

REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, December 3, 2008 7:30pm
City Council Chambers, Bath City Hall

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

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.

C. Public Hearings: 7:37 PM

1) Ordinance: Chapter 8A. General Assistance Maximums for October 1, 2008 to September 30, 2009 (second passage)

Motion by Councilor Rogers, seconded by Councilor Omo to waive the reading of the Ordinance. All were in favor.

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, 2008.

A complete copy of these maximums is on file in the Bath City Clerk's Office with the agenda materials for 12/03/2008 Council Meeting.

Chairman Wyman opened the public hearing. Seeing no comments from Council or the public Chairman Wyman closed the public hearing.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman stated this Ordinance was retroactive to October 1, 2008.

2) Ordinance: LUC Article 6, Section 6.05 – Nonconforming Structures (second passage)

Motion by Councilor Rogers, seconded by Councilor Pagurko to waive the reading of the Ordinance. All were in favor.

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 6, Section 6.05 -- NONCONFORMING STRUCTURES, as follows:

Continuation

A legally nonconforming structure may continue to exist and may be physically repaired, maintained, and renovated to maintain and improve the structure. In addition, other changes in a legally nonconforming structure that may be required by federal, state, or local building and/or safety codes, or are allowed by D, 3, a through d, below, are permitted.

C. Reconstruction or Replacement

1. A legally nonconforming structure that is damaged or destroyed by any cause or is demolished may be reconstructed or replaced, provided that a building permit is obtained within 1 year of the date of damage, destruction, or demolition. The replacement or reconstruction of any nonconforming portion of the structure must be located within the original building footprint. The replacement or reconstruction may increase or decrease the number of square feet of floor area, but may not create any additional, or expand any existing, nonconformity, except as allowed by D, 3, a through d, below.
2. In the Shoreland Zone any non-conforming structure which is located less than the required setback from the normal high-water line of a water body or upland edge of a wetland and which is removed, or damaged or destroyed by more than 50 percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the ZBA in accordance with the purposes of this Code. In no case may a structure be reconstructed or replaced so as to increase its non-conformity.
3. Any non-conforming structure which is damaged or destroyed by 50 percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit, from the CEO.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the ZBA must consider in addition to the criteria in E, 2, below, the physical condition and type of foundation present, if any.

D. Enlargement

1. Any expansion or physical enlargement of a legally nonconforming structure is permitted to the extent that it meets all Space and Bulk Regulations in existence at the time of the proposed expansion or physical enlargement. Enlargement is not permitted on a lot that is nonconforming where it exceeds the lot coverage requirement of the Space and Bulk Regulations. Any expansion is considered an increase in nonconformity if it expands an existing nonconformity horizontally or vertically, however, the expansion of a building may take place vertically if the expansion is not above the highest existing roofline of such

~~nonconforming building the existing building~~ and meets the requirements in paragraph 3, below. ~~does not increase the gross square footage of that part of the building that is nonconforming.~~ Any dimension that is in conformity can be expanded to the extent that it does not create a new nonconformity.

2. The provisions of Section 6.05, D, 1 above do not prevent the expansion or physical enlargement of a legally nonconforming building if that expansion or physical enlargement is proposed to occur on the side of the building away from the property line where the district Minimum Setback requirement is violated, and is outside the minimum setback distance from the property line. Any such expansion or physical enlargement, however, is limited in height to that of the existing building.
3. The provisions of Section 6.05, D, 1, above, do not prevent the vertical expansion in the following situations:
 - a. The construction of a foundation under a building provided the increase in elevation does not exceed 3 feet and the height of the building does not exceed the maximum height allowed in the zone in which the building is located.
 - b. The change of a flat roof to a pitched roof provided there is no additional living or storage space created by the enlargement and no features, such as dormers and skylights other than flush mounted skylights, constructed on or in the new roof, and the height of the building does not exceed the maximum height allowed in the zone in which the building is located.
 - c. Where there is a survey, done by a professional land surveyor, of the lot line to which the building is nonconforming that shows the distance between the legally nonconforming structure and the lot line. This lot line must also be marked by monuments placed in the ground by the professional land surveyor who had performed the survey unless the CEO finds that adequate permanent monumentation exists.
 - c. Where the proposed expansion or physical enlargement is closer than 6 feet to the property line, a permanent easement from the owner of the abutting property allowing the safe, unobstructed use of such abutting property for staging, ladders, or other maintenance proposes, is required. Such easement must be for a width of 8 feet from the nonconforming building, must contain a surveyed legal description, and must be recorded at the Sagadahoc County Registry of Deeds before a permit for such work is granted by the CEO.

