

CITY OF LEWISTON

CITY COUNCIL

SEPTEMBER 1, 2009

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

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

PRESENT: Mayor Gilbert, Councilors T. Peters, Poulin, Theriault, Dube, Reed, Acting City Administrator Phil Nadeau and City Clerk Kathleen Montejo. Absent/Excused: Councilors N. Peters and Bailey.

Pledge of Allegiance to the Flag.

Moment of Silence.

RECOGNITION OF POLICE OFFICER ROB ULLRICH

Mayor Gilbert made a presentation to Officer Rob Ullrich in recognition of his recent national award recognizing his work with the prevention of underaged drinking among minors. Officer Ullrich, a 14-year veteran of the department and former DARE officer, was the recipient of the national 2009 Law Enforcement Officer of the Year award. The award was presented to him by the Office of Juvenile Justice and Delinquency Prevention, (OJJDP) at a ceremony in Dallas, TX, at the National Conference on Under Age Drinking.

PUBLIC COMMENT PERIOD

No members of the public offered any comments at this time.

PUBLIC HEARING ON THE RENEWAL OF A SPECIAL AMUSEMENT PERMIT FOR LITTLE DAN'S BBQ AND GRILL, 757 MAIN STREET

Mayor Gilbert opened the public 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 (218-2009)

Motion by Councilor Theriault, seconded by Councilor Reed:

To grant a special amusement permit for live entertainment to Little Dan's BBQ and Grill, 757 Main Street. Passed - Vote 5-0

PUBLIC HEARING FOR APPROVAL OF AN OUTDOOR ENTERTAINMENT PERMIT FOR THE DEMPSEY CHALLENGE

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

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VOTE (219-2009)

Motion by Councilor Theriault, seconded by Councilor Reed:

To conduct a public hearing on an application from The Dempsey Challenge Committee for outdoor musical concerts to be held at Simard-Payne Memorial Park on October 4, as part of The Dempsey Challenge, and to authorize a permit for an Outdoor Entertainment Event, as required by the City Code of Ordinances, Chapter 10, Article 1, Section 10-3, to organizing committee for the outdoor music concerts, contingent upon positive recommendations from the Recreation Department, Police Department, Fire Department, Code/Land Use Officer and Code/Health Officer regarding compliance with all regulations, and compliance with all City ordinances.
Passed - Vote 5-0

At this point, the Mayor took agenda item 11 out of order and addressed it at this time.

**REQUEST FROM THE DEMPSEY CHALLENGE FOR A WAIVER OF FEES FOR
THEIR FUND RAISING EVENT AT THE LEWISTON ARMORY**

VOTE (220-2009)

Motion by Councilor Theriault, seconded by Councilor Reed:

To approve the request from The Dempsey Challenge organizers for a waiver of the Armory rental fee for their fundraising event. Passed - Vote 5-0

**PUBLIC HEARING AND FIRST PASSAGE REGARDING AN AMENDMENT TO THE
CITY CODE PERTAINING TO BOND ISSUE LIMITATIONS**

Mayor Gilbert opened the public 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 Reed suggested changing the language from a vote of “two-thirds” to a vote of “five” members of the Council, to make it clear that five Councilors must concur to override the limit. Councilor T. Peters stated he felt a simple majority of four votes would be fine, which is the required number to even adopt this ordinance amendment to begin with.

VOTE (221-2009)

Motion by Councilor Reed, seconded by Councilor Theriault:

To amend the proposed language to change the required vote of “two-thirds” of the Council to a vote of “five” members of the Council. Passed - Vote 4-1 (Councilor T. Peters opposed)

VOTE (222-2009)

Motion by Councilor Reed, seconded by Councilor Theriault:

That the proposed amendments to the City Code of Ordinances, Chapter 2 “Administration”,

Sections 2-34 and 2-35 regarding bond issue authorization, receive first passage by a roll call vote and that the public hearing on this ordinance be continued to the next regular City Council meeting. Passed - Vote 4-1 (Councilor T. Peters opposed)

**PUBLIC HEARING AND FIRST PASSAGE FOR RE-ZONING OF THE PROPERTY
AT 176 EAST AVENUE**

Mayor Gilbert opened the public 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 (223-2009)

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

That the proposed amendment to re-zone the property at 176 East Avenue from the Neighborhood Conservation "A" (NCA) District to the Office Residential (OR) District, receive first passage by a roll call vote and that the public hearing on this item be continued to the next regular City Council meeting for final passage. Passed - Vote 5-0

**FIFTH AMENDMENT TO THE JOINT DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF LEWISTON AND COMMUNITY CONCEPTS, INC.**

Mayor Gilbert opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing. Assistant to the City Administrator Lincoln Jeffers said this project is located at the old St. Dom's High School site. Councilor Dube noted the plans have now downsized to half of the original project, and she asked if there would now be fewer parking spaces and less green space requirements. Councilor T. Peters said if the project is not started by June 2010, the developer could sell to a third party and it should be with the consent of the City Administrator. It was noted that Section 5.08 of the agreement would be changed to reflect this change and the CEO of Community Concepts, Inc, the present developer, concurred.

