

WORKSHOP MEETING AGENDA
Bath City Council
Wednesday, September 18, 2019 6:15 PM
Council Chambers
Bath City Hall

- I. Public Hearing on a proposed amendment to the Charter of the City of Bath

- II. Chapter 10, Public Safety, Article 5. Special Events Ordinance Workshop

**NOTICE
PUBLIC HEARING**

BE IT HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE SAID CITY COUNCIL, BEING THE MUNICIPAL OFFICERS OF SAID CITY, WILL HOLD A PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF BATH ON WEDNESDAY, SEPTEMBER 18, 2019 AT 6:15 P.M. IN THE COUNCIL CHAMBERS ON THE THIRD FLOOR OF THE BATH CITY HALL. THE PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF BATH WILL BE IN SUBSTANTIALLY THE FORM BELOW:

CHARTER AMENDMENT – QUESTION 1

“SHALL THE MUNICIPALITY APPROVE THE CHARTER AMENDMENT SHOWN BELOW?”

YES

NO

SUMMARY:

This proposed Charter amendment allows the City Council, upon affirmative vote of six (6) of its members, to waive the five (5) year limitation on contracts involving payment of money out of appropriations of more than one (1) year.

AMEND AS FOLLOWS:

Chapter XI, General Provisions, Sec. 1102

Sec. 1102. Contracts Extending Beyond 1 Year.

No contract involving the payment of money out of the appropriations of more than one (1) year, (other than contract in which rates are subject to approval of the Public Utilities Commission) shall be made for a period of more than five (5) years; nor shall any such contract be valid unless made or approved by ordinance. The five (5) year term limit on contracts involving payment of money out of appropriations of more than one (1) year may be waived by affirmative vote of the majority of the entire City Council (six (6) votes).

Memorandum

To: Mari Eosco, Chair, Bath City Council

CC: Peter H. Owen, City Manager
Marc Meyers, Assistant City Manager
Mary C. Howe, City Clerk

From: Therriault & Therriault, City Solicitors

Date: August 23, 2019

Re: Charter Amendment

An issue has arisen regarding a proposed Contract for the purchase of power that is being considered by the City. The issue concerns the length of the Contract, which is proposed to be twenty-five (25) years. This violates the provisions of Section 1102 of the City Charter, which limits Contracts that call for the payment of money to no more than five (5) years. The Section in the Charter, in its entirety, appears as follows:

Sec. 1102. Contracts Extending Beyond 1 Year.

No contract involving the payment of money out of the appropriations of more than one (1) year, (other than contract in which rates are subject to approval of the Public Utilities Commission) shall be made for a period of more than five (5) years; nor shall any such contract be valid unless made or approved by ordinance.

Interestingly, this identical paragraph was included in the original Bath Municipal Charter, approved by the State Legislature as a private and special law in 1947. The provision appears in that Charter as Section 1002.

Pursuant to 30-A M.R.S Section 2104, the Municipal Officers (in Bath's case the City Council) have the authority to determine if amendments to the City's Municipal Charter should be considered. Any proposed change in the length of Contracts that may be approved by Council, would be considered an administrative matter, since it does not affect or change the basic structure of government and would, therefore, be a proper subject of amendment.

The procedure is straightforward. Initially, the City Council, by Order, provides for notice and a public hearing on the proposed amendment. The notice of the public hearing must be published in a newspaper of general circulation in the municipality at least seven (7) days before the date of the hearing. The notice must contain the text of the proposed amendment and a brief explanation.

The hearing is conducted by the Municipal Officers. Within seven (7) days after the public hearing, the Council may Order the proposed amendment be placed on a ballot at the next regular municipal election held at least thirty (30) days after the Order is passed. Council also has the option of calling for a special election to consider the amendment. The Order may be handled at the same meeting as the public hearing.

In order to meet these time frames for the November 6, 2019 election, Council would have to pass an Order for the public hearing on the amendment at its September 4th meeting. The public hearing could be scheduled for September 18th since I think the Council is having a meeting on that night. The Order placing the amendment on the ballot could be done at the September 18th public hearing meeting or no later than October 2nd. There also has to be consideration for time to prepare the ballots, however, these could be done in advance.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Roger".

Roger R. Therriault, Esq.

RRT/amm



CITY of BATH, MAINE

Office of the City Manager

Peter H. Owen, P. E.

55 Front Street

Bath, Maine 04530

Memorandum

To: Chair Eosco, Vice Chair Paulhus and Members of the City Council
CC: Peter Owen, City Manager
Date: August 30, 2019
From: Marc Meyers, Assistant City Manager
RE: **Charter Amendment/Solar PPA**

The City Manager's Office has been working with ReVision Energy on a potential solar energy power purchase agreement to help offset electricity costs at City facilities and reduce carbon pollution. A power purchase agreement allows the City to enter into an agreement with ReVision Energy or an investor to purchase solar-produced power at a lower rate, while the City doesn't have to shoulder the upfront capital cost of a solar array.

