

**SPECIAL MEETING MINUTES**  
**City Council of the City of Bath, Maine**  
**Wednesday, February 18, 2009 6:00 pm**  
**Second Floor Conference Room, Bath City Hall**

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

Excused: Councilor Rogers

Also in attendance were 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.

**I. Ordinance: Amendments to the Zoning Map and Article 16, adding Section 16.17 – 619 High Street Contract Zone (second passage)**

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

**ORDINANCE**

WHEREAS, THE CITY COUNCIL OF THE CITY OF BATH, AS PART OF THE ADOPTION OF THE BATH LAND USE CODE ON JULY 19, 2000, EFFECTIVE AUGUST 9, 2000, DEPICTED THE BOUNDARIES OF ALL LAND USE DISTRICTS ON A ZONING MAP OF THE CITY OF BATH, ALSO DATED JULY 19, 2000, INCORPORATED BY REFERENCE INTO THE LAND USE CODE PURSUANT TO THE PROVISIONS OF SECTION 7.02 OF THE SAID CODE, AND

WHEREAS, IT IS NECESSARY AND APPROPRIATE THAT THE BOUNDARIES OF THE LAND USE DISTRICTS BE, FROM TIME TO TIME, ADJUSTED AND AMENDED, IN ORDER TO CREATE NEW DISTRICTS AND ADJUST BOUNDARY LINES OF EXISTING DISTRICTS,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE ZONING MAP OF THE CITY OF BATH, DATED JULY 19, 2000, BE AND HEREBY IS AMENDED IN ACCORDANCE WITH THE SKETCH PLAN ATTACHED HERETO AND MADE A PART HEREOF. THIS CHANGE SHALL BE INCORPORATED INTO AND BE PART OF THE OFFICIAL ZONING MAP OF THE CITY OF BATH. THE SPECIFIC ADJUSTMENT IS:

1. Adding the Special Purpose Commercial Contract Overlay District (SPCCO) to the zoning on the parcel of land at 619 High Street; Tax Map 32, Lot 118.

The change is shown on the map that is attached and made a part hereof.

And

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 16, by adding Section 16.17, as follows:

## SECTION 16.17 - 619 HIGH STREET CONTRACT ZONE

### A. District Designation

The property designated for contract rezoning amendment is the property located at 619 High Street; being identified as lots 118 and 118-1 on tax map 32; tax maps dated April 1, 2008. The property is known as the Captain Merritt House.

### B. Findings

1. This lot is located in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
  - a. The building was built as a home for the elderly in 1917.
  - b. The building is in a neighborhood of residential and educational uses and in an R1 zoning district.
  - c. The present use is the administrative offices of The Hyde School.
  - d. The Hyde School proposes to sell the property.
  - e. The size and historic nature of the building makes redevelopment in accordance with the uses allowed in the R1 zone extremely problematic.
  - f. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
  - g. The owner of the property has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a.

### C. Zoning Provisions Affected

This contract zoning amendment is intended to limit the number and type of authorized uses of the property as would otherwise be permitted according to C1 designation in a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on this site given the character of the neighborhood in which the building is located.

### D. Conditions of Approval

This contract zone is approved subject to the following condition:

1. The only uses allowed are the use categories:
  - a. Use 1.1.1 - Site-built Single-family dwelling.
  - b. Use 1.2 - Two-family dwelling
  - c. Use 1.3 - Multi-family dwelling
  - d. Use 1.6.1 - Home occupation - A
  - e. Use 1.6.2 - Home occupation - B
  - f. Use 3.1.1 - Operations designed to attract and serve numerous customers or clients on the premises, however, limited to only attorneys' offices, professional offices, and travel agent offices.
  - g. Use 3.1.2 - Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use.
  - h. Use 6.1.1 - Public or private elementary or secondary schools.
  - i. Use 6.1.2 - Public or private or post-secondary schools.
  - j. Use 6.1.3 - Special-purpose schools
  - k. Use 6.1.4 - Special education schools

- l. Use 6.2 - Libraries and museums, including associated educational and instructional activities.
- m. Use 30.0 - Art studio

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

**ROLL CALL VOTE:**

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

**NAYS: None**

**Ordinance passed unanimously. 7-0**

Chairman Wyman stated that this Ordinance would become effective in 21 days.

**II. Ordinance: Amendments to Article 2 – Definitions regarding Scooters and Small ATVs, Article 11 adding Section 11.37 – the Sale of Motor Scooters and small ATVs and Article 9, Section 9.2 Land Use Table (second passage)**

Motion by Councilor Omo, seconded by Councilor Pagurko to waive the reading of the following 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 2 – Definitions, by adding the following:**

**Motor Scooter**

A motorcycle as defined in Title 29-A MRSA, section 101, Subsection 38, provided the maximum piston displacement of the motor does not exceed 250 cubic centimeters. Notwithstanding the definition contained in Title 29-A MRSA, section 101, Subsection 38, for the purposed of this Code a motorcycle may have wheels smaller than 10 inches in diameter and may have a motor with a piston displacement less than 50 cubic centimeters.