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

Motion by Councilor Pagurko, seconded by Councilor Omo put this item on the floor for discussion.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman stated this Ordinance would be effective in 21 days.

3) Ordinance: LUC Article 8, Section 8.12 – Historic Overlay District (second passage)

Motion by Councilor Omo, seconded by Councilor Pagurko to waive the reading of this Ordinance. All were in favor.

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 8.12 – Historic Overlay District, Paragraph C, as follows:

C. Space and Bulk Regulations

Those of the underlying zone apply; ~~however, they may be modified through the Contract Rezoning process. The underlying minimum lot area per dwelling unit requirements for residential uses may not be modified.~~

And Paragraph I, as follows:

~~I. Contract Rezoning is allowed in the Historic Overlay District~~

And amend Article 8, Section 8.20 – Contract Rezoning, Paragraph B, as follows:

B. Description of Property

This Section applies only to properties located in the following Zoning Districts:

1. Route 1 Commercial Contract District,
2. Special Purpose Commercial Contract Overlay District,
3. Industrial/Shipyard District,
4. Downtown Commercial District,
5. Trufant Marsh Contract District, and
6. Marine Business District, ~~and~~.
7. ~~Historic Overlay District~~

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

Motion by Councilor Pagurko, seconded by Councilor Omo to put this item on the floor for discussion.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman stated this Ordinance would be effective in 21 days.

4) Ordinance: LUC Article 8, Section 8.01 High-Density Residential District – R1 (second passage)

Motion by Councilor Rogers, seconded by Councilor Pagurko to waive the reading of the Ordinance. All were in favor.

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 8.01, as follows:

SECTION 8.01 HIGH-DENSITY RESIDENTIAL DISTRICT - R1

A. Purpose

The High-density Residential District provides for the maintenance and increased livability of the existing densely built-up areas of the City, and areas where a limited amount of high-density housing can be constructed. The High-density Residential District provides areas of compact development that foster cohesive neighborhoods close to community services.

B. Uses Allowed

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

C. Space and Bulk Regulations

MINIMUM LOT AREA	
1. Residential uses	6,000 square feet
2. Nonresidential uses	10,000 square feet
3. Mixed or multiple uses	minimum lot area for each use
MINIMUM LOT AREA PER DWELLING UNIT	
1. All uses	6,000 square feet
MINIMUM LOT WIDTH PER LOT	
1. All uses	60 feet
MINIMUM SETBACKS FOR SINGLE AND 2-FAMILY-RESIDENTIAL USES	
1. Front	10 feet
2. Side.	10 feet
3. From the common lot line that separates the separately owned 2-family dwellings	0 feet
4. Rear	10 feet
5. From waterbodies	25 feet
E. Minimum setbacks for small⁽¹⁾ storage buildings accessory to residential uses	
1. <u>Front</u>	<u>10 feet</u>
2. <u>Side</u>	<u>5 feet</u>
3. <u>Rear</u>	<u>5 feet</u>
4. <u>From waterbodies</u>	<u>25 feet</u>
<u>MINIMUM SETBACKS FOR ALL OTHER BUILDINGS ACCESSORY TO RESIDENTIAL USES</u>	

