

**CITY OF LEWISTON**

**CITY COUNCIL**

**FEBRUARY 8, 2005**

**REGULAR MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M.**

COUNCIL PRESIDENT RENEE A. BERNIER, PRESIDING.

PRESENT: Councilors Mendros, Bernier, O'Brien, Jean, Connors, Paradis, City Administrator James Bennett, and City Clerk Kathleen Montejo. Mayor Guay and Councilor Rousseau were absent/excused.

Pledge of Allegiance to the Flag.

Moment of Silence.

**ANNUAL WARRANT FOR PROSECUTING UNLICENSED DOG OWNERS**

**VOTE (34-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To issue and sign the warrant for the prosecuting of unlicensed dog owners/keepers, as required by Maine Revised Statutes Annotated, Title 7, Section 3943. Passed - Vote 6-0

**AMENDMENT TO THE TRAFFIC SCHEDULE**

**VOTE (35-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To approve amendments to the Traffic Schedule regarding parking regulations at Lisbon Street and Birch Street, and at Russell Street and Nelke Place. Passed - Vote 6-0

**AUTHORIZATION TO ACCEPT TRANSFER OF FORFEITURE FUNDS**

**VOTE (36-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

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 \$477.76, or any portion thereof, in the case of the State of Maine vs. Jordan Smith, CE-04-033 and 04-DEA-439163 Court Records; the transfer of \$514.16, or any portion thereof, in the case of the State of Maine vs. Cindy Splude, CE-04-0027 and 04-DEA-439464 Court Records; the transfer of \$4,828.80, or any portion thereof, in the case of the State of Maine vs. Ryan Callaghan, CE-05-0006 and 05-DEA-445798 Court Records; the transfer of \$8,531.94, or any portion thereof, in the case of the State of Maine vs. Mark Howard, CD-04-0033 and 05-DEA-445801 Court

Records; the transfer of the proceeds from the sale of one .22 caliber Ruger Long Rifle Target Pistol, Serial #222-73838, or any portion thereof, in the case of the State of Maine vs. Elmer Carter, Jr., CR-04-482 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 6-0

**ANNUAL AUTHORIZATION TO POST CERTAIN ROADS TO PROHIBIT DAMAGE FROM HEAVY VEHICLES DUE TO SPRING THAW**

**VOTE (37-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To authorize the Public Works Department to post the following roads prohibiting vehicles having a gross vehicle weight of over 23,000 pounds.

From March 1, 2005 to May 1, 2005:

- Ferry Road - From Cottage Road to River Road
- River Road - From Ferry Road to Solid Waste Facility
- Dyer Road - From Lisbon Road to Ferry Road
- Pinewoods Road - From Ferry Road to Town Line
- Gayton Road - From Lisbon Road to Town Line
- Webster Road - From Old Lisbon Road to Crowley Road
- Merrill Road - From College Road to Main Street
- Sleeper Road - From Merrill Road to Town Line
- Randall Road - From Sunrise Lane to Grove Street
- Grove Street - From Randall Road to Town Line
- Old Greene Road - From North Temple Street to Town Line
- No Name Pond Road - From Old Greene Road to Town Line
- Pond Road - From Cherrywood Drive to No Name Pond Road

Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR A CODE AMENDMENT REGARDING THE BUILDING CODE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (38-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To repeal Sections 18-26 and 18-27 of the current City Code, and that the proposed amendment to the City Code of Ordinances, Chapter 18 "Buildings and Building Regulations", Article II,

“Building Code”, Section 18-26 “Adoption of Building Code” and Section 18-27 “Amendments to the Building Code”, receive final passage by a roll call vote.  
Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR A CODE AMENDMENT  
REGARDING THE RESIDENTIAL CODE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (39-2005)**

Motion by Councilor Connors, seconded by Councilor Jean:

That the proposed amendment to the City Code of Ordinances, Chapter 18 “Buildings and Building Regulations”, Article VI, “Residential Code”, Section 18-200 “Adoption of Residential Code” and Section 18-201 “Amendments to the Residential Code”, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR A CODE AMENDMENT  
REGARDING THE ELECTRICAL CODE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing. Councilor O’Brien stated that she appreciated the change from thirty days to forty-five days regarding the time that an applicant can appeal the decision to the state.

