

**MINUTES FOR THE REGULAR CITY COUNCIL MEETING
THURSDAY, DECEMBER 1, 2011
COUNCIL CHAMBERS, CITY CENTER
5:30 P.M.**

All members of the Council were present, except Councilor O'Brien; Mayor Stokes presided.

Public comments were held on items listed on the agenda.

OLD BUSINESS AND TABLED MATTERS

HAS BEEN READ AND TABLED

11-146

ORDERED, That the City Manager be authorized to contract for demolition and improvements to Haymarket Square not including the construction of new bathroom facilities and not to exceed \$120,000 from the Downtown TIF.

(NO MOTION TO REMOVE FROM TABLE)

10-166

~~WHEREAS, the City Council finds that the criteria for approving a Text Amendment to the Land Use Ordinance, found in section 1.6.1.A, has been satisfied; and~~

~~WHEREAS, the City Council finds that bituminous mix plants and ready mix concrete plants in the Rural River 2 zoning district conflict with residential uses in that district to such a degree that no new plants should be permitted and all existing plants should be eliminated at the end of their current licensing period; and~~

~~WHEREAS, snow dumps and crushing/screening operations are found to be acceptable and critical accessory uses of a mineral extraction site; and~~

~~WHEREAS, the City Council finds that all bituminous mix plants and ready mix concrete plants require Planning Board review and the opportunity for public input, regardless of size or location; and~~

~~NOW THEREFORE BE IT ORDAINED, By the City Council of the City of Augusta that the Augusta Land Use Ordinance and the Mineral Extraction Ordinance be amended as follows:~~

~~Amend the Land Use Ordinance Section 2.2 definition for "Mineral Extraction Activity" as follows:~~

~~Mineral extraction activity. Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled. Uses associated with mineral extraction include, but are not limited to, bituminous mix plants, crushing/screening operations, ready mix concrete plants. All of the land area disturbed or otherwise developed for the extraction, removal, handling,~~

~~processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building, parking lots and stockpiles, is considered to be a part of the mineral extraction site or area. Accessory uses may be conducted at a mineral extraction activity site.~~

Add a new definition to the Land Use Ordinance Section 2.2, Definitions, for a new use called “Mineral Extraction Associated Use” as follows:

~~Mineral Extraction Associated Use. Temporary, portable, or permanent bituminous mix plants and ready mix concrete plants that are constructed, erected, or placed within the Footprint of Operation for a licensed mineral extraction site.~~

Also amend Table 3.6.A.1 Land Uses in the Base Zoning Districts line 30 with a new title for the use as follows:

~~Mineral Extraction Activities and Associated Uses~~

Add a new use to Table 3.6.A.1 Land Uses in the Base Zoning Districts as line 31, renumbering the table appropriately, to include the following use as a Conditional Use only in the Rural River (RR) zoning district.

~~Mineral Extraction Associated Use~~

Amend the Land Use Ordinance Section 2.2 definition for “Development” adding the following language under the subsection on *Major Development*:

~~g. proposes the construction, erection, or placement of a fixed, portable, or temporary bituminous mix plant, or ready mix concrete plant as a primary use or mineral extraction associated use on the site.~~

Also amend the Mineral Extraction Ordinance to replace the phrase “Associated Mineral Extraction Activity” with the phrase “Mineral Extraction Associated Use” throughout the ordinance.

Amend the definition of Accessory Uses in the Mineral Extraction Ordinance as follows:

~~Accessory Uses. Uses clearly incidental and subordinate to a principal use and located on the same lot as the principle use. Such uses must be clearly spelled out in the application and license. Accessory uses may include, but are not limited to snow dumps, screening of materials, and crushing of materials.~~

Amend Section 6-79, License Renewal, of the Mineral Extraction Ordinance as follows:

~~(6) Any use, primary, associated, or accessory, that becomes non-conforming as a result of changes to the Land Use Ordinance or this Mineral Extraction Ordinance shall be sunsetted as part of the license renewal process and shall not be allowed to continue under a renewed license.~~