1. <u>Front</u>	<u>10 feet</u>
2. <u>Side</u>	<u>10 feet</u>
3. <u>Rear</u>	<u>10 feet</u>
4. <u>From waterbodies</u>	<u>25 feet</u>
MINIMUM SETBACKS FOR-ALL OTHER USES	
1. Front	20 feet
2. Side	20 feet
3. Rear	20 feet
4. From waterbodies	25 feet
MINIMUM SETBACKS FOR OTHER THAN SINGLE AND 2-FAMILY RESIDENTIAL USES, WITH AN APPROVED R1 SETBACK REDUCTION PLAN	
1. Front	10 feet
2. Side	10 feet
3. Rear	10 feet
4. From waterbodies	25 feet
MINIMUM YARD AREAS FOR SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL USES	
1. Front	10 feet
2. Side	5 feet
3. From the common lot line that separates the separately owned 2-family dwellings	0 feet
4. Rear	5 feet
5. From waterbodies	25 feet
MINIMUM YARD AREAS FOR ALL OTHER USES	
1. Front	10 feet
2. Side	15 feet
3. Rear	15 feet
4. From waterbodies	25 feet
MINIMUM YARD AREAS FOR OTHER THAN SINGLE AND 2-FAMILY RESIDENTIAL USES, WITH AN APPROVED R1 SETBACK REDUCTION PLAN	
1. Front	10 feet
2. Side	5 feet
3. Rear	5 feet
4. From waterbodies	25 feet
MAXIMUM LOT COVERAGE	
1. All uses	40 percent
MAXIMUM BUILDING HEIGHT	
1. All uses	45 feet

⁽¹⁾Small storage buildings are those buildings that are used only for storage, with a height no greater than 8 feet, with any side that is closer than 10 feet to a rear or side lot line no greater than 12 feet measured in a horizontal direction, and a total square footage no greater than 144 square feet.

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

Motion by Councilor Rogers, seconded by Councilor Pagurko to put this item on the floor for discussion.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman stated this Ordinance would be effective in 21 days.

D. Consent Agenda: 7:45 PM

5) Motion by Councilor Pagurko, second by Councilor Omo to accept the Minutes as presented for the November 5, 2008 Council Meetings and Items F6, F7, F8, F9 and F10 as listed on the agenda. All were in favor.

E. Time Devoted to Residents to Address the City Council: 7:46 PM

No one spoke at this time.

F. Ordinances, Resolutions and Orders: 7:46 PM

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

This was passed under the Consent Agenda.

***7. Order - adopting Robert's Rules of Order for parliamentary procedure (motion to pass Order)**

This was passed under the Consent Agenda.

***8. Adoption Working Rules and Regulations for Council year 2008-2009 (motion to pass)**

This was passed under the Consent Agenda.

***9. 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)**

This was passed under the Consent Agenda.

***10. Appointing Register of Voters for January 2009 - December 2010**

**ORDER
APPOINTING REGISTRAR OF VOTERS**

WHEREAS, Title 21-A Section 101 requires the Municipal Officers shall appoint a qualified Registrar of Voters by January 1 of each odd numbered year.

NOW, THEREFORE, be it ordered by the City Council of the City of Bath that Mary Jane White be and hereby is appointed Registrar of Voters for the City of Bath with a term to expire December 31, 2010.

This was passed under the Consent Agenda.

11. Ordinance: Authorizing Permanent Financing in the amount of \$60,000.00 for the purpose of funding the purchase of defibrillators for the Fire Department (first passage)

Chairman Wyman read the following Ordinance:

**ORDINANCE
AUTHORIZING PERMANENT FINANCING**

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS/NOTES FOR THE CITY OF BATH, MAINE, IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$60,000.00 FOR THE PURPOSE OF FUNDING THE PURCHASE OF DEFIBRILLATORS FOR THE FIRE DEPARTMENT.

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, \$60,000.00 is hereby appropriated for the purpose of providing funding for the purchase of defibrillators for the Fire Department.

Section 2. That, for the purpose of financing the aforesaid appropriation, authorization is hereby given to incur indebtedness by the issuance of bonds/notes of the City of Bath, in an amount up to, but not to exceed, \$60,000.00 under, and pursuant to, the Charter of the City of Bath.

Section 3. That any and all bonds/notes issued pursuant to this Ordinance shall be payable in monthly installments.

Section 4. That the term of any bonds/notes issued under the within Ordinance shall not exceed ten (10) years.

Section 5. That the proceeds of any bonds/notes issued pursuant to this Ordinance shall be used only for those purposes specified in Section 1 above.