**VOTE (40-2005)**

Motion by Councilor Jean, seconded by Councilor Connors:

That the proposed amendment to the City Code of Ordinances, Chapter 18 “Buildings and Building Regulations”, Article V, “Electrical Code”, Section 18-125 through Section 18-188, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR A CODE AMENDMENT  
REGARDING THE FIRE PREVENTION AND PROTECTION CODE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (41-2005)**

Motion by Councilor O’Brien, seconded by Councilor Jean:

That the proposed amendment to the City Code of Ordinances, Chapter 38 “Fire Prevention and Protection”, Article II, “Fire Prevention Code”, Section 38-26 “Codes Adopted”, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FIRST PASSAGE FOR A CODE AMENDMENT  
REGARDING SIGNIFICANT BUILDINGS AND DISTRICTS**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (42-2005)**

Motion by Councilor Connors, seconded by Councilor Jean:

That the proposed amendments to Appendix A, Article XV “Significant Buildings and Districts”, Sections 1- 8, of the City Zoning and Land Use Code, concerning the Historic Preservation Review Board, receive first passage by a roll call vote and that the public hearing on said ordinance be continued to the meeting of February 15, 2005 for final passage.

Passed - Vote 6-0

**PUBLIC HEARING AND FIRST PASSAGE FOR A CODE AMENDMENT  
REGARDING EROSION AND SEDIMENTATION CONTROL STANDARDS**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (43-2005)**

Motion by Councilor Jean, seconded by Councilor Connors:

That the proposed amendments to Appendix A, Article XII “Performance Standards”, Section 15 “Erosion and Sedimentation Control”, of the City Zoning and Land Use Code, receive first passage by a roll call vote and that the public hearing on said ordinance be continued to the meeting of February 15, 2005 for final passage. Passed - Vote 6-0

**PUBLIC HEARING AND FIRST PASSAGE FOR A CODE AMENDMENT  
REGARDING THE DEFINITIONS OF ADULT BUSINESS ESTABLISHMENT,  
DRINKING AND EATING ESTABLISHMENT AND TATTOO PARLORS**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing. City Administrator Bennett provided background information for this item. He stated the Planning Board is recommending a change to the Land Use Code that classifies tattoo parlors as personal services, such as a hair salon business, rather than as an adult business establishment. He noted that an adult business is based upon a certain age in which a patron needs to be in order to participate in the business services. By having a tattoo parlor classified as personal service allows tattoo parlors to locate in many additional zoning districts within the City, as opposed to adult business establishments which are only permitted in limited zoning districts. The City Administrator is recommending an amendment to put the tattoo parlors back into the adult business classification. Councilor Connors commented on the memo from the City Planner which stated the Planning Board does not believe that many new tattoo parlors will open as a result of the additional zoning options, noting it is a market-driven industry.

Planning Board member John Butler stated the Planning Board felt that tattoo parlors should be considered as personal services, to conform with federal definitions and classifications. He said the Planning Board does not predict that the City will now see a large increase in tattoo businesses as a result of their recommended change. Mr. Bennett stated he is not concerned with the classification of personal service vs. adult business, but is concerned with the number of additional districts a tattoo business would now be permitted to operate. Councilor Paradis noted that the City will be working on new design standards soon and whatever is approved tonight is not setting a precedent and can be amended later if there is an issue.

Motion by Councilor Connors, seconded by Councilor Paradis:

To amend the Planning Board's recommendation and to move tattoo parlors from the personal services classification into the adult business establishment classification.

Councilor Mendros stated he will be voting against the amendment and agrees with the Planning Board recommendation. He stated there is a large difference between various types of adult business establishments, noting there is a major difference between a store that sells pornography and a business that does tattoos. He feels the Council is looking for a problem where there is none.

**VOTE (44-2005)**

Motion by Councilor O'Brien, seconded by Councilor Mendros:

To table this item/to postpone indefinitely. Did not pass - Vote 1-5 (Councilor Mendros in favor.)

**VOTE (45-2005)**

Motion by Councilor Mendros, seconded by Councilor O'Brien:

To postpone this item until the next Council meeting. Did not pass - Vote 2-4 (Councilors Mendros and O'Brien in favor.)

Council President Bernier noted that since these motions to postpone action on the pending motion did not pass, the proposed amendment is the item before the Council.

**VOTE (46-2005)**

Motion by Councilor Connors, seconded by Councilor Paradis:

To amend the Planning Board's recommendation and to move tattoo parlors from the personal services classification into the adult business establishment classification.

