

CITY OF LEWISTON

CITY COUNCIL

DECEMBER 16, 2008

REGULAR MEETING HELD IN THE COUNCIL ROOM AT 6:00 P.M.

THE HONORABLE LAURENT F. GILBERT, SR., MAYOR, PRESIDING.

PRESENT: Mayor Gilbert, Councilors T. Peters, Poulin, Theriault, Bailey, Dube, Reed, City Administrator James Bennett, and City Clerk Kathleen Montejo. Absent/Excused: Councilor N. Peters. Councilor Bailey arrived at 7:05pm.

Pledge of Allegiance to the Flag.
Moment of Silence.

Mayor Gilbert noted that Councilor Bailey would be arriving later in the evening due to another commitment and Councilor T. Peters noted that Councilor N. Peters was ill this evening and would not be attending the meeting.

MAYOR'S PROCLAMATION - NATIONAL HOMELESS PERSONS' MEMORIAL DAY

Mayor Gilbert stated that Councilor Bailey requested this Proclamation in awareness of homeless people in the L/A area. He then read a Proclamation regarding National Homeless Persons' Memorial Day and noted an awareness vigil will be held on Monday, December 22 at 4:30pm.

LEWISTON YOUTH ADVISORY COUNCIL UPDATE

Luke Jenson said in October the group members met with students from Northern Ireland and they discussed the similarities and differences in youth in the two countries and were surprised to learn there were more similarities than differences. In November, Councilor Dube met with LYAC members to discuss ideas for their recycling video project. He noted members also attended the Maine Youth Action Network Conference in Bar Harbor last month. LYAC members did a presentation to the Windham Town Council regarding youth councils and also held a youth arts workshop at the Library. This month they are working on the recycling video and a related comic book and are also doing ride-alongs with the police department.

Councilor Poulin noted the motion in the December 2 meeting minutes made by Councilor Theriault regarding seeking the input from the Public Health Committee about the proposed changes to the parks ordinance regarding no smoking was worded a bit differently than what Councilor Theriault had stated. It was agreed that Councilor Theriault would provide the exact wording to the Clerk who will correct the motion in these meeting minutes.

VOTE (295-2008)

Motion by Councilor Dube, seconded by Councilor T. Peters:

To dispense with the reading of the minutes of the meeting of December 2, 2008 and to accept and place them on file as prepared by the City Clerk, as amended. Passed - Vote 5-0

EXECUTIVE SESSION

VOTE (296-2008)

Motion by Councilor T. Peters, seconded by Councilor Theriault:

To enter into an executive session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney regarding the stormwater appeal hearings. Passed - Vote 5-0

Executive Session began at 6:25pm and ended at 6:45pm.

AUTHORIZATION TO ACCEPT TRANSFER OF FORFEITURE FUNDS

VOTE (297-2008)

Motion by Councilor T. Peters, seconded by Councilor Theriault:

That pursuant to Title 15, Maine Revised Statutes Annotated, Section 5824(3) and Section 5822(4)(A), the City Council hereby acknowledges and approves of the transfer of \$557.00, or any portion thereof, in the case of the State of Maine vs. Flint Irwin, CR-08-1229 Court Records. Being funds forfeited pursuant to court process. It is further acknowledged that these funds shall be credited to the 'City of Lewiston Drug Enforcement Program', funds to be deposited in Account No. 590-3514050 at People's Heritage Bank. Passed - Vote 5-0

BIENNIAL APPOINTMENT OF REGISTRAR OF VOTERS

VOTE (298-2008)

Motion by Councilor T. Peters, seconded by Councilor Theriault:

To appoint City Clerk Kathleen M. Montejo as the Registrar of Voters for a two-year term of office from January 1, 2009 to December 31, 2010. Passed - Vote 5-0

**APPEAL HEARING REGARDING STORMWATER UTILITY CREDIT APPLICATION
FOR 550 LISBON STREET AND 35 ADAMS AVENUE**

VOTE (299-2008)

Motion by Councilor T. Peters, seconded by Councilor Dube:

To combine the presentations for agenda items four and five (appeal hearings for 550 Lisbon Street, 35 Adams Avenue and 475 Pleasant Street) and to hear this information together. Passed - Vote 5-0

Mayor Gilbert asked each Council member if they knew Robert Gladu and Ralph Sawyer, partners in the Pepperell Associates, and if they could be impartial during the hearings. Councilors T. Peters, Theriault and Dube said they knew Mr. Gladu and could be objective.

