

REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, February 3, 1999 7:00 PM
City Council Chambers, Bath City Hall

The Regular Meeting of the Bath City Council was called to order by Chairman Hall at 7:00 PM on Wednesday, February 3, 1999 for the purpose of conducting business as listed on the agenda.

Chairman Hall opened the meeting with the Pledge of Allegiance.

ROLL CALL: Councilors Tainter, Rogers, Tibbetts, Hayden, Wyman, Blake, James, Williams and Chairman Hall.

Also in attendance were the City Manager, John Bubier, City Solicitor, Roger Therriault and Deputy City Clerk, Mary White.

C. PUBLIC HEARING:

1) Ordinance - Final Passage - Chapter 17. Vehicles and Traffic, Article 6. Stopping, Standing and Parking Restrictions (Chestnut Street) – 7:02 PM

Chairman Hall 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 17. VEHICLES AND TRAFFIC

Article 6. Stopping, Standing and Parking

Section 17-259. Parking Restrictions
Chestnut Street North Side

Delete:

"From a point 300 feet westerly of CMP Pole No.3, to Lincoln Street, no restrictions."

Replace With:

"From a point 300 feet westerly of CMP Pole No.3, to a point 40 feet east of Lincoln Street, 2 hour parking; From a point 40 feet east of Lincoln Street to Lincoln Street, no parking."

Motion by Councilor Wyman, seconded by Tainter to place Ordinance on the floor.

Chairman Hall opened the Public Hearing to public comment. There was none.

Chairman Hall opened the floor to Council comment. There was none.

VOTE: On Ordinance - Final Passage Approved by Unanimous Vote 8-0

2) Ordinance - Final Passage - Chapter 5. Businesses, Article 14. Manner of Sale of Tobacco Products – 7:05 PM

Chairman Hall highlighted the discrepancies and important points contained in the First Passage Ordinance that was tabled from January 20, 1999 Council Meeting.

It was motioned by Councilor Blake, seconded by Councilor James to remove this Ordinance from the table.

VOTE to Remove Ordinance from Table Unanimous Vote 8-0

Chairman Hall introduced the memo from City Solicitor Therriault which contained the First Passage Ordinance and three amended versions of the Ordinance for the Council to consider.

Councilor Tibbetts stated that Amendment #1 had been defeated on January 20, 1999 and that he motioned that the Amendment #2 be placed on the floor for discussion. This was seconded by Councilor Williams.

Chairman Hall than clarified the changes to the First Passage Ordinance contained in Amendment #2 for the public and Council.

Chairman Hall asked for Council discussion. There was none.

Chairman Hall opened the floor to public comment.

Chris Barber, Bath resident and member of the group ACCESS, spoke in favor of Amendment #2.

Jayne Palmer, Bath resident and merchant, read the following letter with 19 signatures of Bath merchants.

To: Bath City Council
3 February 1999

We the undersigned Bath merchants wish to make a statement of opinion in regard to the proposed ordinance and three related amendments being considered relative to the manner of sale of tobacco products by merchants in the city of Bath. We were in agreement with the original premise which was to remove cigarettes from vendors where they might easily be stolen.

However the amendments have now gone to far. It has now become an issue of civil liberties. You are playing with the individual rights of independent merchants who should be allowed to make the right decision to handle the basic ordinance on their own. How long before the council will be asked to regulate the sale of health damaging products like coffee and candy. Strong ordinances with steep damages are already in place related to the sale of tobacco products to minors and with proper enforcement by the police and parents the issue can be controlled. We feel that the original premise (including Amendment 2) is all that we can support and we would be opposed to any further infringements on a merchants rights to business.

Since there was no more public comment Chairman Hall closed the floor to public comment and opened it to Council comment.

Councilor Rogers stated that since Amendment #2 had the support of the Council, the public and businesses, the Council should accept Amendment #2.

Councilor Tibbetts spoke in favor of Amendment #2. He being the only smoker on the Council, he felt this amendment did not infringe on his rights and it did deny access to these products by persons under the legal age.

Councilor Tainter expressed his thanks to all those who worked on the Ordinance. He spoke in favor of Amendment #2.