**Small ATV**

Any motorized off-road vehicle 50 inches or less in overall width, having a dry weight of 600 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator, having handle bars for steering, and having a the maximum piston displacement not exceeding 375 cubic centimeters.

AND AMEND ARTICLE 11, BY ADDING SECTION 11.37 — THE SALE OF MOTOR SCOOTERS AND SMALL ATVS, AS FOLLOWS:

**Section 11.37 The Sale of Motor Scooters and small ATVs**

This Standard applies to Land Use category 12.6.

- A. Outdoor display or storage of motor scooters or small ATVs is not allowed overnight or during times when the business is not open to the public.
- B. The repair and/or service of motor scooters or small ATVs may not take place outside of an enclosed building.

C. No more than 5 motor scooters and/or small ATVs may be displayed out of doors at any one time. And amend Article 9, Section 9.2 –Land Use Table, as follows:

	ZONING DISTRICTS														
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	I	GC	RP	NRPO	TM C
<b>11.0 Accommodations</b>															
11.1 Hotel, motel, inn, tourist cabins, or similar business providing overnight accommodations															
11.1.1 Those businesses that: may include accessory uses such as a restaurant, meeting facilities, a swimming pool, or exercise facilities; or have more than 40 rental rooms.	N	N	N	N	N	S	N	N	S	N	N	S	N	N	N
11.1.2 Those businesses that do not include accessory uses that serve customers who are not also renting a room and have no more than 40 rental rooms.	N	N	S	N	S	S	S	N	S	N	N	S	N	N	N
11.3 Rooming house	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
11.4 Bed and Breakfast	S	S	S	S	S	N	S	N	N	N	N	N	N	N	N
<b>12.0 Motor Vehicle-related Sales and Service Operations</b>															
12.1 Motor vehicle, snowmobile, or mobile home sales and service, including motor vehicle or snowmobile repair and fuel sales as accessory uses.	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N
12.2 Motor vehicle or snowmobile repair facility	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N
12.3 Motor vehicle fuel sales	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N
12.4 Car wash	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N
12.5 Sales and installation of motor vehicle parts, such as mufflers, tires, or brakes	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N
<u>12.6 Sale of motor scooters or small ATVs</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>I</b>	<b>GC</b>	<b>RP</b>	<b>NRPO</b>	<b>TM C</b>

(Notes: Additions are underlined.)

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

**ROLL CALL VOTE:**

**YEAS: Cochrane, Omo, Paulhus, Eosco, Pagurko, Winglass**

**NAYS: Sinclair**

**Ordinance passed. 6-1**

Chairman Wyman stated that this Ordinance would become effective in 21 days.

**III. Ordinance: Amendment Chapter 17. Vehicles and Traffic, Article 5A, Restricting Vehicle Weight on Posted Ways (first passage)**

Motion by Councilor Omo, seconded by Councilor Pagurko to waive the reading of the following 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 17. VEHICLES AND TRAFFIC**

Add a new Section 5A, as follows:

**Article 5A  
Restricting Vehicle Weight on Posted Ways**

**Section 17-221. Purpose and Authority**

The purpose of this “Ordinance Restricting Vehicle Weight on Posted Ways” (hereinafter, the “Ordinance”) is to prevent damage to City ways and bridges in the City of Bath (hereinafter the “City”) which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of City ways and bridges, and to reduce the public expense of their maintenance and repair. This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2388.

**Section 17-222. Definitions**

Unless specifically defined in this Code, definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this Ordinance. Any words not defined therein shall be given their common and ordinary meaning.

**Section 17-223. Restrictions and Notices**

The City council or their duly authorized designee may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the City ways and bridges, and designate the City ways and bridges to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restrictions during any applicable time-period on any way or bridge so posted unless otherwise exempt as provided herein.

The notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time-period during which the restriction applies, the

date on which the notice is posted, and the signatures of the City council or their duly authorized designee. The notice shall be conspicuously posted at each end of the restricted portion of the way or bridge in a location clearly visible from the traveled way or bridge.

Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices. No person may remove, obscure or otherwise tamper with any notice so posted except as provided herein.

### **Section 17-224. Exemptions**

Vehicles that are exempt from the Maine Department of Transportation's (MDOT) and "Rules and Regulations Restricting Heavy Loads on Closed Ways" a date December 31, 1996 and amended on March 4, 1998, are exempt from this Ordinance.

