

## STATE OF MAINE

### COUNTY OF YORK

### CITY OF SACO

The following are minutes of the May 17, 2010 City Council Meeting.

- I. **CALL TO ORDER** – On Monday May 17, 2010, at 7:00 p.m., a Council Meeting was held in the City Hall Auditorium.
  
- I. **ROLL CALL OF MEMBERS** - Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Leslie Smith, Jr., Marie Doucette, Jeffrey Christenbury, Arthur Tardif, Eric Cote and Marston Lovell. Also in attendance, this evening, were City Administrator Richard R. Michaud and Lucette S. Pellerin, City Clerk.
  
- II. **PLEDGE OF ALLEGIANCE**
  
- III. **GENERAL:**
  
- IV. **APPROVAL OF MINUTES:**

Minutes were not presented this evening.

- V. **AGENDA:**

- B. **Confirmation of New Fire Chief**

Alden Murphy, Fire Chief has resigned effective July 1, 2010.

In accordance with the Administrative Code Sub-section 4-17 (A) which states: “There shall be a Fire Department, the head of which shall be the Fire Chief. The Fire Chief shall be appointed by the City Administrator and confirmed by the City Council,” the Administrator has made such an appointment.

The position was posted with an in-house advertisement that attracted two candidates. The City Administrator appointed Deputy Chief John Duross as Fire Chief effective July 1, 2010.

Deputy Chief John Duross has been a full time employee for the City of Saco Fire Department since 1987. John has moved up through the department beginning as a firefighter, emergency medical technician, shift captain, and since 1995 has been a deputy fire chief. He has demonstrated experience in fire ground operations, emergency medical services, fire prevention, and code enforcement, training, budgeting and labor relations.

During his 29 years of service with the fire department, and since his last 15 years as deputy fire chief, John has selflessly protected and served our community at any hour of the day or night; and as fire chief he will continue to serve the city well.

Councilor Cote moved, Councilor Tardif seconded, that it be ordered that the City Council confirm the City Administrator's appointment of John Duross as the fire chief, effective July 1, 2010. Further move to approve the order. The motion passed with seven (7) yeas.

**A. FY11 Budget:**  
**a. WWTP Budget Adoption**

The FY2009-2010 operating budget was \$2,370,948 that was supported by a sewer user fee rate of \$3.60 per unit. At the rate of \$3.60 per unit, an annual average of 100 customers was \$270.00 per year.

The FY2010-2011 budget includes an increase in the sewer user fee rate from \$3.60 to \$4.05 per unit. At the rate of \$4.05 per unit, an annual average of 100 customers will be \$299.70 per year, an increase of 11%.

The sewer user fee rate increase for FY2010-2011 represents the first increase in a 2 year plan. In FY2011-2012, the Council will consider increasing the sewer user fee rate to \$4.25 per unit.

Councilor Doucette moved, Councilor Christenbury seconded, that it be Ordered that the City Council move to adopt an appropriation order for the adoption of the Fiscal Year 2010-2011 Waste Water Treatment Plant budget of the City of Saco, Maine as follows:

Approve gross expenditures of \$2,181,890; to be offset by \$2,181,890 in anticipated revenues and other credits, which represents an increase in the rate of sewer user fees from \$3.60 to \$4.05. Further move to approve the Order. The motion passed with six (6) yeas and one (1) nay. Councilor Tardif voted in the negative.

**b. Adoption of the FY11 Municipal Budget**

The Council discussed this item at Workshop on March 15<sup>th</sup>, March 22<sup>th</sup>, April 5<sup>th</sup>, April 20<sup>th</sup>, and April 26<sup>th</sup> 2010; the Public Hearing for the budget was held on May 3, 2010, it was followed by a workshop on Budget.

Councilor Christenbury moved, Councilor Cote seconded that it be it Ordered that the City Council move to approve an appropriation order for the adoption of the Fiscal Year 2010- 2011 budget, **excluding all school related items**, per Section 6.06 and 6.07 of the Charter of the City of Saco, Maine as follows:

Approve gross expenditures of \$22,437,136 which represents \$19,979,656 in municipal expenditures, \$500,000 in overlay, \$1,079,365 in County taxes, \$743,115 in TIF transfers, and \$165,000 in capital improvements for municipal operations; to be offset by \$22,437,136 in anticipated revenues and other credits, which represents \$7,666,232 in anticipated municipal revenues, and other credits of \$ 834,398 from the Ambulance Fund, \$20,000 from the Economic Development Fund, \$25,000 from the Saco Island TIF, \$1,000 from the Camp Ellis Fund, and \$237,000 from school reimbursement to Public Works, and \$1,468,773 from the

Undesignated Fund Balance and \$35,000 from Designated Fund Balance; and thereby raising gross taxes of \$12,149,733 and further ordering that the amounts set in the following attached schedule titled "CITY OF SACO FY 2011 CITY BUDGET" which shall become a part of the City Clerk's records and shall designate the form of the City of Saco Budget for Fiscal Year 2010-2011 as authorized under Section 6.04 of the Charter of the City of Saco, Maine. The motion passed with five (5) yeas and two (2) nays. Councilor Smith and Tardif voted in the negative.