VOTE (224-2009)

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

To approve the attached "Fifth Amended and Restated Joint Development Agreement" between Community Concepts, Inc. and the City of Lewiston, and to authorize the Acting City Administrator to execute the Agreement, in substantial form as presented, and that the Acting City Administrator be and hereby is authorized to make, execute and deliver other such documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction. Passed - Vote 5-0

**ORDERS ADOPTING TECHNICAL CORRECTIVE AMENDMENTS TO THE
SCHOOL BUDGET AND APPROVAL OF RELATED ELECTION ITEMS**

Councilor T. Peters said he has a concern with the language of the ballot question, noting it does

not provide much information to the voter about the issue. The School Superintendent said the ballot question language is required by state law and this is how the question must be written.

VOTE (225-2009)

Motion by Councilor Poulin, seconded by Councilor Dube:

1) To approve the Orders Adopting the Technical Corrective Amendments to the School Budget for the period of July 1, 2009 to June 30, 2009:

Ordered, that upon recommendation of the School Department, this City Council hereby declares that an emergency exists within the meaning of Maine Revised Statutes, Title 20-A MRSA Section 1488 and that this City Council adopt the following corrective amendments to the budget for the School Department for the 2009-2010 fiscal year with no increase in local taxation, in order to prevent a possible loss of State school subsidy.

Ordered, that upon recommendation of the School Department, this City Council hereby amends the budget of the School Department for the 2009-2010 fiscal year to appropriate the previously approved sum of \$1,450,989 for non-state funded debt service from the School Department's Medicaid balance rather than from the School Department's local contribution to the total cost of funding public education as described in the Essential Programs and Services Funding Act.

Ordered, that upon recommendation of the School Department, this City Council hereby amends the school budget line item for Regular Instruction from \$17,713,321 to \$19,164,310 by adding the sum of \$1,450,989 in order to authorize expenditure of the full amount of the School Department's required local contribution to the total cost of funding public education as described in the Essential Programs and Services Funding Act.

Ordered, that upon recommendation of the School Department, this City Council hereby amends the total budget of the School Committee for the 2009-2010 fiscal year from \$49,654,485 to \$51,105,474 by adding to the total school budget, the additional sum of \$1,450,989 which the City Council has now authorized to be expended for Regular Instruction in order to authorize expenditure of the full amount of the School Department's required local contribution to the total cost of funding public education as described in the Essential Programs and Services Funding Act.

2) Be It Ordered by the City Council that the Election Warrant be issued for the Special Municipal Election to be held on Tuesday, Sept 15, 2009 for the purpose of voting for the School Budget Validation Referendum, and to approve the following recommendations from the City Clerk/Registrar of Voters on actions necessary to conduct the Special Municipal Election :

A. That the hours for acceptance of registrations in person only, prior to the Sept 15th election, as required by MRSA Title 21A, sec. 122, 6A (2), be set at 8:00am to 4:30pm, Aug 25 through Sept 14, 2009.

B. That the names of those persons who register during the closed session for registration shall be recorded in accordance with MRSA Title 21A, sec. 122, subsec. 7B.

C. Pursuant to Title 21A, sec 759(7), absentee ballots will be processed at the polling place at 7:00am, 6:00pm and any and all remaining shall be processed at 8:00pm, if necessary.

D. To appoint the City Clerk as the City's Election Warden and the Deputy Registrar of Voters as the City's Ward Clerk, for the Sept 15 election.

Passed - Vote 5-0

**DISPOSITION OF CITY-OWNED PROPERTIES AT 163 SWITZERLAND ROAD
AND 304 EAST AVENUE**

VOTE (226-2009)

Motion by Councilor Dube, seconded by Councilor Reed:

Be It Resolved by the City Council that the Acting City Administrator be and hereby is authorized to dispose of the city owned property at 163 Switzerland Road, and to sell the property to the highest bidder, and that the Acting City Administrator be and hereby is authorized to make, execute and deliver such deeds and other documents as he, in his discretion, may deem necessary or convenient to the accomplishment of such transaction. Passed - Vote 5-0

Finance Director Richard Metivier said there were not any bids submitted for the property at 304 East Avenue, noting it is a current owner-occupied property, so the staff recommendation is to evict the home owner in order to control the property to sell it. Earlier in the week, the staff was contacted by a family member of the home owner who will assist him with the back taxes.

