

# LEWISTON CITY COUNCIL AGENDA

## CITY COUNCIL CHAMBERS

**Tuesday, August 25, 2015**

### **6:00 p.m. Special Meeting**

Pledge of Allegiance to the Flag.  
Moment of Silence.

- ES-1. Executive Session regarding consultation with the City Attorney.
  - 2. Resolve Ratifying the conclusion of the City Clerk that the Council Order adopted August 11, 2015, "Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to execute the purchase and sale agreement and other documents necessary to effect the transaction" is not a permissible subject for a citizen initiative referendum and, therefore, that the City Clerk cannot issue a proper petition.
  - \* 2B. Resolve Directing the City Clerk to place a question on the November Regular Municipal Election Ballot regarding the acquisition of 2 and 26 Oxford Street.
  - 3. Discussion of the use of HOME Funds to Purchase and Renovate Properties for Sale to Qualified Buyers.
  - 4. Discussion of Fire/Code Inspections Task Force Report.
- ES-5. Executive Session to discuss Real Estate Negotiations of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.
- ES-6. Executive Session pursuant to MRSA Title 1, section 405(6)(c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.
- 7. Adjourn.

**LEWISTON CITY COUNCIL**  
**MEETING OF AUGUST 25, 2015**

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 1**

**SUBJECT:**

Executive Session regarding consultation with the City Attorney.

**INFORMATION:**

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings. Discussing a legal matter with the City Attorney is a topic permitted under the statutes.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

The state statutes outline the issues that will be discussed in executive session.

*EARB/kmm*

**REQUESTED ACTION:**

1	2	3	4	5	6	7	M
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To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney.

# LEWISTON CITY COUNCIL

## MEETING OF AUGUST 25, 2015

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 2**

**SUBJECT:**

Resolve Ratifying the conclusion of the City Clerk that the Council Order adopted August 11, 2015, "Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to execute the purchase and sale agreement and other documents necessary to effect the transaction" is not a permissible subject for a citizen initiative referendum and, therefore, that the City Clerk cannot issue a proper petition.

**INFORMATION:**

On August 12, a resident initiated the citizen petition process calling for the repeal of the Order adopted by the Council regarding the purchase of property 2 and 26 Oxford Street. The City's Elections Ordinance outlines the citizen initiative process and requires that ten registered voters sign a petition application to start the process. As of August 18, ten voters have signed the application yet the City Clerk has determined that, under the City's Elections Ordinance, this topic is not a permitted topic for a citizen petition. The City Attorney has prepared an opinion on this matter and concurs with that conclusion.

This agenda item is asking the Council to ratify the finding of the City Clerk. If the Council concurs, the application would be denied and the petition could not be issued.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

The City Administrator recommends approval of the requested action.



**REQUESTED ACTION:**

1	2	3	4	5	6	7	M
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To approve the Resolve Ratifying the conclusion of the City Clerk that the Council Order adopted August 11, 2015, "Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to execute the purchase and sale agreement and other documents necessary to effect the transaction" is not a permissible subject for a citizen initiative referendum and, therefore, that the City Clerk cannot issue a proper petition.



COUNCIL RESOLVE

**Resolve,** Ratifying the Conclusion of the City Clerk that the Council Order Adopted August 11, 2015, "Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction" is not a Permissible Subject for a Citizen Initiated Referendum And, Therefore, That The City Clerk Cannot Issue a Proper Petition.

Whereas, the City Council adopted a Council Order on August 11, 2015 approving the City's purchase of 2 and 26 Oxford Street; and

Whereas, on August 12, 2015, a resident signed a petition application, the first step necessary to begin the process of placing the Council's order on a referendum ballot; and

Whereas, the City Clerk, through the City Administrator, requested that the City Attorney review whether this Council order is an appropriate topic for a referendum; and

Whereas, by August 18<sup>th</sup>, ten residents had signed the petition application; and

Whereas, the City Attorney provided an opinion that, under the City's Code of Ordinances § 32-29, and in light of the Maine Supreme Judicial Court's decision in *Friends of Congress Square Park v. City of Portland*, only matters of a legislative nature are subject to referendum and that the subject of this proposed referendum is administrative in nature; and

Whereas, as a result, the City Clerk has concluded that the subject matter in question is not a permitted one for a referendum under § 32-29 and that she, therefore cannot issue a proper petition under § 32-37 of the Code of Ordinances; and

Whereas, later in the petition process, the City Council has the authority to determine if a referendum petition meets the requirements of the Code Ordinances; the City Clerk, however, has requested that the City Council review her decision and ratify her conclusion at this juncture rather than requiring the applicants to expend time and energy collecting signatures on an improper petition;

**Now, therefore, be it resolved by the City Council of the City of Lewiston** that

The conclusion of the City Clerk that the Council Order "Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction" is not a Permissible Subject for a Citizen Initiated Referendum under the City's Code of Ordinances § 32-29, and that the City Clerk, Therefore Cannot Issue a Proper Petition, is hereby ratified and confirmed.

# APPLICATION TO CIRCULATE PETITIONS FOR INITIATIVE OR REFERENDUM

*as defined in the City Code of Ordinances, Chapter 32 Elections, Article II. Initiative and Referendum*

### ISSUES SUBJECT TO CITIZEN INITIATIVE OR REFERENDUM

Initiatives and referendums are permitted on all ordinances, orders and resolves pertaining to the policing power authority of the council to regulate, govern and enforce all legislative matters on the municipal level regarding the health, safety and welfare of the general public, such as but not limited to zoning, licensing, noise, traffic, solid waste, animals and other related issues. Any resolve dealing with appropriations or orders or resolves dealing with tax levy or budgetary matters shall be subject to this ordinance for the next fiscal year following the successful passage by the voters. No ordinance, order or resolve dealing with terms and conditions of employment for city employees shall be subject to the initiative and referendum provisions contained in this article. (Sec. 32-29)

**Petition Topic/Title:** Repeal of City Council Approval to Purchase 2 and 26 Oxford Street properties.

**Petition Question - use exact wording:** Shall the Order, Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction be repealed?