Section 6. That any proceeds of the bonds/notes issued not used for the purposes specified in Section 1 shall be applied to repayment of the principal and/or interest of any such bonds/notes.

Section 7. Any suit questioning the validity of this Ordinance shall be barred unless commenced within forty-five (45) days following publication of the Ordinance, said publication in accordance with Section 809 of the Charter of the City of Bath.

Section 8. 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, denominations, interest rate or rates and any other details of each issue of bonds and/or notes issued in anticipation of this permanent financing.

Section 9. That any and all bonds and/or notes issued by the City pursuant to Chapter 8 of the Charter of the City of Bath shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager.

Section 10. That any and all bonds and/or notes issued pursuant to Chapter 8 of the Charter of the City of Bath shall be general obligation securities of the said City.

Section 11. The City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized to make any such bonds or notes authorized hereby subject to call for redemption with or without premium at the election of the City before the dates fixed for the final payment thereof. Any notes issued hereunder shall be subject to prepayment without penalty.

Motion by Councilor Pagurko, seconded by Councilor Omo to put this item on the floor for discussion.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman set second passage of this Ordinance for the January 7, 2009 Council Meeting at 6:01PM.

12. Nominations for the Election of Councilor to attend the Bath Water District Board of Directors meetings.

Councilor Winglass nominated Chairman Wyman to be the Council Representative to the Bath Water District Board of Directors until the first Wednesday in December 2009. Councilor Pagurko seconded the nomination. There were no other nominations. All were in favor of Councilor Wyman as the Council Representative to the Bath Water District Board of Directors.

G. Petitions & Communications: 8:00 PM

Chairman Wyman read the following letter:

November 14, 2008

Mr. William Giroux
City Manager
55 Front Street
Bath, ME 04530

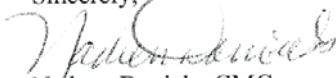
Dear Bill:

I am writing to extend my thanks to you for giving the Maine Town and City Clerks' Association Board of Directors the benefit and expertise counsel of Mary White during the past three years.

Our organization is successful because of the dedication of its volunteer clerks and we certainly could not have accomplished our mission without Mary's assistance.

We greatly appreciate Mary's time and energies and, on behalf of the Clerks' Association, I thank you and the city of Bath for sharing her time and services with us.

Sincerely,


Nadeen Daniels, CMC
MTCCA President

Councilor Winglass spoke regarding the passing of former Bath Municipal Band Leader, James Footer and that he felt some recognition of Mr. Footer's contributions to the citizens of Bath during his many years of service to the Band were in order.

H. City Manager's Report: 8:03 PM

Mr. Giroux introduced Seth Goodall the newly elected State Senator for District 19. Mr. Goodall stated that he was honored to be representing the citizens of District 19 and his office was always open to anyone with questions.

William Giroux spoke briefly regarding the closure of the BNAS and the area housing issues.

I. Committee Reports: 8:07 PM

Councilor Eosco reported that Main Street Bath was working hard to make "Bath's Old Fashion Christmas" a success this year and urged everyone to buy their Christmas presents locally in support of Bath businesses.

J. Old Business: 8:10 PM

There was no Old Business.

K. New Business: 8:10 PM

13) Appointment one member to the Winnegance Alewife Committee with a 3-year term.

Councilor Pagurko nominated Steven Wilson to the position. The nomination was seconded by Councilor Winglass. All were in favor.

14) Appointment of Donald McPherson as the Alternate Codes Enforcement Officer and Plumbing Inspector for the City of Bath until January 2010.

Councilor Rogers asked that Mr. McPherson be appointed to the position. Councilor Pagurko seconded the nomination. All were in favor.

Motion by Councilor Pagurko at 8:12 PM to go into an Executive Session to discuss a Real Estate Matter per 1 M.R.S.A. §405(6)(C). Councilor Cochrane seconded the motion. All were in favor.

Motion by Councilor Pagurko at 8:32 PM to come out of Executive Session. Councilor Winglass seconded the motion. All were in favor.

The meeting adjourned at 8:33 PM with a motion by Councilor Rogers, seconded by Councilor Pagurko. All were in favor.

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.