Councilor Blake spoke in support of Amendment #2, but wished it could address the limiting of advertising aspect.

Councilor James expressed his support for Amendment #2. He stated that this was a excellent compromise and this was an Ordinance that Bath could be proud of.

Councilor Williams gave full support to Amendment #2, but stated that she would like to go on record as saying that she would like to see the Ordinance be even stronger with a community discussion on the language.

VOTE: To accept Amendment #2 was Unanimous Vote 9-0

Chairman Hall put the original Ordinance with Amendment #2 back on the floor.

Councilor Tibbetts proposed that the Ordinance, Section 5-401, be amended by deleting all the words between the first “recognizes” and “that prevention by reducing,” seconded by Councilor Williams.

Chairman Hall put the Ordinance with this amendment on the floor for Councilor comment.

Councilor Blake stated that she felt that these statements were proven facts and should stay in the Ordinance.

Councilor Tibbetts confirmed that he knew these facts were indeed true, but that the Council had not commissioned any study and therefore the Ordinance should reflect this.

Councilor Blake agreed to the removal of the words “and finds”, that everything else should stay.

Councilor James voiced agreement with Councilor Blake. Stating that the “and finds” should be deleted throughout the paragraph and on line 6 the word “finds” be changed to “recognizes”.

Councilor James asked Councilor Tibbetts to withdraw his amendment.

Councilor Tibbetts would not withdraw the amendment.

Chairman Hall asked for public comment for this amendment. There was none.

VOTE on Amendment to Ordinance Defeated by Vote 3-5

Yeas: Tibbetts, Wyman, Williams

Nays: Tainter, Rogers, Hayden, Blake, James

Councilor James motioned to make an amendment to the Ordinance by deleting the “and finds” throughout the paragraph and on line 6 the word “finds” be changed to “recognizes”, seconded by Councilor Blake.

Chairman Hall asked for Council comments.

Councilor Tibbetts stated that his was in favor of this amendment.

Councilor Williams voiced her support for this amendment.

Chairman Hall asked for public comment. There was none.

Chairman Hall opened the floor for Council comments. There were none.

VOTE on Amendment to Ordinance Approved by Unanimous Vote 8-0

Chairman Hall asked if there were any discussion on the twice amended Ordinance now on the floor.

Councilor James motioned to amend the Ordinance by adding the words “and displays” after the word “displays” in Sections 5-401 and 5-403 B, seconded by Councilor Blake.

Chairman Hall asked for Council comments.

Councilor Blake stated that even though she had seconded the motion she thought the motion was too generic.

Councilor Rogers expressed his misgivings about the turn this motion was taking and that there would be a loss of support by Council and the public if this continues.

Councilor Blake withdrew her second on the Amendment.

Councilor James withdrew his motion on the Amendment.

Councilor Tibbetts called a vote on the twice amended Ordinance.

VOTE: on the Twice Amended Ordinance Approved by Unanimous Vote 8-0

The following is the Final Red Lined 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 5. BUSINESSES

Add the following:

Article 14. Manner of Sale and Location of Tobacco Products

Section 5-401. Findings and Purpose.

The City Council of the City of Bath recognizes and finds that undeniable and substantial scientific and medical evidence indicates that the use of tobacco products leads to serious and life threatening medical problems such as cancer and heart disease. This Council further recognizes and finds that substances in tobacco are highly addictive and once engaged in the use of tobacco products, makes discontinuing their use difficult Under these circumstances, the Council finds recognizes that prevention by reducing accessibility to tobacco products by adolescents is in the public interest and in the interest of the safety, health and welfare of the inhabitants of the City of Bath. Therefore, the purpose of this Ordinance is to prohibit self-service sales, self-service displays, racks and shelves of tobacco products in environments in which minors are allowed-. , and to prohibit the location of vendor assisted counter displays on any counters where a sale takes place.

Section 5-402. Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered in the City of Bath.
2. "Exempt Business" means any business except tobacco specialty stores that does not allow anyone under eighteen (18) years of age to enter unless accompanied by an adult. These establishments will be exempt from the Ordinance as written.
3. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
4. "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco products that the public has access to without the intervention of an employee.
5. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
6. "Tobacco retailer" shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use in the City of Bath.
7. "Vendor assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.
8. "Vending machine" means any automated, self-service device which, upon insertion of money, token or other form of payment, dispenses cigarettes or any other tobacco product.
9. "Tobacco specialty store" shall mean a tobacco retailer whose business exclusively or primarily involves the sale of tobacco products and related goods.