Any ten qualified voters of the city may originate a petition putting in operation the initiative or the referendum by signing a petition application at the office of the city clerk (Sec. 32-27). The first and second voter signing this application shall serve as the coordinators/contact people for any questions regarding the petition. Once the signatures of the ten applicants have been verified as registered voters of Lewiston, the City Clerk shall prepare and issue the proper petition forms to the ten voters and upon the request of any registered voter of Lewiston.

SIGNATURE	PRINTED NAME	STREET ADDRESS	PHONE NUMBER	DATE
<i>Bruce C Dams</i>	BRUCE C DAMON	22 Buttonwood Ln	212-6151	8-12-15
<i>Michael J Marcotte</i>	Michael J Marcotte	12 O'Connell Street	939-9332	8-13-15
<i>Stanley P Pelletier</i>	STANLEY P PELLETIER	28 So Dry Lane	784-7950	8-13-15
<i>Doris A Pelletier</i>	Doris A Pelletier	28 So Surry Lane	784-7950	8-13-15
<i>Benjamin J. Martin</i>	Benjamin J. Martin	19 Boston Ave	333-1089	8/13/15
<i>Darcy Reed</i>	Darcy Reed	89 Rideout Ave	330-5486	8/13/15
<i>John R. Tomelaw Sr.</i>	John R. Tomelaw Sr.	6 Pleasant St.	689-8208	8/13/15
<i>David Boucher</i>	David Boucher	146 No Name Pond Road	212-8764	8-13-15
<i>Paul B. Macdoire</i>	Paul B. Macdoire	805 Sabbath St	784-0846	8-18-15
<i>Susan M. Madore</i>	Susan M. Madore	805 Sabbath St	784-0846	8-18-15
11.				
12.				

Date application initiated: 8/12/15 12:55 pm Date application ends by ordinance: 8/25/15 4pm (10 working days from issuance)  
 Date application completed: 8/18/15 Date signatures verified: 8/18/15 Date petitions issued: \_\_\_\_\_



**City of Lewiston Maine  
City Council Order  
August 11, 2015**



- Order,** Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction.
- Whereas,** the owner of 2 and 26 Oxford Street recently lost a long term tenant and has offered the properties for sale to the city prior to listing them for sale; and
- Whereas,** 2 and 26 Oxford Street currently have a combined Assessed Value of \$322,400 and are .6548 acres in size; and
- Whereas,** the owner of the properties has agreed to sell both parcels to the city for the combined price of \$315,000; and
- Whereas,** sufficient funding for the acquisition, totaling \$322,745, is available through the transfer of the following funds to the Acquisition/Demolition account: \$147,485 that the city received in roof insurance for Bates Mill #5; \$50,000 received in option payments made by the group promoting a casino at Bates Mill #5; and \$125,260 in accumulated investment earnings from Bates Mill operating subsidies and projects; and
- Whereas,** these two properties are adjacent to Simard Payne Park and overlook Cross Canal #1 on the north side and the Lower Canal on the west side; and
- Whereas,** these properties are identified in the Riverfront Island Master Plan as a prime site for a mixed use development project; and
- Whereas,** parking is a critical and necessary component necessary to support the redevelopment of the Bates Mill complex, PAMCO Mill, and other mills in the Riverfront Island area; and
- Whereas,** until market demand warrants construction of a mixed use project, 2 and 26 Oxford Street can be developed as surface parking at a significantly lower cost than decked parking, supporting expansion of the tax base;

**Now, therefore, be it ordered by the City Council of the City of Lewiston that**

The acquisition of 2 and 26 Oxford Street in Lewiston is approved under the terms of the attached Purchase and Sale Agreement. The City Administrator is authorized to execute the Purchase and Sale Agreement and other documents necessary to effect the transaction on behalf of the City, and the Finance Director is authorized to transfer the aforementioned funds to the Acquisition/Demolition account in order to fund the purchase of the properties.

The City of Lewiston is an EOE. For more information, please visit our website @ [www.ci.lewiston.me.us](http://www.ci.lewiston.me.us) and click on the Non-Discrimination Policy.

27 Pine Street Lewiston, Maine 04240 Telephone (207) 513-3017 Fax (207) 784-2959



## LEGAL DEPARTMENT



### MEMORANDUM

**TO:** Kathy Montejo  
**COPY:** Ed Barrett, Phil Nadeau  
**FROM:** Martin Eisenstein, Anne Torregrossa  
**DATE:** August 14, 2015  
**RE:** Petition to repeal the City Council's order approving the purchase of 2 and 26 Oxford Street

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On August 11, 2015, the City Council passed an order (the "Order") approving the City's purchase of 2 and 26 Oxford Street, Lewiston and authorizing the City Administrator to execute a purchase and sale agreement with the owner, who has already signed the agreement. One of the purposes of the purchase, as stated in the Order, is to develop the properties "as surface parking at a significantly lower cost than decked parking, supporting expansion of the tax base." A second purpose is that the properties are identified on the City's Riverfront Island Master Plan as prime property suitable for mixed use development, and the City's purchase would ensure that the properties would be available for such development when the market demand warrants construction. Prior to the City Council's decision, the Planning Board had voted to recommend against the purchase. This was done pursuant to the City Ordinances that require the Planning Board to review and make a recommendation regarding all proposed capital expenditures of \$100,000 or more and all acquisitions of land.

On August 12, a citizen filed an application to circulate a petition to hold a referendum to revoke the Order. The referendum reads:

Shall the Order, Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction be repealed?

You have inquired, through the City Administrator, whether this is an appropriate topic for referendum.