Vehicles. The following vehicles are exempt from this regulation:

- A. Any vehicle or combination of vehicles registered for a gross weight of 23,000 pounds or less.
- B. Any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and traveling without a load other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment. It shall be a defense to a violation of this sub-section if the combined weight of any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and its load is in fact 23,000 pounds.
- C. Maine Department of Transportation highway maintenance vehicles or vehicles under the direction of a public jurisdiction with permission of the Department engaged in emergency maintenance of public highways or appurtenances thereto.
- D. Passenger cars, pickup trucks, emergency vehicles, school buses, a wrecker towing a disabled vehicle of legal weight from a posted highway, and vehicles with three axles or less under the direction of a public utility and engaged in plant maintenance or repair.
- E. Any vehicle transporting home heating fuel (oil, gas, stove size wood) to a private consumer, gasoline, groceries, bulk milk, bulk feed, solid waste, rubbish, or medical gases may apply for an exemption certificate. These vehicles must be registered in excess of 23,000 pounds and must be carrying a partial load with a weight equal to or less than that indicated on an exemption certificate issued by the Maine Department of Transportation. This certificate shall accompany the vehicle at all times as shall weigh slips, delivery slips, or bill of lading for the load being carried.)
- F. No vehicle delivering home heating fuel shall be required to obtain a municipal permit to travel over a restricted way or bridge if that vehicle operates in accordance with a permit issued by the Maine Department of Transportation.
- G. During a drought emergency declared by the Governor of the State of Maine, no vehicle that is transporting well-drilling equipment for the purpose of drilling a replacement water well, or for improving an existing water well that is no longer supplying sufficient water for residents, or agricultural purposes shall be required to obtain a municipal permit to travel over a restricted way or bridge if the following conditions are met:

1. That vehicle operates in accordance with a permit issued by the Maine Department of Transportation when a department permit is required for a road or way necessary to reach the municipal way on which the property to be drilled is situated; and
2. The City manager or, in the absence of the City manager, a City officer is notified in advance; and
3. The operator of the vehicle is traveling on a road that is posted by the City in accordance with restrictions imposed by the City.

### **Section 17-225. Permits**

The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the City council or their duly authorized designee for a permit to operate on a posted way or bridge notwithstanding the restriction. The City council or their duly authorized designee may issue a permit only upon all the following findings:

- A. No other route is reasonably available to the applicant;
- B. It is a matter of economic necessity and not mere convenience that the applicant use the way or bridge; and
- C. The applicant has tendered cash, a bond or other suitable security running to the municipality in an amount sufficient, in their judgment, to repair any damage to the way or bridge which may reasonably result from the applicant's use of the same.

Even if the City council or their duly authorized designee makes the foregoing findings, they need not issue a permit if they determine the applicant's use of the way or bridge could reasonably be expected to create or aggravate safety hazards or cause substantial damage to a way or bridge maintained by the City. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the ways and bridges.

In determining whether to issue a permit, the City council or their duly authorized designee shall consider the following factors:

- A. The gross registered weight of the vehicles;
- B. The current and anticipated condition of the way or bridge;
- C. The number and frequency of vehicle trips proposed;
- D. The cost and availability of materials and equipment for repairs;
- E. The extent of use by other exempt vehicles; and
- F. Such other circumstances as may, in their judgment, be relevant.

The City council or their duly authorized designee may issue permits subject to reasonable conditions, including but not limited to, restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

### **Section 17-226. Administration and Enforcement**

This Ordinance shall be administered and may be enforced by the City council or their duly authorized designee. The duly authorized designee shall be the Public Works Director.

### **Section 17-227. Penalties**

Any violation of this Ordinance shall be a civil infraction subject to a fine of not less than \$250 nor more than \$1000. Each violation shall be deemed a separate offense. In addition to any fine, the City may seek restitution for the costs of repairs to any damage of a way or bridge and reasonable attorneys fees and costs. Prosecution shall be in the name of the City and shall be brought in the Maine District Court.

### **Section 17-228. Severability; Effective Date**

Any event any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.

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

**VOTE:**

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

**NAYS: None**

**Ordinance passed unanimously. 7-0**

#### **IV. Authorizing the posting of the Warrants the RSU #1 Referendum Election to be held on March 25, 2009 at the Bath Middle School at 6 Old Brunswick Road.**

Councilor Omo motioned to have the City Clerk go forth with the posting of the warrants. Councilor Winglass seconded the motion. All were in favor.

The meeting adjourned to Workshop at 6:10 PM with a motion by Councilor Pagurko, seconded by Councilor Omo. All were in favor.

Attest:

Mary J. White, City Clerk

*Please note: These minutes are not recorded verbatim.*