conditions may not be created when the day-care facility traffic is added to existing and foreseeable future traffic in its vicinity.
5. An adequate drop-off and pick-up site must be established for a day-care facility.
6. The design and external appearance of any building must constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance, or architecture.

D. Denial of Application

If the CEO finds that the application for a day-care home does not conform to the standards, the application must be denied and the applicant notified in writing of the reasons for the denial. If the Planning Board finds that the application referred to it for a day-care home or a day-care facility does not conform to the standards, it must be denied and the applicant notified in writing of the reasons for the denial.

E. Minimum Lot Size Requirement

If located in a single-family dwelling, a day-care home is not required to meet the minimum lot size for both the day-care home and the single-family dwelling, only for the latter. A day-care home in a 2-family or multi-family dwelling, or a day-care facility located in a single-family dwelling, must meet the minimum lot area for both the day-care home or facility and the dwelling unit.

(Note: Additions are underlined, and deletions are ~~crossed out~~.)

Upham explained that this amendment is to set the particular standards for the fencing and lighting of these facilities.

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

City Planner James Upham stated that he would have a list of specific materials that are appropriate for the fencing for the next regular Council Meeting.

Chairman Wyman asked for a Roll Call Vote.

Councilor Sinclair made a Point of Order asking as to what exactly was being voted on the proposed changed language that was not before them or that which the City Solicitor has agreed is not likely enforceable even if enacted?

City Solicitor Therriault stated that they would be voting on the Ordinance amendment before them with the amendment language available at second passage.

Councilor Sinclair made a motion that the vote be postponed until the actual language that would be approved in its final format was before them. Councilor Winglass seconded the motion.

VOTE on the postponement:

YEAS: 5

NAYS: 1 - Omo

Postponement passed. 5-1

11) Order: Approval of Lease for Castine Avenue Parking Facility

Chairman Wyman read the following Order:

ORDER APPROVING LEASE

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LEASE AGREEMENT BY AND BETWEEN THE CITY OF BATH AND JEFFREY CROSMAN, FOR PROPERTY KNOWN AS THE CASTINE AVENUE PARKING FACILITY, SAID LEASE BEING ATTACHED HERETO, BE AND HEREBY IS APPROVED FOR THE TERM BEGINNING APRIL 1, 2010 AND EXTENDING THROUGH MARCH 31, 2013. THE LEASE CONTAINS A PROVISION FOR ONE YEAR EXTENSIONS BY AGREEMENT OF THE PARTIES AND THE MANAGER IS HEREBY AUTHORIZED TO EXERCISE THAT EXTENSION AUTHORITY. THE MANAGER IS FURTHER AUTHORIZED TO EXECUTE THE ORIGINAL LEASE ATTACHED HERETO ON BEHALF OF THE CITY OF BATH.

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

City Manager William Giroux explained that this increase would bring the lease price into a more reasonable rate and recommended the passage of the Order.

VOTE:

YEAS: 6

NAYS: 0

Order passed unanimously. 6-0

G. Petitions & Communications 7:11 PM

12) Petitions Regarding “Fields of the Future” – Mary White, City Clerk

City Clerk Mary White presented Council with petitions which asked that the bond for the turf replacement at McMann Field be put out to vote. These petitions contained 1,024 names of eligible voters.

City Solicitor Roger Therriault explained the question before Council is whether to repeal the previously passed Ordinance. He stated that a Yes vote to repeal would end the issue and no further action would be required, but a No vote would mean that Council would need to put the Order asking for the submission of this bond question to the public vote be put on the floor for action.

Councilor Rogers made a motion stating “should the Ordinance be repealed”. The motion was seconded by Councilor Pagurko.

Pat Thomason of the Field of the Future Committee encouraged the Council to vote No in order to send the question out to the voters.

VOTE on Repeal of Ordinance:

YEAS: None

NAYS: Omo, Rogers, Eosco, Sinclair, Pagurko, Winglass

Failed to repeal. 6-0

Chairman Wyman read the following Order:

**ORDER FOR SUBMISSION OF
REFERENDUM TO ELECTORS**

WHEREAS, a Petition has been received for the repeal of a Bond Ordinance authorizing indebtedness for turf at the McMann Facility previously approved by the Bath City Council, and

WHEREAS, the Clerk has certified to the City Council that the Petition has the requisite number of signatures, and

WHEREAS, the City Council has been presented with the Clerk's certification, and

WHEREAS, the City Council has declined to repeal the Ordinance.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that a Referendum vote be submitted to the electors at a special/regular election to be held on the 8th day of June, 2010 from 9 A.M. to 8 P.M.

BE IT FURTHER ORDERED by the City Council of the City of Bath that a complete text of the referred Ordinance be published in a newspaper having a general circulation within the City of Bath, not less than ten days nor more than fifteen (15) days prior to the election.

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

Susan Goodfellow of 5 Regatta Lane asked how the ballot question would be written.

City Solicitor Roger Therriault stated the Charter would dictate the form of the question.

VOTE:

YEAS: 6

NAYS: 0

Order passed unanimously. 6-0

H. City Manager's Report 7:22 PM

City Manager addressed the following items:

- Council Workshop regarding Waterfront/Downtown Improvements and Property Maintenance Ordinance at 6PM in the Council Chambers on April 21, 2010.

I. Committee Reports, if any 7:24 PM

Councilor Rogers announced there would be a televised forum to be held May 6 at 7:00 PM in Council Chambers regarding the upcoming vote on McMann Facility turf field. He asked that any questions the public might have be passed in through the City's Web Page prior to the forum. Councilor Rogers stated that questions would be taken from Bath residents only. Councilor Eosco informed the public that the reason the questions being asked need to be in before the forum so the participants could do any research on the issues ahead of time and answers would be ready at airing time.

J. Unfinished Business 7:26 PM

There was no unfinished business taken up at this time.

K. New Business 7:26 PM

13) Appointment of a member to the Bath Recreation Commission with a term to expire November 2012.

Councilor Pagurko nominated Duane Hinds to fill this position. All were in favor of the nomination.

The meeting adjourned at 7:28 PM with a motion by Councilor Winglass, seconded by Councilor Pagurko. All were in favor of the motion.

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.