Councilor Dube noted he resides in Ward Six. Councilors Poulin and Reed did not know Mr. Gladu and said they could be impartial. None of the Councilors knew Mr. Sawyer. The Mayor indicated that he knows Mr. Gladu and can be impartial, and does not know Mr. Sawyer.

The Mayor then began the hearing and read an opening statement outlining the procedure for the hearing. Scott Lynch, attorney for Pepperell Associates, objected to the rules for the hearing, noting twenty minutes is not enough time to present his case and he felt some of the evidence was prejudged regarding what will or will not be considered during the hearing. He inquired who wrote the rules and who decided what is allowed to be considered or not, noting it seems it has already been decided and prejudged if evidence is relevant or not.

The City Administrator said the Council can decide if the advice from the City Attorney is advice they want to follow or not. Their role during the hearing is to serve as an appeals board to decide if the way staff has handled the stormwater application and request for credit is consistent with the city's ordinance or not. The Mayor said the rules for the procedure will stand unless any Councilors object, and no Councilors objected to the rules as presented.

Councilor Bailey arrived at this time.

The Mayor then allowed Mr. Lynch twenty minutes to address the Council. Mr. Lynch distributed binders to the Councilors with his exhibits. He proceeded to review and highlight various issues such as clarification of an easement across the property and that the owners have allowed the city to cross the property for maintenance, review of the city's ordinance language, review of a "tax" vs. a "fee", noting this is a tax and not a fee which can only be adopted by the voters and not the Council and a review of the Hill Mill property and how the credit issue was applied to this account.

At this point, City Administrator James Bennett and Director of Public Services David Jones were allowed twenty minutes to address the Council. Mr. Bennett reminded the Council their role is to review the facts of the case and to determine if the Stormwater Superintendent applied the ordinance regulations as required. They noted the question of whether or not it is a tax or a fee would need to be determined by a court and that the Hill Mill property is not applicable to this application. Mr. Bennett said the two main issues are if the stormwater runoff from the property impacts the city system and the issue of the easement. He noted the ordinance states applicants "may" receive a credit and does not state "shall". Mr. Jones reviewed the Gully Brook information and identified that this property does impact the system.

Councilors then discussed the details that were presented and asked questions of both parties.

VOTE (300-2008)

Motion by Councilor Reed, seconded by Councilor Poulin:

To send this issue regarding 550 Lisbon Street and 35 Adams Street to the Stormwater Utility Superintendent to review due to the new information regarding the easement.

Passed - Vote 4-2 (Councilors T. Peters and Bailey opposed)

**APPEAL HEARING REGARDING STORMWATER UTILITY CREDIT APPLICATION
FOR 475 PLEASANT STREET**

VOTE (301-2008)

Motion by Councilor Reed, seconded by Councilor Poulin:

To accept the Stormwater Utility Superintendent's recommendation for 475 Pleasant Street and to not approve the appeal request from the property owners. Passed - Vote 6-0

**APPEAL HEARING REGARDING STORMWATER UTILITY CREDIT APPLICATION
FOR 17 LIBBY AVENUE**

Mayor Gilbert opened the hearing and read an opening statement outlining the procedure for the hearing. Mayor Gilbert asked each Council member if they knew the applicant, Daniel Jacques, and if they could be impartial during the hearings. Councilor Theriault stated he did know Mr. Jacques and could be impartial; the other Councilors did not know Mr. Jacques and stated they could be impartial. Daniel Jacques noted that he lives in Greene but owns a self storage building at 17 Libby Avenue and his property does not impact the stormwater system. He received a credit from the city for this past year but would like to receive credit for the back years that he has paid and did not have to, for a total of approximately \$1,500.