City of Lewiston Code of Ordinances § 32-29 provides that:

Initiatives and referendums are permitted on all ordinances, orders and resolves **pertaining to the policing power authority of the council to regulate, govern and enforce all legislative matters on the municipal level** regarding the health, safety and welfare of the general public, **such as, but not limited to zoning, licensing, noise, traffic, solid waste, animals and other related issues.** . . . No ordinance, order or resolve dealing with terms and conditions of employment for city employees shall be subject to the initiative and referendum provisions contained in this article.

(emphasis added). A matter is appropriate for referendum only if it falls within the scope of this ordinance.

### **Only Matters of a Legislative Nature are Subject to Referendum**

The leading case on the initiative/referendum process is *Friends of Congress Square Park v. City of Portland*, 91 A.3d 601 (ME 2014), which clarified the law in this area. In that case, the Law Court explained that a matter may be submitted to the voters if the ordinance at issue permits the subject of the petition to be submitted for vote by the citizens. The decision, according to the Court, is based upon an interpretation of “the plain language” of the municipality’s ordinance; i.e. an examination of the “plain meaning” of the law. *Id.* at 604. Turning to the plain language of Portland’s ordinance, the Court contrasted an initiative/referendum ordinance that had been proposed for Portland, which would have broadly authorized review of “all municipal affairs,” with the ordinance that was actually adopted, which limited review to only “legislative matters.” *Id.* at 604. The Law Court then distinguished between legislative matters – which were the proper subject of the initiative/referendum process under the plain language of Portland’s more narrowly drawn ordinance – and “administrative matters – which were not subject to the process under the more narrow language but would have been subject to referendum under the broader ordinance that was initially proposed. Because the City of Lewiston ordinance is limited to legislative matters, similar to the Portland ordinance interpreted in the *Friends of Congress Square* case, it is appropriate to apply the Court’s opinion so as to exclude administrative matters from being proper subjects for referendum in Lewiston.

### **The Subject of the Proposed Referendum is Administrative in Nature**

The question remaining, therefore, is whether the Council’s vote adopting the Order was legislative – and therefore subject to referendum – or administrative. The Law Court, for the first time, took the opportunity in the *Friends of Congress Square Park* case to attempt to draw a distinction between the legislative and administrative functions of a municipal body.

The Court began the analysis by adopting “the generally accepted definition of “legislative power” as the “power to make laws and to alter them.” *Id.* at 605, *quoting*, Black’s Law Dictionary 983 (9th ed.2009). However, the Court recognized that there is no bright line separating legislative from administrative functions, but there were various factors to review to assist in drawing such a distinction. *Id.* at 605-06. One factor indicating legislative “power to make laws and to alter

them” is whether the ordinance “declare(s) [a] public purpose and provide(s) ways and means to accomplish that purpose.” *Id.* at 606 (alterations in brackets in original). Conversely, acts implementing such general rules are administrative in nature. *Id.*; see also 5 Eugene McQuillin, *The Law of Municipal Corporations* § 16:54 (3d ed.1978) (if the initiative is to make a new law, it is legislative, but if it implements existing policy, it is more likely administrative). Another factor is whether the act in question is discretionary; acts that are discretionary in nature are likely legislative. *Id.* at 605. The Law Court implied that whether a matter is discretionary is influenced by whether the government has exclusive power in that area (as opposed to the private sector) and whether those powers have been delegated by the City Council. *Id.* at 606. A third indication that an act is legislative is if it involves making laws of general applicability and permanent nature, as opposed to decisions based on individualized, fact-specific considerations, or those that are temporary in operation or effect. *Id.* at 605, n.7, 606. The last factor considered by the Court is whether the proposed initiative or referendum “compels or bars action by elected officials that would seriously hamper governmental functions.” *Id.* at 607, quoting 5 Eugene McQuillin, § 16:53. The Court also instructed that initiative/referendum powers “should not be so interpreted as to destroy or impair the efficacy of some other governmental power.” *Id.*, citing 62 C.J.S. *Municipal Corporations* § 386 (2014).

In applying the factors set forth in the *Friends of Congress Square* decision, we find, on balance, that the subject of the petition—the Order authorizing the purchase of land—is an administrative matter. First, the Order does not declare or modify a public purpose; instead, it simply implements existing policy to create parking to spur development, as well as to provide for mixed development use along the riverfront. By ordinance, the City has provided for a process to approve capital expenditures, the very example of an administrative or proprietary decision. That process has been followed in this case.<sup>1</sup> Second, whether the Order is discretionary is unclear. On the one hand, the City’s power to purchase properties has not been delegated, and, on the other hand, purchase of land is not an exclusive activity of the City of Lewiston. Thus, this was not the City acting in its regulatory role, such as when the City adopts zoning ordinances, which is solely within its power, as opposed to when it operates in a proprietary capacity, such as when the City buys products or other services that other organizations, companies and individuals can purchase. Third, the Order was not an ordinance of general applicability; it was an item-specific decision to buy two parcels of land that simply happened to come up for sale. Finally, the proposed referendum would interfere with the efficient administration of the government. A purchase and sale agreement has already been signed by the seller, and awaits the signature of the City Administrator. Holding off on consummating the purchase could adversely affect the efficient administration of the City’s affairs, including obtaining parking in the most cost-efficient manner.