Passed - Vote 5-1 (Councilor Mendros opposed)

**VOTE (47-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

That the proposed amendments to Appendix A, Article II "Definitions", Article VI "Nonconformance", Article XI "District Regulations", and Article XII "Performance Standards", of the City Zoning and Land Use Code, as amended by the City Council above, receive first passage by a roll call vote and that the public hearing on said ordinance be continued to the meeting of February 15, 2005 for final passage.

Passed - Vote 5-1 (Councilor Mendros opposed.)

**PUBLIC HEARING REGARDING ADOPTION OF BOND RESOLUTION FOR FARWELL ELEMENTARY SCHOOL CONSTRUCTION PROJECT**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing.

**VOTE (48-2005)**

Motion by Councilor Connors, seconded by Councilor Paradis:

Be It Ordered that the Bond Resolution of the Municipal Officers of the City of Lewiston, Maine, regarding the authorization to issue bonds in the amount of \$11,320,749 for the Farwell Elementary School Construction Project, and authorizing and approving the bond documents, be adopted:

Ordered, that \$11,320,749 be appropriated to finance the construction, original equipping, and furnishing of a new elementary school to replace the existing Farwell Elementary School, including related land acquisition costs and expanded capacity for the gymnasium;

Further Ordered, that to meet this appropriation, \$11,320,749 shall be raised by the issue of bonds and notes, such borrowing having been approved by a referendum vote pursuant to Title 20-A MRSA section 15904(1) and section 15904(4) at the December 7, 2004 Special Municipal Election, and it being anticipated that the debt service on \$10,721,062 of such borrowing shall qualify for the purposes of a state/local allocation subsidy;

Further Ordered, that the City Council hereby instructs the Finance Director to advertise for bids for the bonds; to award the loan; and to employ Palmer & Dodge LLP to furnish the legal opinion for same; provided that in the alternative, the Finance Director is authorized to award the loan to the Maine Municipal Bond Bank;

Further Ordered, that the bonds shall be signed by the Mayor and City Treasurer;

Further Ordered, that the date, maturities, denominations, interest rate or rates, place or places of payment, form and other details of the bonds and of the provisions for the sale thereof, shall be determined by the Finance Director; and

Further Ordered, that bonds issued hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Passed - Vote 6-0

**PUBLIC HEARING FOR LIQUOR LICENSE AND SPECIAL AMUSEMENT PERMIT  
FOR LUCKY'S LOUNGE, 37 PARK STREET**

The City Administrator informed the Council that it was recently brought to the attention of city staff that since the Salvation Army is located 260 feet from this proposed business, the State will be conducting a public hearing before issuing the liquor license, since the business is within the 300 foot zone of a religious facility. Mr. Bennett informed the Council they could deny the license application for this reason, if they saw fit to do so. Councilor Paradis stated he is more concerned with the noise for residents at Oak Park, noting that the business will most likely not be operating loud music during the time that religious services are occurring at the Salvation Army.

Council President Bernier opened the public hearing. Nasim Arborio and Brian Hanson, owners of Lucky's Lounge, addressed the Council and stated they are aware of the proximity of Oak Park. They stated they are planning to have a contemporary bar with couches and a relaxing atmosphere, and stated their target clientele is professionals working in the downtown. They said they are planning poetry readings, live guitar music and so forth. Mr. Hanson stated that he has several years of experience in the bar and restaurant business, stating he owns The Industry nightclub in the Old Port and Hanson Brothers seafood restaurant in the Portland Public Market. Ms. Arborio said they are planning to change the name of the business to The Venus Room, since they recently learned there is another Lucky's Lounge in Maine.

Council President Bernier then closed the hearing.

**VOTE (49-2005)**

Motion by Councilor Connors, seconded by Councilor Jean:

To authorize the City Clerk's Office to approve a new liquor license application and special amusement permit for Lucky's Lounge, 37 Park Street. Passed - Vote 6-0

**PUBLIC HEARING FOR SPECIAL AMUSEMENT PERMIT FOR THE COLISEE,  
190 BIRCH STREET**

Council President Bernier opened the public hearing. Council President Bernier inquired of Colisee Manager Paul LeClair about any concerns with patrons drinking too much during the hockey games. Mr. LeClair stated there have been a few incidents where the police officers on duty at the Colisee needed to escort some fans out of the building, but it is not common. He stated the people were not arrested, just asked to leave and they did so. He noted the staff is

well trained in serving patrons and recognizing problems. The City Administrator noted that of the twelve police calls to the facility since February 2003, a few of the calls were due to fighting between parents of youth hockey players, when no alcohol was being served. Council President Bernier then closed the hearing.