~~(7) Any Mineral Extraction Associated Use that is a Conditional Use or Nonconforming Use per the Land Use Ordinance, but did not receive a detailed review as part of the original licensing approval of the primary Mineral Extraction Activity, shall receive Conditional Use review at the time of relicensing as an amendment to the existing approval for the site.~~

~~(8) Any use, primary, associated, or accessory, that requires Major or Minor Development Review under the Land Use Ordinance at the time of license renewal, but did not require or obtain such approval at the time of initial establishment, shall receive such review from the Planning Board at the time of license renewal.~~

WHEREAS, the City Council has heard testimony regarding the impact of bituminous mix (asphalt) plants on surrounding properties and residents on numerous dates between November 2009 and October 2011; and

WHEREAS, the City Council finds that asphalt plants emit odor, dust, noise, and contribute significantly to additional heavy truck traffic that adversely impacts the health, safety, and general welfare of neighboring properties, residents and residential uses; and

WHEREAS, the evidence heard by the Council and the findings herein support the conclusion that asphalt plants and residences within 2500 feet are incompatible uses; and

WHEREAS, the City Council finds, as support for the previous finding, numerous complaints by residents within and beyond 2,500 feet of the one bituminous mix plant in Augusta have been received during the 2009, 2010, and 2011 paving seasons; and

WHEREAS, the City Council finds, that to date the city has received complaints related to the one bituminous mix plant in Augusta on 30 different days during 2011. Complaints from residents primarily regarding odor in 2011 occurred on May 26, June 1, June 8, June 17, June 28, July 6, July 8, July 11, July 21, July 29, August 1, August 9, August 11, August 18, August 19, August 25, August 27, August 31, September 12, September 13, September 14, September 21, October 21, October 24, November 1, November 7, November 8, November 9, November 14, and November 22. Some complaints also included issues related to smoke from the bituminous mix plant, dust from additional truck traffic related to the bituminous mix plant, and noise from additional truck traffic related to the bituminous mix plant; and

WHEREAS, the city staff visited the Grandview neighborhood as soon as possible after receiving a complaint and verified the presence of an asphalt odor on numerous occasions when complaints were made, including on June 28, July 21, August 1, August 24, October 24, November 8, and November 9; and

WHEREAS, the Maine Department of Environmental Protection conducted a detailed air sampling study in the Grandview neighborhood. The sampling site was approximately 2,000 feet from the bituminous mix plant. The sample collection occurred during the summer of 2010 and a final report was issued in February of 2011. The report stated that Maine DEP staff personally detected a “noticeable asphalt odor” on three occasions when visiting the neighborhood to collect air samples after receiving complaints; and

WHEREAS, the City Council finds that R.C. & Sons Paving, Inc., made a significant effort to address the odor problem by incorporating the use of an industry approved additive to their asphalt mix during the 2010 paving season and in the early part of the summer of 2011, with no resulting reduction in odor; and

WHEREAS, the City Council finds that R.C. & Sons Paving, Inc., spent substantial funds on a odor scientist during the summer of 2011 to make recommendations to eliminate odor problems with their plant; and

WHEREAS, the City Council finds that R.C. & Sons Paving stated at a City Council meeting in October 2011 that in September 2011 they implemented some of the odor scientist's recommendations, including constructing an enclosure around the truck loading area, yet complaints from neighbors persisted after that time and city staff found that asphalt odors in the Grandview neighborhood persisted in October and November 2011; and

WHEREAS, the City Council finds that the presence of an asphalt odor has a substantial negative impact on the use and enjoyment of residential properties and the health and welfare of the residents; and

WHEREAS the City Council finds that bituminous mix plants are not subordinate uses to a mineral extraction activity, but are primary uses or co-primary uses of a site due to their significant impacts of added odor, traffic, dust, and noise created separately from the impacts of a mineral extraction activity; and

WHEREAS, the City Council finds that all bituminous mix plants require Planning Board review as primary uses on any site they propose to locate and require the opportunity for public input, regardless of size or location; and

WHEREAS, the City Council finds that bituminous mix plants are able to profitably operate outside mineral extraction sites in other municipalities in Maine; and