The City Charter (Section 1102) states that "no contract involving payment of money out of the appropriations of more than one year (other than rates are subject to approval of the Public Utilities Commission) shall be made for a period of more than five (5) years). The proposed contract for the PPA is 25 years, due the initial commitment from Revision Energy or an investor to install the solar array. Adjusting to shorter contract, would likely be unattainable for Revision or its investor due to its return on investment or the City for potential increased rates.

After consulting with the City Solicitor, amending the City Charter appeared the only way to move forward with this solar project. The proposed amendment would allow the City Council, upon affirmative vote of six of its members, to waive the five-year limitation on contracts involving payment of money out of appropriations of more than one year.

The City Solicitor has included a memorandum outlining the procedure for a charter amendment. Tonight, the City Council will be taking the first step in that procedure by voting on an Order for a Public Hearing and Notice of the Public Hearing.

Chapter 10
Public Safety

Article 5. Special Events Ordinance

Sec. 10-501. Purpose

The City finds that special events have the potential to create a hazard to the public health, peace, and safety. It is recognized that many special events enhance the quality of City life. It is further recognized that many types of special events seek to exercise citizens' Constitutional rights to assembly and free speech . The process shall provide the City with notice of the pendency of a special event of significant size in order to protect the safety of those involved with the event and the public in general. It is the City's purpose, by this Article, to promote and permit safe special events while regulating the conduct of such special events in order to protect the public health, peace, and safety. This Ordinance is intended to establish a process for the consideration of requests to conduct special events.

Sec. 10-502. Definitions

The following definitions shall apply to the terms used in this Article. Terms not defined herein shall have their customary and ordinary meanings.

- A. Special event shall mean any event for which the continued attendance is reasonably anticipated to be one hundred (100) or more persons which:
 - 1. Utilizes or seeks to reserve any City owned or controlled property, including but not limited to streets, sidewalks, parks, parking areas or buildings, or,
 - 2. Is an event held on private property which will require an increased level of City services such as emergency calls for service, trash removal, traffic, crowd control, or medical services, and has the potential to cause/create hazard to public safety if not regulated.
- B. Services shall mean any City provided service, including but not limited to traffic control, crowd control, trash removal, medical services, fire services, traffic control devices. (I.e. barricades and signage.)
- C. Standing. In order to submit an application for a special event, and to conduct that event, the applicant must demonstrate ownership, a leasehold interest, or written permission from the owner to use a particular site. This shall include the location of the special event and any areas providing support for the event.

- D. Operator. Operator means the person or entity responsible for staging and managing the special event. In the event that no operator exists, the owner or in the event of non-availability of the owner, the lessee of the ground encompassing the special event area and any support areas, shall be deemed to be the operator.

Sec. 10-503. Permits

- A. Permit Required. No property owner shall permit on that owner's property, or otherwise conduct or permit on public property, a special event as defined in Section 10-502(A) unless a permit has been obtained in advance of the event from the City of Bath.
- B. Exemptions. Events which would be classified as special events, which constitute traditional types of special events that have occurred and been conducted in a manner so as not to endanger the health and wellbeing of the citizens, and which require minimal City services shall be exempt from this permitting requirement. By way of illustration only, they include such events as those organized or held by a Department or Agency of the United States, State of Maine, or City of Bath, or RSU1. Organizations may apply for a blanket waiver for recurring events on locations that meet the criteria of this Section. (Permitting for Heritage Days activities shall continue to be provided by action of the Bath City Council.)

Sec. 10-504 Application Submission Requirements

- A. The application shall be in writing and on a form supplied by the City.
- B. Time Requirements. The application for a permit must be submitted no less than 30 days prior to the special event, unless the City Manager or his/her designee allows a shorter time frame for good cause shown.
- C. Applicants for a special event permit shall furnish to the City the following:
 - 1. Application form, providing, at a minimum:
 - a. Name and contact information of the applicant or operator if different
 - b. Description of the event, including its expected impact on the City, City services, residents, and businesses
 - c. Number of anticipated participants
 - d. Name and emergency contact information for the manager or operator of the special event
 - 2. Evidence of right, title, or interest by the applicant in the location of the special event and any areas providing support for the event

3. Evidence in plan, text, or report form explaining and/or demonstrating how the event meets the applicable standards of Section 10-505
 4. Such plans, specifications, and reports as many be deemed necessary for a proper review of the proposed special event
- D. Additional Information. Staff processing the application may request such additional plans, specifications and reports as may be deemed necessary for a proper review of the application.