We note that the subject matter of the Order does not fit within the examples of legislative matters cited in the ordinance (zoning, licensing, noise, traffic, solid waste, animals and other related issues). Although this is not the primary basis for our opinion, as the quoted examples are not exclusive, the examples do illustrate the nature of the matters envisioned to be legislative and

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<sup>1</sup> Although the Planning Board’s recommendation was not adopted, the City Council considered its views but decided that, to implement existing policies of providing parking, with the possible long term use of the property as mixed development, the most efficient way is to purchase the land on Oxford Street. That may or not be the best decision, but it certainly is a decision made not in order to set public policy, but to provide for the efficient implementation of the policy.

provide some guidance in interpreting the ordinance. The purchase of land is not similar in nature to the examples given.<sup>2</sup>

In conclusion, although the determination of what is a legislative matter is not as clear cut a decision as other matters, it is our responsibility to construe the ordinance based on the guidance from other decisions. In that light, we are of the opinion that the Order is administrative in nature and the proposed petition is not an appropriate matter for referendum.

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<sup>2</sup> We note that the last sentence of Code of Ordinances § 32-29 does specifically exclude employment decisions from initiative/referendum. However, that specific carve-out is not the only matter excluded from referendum. If the intent in adopting § 32-29 had been to exclude only those items specifically identified, then the ordinance would have stated in effect that all matters, except those specified, are subject to referendum. As the Law Court stated in a similar analysis of the Portland ordinance, the adoption of the term “legislative matters” must be read as a limitation on the scope of the initiative/referendum power, lest the Court ignore the basic statutory principle that all words in a statute be given effect.

**Sec. 32-27. How to invoke.**

The submission to the vote of the people of any proposed or enacted ordinance, order or resolve, or question, may be accomplished by the presentation of a petition therefor to the council in the manner provided in this article. Any ten qualified voters of the city may originate a petition putting in operation the initiative or the referendum by signing a petition application at the office of the city clerk. The petition application shall be available to accept signatures for 10 working days. Whenever requested by ten such voters, the clerk shall prepare the proper petition with a copy of the ordinance, order or resolve to be submitted attached thereto, and upon its being signed by the ten voters, the clerk shall issue the petition forms to the ten voters and upon the request of any registered voter within the city, who shall for 60 days thereafter collect signatures of qualified voters of the city. Any signatures collected outside of the 60-day period shall be deemed invalid. Prior to the close of business on the 60<sup>th</sup> day, or in the event said day is a nonbusiness day, the immediate next business day, the petition forms shall be submitted to the city clerk, the city clerk shall declare the petition closed, shall verify the signatures on the petition within ten business days, and shall at the first regular meeting of the council thereafter present the petition with verification of the number of valid signatures thereto attached to the council. If the number of valid signatures to such petition shall amount to seven percent of the number of votes cast in the City of Lewiston at the last gubernatorial election or greater, the council shall order that the question proposed in the petition be submitted to the voters of the city at the next available, scheduled election following.

Provided, that in the case of the referendum, the entire repeal of the ordinance, order or resolve sought to be referred, and in the case of the initiative, the passage by the council of the desired ordinance, order or resolve, shall put an end to all proceedings under the petition.

(Code 1982, § 9-19; Ord. No. 08-01, 7-10-08; Ord. No. 14-09, 01-01-2015)

**Sec. 32-28. Form of petition.**

The petition used to originate the initiative or the referendum shall be substantially in the following terms:

PETITION TO THE CITY COUNCIL

FOR THE SUBMISSION TO THE PEOPLE OF THE QUESTION

Shall the ordinance, order, resolve or question, a copy of which is hereunto attached, be adopted?

We, the undersigned, are duly qualified voters of the City of Lewiston, residing respectively at the addresses placed opposite our names, and we hereby petition the city council to submit the foregoing question to the voters of the City of Lewiston at the next regular municipal election.

Names	Residence	Date
_____	_____	_____
_____	_____	_____

(Code 1982, § 9-20; Ord. No. 08-01, 7-10-08)

**Sec. 32-29. Ordinances subject to initiative or referendum.**

Initiatives and referendums are permitted on all ordinances, orders and resolves pertaining to the policing power authority of the council to regulate, govern and enforce all legislative matters on the municipal level regarding the health, safety and welfare of the general public, such as, but not limited to zoning, licensing, noise, traffic, solid waste, animals and other related issues. Any resolve dealing with appropriations or orders or resolves dealing with tax levy or budgetary matters shall be subject to the ordinance from which this section derives for the next fiscal year following the successful passage by the voters. No ordinance, order or resolve dealing with terms and conditions of employment for city employees shall be subject to the initiative and referendum provisions contained in this article.

(Ord. No. 08-01, 7-10-08)

**Sec. 32-30. Number of votes required.**

Whenever a petition has been originated in accordance with the provisions of this article for the reference to the people of any ordinance, order, resolve or question passed by the council, and the required number of valid signatures has been obtained thereon for its presentation to the council, the same shall be suspended from going into operation until it has been submitted to a vote of the people and has received the affirmative vote of a majority of the voters on such question, unless otherwise restricted in section 32-29.

(Code 1982, § 9-21; Ord. No. 08-01, 7-10-08)

**Sec. 32-31. Submission to voters; municipal action eliminating an election.**

When an initiative or referendum petition meeting the requirements of this article is presented by the city clerk, the city council shall order that the proposed or referred ordinance, order, resolve or question be submitted to the voters of the city at the next available, scheduled election following if not otherwise earlier authorized by a special election, unless the city council proceeds to repeal the ordinance, order, resolve or question in the case of a referendum, or to pass the desired ordinance, order, resolve or question in the case of the initiative.

(Code 1982, § 9-22; Ord. No. 08-01, 7-10-08)

**Sec. 32-32. Effective date after election.**

If a majority of the qualified voters voting on a proposed initiative ordinance, order, resolve or question or a referred ordinance, order, resolve or question shall vote in favor thereof, such ordinance, order, resolve or question shall take effect upon the declaration of the official canvass of the return of such election and the mayor shall forthwith make proclamation thereof.