Mr. Robert McCarron, brother of property owner Steve McCarron addressed the Council and stated he would be paying a portion of the back taxes and asked about an option of entering into a payment arrangement for the remaining taxes that would be due. Tax Collector Paul Labrecque has said he has been trying to communicate with Mr. McCarron about options such as the homestead exemption and other programs that may assist his situation.

VOTE (227-2009)

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

To authorize city staff to enter into a payment agreement with Mr. McCarron regarding the property at 304 East Avenue. Passed - Vote 5-0

**PRESENTATION FROM THE ACTING CITY ADMINISTRATOR ON PROCEDURE
MODIFICATIONS TO THE TRANSFER STATION OPERATION**

Acting City Administrator Phil Nadeau presented the recent findings regarding the recommendations for safety upgrades to the transfer station drop off area since a resident fell into the dumpster area. He said that barriers will be installed in the area and a drop off pad will be established for bulky items that cannot be lifted over the barriers. Mr. Nadeau noted that if another accident occurs in this area without the proper barriers in place, the City's insurance company would not cover the accident. Councilor T. Peters asked Mr. Nadeau to not install the barriers yet, but instead to seek information from the insurance company if a waiver for users of the station would suffice instead. The rest of the Council concurred with this recommendation. Mr. Nadeau will report back at the next meeting.

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**AMENDMENTS TO THE RULES GOVERNING THE CITY COUNCIL TO
ESTABLISH A FIFTEEN MINUTE PUBLIC COMMENT PERIOD AT THE
BEGINNING OF EACH REGULAR CITY COUNCIL MEETING**

The Mayor suggested adding the phrase “not already listed on the agenda” for the fifteen minute comment period.

VOTE (228-2009)

Motion by Councilor Dube, seconded by Councilor Reed:

To approve the proposed amendment to the Rules Governing the City Council, City Policy Manual Number 6. Passed - Vote 5-0

**RECEIPT OF PLANNING BOARD’S RECOMMENDATION REGARDING THE
PROPOSED ORDINANCE FOR THE KEEPING OF CHICKENS IN
RESIDENTIAL PROPERTIES**

Mr. and Mrs. Grandmaison of Jean Street stated they have been speaking with neighbors and others in the community who are opposed to the keeping of chickens in residential areas.

VOTE (229-2009)

Motion by Councilor Reed, seconded by Councilor Theriault:

To accept and place on file the recommendation from the Planning Board regarding this matter and to wait until the recommendation is received from the Public Health Committee before pursuing any action on this issue. Passed - Vote 5-0

**APPROVAL OF DE-AUTHORIZATION OF FUNDING FOR PROJECTS PREVIOUSLY
APPROVED IN EARLIER BOND ISSUES**

VOTE (230-2009)

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

To approve the de-authorization of the bond issue funding for the following projects as previously approved by the City Council:

Bates Mill Exit Strategy, originally approved May 2004, for \$5,400,000

A portion of projects in the 2009 Bond Issue, originally approved June 2008, for \$6,394,000

Passed - Vote 5-0

**RECOMMENDATIONS FROM THE PUBLIC WORKS DEPARTMENT FOR
EQUIPMENT REPLACEMENT**

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Public Works Director Paul Boudreau stated the oil sample from the snowblower was tested and the engine is fine.

VOTE (231-2009)

Motion by Councilor Theriault, seconded by Councilor Reed:

To approve the recommendation from the Public Works Director and to authorize the Public Works Department to rehabilitate the current Trackless tractor for sidewalk snow removal and to purchase the heavy duty snow blower attachment unit. Passed - Vote 5-0

**DISCUSSION REGARDING SUGGESTED CHANGES TO THE CITY'S SOLID WASTE
COLLECTION PROGRAM**

Due to the late hour, this item will be placed on the agenda of the next regular City Council meeting.

APPROVAL OF THE SEPTEMBER CITY COUNCIL WORKSHOP SCHEDULE

VOTE (232-2009)

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

To adopt the proposed City Council workshop schedule for the month of September.
Passed - Vote 5-0

REPORTS AND UPDATES

No reports or updates were presented at this time.

OTHER BUSINESS

Councilor Dube reported that the City has a current recycling rate of 6.7%.

VOTE (233-2009)

Motion by Councilor Theriault, second by Councilor Reed:

To adjourn at 10:04 P.M. Passed - Vote 5-0

A true record, Attest:

Kathleen M. Montejo, MMC

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City Clerk
Lewiston, Maine