WHEREAS, the City Council finds that the current Land Use Ordinance, as well as prior Land Use Ordinances in Augusta dating back to 1991, classify bituminous mix plants as "Heavy Manufacturing"; and

WHEREAS, the North American Industrial Classification System classifies bituminous mix plants (asphalt mix plants) as Manufacturing uses; and

WHEREAS, the City Council finds that the 2007 Comprehensive Plan for the City of Augusta, adopted by the Council on January 7, 2008, does not support Manufacturing of any type in the "North River Residential" area or the "Westside Residential" area (Volume I, pages 38-39, 42); and

WHEREAS, the City Council finds that the criteria for approving a Text Amendment to the Land Use Ordinance, found in section 1.6.1.A of the Land Use Ordinance, has been satisfied;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Augusta that the Augusta Land Use Ordinance and the Mineral Extraction Ordinance be amended as follows:

Amend the Land Use Ordinance Section 2.2 definition for “Mineral Extraction Activity” as follows:

Mineral extraction activity. Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled. ~~Uses associated with mineral extraction include, but are not limited to, bituminous mix plants, crushing/screening operations, ready mix concrete plants.~~ All of the land area disturbed or otherwise developed for the extraction, removal, handling, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building, parking lots and stockpiles, is considered to be a part of the mineral extraction site or area. Accessory uses may be conducted at a mineral extraction activity site.

Also amend Table 3.6.A.1 Land Uses in the Base Zoning Districts line 30 with a new title for the use as follows:

Mineral Extraction Activities ~~and Associated Uses~~

Amend the Land Use Ordinance Section 2.2 definition for “Development” adding the following language under the subsection on *Major Development*:

g. proposes the construction, erection, or placement of a fixed, portable, or temporary bituminous mix plant, or ready mix concrete plant.

Amend the Land Use Ordinance Section 5.1.15.1.2, Air Quality (Smoke, Odors, Dust, Fumes), adding a new subsection (b) that states:

(b) bituminous mix plants, also known as asphalt plants, shall not be sited within two thousand five hundred (2,500) feet of an existing residential property. Measurement shall be the shortest distance possible from the plant to the nearest point of the residential property line.

Amend the Mineral Extraction Ordinance Section 6-76(a), General Requirements – All Operations, adding a new subsection (9) that states:

(9) bituminous mix plants, also known as asphalt plants, shall not be sited within two thousand five hundred (2,500) feet of an existing residential property. Measurement shall be the shortest distance possible from the plant to the nearest point of the residential property line.

Amend the Mineral Extraction Ordinance to eliminate the definition for “Associated Mineral Extraction Use” and the phrase “Associated Mineral Extraction Activity” throughout the ordinance.

Amend the Mineral Extraction Ordinance to eliminate section 6-75(f) “Allowable Associated Mineral Extraction Uses”, and renumber section 6-75 accordingly.

Amend the definition of Accessory Uses in the Mineral Extraction Ordinance as follows:
Accessory Uses. Uses clearly incidental and subordinate to a principal use and located on the same lot as the principle use. Such uses must be clearly spelled out in the application and license. Accessory uses may include, but are not limited to snow dumps, screening of materials, and crushing of materials.

Amend Section 6-79, License Renewal, of the Mineral Extraction Ordinance as follows:
(6) Any use, primary, associated, or accessory, that becomes non-conforming as a result of changes to the Land Use Ordinance or this Mineral Extraction Ordinance shall be sunsetted as part of the license renewal process and shall not be allowed to continue under a renewed license.

(7) Any use, primary, associated, or accessory, that requires Major or Minor Development Review under the Land Use Ordinance at the time of license renewal, but did not require or obtain such approval at the time of initial establishment, shall receive such review from the Planning Board at the time of license renewal.

Motion to amend by: Paradis Second by: Munson
(add: New language submitted by Counsel)

Yeas: 6; Grant, Paradis,
 Rollins, Coffin, Emery, Munson
Nays: 1; Byron

Motion for passage as amended by: Paradis Second by: Munson

Yeas: 6; Grant, Paradis,
 Rollins, Coffin, Emery, Munson
Nays: 1; Byron

OLD BUSINESS AND TABLED MATTERS (Con't)

READ AND PASSED, FINAL READING

11-177

WHEREAS, the properties directly across Sewall Street from the State House are a mix of residential and professional offices; and

WHEREAS, the property at 110 Sewall Street is proposed to be used as a law office or professional association office that would be used by individuals primarily having business at the State House.