### **c. FY11 State Required Action**

The State requires two separate actions by the Municipal Officers after the budget is passed. Section 5682 of Title 30-A requires that the City may receive State funds only on the affirmative vote of the Council to accept those funds. The numbers in the motion are the estimates from the budget. Total accuracy on the estimates is not a requirement, only that acceptance of the funds is authorized. The City Clerk must certify the vote and return to Augusta before 7/1/10.

Councilor Mills moved, Councilor Christenbury seconded, that it be Ordered that the City Council authorize the City Treasurer to accept, on behalf of the City of Saco, the following categories of state funds and their estimated amounts for the fiscal year 2010-2011 which are provided by the Legislature of the State of Maine to the City of Saco, and which action is required under Title 30-A MRSA 5682.

Municipal Revenue Sharing	\$1,100,646
Local Road Assistance	\$ 206,040
Tree Growth Reimbursement	\$ 20,000
Veterans Exemption Reimbursement	\$ 9,000
General Assistance Reimbursement	\$ 45,000
Homestead Exemption Reimbursement	\$ 272,400

And such other state revenues, grants or reimbursements which may from time to time become available to the City of Saco from the State of Maine. The motion passed with seven (7) yeas.

### **d. Set the FY11 Property Tax Due**

Title 36, MRSA, Section 505 provides that a municipality may by vote determine the rate of interest which shall apply to delinquent taxes committed during the taxable year until those taxes are paid in full. The maximum rate of interest is the highest conventional rate of interest charged for commercial unsecured loans by Maine banking institutions on the first business day of the calendar year the vote is taken. The Treasurer of the State of Maine had determined that the maximum rate of interest than can be charged per Title 36, MRSA, Section 505 (4) for calendar year 2010 is 7.0%. Therefore, for the FY2011 tax commitment, the maximum rate is 7.0%. As a normal course of business, the City has adopted the maximum rate as its rate. This will provide incentive for those property owners who are financially able, to pay on time.

Title 36, MRSA, Section 506-A provides that a municipality must establish a rate of interest for the overpayment of taxes. The rate of interest may not exceed the interest rate established by the

municipality for delinquent taxes reduced by 4% but may not be less than 8% or greater than 12%. If a municipality fails to set a rate, it shall pay interest at the rate of 12%. Therefore, for overpayment of the FY2011 taxes, the rate of interest to be paid should be set at 8%.

Title 36, MRSA, Section 506 provides that a municipality "...may authorize their tax collectors or treasurers to accept prepayment of taxes not yet committed and to pay interest on these prepayments, if any is authorized, at a rate not exceeding 8% per year; municipalities are not obligated to authorize the payment of interest on taxes prepaid under this section." Therefore, we are requesting council authorization to apply any prepayment of taxes directly to the tax account as they are received without having to pay interest on these prepayments.

Councilor Mills moved, Councilor Doucette seconded, that it be Ordered that the City Council set the interest rate for delinquent FY2011 property taxes at 7.0%, on any refunds of FY2011 tax payments at 8.0%, authorize the tax collector to accept prepayment of taxes not yet committed without having to pay interest on these prepayments and to establish the due dates for tax payments as follows:

First half payment – Due Date 9/10/2010 with first interest date of 9/13/2010.

Second half payment – Due Date 03/11/2011 with first interest date of 03/14/2011. Further move to approve the Order. The motion passed with seven (7) yeas.

#### **e. Reconfirm Tax Policy 2011**

On October 6, 1986, the City Council approved a tax collection policy which allowed the Tax Collector or the Treasurer to apply tax payments received from an individual to the oldest unpaid tax bill first. We would like to reconfirm the existing policy with the onset of a new tax year.

#### **Tax Collection Policy**

The municipal officers of the City of Saco have approved the request of the municipal treasurer and the tax collector that any tax payment received from an individual as payment for any property tax be applied against outstanding or delinquent taxes due on that property in chronological order beginning with the oldest unpaid tax bill. Taxes may not be applied to a period for which abatement request or appeal has not been resolved unless approved in writing by the taxpayer. Also, on the 30-day lien notice or 45-30 day foreclosure notice, a statement will be added indicating the City's tax collection policy.