**VOTE (50-2005)**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To grant a special amusement permit for dancing and entertainment to The Colisee, 190 Birch Street. Passed - Vote 6-0

**PUBLIC HEARING FOR SPECIAL AMUSEMENT PERMIT FOR THE CAGE,  
97-99 ASH STREET**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the hearing. Councilor Paradis asked Chief Welch if conditions should be set on the permit again for this year, and the Chief stated that the Police Department does not have any concerns with this business.

**VOTE (51-2005 )**

Motion by Councilor O'Brien, seconded by Councilor Jean:

To grant a special amusement for dancing and entertainment to The Cage, 97-99 Ash Street. Passed - Vote 6-0

**TRANSFER OF FUNDS FOR THE WORKER'S COMPENSATION FUND**

**VOTE (52-2005)**

Motion by Councilor Jean, seconded by Councilor Connors:

ORDERED, That upon recommendation of the City Administrator and Finance Director, the City Council hereby approves a transfer of funds from the Undesignated Fund Balance in the amount of \$1,400,000 into the Workers' Compensation Fund. Passed - Vote 6-0

**NOMINATION AND APPOINTMENT OF SCHOOL COMMITTEE  
MEMBER FOR WARD ONE**

**VOTE (53-2005)**

Motion by Councilor Connors, seconded by Councilor O'Brien:

To receive the nomination from Mayor Guay regarding his nomination of John Butler, Jr., 20 Ware Street, to serve on the School Committee from Ward One, and to appoint John Butler to this position, said term to expire January 3, 2006. Passed - Vote 6-0

**ESTABLISHMENT OF THE URBAN DESIGN STANDARDS COMMITTEE AND APPOINTMENTS TO THE COMMITTEE**

**VOTE (54-2005)**

Motion by Councilor Connors, seconded by Councilor Jean:

To establish the Urban Design Standards Committee which shall work with the city's consultants to create design standards for the greater downtown area. Passed - Vote 6-0

**VOTE (55-2005)**

Motion by Councilor Bernier, seconded by Councilor Mendros:

To nominate Councilor Paradis to serve on the Urban Design Standards Committee.

Passed - Vote 5-0-1 (Councilor Paradis abstained.)

The City Administrator suggested that even though the requested action was to formally appoint city staff members to the committee as well, the staff members should not be fully appointed as voting members of the committee, but shall advise and assist the committee instead. A change was made to remove the names of staff members from the committee.

**VOTE (56-2005)**

Motion by Councilor O'Brien, seconded by Councilor Mendros:

To appoint the following people to serve on the Urban Design Standards Committee:

Planning Board member Tom Truchon, Board of Appeals member Paul Robinson, a member of the Downtown Advisory Board (to be named at a later date), Historic Preservation Review Board member Phil Meldrum and City Councilor Paradis. Passed - Vote 6-0

**APPOINTMENTS TO BOARDS AND COMMITTEES**

**VOTE (57-2005)**

Motion by Councilor Paradis, seconded by Councilor Jean:

To confirm the Mayor's nomination of Joseph Lavigne, 497 Main Street, to serve as a member of the Board of Library Trustees and to appoint Mr. Lavigne as a member of the Board of Library Trustees for a six year term, said term to expire January 5, 2010 and confirm the Mayor's nomination of John Painter, 765 College Street, to serve as a member of the L/A Community Forestry Board and to appoint Mr. Painter as a member of the L/A Community Forestry Board for a three year term, said term to expire March 7, 2006. Passed - Vote 6-0

**REPORTS AND UPDATES**

No reports or updates were presented at this time.

**OTHER BUSINESS**

City Administrator Bennett stated that a copy of the Joint Development Agreement for the Island Point Project is available this evening, and the Council will be asked to take action on this item at the next Council meeting. He also stated the budget presentation will be held on March 22.

**VOTE (58-2005)**

Motion by Councilor Paradis, second by Councilor O'Brien:

To adjourn at 8:05P.M. Passed - Vote 6-0

A true record, Attest:

Kathleen M. Montejo, CMC  
City Clerk  
Lewiston, Maine