Section 5-403. Regulation of Manner of Sale of Tobacco Products.

- A. It shall be unlawful for any person, business, or tobacco retailer, except tobacco specialty stores which do not allow persons under the age of eighteen (18) to enter the premises, to sell, permit to be sold, offer for sale or display for sale any tobacco products by means of self-service merchandising.
- B. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this Ordinance shall eliminate the self-service merchandising, vendor assisted counter displays, vending machines of tobacco products, except for exempt businesses as herein defined, no later than February 10, 1999 as of the effective

date of this Ordinance.

Section 5-404. Enforcement.

- A. Enforcement of this Ordinance shall be the responsibility of the Chief of Police or his or her designee.

Section 5-405. Violations.

Any person who owns, manages, operates or otherwise controls the use of any premises subject to this Ordinance, where tobacco products are sold, shall be subject to the terms and conditions of this Ordinance and any failure to comply with its terms and conditions shall be considered a violation thereof.

Section 5-406. Penalties.

Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this Ordinance who violates any provision of this Ordinance shall be deemed guilty of a civil infraction, punishable by:

- 1) First violation, a fine, not exceeding one hundred dollars (\$100.00), payable to the City of Bath.
- 2) Second violation within one year, a fine, not exceeding five hundred dollars (\$500.00), payable to the City of Bath.
- 3) For a third or more violation within one year, a fine, not exceeding one thousand dollars (\$1,000.00), payable to the City of Bath.

Each day that a violation continues, shall constitute a separate offense and each shall be subject to the penalties noted above.

Nothing herein shall prohibit enforcement of this Ordinance through injunctive relief or other appropriate court order or display for sale any tobacco products by means of self-service merchandising.

Section 5-407. Other Applicable Laws.

This Article shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable

laws.

Section 5-408. Effective Date.

This Ordinance shall be effective on May 1, 1999.

D. CONSENT AGENDA: – 7:32 PM

Chairman Hall introduced the Consent Agenda consisting of the following:

- 3) Minutes of Previous Meetings of January 6, 13 and 20, 1999** (motion to approve as presented)
- K-4) Committee Appointments** (motion to appoint)
Bath Housing Authority Board of Directors – Frederick Clarke – term to expire February 2004

Councilor Tibbetts asked to have K-4 removed and brought up again in its appropriate position. This was taken off the Consent Agenda.

VOTE: Consent Agenda Approved by Unanimous Vote 8-0

E. TIME DEVOTED TO RESIDENTS TO ADDRESS THE CITY COUNCIL: - 7:36 PM

No members of the public spoke at this time.

F. ORDINANCES, RESOLUTIONS AND ORDERS: - 7:37 PM

No items to be taken up.

G. PETITIONS & COMMUNICATIONS: - 7:38 PM

No petitions or communications received.

H. CITY MANAGER'S REPORT: – 7:40 PM

- 1) Holding monthly meetings with the Council Chairman, Council Representative to School Board and Superintendent of Schools to keep dialog open between the municipal and school entities which helps during budget times.
- 2) Bath Business Association - Meeting at least 3 times a month. Now working on the launching on April 17, 1999 of the Winston Churchill. The City, BBA, and the Maritime Museum are working together on a project for the end of September which would consist of a sample of maritime vessels.
- 3) Recently had a chance to see a detailed report on Historic Bath by Earl Shuttlesworth of the Maine Historic Society and would like to share this with the public through the public access channel at a future date.

- 4) Having been meeting with Ocean Properties and Reality Resources to discuss their doing projects in Bath.
- 5) Meeting with Doug McCobb and the DOT on the Route One project of reworking the entrance to the City.
- 6) Continuing to meet with Gardiner Savings Representatives dealing with the project at the triangle next to Shaws.
- 7) Working with CED to help them with the loan package for the Wing Development project.
- 8) Cable Company has delivered the first installment of \$92,000 for the PEG project.
- 9) A delegation from the City went up to Augusta to meet with General Adams of the National Guard to discuss the possible uses of the Armory Building.
- 10) Met with Kevin Gildart and James Favreau about BIW parking issues which proved to be very productive.
- 11) Urban Compact and Regional Centers Initiative Committee is working on State Statues that would encourage funds to be driven into urban centers and cease indiscriminate development in areas without infrastructure.