(Code 1982, § 9-23; Ord. No. 08-01, 7-10-08)

**Sec. 32-33. Conflicting ordinances.**

Any number of proposed or referred ordinances, orders, resolves or questions may be voted upon at the same election. If two or more ordinances, orders, resolves or questions adopted at the same election shall contain conflicting provisions, the ordinance, order, resolve or question receiving the highest number of votes at such election shall be paramount and all questions of

## ELECTIONS

construction shall be determined accordingly.

(Code 1982, § 9-24; Ord. No. 08-01, 7-10-08)

### **Sec. 32-34. Order upon the ballot.**

If two or more ordinances, orders, resolves or questions are submitted at the same election, they shall be placed upon the ballot in the order of the priority of the filing of the respective petitions and shall be given precedence upon the ballot over any and all questions submitted by the council on its own initiative.

(Code 1982, § 9-25; Ord. No. 08-01, 7-10-08)

### **Sec. 32-35. Amending and repealing matters enacted by the people.**

An ordinance, order, resolve or question proposed by petition or adopted by vote of the people shall not be repealed or amended except by a vote of the people, unless such ordinance, order, resolve or question shall otherwise expressly provide.

(Code 1982, § 9-26; Ord. No. 08-01, 7-10-08)

### **Sec. 32-36. Authority to submit question to a popular vote.**

The council may submit on its own initiative a proposition for the enactment, repeal or amendment of any ordinance, order, resolve or question except as otherwise provided in this article, to be voted upon at a regular or special city election, and should such proposition receive a majority of the votes cast thereon at such election, such ordinance, order, resolve or question shall be enacted, repealed or amended accordingly.

(Code 1982, § 9-27; Ord. No. 08-01, 7-10-08)

**Editor's note:** Lewiston voters accepted this ordinance, that was passed by the council, at an election held on Feb. 17, 1947.

**State law references:** City council's authority to establish the initiative and referendum, the Maine Constitution, art. IV, § 21.

### **Sec. 32-37. Publication required.**

Whenever any ordinance, order, resolve or question is required by the provisions of this article to be submitted to the voters of the city, the city council shall order one publication of the complete text thereof to be made in the daily newspapers published in the city, such publication to be made not less than seven days, nor more than 15 days prior to the election.

(Code 1982, § 9-30; Ord. No. 08-01, 7-10-08)

### **Sec. 32-38. Form of ballot.**

The ballots used when voting upon proposed ordinances, orders, resolves or questions shall set forth the title in full and state its general nature and shall contain the words: "For the ordinance, order, resolve or question" and "Against the ordinance, order, resolve or question".

(Code 1982, § 9-31; Ord. No. 08-01, 7-10-08)

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### **Sec. 32-39. Ordinances not retroactive.**

All ordinances, orders, resolves or questions and parts thereof which are hereafter repealed through the initiative and referendum provided for in this article shall remain in force for the trial and punishment of all past violations of them and for the recovery of penalties and forfeitures already incurred and for the preservation of all rights and remedies existing by them and, so far as they apply, to any office, trust, proceeding, right, contract or event already affected by them. (Code 1982, § 9-29; Ord. No. 08-01, 7-10-08)

### **Sec. 32-40. Additional ordinances authorized.**

The council shall, by ordinance, make such further regulations as may be necessary to carry out the provisions of this article. (Code 1982, § 9-28; Ord. No. 08-01, 7-10-08)

### **Sec. 32-41. Authority of council to submit question for nonbinding vote.**

The council may submit to the electorate on its own initiative a nonbinding question, to determine the collective views of the voters, to be voted upon at a regular or special city election. Such question shall be entitled on the Ballot "Nonbinding Question To Voters" and the vote thereon shall not be binding upon the council. The city clerk shall report to the council the results of such vote at the next council meeting occurring at least ten days after the date of such election. Such question shall not be subject to sections 32-26 through 32-36 or 32-38.

(Ord. No. 01-15, 10-4-01; Ord. No. 08-01, 7-10-08)



# City of Lewiston, Maine

## Department of City Clerk

Kathleen M. Montejo, MMC  
City Clerk & Registrar of Voters

Kelly J. Brooks, CMC  
Deputy City Clerk



August 18, 2015

Bruce Damon  
22 Buttonwood Lane  
Lewiston, ME 04240

Dear Bruce,

We have received ten signatures on the application you submitted for a referendum to repeal the City Council Order authorizing the purchase of 2 and 26 Oxford Street.

Under Section 32-27 of the City of Lewiston Ordinances, I, as the clerk, prepare a "proper petition with a copy of the . . . order" to be voted on for you to gather signatures. The City Attorney has advised in a legal opinion dated August 14, 2015 (copy attached), that the referendum question you have proposed is not authorized under Section 32-29 of the Lewiston Ordinances because it addresses an administrative, rather than legislative, matter. Based on that opinion, I am of the view and belief I cannot prepare a "proper petition" because the Ordinance does not permit a referendum on the subject of the application.

Rather than reject it out of hand, however, I have requested that the City Council consider and decide at its meeting of August 25, 2015 whether the proposed petition is permissible under Section 32-29 of the Ordinances. The City Council has the authority under Section 32-31 to make that determination later in the process, once sufficient signatures are gathered on the petition. A determination now by the City Council will save the applicants and citizens the expense of gathering signatures if the Council decides that the subject of the petition is not appropriate for referendum once the signatures have been obtained. On the other hand, if the City Council determines that the proposed referendum properly addresses a legislative matter, then I will issue the petition and you can proceed with confidence that the petition will be placed before the voters if sufficient signatures are obtained.

Please let me know if you have any questions regarding this issue.

Sincerely,

Kathleen M. Montejo, City Clerk

# LEWISTON CITY COUNCIL

## MEETING OF AUGUST 25, 2015

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 2 B**

**SUBJECT:**

Resolve Directing the City Clerk to place a question on the November Regular Municipal Election Ballot regarding the acquisition of 2 and 26 Oxford Street.