Sec. 10-505 Approval Criteria

- A. The burden of proof as to whether the standard is met is that of the applicant.
- B. The application must be approved and the permit issued if the City, using the review procedures in Section 10-507, determines that the applicant has demonstrated that the applicable standards of review have or will be met.
- C. Standards of Review
 1. Adequate and satisfactory water supply and facilities
 2. Adequate refuse storage and disposal facilities
 3. Adequate medical facilities, supplies, care, and staffing availability
 4. Adequate fire and police protection
 5. Adequate transportation, mobility, and access for special event participants, general public, transit, and emergency services.
 6. Adequate sewer facilities
 7. Sanitary food service
 8. Appropriate sleeping area and facilities if necessary
 9. Adequate traffic control
 10. Such other matters as may be appropriate to the type of event and to provide for health and safety
 11. The applicant shall carry public liability insurance in an amount not less than \$1,000,000.00 per person for bodily injury and for property damage with the City to be named as an additional insured. The proof of insurance will be reviewed for adequacy by the City.
 12. Adequate precautions to prevent public or private nuisances, as defined in State or local law, such as, but not limited to excessive noise.
 13. Adequate precautions will be taken to control the use and consumption of alcoholic beverage.

Sec. 10-506 Review Procedures

- A. As soon as practical after determination of the application as being complete and that the applicant has standing, the City Clerk must forward the application and associated materials to the following for review:
 1. Police Chief
 2. Fire Chief
 3. Codes Enforcement Officer
 4. Public Works Director
 5. Parks and Recreation Director
- B. Upon receipt, reviewers shall review the application and make a determination on the application as to its compliance with the standards of review identified in Section 10-505(B). Determinations and any review comments shall be reported to the City Clerk.
- C. Once all reviewers have reported their findings to the City Clerk, the City Clerk shall:
 1. Approve the application
 2. Approve the applications with reasonable conditions
 3. Deny the application
- D. If denied, the applicant shall be provided in writing with the cause for such denial.
- E. Appeal process: The denial of a permit by the City of Bath may be appealed to the City Manager. The appeal must allow the City Manager a sufficient amount of time prior to the scheduled event so as to process an appeal. If time permits, the Manager may schedule a meeting with the applicant, the Chief of Police, and any other Department Managers or advisors deemed necessary. The City Manager may:
 1. Affirm the denial
 2. Direct the issuance of the permit
 3. Deny the permit pending the applicant's completion of certain steps, which if followed, will result in the permit being issued.

Sec. 10-507 Permit fee; Costs of Services

- A. A non-refundable administrative fee for processing an application under this article shall be \$25 dollars and shall be submitted at the time of the submission of the application.
- B. Costs. Any costs related to the staging and management of the special even, including, but not limited to costs for cleanup, crowd control, traffic control, medical personnel, public safety personnel, waste disposal, or cleanup and the like, will be assessed against the operator. This shall include costs for local law enforcement, and payment of all proper claims for damages to real or personal property. Where

the costs are anticipated to be substantial, in excess of \$5,000.00, the permit may be conditioned upon the receipt of a deposit to be held by the City until all final costs are tabulated. If there is any balance in the deposit, that shall be refunded to the operator.

Sec. 10-508 Law enforcement

Nothing in this Section shall be deemed a waiver of the provisions of State Law or Local Ordinances which prohibit the sale, consumption, or vending of alcoholic beverages in certain locations. (Reference is made to City Ordinances Chapter 6, Cemeteries and Parks, Article 4, Park Areas–Prohibitions, Sect. 6-28, Park Areas–Prohibited Activities, Subsection J, Alcoholic Beverages, which allow alcoholic beverages in the Library and/or Waterfront Parks in connection with specific events.)

Sec. 10-509 Victualers/vendors; alcoholic beverages

A. No operator will permit, encourage or suffer any person, firm, business, family or corporation from selling or merchandising clothes, food, goods, second-hand merchandise, etc., at a special event unless that person, firm, business, family or corporation has secured a vendor or victualers license as required by the City.

B. Any vendor or victualer found at a special event without proper State and/or local licensing to so operate will be removed by the City from the special event, and the operator will be cited for violation of this chapter and for violation of any other applicable City Code and/or State laws . Local licenses may be waived in certain circumstances.

C. If the operator intends to sell or permit the sale of alcoholic beverages within the special event area during a special event, the operator shall restrict the time and location of such sale so that alcoholic beverages are sold only during the particular event and so that public safety and order will not be impaired. The operator shall comply fully with the laws of the State of Maine regulating the sale and consumption of alcoholic beverages, as well as with the City's Special Amusement Ordinance. No alcoholic beverages shall be sold at a special event after 10:00 p.m.

Sec. 10-510 Violations and penalties

Any person or operator who violates any provision of this ordinance or any term of a permit issued pursuant to this chapter shall be subject to a civil penalty. It is a violation of this ordinance and deemed a nuisance herein to hold a special event within the City of Bath without a permit. Operator(s) found in violation of this chapter shall be subject to a fine of not to exceed a maximum of \$1,000, plus any and all costs of the City of Bath, including the Police and Fire Departments, incurred by the City to terminate the special event, safely disperse those in

attendance and enforce this ordinance. Each violation shall be considered a separate offense, and each day a violation is allowed to exist shall be considered a separate offense. The provisions of this ordinance shall be enforced by the Chief of Police, the Codes Enforcement Officer, or such other municipal official or employee as the Chief of Police shall designate.

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