NOW THEREFORE BE IT ORDAINED, By the City Council of the City of Augusta that the following amendments be made to the Land Use Ordinance, Official Zoning Map:

The lot known as Assessor's Map 26, Lot 117 shall be rezoned in accordance with Section 1.6.1(A)(iv)(b) of the Augusta Land Use Ordinance. The new contract zone shall be Institutional/Business/Professional (BP) District with two uses specifically allowed as permitted uses – "business and professional offices and services, specifically law offices" and "business / professional associations".

Motion for passage by: Paradis Second by: Rollins
Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson
Nays: 0

NEW BUSINESS

READ AND PASSED, AS AMENDED

11-181

WHEREAS, the City of Augusta has, by virtue of its management services contract with the State of Maine Department of Transportation (MDOT), has agreed to accept responsibility as sponsor for ~~federal-state~~ grant funds designated for capital improvements to the Augusta State Airport, and

WHEREAS, said capital improvement projects have been approved by the MDOT and no local financial obligation is incurred by the City of Augusta as sponsor of said grant funds,

NOW THEREFORE, BE IT RESOLVED, That the City manager is hereby authorized to execute cooperative agreements with the MDOT for the following Airport Project Level Contracts:

State PIN # 018251.00	Repairs to Snow removal Equipment	\$20,000
State PIN # 016021.00 & " " 016021.63	Airport Capital Improvements	\$10,000 <u>\$33,748</u>
State PIN # 017395.00	Additional Airport Capital Improvements (to increase total contract to \$200,000)	\$89,500
Modification to management agreement to add 6 th year		\$550,000

Motion to amend by: Bryon Second by: Grant
(Change: federal to state)
Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson
Nays: 0

Motion to amend by: Byron Second by: Coffin
(Change: \$10,000 to \$33,748)

Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson
Nays: 0

Motion for passage, as amended, by: Coffin Second by: Rollins
Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson
Nays: 0

NEW BUSINESS (Con't)

HAS BEEN READ, FIRST READING

11-182

BE IT ORDAINED, By the City Council of the City of Augusta, as follows:

That Chapter 18, Section 73 Schedule of no parking, restricted parking areas, of the Revised Code of Ordinances 1990, as amended, be further amended by deleting the following:

Drew Street (Seasonal):

No Parking on the east side from Western Avenue to Green Street from November 15 to April 1.

BE IT FURTHER ORDAINED, By adding the following:

Drew Street:

No Parking on the east side from Western Avenue to Lincoln Street.

No Parking on the east side from Lincoln to Green Street from November 15 to April 1.

Two (2) hour parking on the west side of Drew Street from Western Avenue to Lincoln Street between the hours of 8:00 a.m. and 6:00 p.m.

(FIRST READING, NO VOTE TAKEN)

NEW BUESINESS (Con't)

READ AND PASSED

11-179

ORDERED, That the minutes of the City Council meetings held November 17, 2011, submitted by the City Clerk, be approved.

Motion for passage by: Paradis Second by: Munson
Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson
Nays: 0

11-180

ORDERED, That Mary Mayo-Wescott be appointed to the Cable Television and Telecommunications Committee; said term to expire on December 1, 2014.

Motion for passage by: Paradis Second by: Munson

Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson

Nays: 0

11-183

Ordered, That the City Council enter into executive session to discuss:

A potential litigation; 1 M.R.S.A. §405(6)(E)

Also acquisition or lease of property; 1 M.R.S.A. §405(6)(C)

Motion for passage by: Paradis Second by: Munson

Yeas: 7 Byron, Grant, Paradis
 Rollins, Coffin, Emery, Munson

Nays: 0

Meeting adjourned at 8:40 p.m.

Respectfully submitted,

Tina M Charest, Deputy City Clerk
December 5, 2011