**INFORMATION:**

An alternative to the Citizen initiated process would be for the City Council to consider placing a question on the November ballot regarding the purchase of 2 and 26 Oxford Street. This would speed the process by having the question on this November's ballot as opposed to next June's and likely result in the citizen petition coordinators abandoning the signature collection process.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

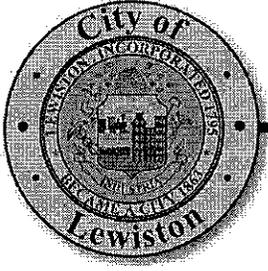
This is a policy decision of the City Council.

*EARB/kmm*

**REQUESTED ACTION:**

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To approve the Resolve Directing the City Clerk to place a question on the November Regular Municipal Election Ballot regarding the acquisition of 2 and 26 Oxford Street.



CITY OF LEWISTON, MAINE

August 25, 2015

COUNCIL RESOLVE

**Resolve,** Directing the City Clerk to Place a Question on the November Regular Municipal Election Ballot Regarding the Acquisition of 2 and 26 Oxford Street.

Whereas, the City Council adopted a Council Order on August 11, 2015 approving the City's purchase of 2 and 26 Oxford Street; and

Whereas, on August 12, 2015, a resident signed a petition application, the first step necessary to begin the process of placing the Council's order on a referendum ballot; and

Whereas, once the actual petitions are issued, the period for collecting the required signatures will extend beyond the date by which this question could be placed before the voters in November, thus potentially delaying a resolution until June 2016; and

Whereas, the Council wishes to resolve this issue more expeditiously by placing it on the November ballot;

**Now, therefore, be it Resolved by the City Council of the City of Lewiston** that

The City Clerk is hereby directed to place the following non-binding question on the November Regular Municipal Election Ballot:

"Shall the City Council rescind the Order, Approving the City's purchase of 2 and 26 Oxford Street, Lewiston and Authorizing the City Administrator to Execute the Purchase and Sale Agreement and other Documents Necessary to Effect the Transaction be repealed?"

**Be it Further Resolved,** that the City Administrator is directed to refrain from executing the purchase and sale agreement for this property until after the City Council has had the opportunity to review the result of the November ballot question.

# Economic and Community Development

Lincoln Jeffers

Director

Lewiston



2007



**To:** Honorable Mayor and Members of the City Council  
**From:** Lincoln Jeffers  
**RE:** HOME Funds to Purchase/Renovate/Sell  
**Date:** August 19, 2015

Each year, Lewiston and Auburn receive funding from the federal HOME Investment Partnership Program. Lewiston and Auburn formed a consortium in July 2002 to receive HOME funds from the U.S. Department of Housing and Urban Development. Traditionally, HOME funds are allocated to communities on an entitlement basis similar to CDBG. However, since the criteria for receipt of a HOME entitlement are different than for CDBG, neither city qualifies to receive entitlement funding on its own. In such cases, HUD allows neighboring communities the opportunity to apply jointly for these funds. The City of Auburn is the lead applicant and administers the program for both cities. Unlike CDBG funds, which may be used for a wide variety of project types, HOME funds are designed exclusively to finance affordable housing projects. As with CDBG, the City of Lewiston's share from the HOME consortium varies annually, but the average allocation historically has been +/- \$250,000 each year. However, in recent years it has been declining. We received \$159,517 as our share of the allocation in the current fiscal year.

Historically, Lewiston has used the majority of its HOME funding to support the development of large affordable housing projects, homebuyer assistance, and homeowner rehabilitation loans. With the Pierce Place project not needing the \$200,000 targeted for that project and lower participation rates in homeowner rehabilitation projects than we had projected, Lewiston has \$210,000 available for rehabilitation, of which approximately \$161,000 will be lost back to HUD if it is not committed by the end of September.

Auburn utilizes some of their HOME funds to purchase properties in poor condition, renovate them to HOME standards, and then sell them to homeowners with household incomes at or below 80% of the area median income based on household size (\$47,500 for a family of 4 in Lewiston). Often, a rehabilitated property is sold for a price below the cost of acquisition and renovation. However, when done well, they take properties with solid bones and put them back into productive use, housing lower income residents in quality housing, improving the physical landscape of neighborhoods, and increasing home ownership rates, which bring further stability to neighborhoods.

To date, Lewiston has not used its HOME funds this way. We are at a point, however, where we will lose approximately \$161,000 in funding allocated to the city if we do not find an eligible project to which to commit the funds. As previously noted, HOME funds can only be used to support affordable housing options. Staff has identified several properties on the market that may be suitable for this type of activity. Depending upon the properties selected, we can afford to do no more than two projects with the funds available.

I seek direction from the City Council if this is an activity that you can support. If so, staff will move forward with further investigation of suitable properties, developing a scope of service and cost estimates for needed renovations, and negotiating a purchase and sale agreement subject to City Council approval. If successful in packaging a suitable project, we would be back in front of the Planning Board for recommendations and the City Council for approvals in September.



### **Fire/Code Inspections Task Force**

Public Meeting - February 3, 2015

#### **Task Force Purpose**

Following the tragic fire on Noyes Street on November 1, 2014, Acting City Manager Sheila Hill-Christian created a task force to recommend improvements to better ensure the safety of the city's rental housing stock. Boston Fire Department Deputy Chief Jay Fleming provided pro bono technical assistance to the task force, which was led by Acting Chief of Staff Julie Sullivan. The task force conducted its work in two phases. Phase one was an internal review of relevant codes and ordinances, staffing levels, roles and responsibilities across departments, and relevant initiatives in Boston, New York, Providence, RI, Austin, TX, and Princeton, NJ, and prior studies over the course of three work sessions in December, all of which were open to the public. City staff comprising phase one membership were: Rich Bianculli, JD, Neighborhood Prosecutor; Keith Gautreau, Acting Assistant Chief for Fire Prevention; Tammy Munson, Inspections Division Director; Jon Rioux, Inspections Division Deputy Director; Planning Board Chair Tuck O'Brien; and Acting City Manager Sheila Hill-Christian.