I. COMMITTEE REPORTS - 7:50 PM

Councilor Williams reported that the E911 Committee had gotten the notification letters out last week to all the citizens that would be having their street name changed and now were waiting for any appeals.

She also reported that she will be writing a letter to the SCLC group explaining the Chestnut Street parking Ordinance and its effective date so they can make an announcement letting the students know of this change. Councilor Williams told the group that the Council was aware of their parking problems and hoped to be able to address this soon.

Councilor Tibbetts shared the Six Month Budget Report. He stated that the figures that the Council should be interested in would be the percentage of revenues collected and of expenditures used. At this time, the percentages should be at 50%. Because of vacations, the Committee will not be able to meet so he felt that the Nine Month Cumulative Report would be best to use at the budget proceedings.

Chairman Hall shared a communication from Kathy Montejo, Lewiston City Clerk that was in their City Hall newsletter regarding the Mayor's recent visit to Bath's City Hall. The following is that communication:

If anyone is interested, I would be happy to coordinate a "*field trip*" to City Hall in Bath. I recently visited John Bubier, Bath's City Manager, and I was struck by the way I "*felt*" as I walked through the building. It was very open, airy, well lit, warm, and definitely conveyed WELCOME! I did not want to leave the building (and you know I am not one to turn down a free lunch). Indeed, Bath City Hall had a very refreshing, appealing atmosphere. Half of our customer service relates to how our customers "*feel*" and whether they feel "*welcomed*." I want

everyone who enters our building to know "*their business is welcomed.*"

Chairman Hall commended Dana Snow on the excellent job he does in keeping City Hall looking so well kept.

J. OLD BUSINESS: – 7:55 PM

There was no old business taken up at this time.

K. NEW BUSINESS: – 7:55 PM

It was motioned by Councilor Wyman, seconded by Councilor Rogers to waive the rules so that the following order could be considered by the Council.

VOTE: to Waive Rules Approved by Unanimous Vote 8-0

Chairman Hall read the Order:

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT, UPON APPLICATION BY FEDERAL EXPRESS FOR LOCATION OF A LETTER BOX ON CITY OF BATH PROPERTY, THAT THE APPLICATION IS APPROVED AND A FEDERAL EXPRESS LETTER BOX IS AUTHORIZED TO BE LOCATED NEXT TO THE UNITED PARCEL SERVICE LETTER BOX ON WATER STREET.

Motioned by Council Wyman, seconded by Councilor Blake to put this order on the floor for discussion.

There was no public or Council discussion.

VOTE: on Order Approved by Unanimous Vote 8-0

4) Appointment Bath Housing Authority Board of Directors member Frederick Clarke - term expires February 2004.

Councilor Tibbetts had some questions about the legal make up of the Board as far as the member's residence requirements.

City Solicitor Therriault will be looking into the Bath Housing Authority By Laws and the federal regulations which must be followed and report back to Council on this matter.

This item was tabled until the February 17, 1999 Council Meeting.

ADJOURN:

WORKSHOPS: 8:04 PM

- 1) Reality Resources Presentation
William Hahn and Steven Liberty
- 2) Butler Head Management Plan
Denis Hebert, Director of Cemeteries and Parks
Tom Barrington, Bath Community Forestry Committee
- 3) Coastal Humane Society Presentation
Wendy Fenton, Manager
Megan Cowley, Assistant Manager
Steve Williams, Treasurer

On motion by Councilor Wyman, seconded by Councilor Williams it was moved to adjourn the meeting.

VOTE: To Adjourn Approved by Unanimous Vote 8-0

Meeting Adjourned at 10:22PM.

Respectfully submitted:

Mary J. White, Deputy City Clerk

Please note: These minutes are not recorded verbatim. A tape recording of the meeting is available for review in the City Clerk's office during regular business hours.