Councilor Lovell moved, Councilor Christenbury seconded, that it be Ordered that the City Council accept the tax collection policy as presented pursuant to 36 MRSA Section 906. Further move to approve the Order. The motion passed with seven (7) yeas.

#### **C. Vote – MMA Legislative and Executive Policy Committee**

The nomination/election season is underway for Maine Municipal Association's (MMA) committees.

The MMA takes its direction on all questions regarding the goings-on at the State House in Maine from 70 elected and appointed municipal officials serving in towns and cities throughout

the state who are chosen by their peers to serve on the Association's Legislative Policy Committee (LPC) as well as others such as the Executive Committee.

Any elected or appointed municipal official holding office in any MMA membership community is eligible to serve on the Legislative Policy Committee. There are two seats on the LPC for each State Senate District. Members serve two-year terms, representing their own community and the other municipalities in their Senate District.

Councilor Marston Lovell has previously served on the LPC and is seeking another term; he is also seeking a term on the Executive Committee.

Councilor Cote moved, Councilor Mills seconded that it be ordered that the City Council nominate Councilor Marston Lovell to Maine Municipal Association's (MMA) Legislative Policy Committee; and further vote to elect Councilor Marston Lovell to the MMA Executive Committee. Further move to approve the order. The motion passed with six (6) yeas. Councilor Lovell abstained.

#### **G. Warrant for the RSU Budget Validation Referendum**

The Regional School Unit No. 23 composed of the City of Saco and the Towns of Dayton and Old Orchard beach, State of Maine submitted the Warrant To Call Regional School Unit No. 23 Referendum.

Councilor Christenbury moved, Councilor Doucette seconded, to approve the Warrant as presented by the Regional School Unit No. 23. The motion passed with seven (7) yeas.

#### **VI. Executive Session –**

Councilor Christenbury moved, Councilor Lovell seconded that it be Ordered that the City Council, Pursuant to [1 M.R.S.A. Chapter 18, Subchapter 1, §405 (6) (D)] move to enter into Executive Session to discuss: Labor Negotiations

The motion passed with seven (7) yeas. TIME: 7:40 p.m.

Upon return from the executive session, at 8:00 p.m., Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Leslie Smith, Jr., Marie Doucette, Jeffrey Christenbury, Arthur Tardif, Eric Cote and Marston Lovell.

A report, from the executive session, was not presented this evening.

#### **D. Council to accept the "Voting Traffic Plan, dated April 21, 2010"**

In November 2009 the City consolidated all ward voting to the Community Center on Franklin Street.

There are benefits to merging ward voting to the Center. The city saves money by decreasing the number of poll workers; parking and traffic in school parking lots and area streets is not needed;

therefore, providing less disruption to the children at the schools and easing traffic areas around the schools during election days.

In an effort to further promote ease of voting for citizens and provide an alternative to voting at the Center, absentee voting was offered weeks prior to Election Day during the last special election, and the absentee voter turnout was high. Another intended advantage to the consolidated voting location is to provide ease and convenience of voting for citizens by advertising just one location.

However, the turnout in the last election was heavy, and traffic problems impeded the public's ability to access the polling location quickly and without frustration. As a result of that experience, the Council directed the police department to develop a plan to address some of the issues that developed during voting.

Councilor Lovell moved, Councilor Mills seconded that it be Ordered that the City Council accept the 'City of Saco Voting Traffic Plan, dated April 21, 2010'. Further move to approve the order. The motion passed with five (5) yeas and two (2) nays. Councilors Smith and Christenbury voted in the negative.

#### **E. Designate the BayView Convent as an Historic Landmark**

An application to establish the Bay View Convent as a Historic Landmark was submitted to the Historic Preservation Commission (HPC) and scheduled for review at its March 10 meeting. Prior to that, both Zoning Officer Dick Lambert and City Attorney Tim Murphy offered the opinion that the applicant, Chris Di Matteo, had no standing to pursue this nomination. The HPC decided to support the nomination itself, and has conducted a review process with public hearings as outlined in Sec. 413-5 of the Zoning Ordinance.

This HPC reviewed this item at meeting on March 10, March 25, April 5, 14, 22 and 29, and May 5, 2010. The final report includes the recommendation that the Bay View House be designated as a Historic Landmark.

The City Council previously approved a contract zone for the property which would permit its demolition. A demolition permit has been issued.