Phase two added four external representatives to the task force: Julie Gregor, Inspection Manager for the Portland Housing Authority; Katie McGovern, JD, Pine Tree Legal Assistance; and Crandall Toothaker and Carleton Winslow (alternate: Brit Vitalius) of the Southern Maine Landlord Association. The task force met four times in January during phase two, and all meetings were open to the public.

The task force did not seek to specifically analyze or debrief the Noyes Street fire, but instead to examine the larger issues related to the fire and explore options to address them. Furthermore, the task force chose to focus on rental housing stock. Notes from each meeting are provided as attachment A.

The State Fire Marshal's Office released their report in late January. Because the report was forwarded to the District Attorney, the full text could not be made public during the task force's time frame. The task force did review the key findings (please see meeting notes from January 26) and found that the issues were in line with those already under discussion. Portland Fire Chief Jerome LaMoria called in the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives to study the fire, and the ATF conclusions corroborate those of the State Fire Marshal's Office.

# DRAFT

## Recommendations

Overall, the task force identified several key things the City can do to improve the safety of rental housing stock:

- Provide public education
- Hold landlords and tenants accountable
- Reinstate routine inspections of relevant housing stock by fire station personnel
- Implement a risk-based prioritization for inspections while also increasing the number of inspectors with better training, including cross-training, and other City staff working in the field who can assist in identifying potentially dangerous housing safety situations.
- Designate a Housing Safety Official with authority over housing safety who will ensure communication, coordination, accountability, consistency, training, and technology utilization across relevant City departments and evaluation of the effectiveness of the programs.
- Use existing technology more efficiently

So that the many issues considered by the task force can be succinctly presented and the rationale for the recommendations chosen be clear, this document illustrates the issues, the matrix of options, relevant City code when applicable, and the related recommendation.

***Issue: There are approximately 17,000 rental units in Portland. How can the City assure timely inspections of all rental properties?***

Option	Pro(s)	Con(s)
Respond to complaints (current practice)	Requires no new resources	Does not allow for prioritized inspections nor does it ensure inspections of all properties over time.
District-based inspections	Small geography; inspectors get to know their area better	Does not allow for most serious violations to be addressed quickly; does not allow for differing density of rental housing by district; requires additional staff
Third-party inspections	Does not require increased staffing	Difficult to assure qualified third-party inspectors; added cost for landlords; added administrative burden for City to track
Inspections at time of sale		Unknown frequency of turnover. Does not ensure regular inspections.
Develop list of variables to create risk-based prioritization of rental housing properties	City can utilize existing technologies/software and data	
Other kinds of limited inspections – e.g., common areas, exterior		Does not ensure that serious life safety threats are identified.

D R A F T

only; randomized annual inspections		
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**Risk-based prioritization** – In order to maximize limited resources and to address the most serious issues quickly, the City’s best option is to build on existing technologies to rank properties based on risk factors. There are numerous municipalities using this approach to ensure safe housing and allocate inspections and enforcement resources according to a risk score generated by many variables, including construction, age, number of units, location, delinquent taxes, vacancy, foreclosure, complaints/violations, and calls for service. (Please see Attachment B for a complete list of variables included at this time.) Public Safety Solutions Inc. (PSS) conducted an extensive and thorough review of the entire Portland Fire Department in 2013 and also recommends this approach. Furthermore, this approach avoids any potential for selective enforcement.

- a. Fix It Portland – complaints via web, smart phone app
- b. Urban Insight – internal software used for inspections and code enforcement functions across the City, along with other municipal functions
- c. Cost: No additional costs; will need additional staff time to process (see Staffing section)
- d. Timeline: Up and running by Feb. 28, 2015

***Issue: Human behaviors have the greatest impact on fire prevention. How can the City educate tenants and landlords about fire safety practices?***

**Public Education** – Clearly, this is the best means of prevention. The Fire Department will take the lead on this by reinstating school-based programs, targeting college students and 20-somethings, landlords, and other tenants. This was a major focus in PSS’s recommendations around prevention.

- a. Chief Lamoria recently named Keith Gautreau as Assistant Chief for Fire Prevention.
- b. Chief Gautreau is designing a multi-pronged education plan with assistance from the State Fire Marshal’s office, Deputy Chief Jay Fleming from the Boston Fire Department, and the National Fire Protection Association. Some of the key points will include the importance of:
  - i. Working smoke detectors
  - ii. Unblocked exits
  - iii. Properly disposed smoking materials
  - iv. Trash disposal/housekeeping
- c. The Southern Maine Landlord Association proposes a new document outlining fire safety expectations and responsibilities to be signed by tenants and landlords at the same time a lease is signed.
- d. Cost: None
- e. Timeline: Portland Fire has the National Fire Protection Association on standby for training while they purchase computers; looking at March/April for training and May start-up of the new Proactive Inspection Program of 3 or more unit apartment buildings.

***Issue: When Life Safety violations are noted, currently Fire Inspectors send a letter to the landlord who has 32 days to respond. If there is no response, a second letter is sent and another 32 days are granted.***

Option	Pro(s)	Con(s)	Relevant Code Citation
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**D R A F T**

Ticket and fine	Quicker and clearer enforcement process; inspector can issue ticket while out in the field	Multiple Court Appearances; Safety Concern(s) for Inspectors issuing tickets	Penalties and specific violations – Chapter 6, Article I, pp 6-1 and following; Chapter 10, p. 10-13 and following
Landlord registration	Provides more complete information including who to contact as well as insurance company and other property-specific data	Staff time to manage, enforce	Chapter 6, Article VI, pp 6-51 and following; includes form and violations
Re-inspection fees	Helps enforcement and helps support inspection		Chapter 6, Article 1, p 6-4, refers to Section 1-16
Dedicated legal resources	Key part of timely enforcement		
Tenant notification of building violations	Tenants should be aware of the violations		
Housing court	Focused resource for housing safety issues	Costly to create	
Low-interest loan program for landlords to address violations	Would allow more landlords to bring their properties up to code	Not sure of available funding source	
Legal use/zoning – eg, 3 <sup>rd</sup> floor units, rooming/lodging houses	Critical risk factor	Requires zoning changes; hard to find violators; will increase the work-load for the city’s zoning administration staff	

**Enforcement** – There are many opportunities to clarify and strengthen the enforcement process, some of which require minor revisions to City Code.