Mr. Bennett and Mr. Jones then addressed the Council and noted that his property does not impact the system and the question the Council needs to address is if the ordinance was followed properly. The ordinance states credits can be applied for the current year but not for past years. There is not a retroactive option due to budgeting planning - it would be an unknown figure. Mr. Bennett noted the Council can amend the ordinance at a future meeting to allow for credits to be issued retroactively, noting about 30 to 40 accounts may be affected. Councilor Poulin noted that residents do not know about the credit option.

VOTE (302-2008)

Motion by Councilor Reed, seconded by Councilor Theriault:

To accept the Superintendent's recommendations and to have his findings stand at this time. Passed - Vote 6-0

NEW LIQUOR LICENSE FOR THE EDGE BAR & GRILL

Mayor Gilbert opened the hearing to receive citizen input and comment. Pamela Averill introduced herself as the owner and said she was present to answer any questions from the Council. Mayor Gilbert then closed the hearing.

VOTE (303-2008)

Motion by Councilor Reed, seconded by Councilor Theriault:

To authorize the City Clerk's Office to approve a new liquor license application for The Edge Bar & Grill, 1018 Sabattus Street. Passed - Vote 6-0

SPECIAL AMUSEMENT PERMIT FOR THE RAMADA

Mayor Gilbert opened the hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (304-2008)

Motion by Councilor Theriault, seconded by Councilor Poulin:

To grant a special amusement permit for live entertainment to the Ramada, 490 Pleasant Street. Passed - Vote 6-0

SPECIAL AMUSEMENT PERMIT FOR CDDL ASSOCIATES

Mayor Gilbert opened the hearing to receive citizen input and comment. Bruce Bergundahl introduced himself as the Clerk for the corporation and said he was present to answer any questions about the application. Mayor Gilbert then closed the hearing. Councilor Poulin said he was concerned about the high number of calls in the police log.

VOTE (305-2008)

Motion by Councilor T. Peters, seconded by Councilor Theriault:

To grant a special amusement permit for live entertainment to CDDL Associates, 33 Sabattus Street. Passed - Vote 5-1 (Councilor Poulin opposed)

SPECIAL AMUSEMENT PERMIT FOR THE SOUTH END SOCIAL CLUB

Mayor Gilbert opened the hearing to receive citizen input and comment. Dolores Gaboury, club treasurer, said she was in attendance to answer questions. Mayor Gilbert then closed the hearing.

VOTE (306-2008)

Motion by Councilor T. Peters, seconded by Councilor Reed:

To grant a special amusement permit for live entertainment to the South End Social Club, 315 Lisbon Street. Passed - Vote 6-0

PROJECT PROPOSAL REGARDING DECORATED TRASH BINS

Tim Stretton said he is doing an internship with the Mayor's Office and is working on the Mayor's city beautification program. He explained the idea of the trash bin program and using 55 gallon steel drums that will be painted by high school students. The plan is to see if area landlords are interested in partnering with the city on this program to adopt a trash barrel in exchange for a partial fee waiver in the solid waste program for their building. Councilors inquired about securing the barrels so they are not stolen or vandalized, maintenance of the barrels and the designs to be painted on the barrels. Public Works Director Paul Boudreau said they could chain down the barrels and he could regulate any designs if there was a problem. Mayor Gilbert commended the high school art department for volunteering to work on this program.

VOTE (307-2008)

Motion by Councilor Reed, seconded by Councilor Theriault:

To endorse the concept of the proposed program. Passed - Vote 5-1 (Councilor Dube opposed)

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENT
CONCERNING TEMPORARY HOUSING**

Mayor Gilbert opened the hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (308-2008)

Motion by Councilor Reed, seconded by Councilor T. Peters:

That the proposed amendment to Appendix A, Article V “Administration and Enforcement”, Section 3, “General Provisions ”of the City Zoning and Land Use Code, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE REGARDING AN AMENDMENT TO THE
TRAFFIC AND VEHICLES ORDINANCE REGARDING PARKING PROHIBITED**

Mayor Gilbert opened the hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

VOTE (309-2008)

Motion by Councilor Theriault, seconded by Councilor Bailey:

That the proposed amendments to the City Code of Ordinances, Chapter 70 “Traffic and Vehicles”, Article IV “Stopping, Standing and Parking”, Sections 70-155, 70-158 and 70-167, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE REGARDING AN AMENDMENT TO THE
STREETS AND SIDEWALKS ORDINANCE REGARDING SNOW ON PUBLIC
SIDEWALKS, WALKWAYS AND STREETS**

Mayor Gilbert opened the hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing. Councilor Poulin expressed concerns about the proposed amendments as written and distributed his recommendations for additional amendments. He stated the amendments as originally presented give too much discretion to law enforcement and he felt out of fairness to the residents, the ordinance language needed to be more concrete so they knew how it would be applied and what was applicable for their property. Councilor Reed felt that even with Councilor Poulin’s changes to try to clarify it more, the ordinance amendments are still unenforceable. It was noted that the seventy two hour window was OK to try the system and it could be changed if it is not working. Councilor Bailey asked Public Works Director Paul Boudreau about the snow plowing on the East Avenue sidewalks and noted the snow needs to be plowed differently so residents can use the sidewalks.

VOTE (310-2008)

Motion by Councilor Poulin, seconded by Councilor T. Peters:

To amend the ordinance to incorporate the additional amendments as recommended by Councilor Poulin. Passed - Vote 5-1 (Councilor Reed opposed)

VOTE (311-2008)

Motion by Councilor Theriault, seconded by Councilor Bailey:

That the proposed amendments to the City Code of Ordinances, Chapter 66 “Streets and Sidewalks”, Article I “General”, Section 66-12 “Removal of unlawful deposits of snow and/or ice from public sidewalks, public walkways, public streets and public easements”, receive final passage by a roll call vote. Passed - Vote 5-1 (Councilor Reed opposed)

VOTE (312-2008)

Motion by Councilor Poulin, seconded by Councilor Theriault:

To continue the meeting beyond the 10pm ending time.
Passed - Vote 4-2 (Councilors T. Peters and Bailey opposed)

**PUBLIC HEARING AND FIRST AND FINAL PASSAGE FOR A MORATORIUM
ORDINANCE REGARDING USES PERMITTED IN THE CENTREVILLE, MILL AND
RIVERFRONT ZONING DISTRICTS**

Mayor Gilbert opened the hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing. Councilor Dube noted it would not hurt to extend the moratorium in light of the upcoming strategic plan. Councilor Reed felt the moratorium sent the message that Lewiston was not supportive of local businesses and this is the wrong message to send. He noted the City recently purchased property on Lincoln Street and there are no current plans for the use of that property. He stated he believes projects and decisions are being made without informing the full Council of the information. Mr. Bennett said is has been a long standing practice of the city, since the 1990s, to acquire property on Lincoln Street for future development of this area.

VOTE (313-2008)

Motion by Councilor Reed, seconded by Councilor Poulin:

That the proposed moratorium ordinance regarding uses permitted in the Centreville, Mill and Riverfront Zoning Districts, to be effective January 5, 2009, receive first passage by a roll call vote. Did Not Pass - Vote 3-4 (Councilors T. Peters, Bailey and Dube in favor; Councilors Reed, Poulin and Theriault opposed; Mayor voted to break the tie and voted no)

REPORTS AND UPDATE

Councilor Poulin reported the School Committee is looking at reductions in the operating budget due to the state cuts. He said they are not planning to have staff lay offs but are looking at collaborative efforts instead, highlighting the approach that school and city administrative staff will serve as substitute teachers. Councilor Poulin noted the Pettingill Re-Use Committee is planning to offer the land to the city to be developed into a neighborhood park, which would involve demolishing the building.

OTHER BUSINESS

Mr. Bennett suggested a workshop in January to address the issue of stormwater credits that arose earlier in the evening.

VOTE (314-2008)

Motion by Councilor Theriault, second by Councilor Poulin:

To adjourn at 10:15P.M. Passed - Vote 6-0

A true record, Attest:

Kathleen M. Montejo, MMC
City Clerk
Lewiston, Maine