City Attorney Tim Murphy has advised on landmark adoption procedure, which has some inconsistencies with the state zoning law and the City Charter. If the Council votes in favor of adoption, it will be preliminary to amending the Zoning Ordinance to do so.

Councilor Christenbury moved, Councilor Tardif seconded, that it be Ordered that the City Council deny the request of the Historic Preservation Commission to list the Bay View Convent at 187 Bay View Road as a landmark under Section 413-5. Further move to approve the Order. The motion passed with five (5) yeas and two (2) nays. Councilor Mills and Smith voted in the negative.

**Request by Councilor Doucette to Reconsider the above Motion.**

Councilor Doucette moved, Councilor Mills seconded the it be that it be Ordered that the City Council deny the request of the Historic Preservation Commission to list the Bay View Convent at 187 Bay View Road as a landmark under Section 413-5. Further move to approve the Order. The motion passed with four (4) yeas and three (3) nays. Councilors Mills, Smith and Doucette voted in the negative.

**Mayor Michaud requested a brief break at 10:05 p.m.**

**The meeting was reconvened at 10:13 p.m.**

**F. Appeal of the Demolition Permit for Bay View Convent & Authorize Independent Legal Counsel for the HPC**

On or about April 5, 2010, the Servants of the Immaculate Heart of Mary (the Servants) owners of the Bay View Convent took out an application to demolish the structure at 187 Bay View Road. The Building Inspector reviewed the application and granted the demolition permit on April 6, 2010.

In a letter dated April 23, 2010, to the Mayor and City Council, the Historic Preservation Commission (HPC) requested an appeal of the decision of the Building Inspector to issue a demolition permit for the property at 187 Bay View Road.

Demolition permits are issued under the authority of the International Building Code, Ed. 2003, specifically section 105. The International Building Code was incorporated as section 73 of the City of Saco Code. It is Section 73, where the issue of any appeals starts. According to City Code, Section 73-5, any appeal from a demolition permit should be brought before “the Mayor and City Council” within “30 days from the date of the decision appealed ...”

The city attorney was charged with providing guidance on the format, structure, and other legal requirements for the Council to consider as it conducts an appeal hearing. The city attorney has provided the requested information and is now before the council for review.

The following parties have been notified of this meeting: The sisters of the Servants; Attorney David Ordway, Saco Building Inspector; HPC members: Robert Demers, Chairman; John Read; Audrey Milne; Johanna Hoffman; Don Uldbjerg; Jay St. John; and Gabrielle Gallucci; and Developer Tim Swenson, Architect John Mitchell.

Councilor Mills moved, Councilor Smith seconded, that it be Ordered that the City Council adopt the procedural rules for the appeal hearing in the document titled, ‘**Memo to Rick Michaud, Mayor, City Council regarding Saco HPC Appeal/Demolition Permit, dated May 11, 2010**’. Further move to approve the order. The motion passed with six (6) yeas and one (1) nay. Councilor Tardif voted in the negative.

Mr. John Reed, a member of the Historic Preservation Commission, requested that Councilor Cote recuse himself, from voting in this matter, due to the vitality of the bias towards the HPC.

Mr. Reed also stated an objection to Councilor Christenbury participation in the matter.

Mayor Michaud stated for the record, that the Council is a political and judicial body that wears many hats.

Councilor Lovell moved that Councilor Cote be asked to recuse himself pertaining to this matter. The motion failed due to a lack of second.

Councilor Lovell moved, Councilor Christenbury seconded, to hear the matter of the application. This motion was withdrawn by the Councilors.

Councilor Mills moved, Councilor Smith seconded, that Councilor Cote recuse himself. The motion failed with three (2) yeas and four (4) nays. Councilors Doucette, Christenbury, Tardif, and Lovell voted in the negative.

Councilor Mills moved, Councilor Smith seconded, that Councilor Christenbury be recused. The motion failed with one (1) yea and five (5) nays. Councilor Mills, Doucette, Tardif, Cote and Lovell voted in the negative.

Councilor Tardif moved, Councilor Christenbury seconded, to close the hearing. The motion passed with six (6) yeas and one (1) abstention. Councilor Mills abstained.

Councilor Cote moved, Councilor Tardif seconded, to find that the Historic Preservation Commission does not have standing in this matter. The motion passed with five (5) yeas and two (2) nays. Councilors Lovell and Smith voted in the negative.

## **VIII. ADJOURNMENT**

Councilor Mills moved, Councilor Doucette seconded, to adjourn. The motion passed with seven (7) yeas. TIME: 11:45 p.m.

ATTEST: \_\_\_\_\_  
Lucette S. Pellerin, City Clerk