- a. Enforce existing requirement for landlords to register with the City annually.
  - i. Contact information, type of property, insurance company information
  - ii. Annual fee
  - iii. Fines for failure to register, provision of inaccurate information
- b. Move to immediate ticket and fine for violations – *what is a reasonable time frame for violations? 7 days with a submitted plan of correction; 24-48 hours for more serious violations?*
- c. Also enforce existing re-inspection fees (\$75). Already have fee schedule in Ch. 10 to be enforced.
- d. Dedicate legal resources – one day per month dedicated to housing-related issues. The City should evaluate to ensure this is adequate and consider the feasibility of the housing court model used in other municipalities. A new City attorney was recently hired to focus on these issues in addition to Police Department’s Neighborhood Prosecutor.

## D R A F T

**Technology** – With minimal to no new resources, the City can standardize and streamline inspection reporting processes. The PSS study noted the need for improved use of technology in the inspections functions. Expanded use of technology also allows for greatly increased transparency.

- a. Fire Department will move to Urban Insight.
- b. Develop and implement standardized checklists for inspectors to use in the field (drop-down boxes in Urban Insight). *These checklists should be shared with landlords and tenants through public education.*
- c. Consider having tablets for inspectors to use in the field, greatly diminishing the amount of time required to cite an owner for violations and follow up with enforcement.
- d. Provide online capability for annual landlord registration.
- e. Work toward having a complete and accurate census of all rental properties

**Internal Training** – The internal phase of this Task Force’s work illuminated several areas for improvement in staff training.

- a. Inspectors across relevant departments require additional training and cross-training to improve inspections. NFPA to provide free cross-training for Fire and Housing Safety in the spring.
- b. All relevant staff require additional training to use Urban Insight and to ensure thorough documentation of all inspections.
- c. Other City staff who work in the field will be trained on the checklist so that they can easily report any concerns for follow up.

***Issue: The Fire Department traditionally conducts proactive inspections and responds to complaints for buildings with 3 or more units. The violations noted are then transferred to the fire prevention bureau for follow-up, creating a back-log of enforcement matters, and requires involvement of city’s code enforcement staff for code compliance. The City’s Code Enforcement Division is driven by a re-active complaint based system. The City has one code enforcement officer who responds to land use complaints.***

Option	Pro(s)	Con(s)	Relevant Code Citation
District-based inspections	Small geography; inspectors get to know their area better	Does not allow for most serious violations to be addressed quickly; does not allow for differing density of rental housing by district	
Third-party inspections	Does not require a significant amount of city staff	Difficult to assure qualified third-party inspectors (municipal licensing/ spot checks); added cost for landlords; added administrative burden for City to track	

D R A F T

Reinstate routine Fire Department inspections of buildings with three or more rental units	FD needs to be familiar with buildings for fire prevention and planning; firefighters have the time to conduct these inspections; such properties are required to have advanced life safety systems.	Firefighters need training and checklists to ensure consistency. Also need tablets to input data while in the field.	
Develop list of variables to create risk-based prioritization of rental housing properties	City can utilize existing technologies/software and data		

**Staffing** – PSS’ study used a metric to recommend 10 new FTEs in the Fire Department alone to ensure widespread inspections. We believe we can achieve the intended goal of improving our ability to ensure the safety of Portland’s rental housing stock using a different approach. In order to ensure implementation of these recommendations and to evaluate whether there are indeed ensuing improvements to the city’s rental housing stock, the following new positions are requested.

- a. Housing Safety Official (title TBD) who reports to the City Manager, convenes and coordinates all relevant departments to address issues with a property and decide actions to be taken.
  - i. This person would be responsible for ensuring that the highest-risk properties are inspected first, inspection documentation is consistent and complete, and timely follow-up in conducted until violations are fully addressed.
  - ii. This person will also ensure data is collected to provide a robust evaluation of the implementation of task force recommendations.
  - iii. This person will also be “where the buck stops” for all issues related to housing safety.
- b. Three additional inspectors, all cross-trained in building code and life safety code, who will report to the Housing Safety Official.
- c. One administrative support position, who coordinates the risk-based assessment of all rental properties, the online database, landlord registration, who also reports to the Housing Safety Official.
- d. Reinstate Education Officer at the Fire Department to implement the additional training needed.
- e. Consider outsourcing the Fire Department’s plans review work currently done by the Fire Prevention Officer.

# LEWISTON CITY COUNCIL

## MEETING OF AUGUST 25, 2015

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 5**

**SUBJECT:**

Executive Session to discuss Real Estate Negotiations of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

**INFORMATION:**

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

The City Administrator recommends approval of the requested action.

*ERB/kmm*

**REQUESTED ACTION:**

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To enter into an Executive Session, pursuant to MRSA Title 1, section 405(6)(c), to discuss Real Estate Negotiations, of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

# LEWISTON CITY COUNCIL

MEETING OF AUGUST 25, 2015

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 6

**SUBJECT:**

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

**INFORMATION:**

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

State statutes define the purposes for entering into an executive session.

*ETB/ymm*

**REQUESTED ACTION:**

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To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.