

**TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE HEARING
June 17, 2016**

An Administrative Board Hearing was called to order at 2:00 p.m. on Friday, June 17, 2016, to consider administrative review on Pun Saloon LLC/Keith O’Leary (206-31-9), known as Uptown O’Leary’s Public House.

The following were in attendance:

**Town Manager Larry Mead
Assistant Town Manager, Louise Reid
Code Enforcement – Dan Feeney
Planner – Jeffrey Hinderliter
Marc Bourassa
Police Chief Dana Kelley
Michael Shannon
Dan Blaney
Interim Fire Chief William Farley
Keith O’Leary
Attorney Scott Gardner representing Mr. O’Leary**

Absent: Tina Kelly

The Board met at 2:00 to review the numerous complaints that have been raised regarding the operation of the business establishment.

During the initial meeting the memo received from Tina Kelly, who is absent from today’s meeting, was included as part of the Minutes:

“Greetings ARB Committee,

My apologies that I cannot join you today. After reviewing the police reports, I believe we are likely on the same page.

From what I can see in the numerous police reports and calls for services, it appears we have an ongoing theme involving the same two people, Keith O’Leary and a former employee, both violating the terms and conditions of bail and Protection from Harassment/Abuse order. Though this may seem like a civil matter, (and it is), it is taxing our resources by the sheer volume of calls/requests for service.

More importantly, I see that Mr. O'Leary violated his own bail conditions with the violation(s) of:

**"must not use any alcoholic beverages or illegal drugs;
must not possess any alcoholic beverages or illegal drugs"**

Both of these conditions have been violated and an arrest for possession has been warranted. I do not believe that Old Orchard Beach wants to attract the issues that this business owner is bringing to town. I would implore the committee and the Town Council to seriously review the reports before you, and at the bare minimum, I suggest the following:

- 1). A provisional business license until September 30, 2016.
- 2). Any calls for service involving the two parties violating the terms and conditions in the PFH/A shall warrant an emergency ARB meeting.
- 3). A detailed plan of correction by Mr. O'Leary to the ARB within 10 days indicating plans for improvement, addressing his bail conditions *"must not use any alcoholic beverages or illegal drugs; must not possess any alcoholic beverages or illegal drugs"* while operating a bar in OOB. Failure to do so may be cause for revocation. I do not believe our Consent Agreements have been effective. I propose that the business owner write their own plan of correction.

If the ARB is not satisfied with the progress and/or direction by September 30, 2016, the board shall reconvene and address next steps.

The State of Maine should be notified about the terms and conditions of bail agreement in regards to his state liquor license. This may be cause for his liquor license revocation thus rendering his business license obsolete as he will no longer be allowed to sell alcohol.

I hope for a successful and productive meeting. I look forward to reading the follow up. Off to South Carolina! See you soon.

Best,

Tina Kelly, CI/CT, NAD V, SC:L
Sign Language Interpreter
TerpTina@aol.com
207-838-8462 - Cell or text"

At the arrival of Mr. O'Leary and his Attorney, Scott Gardner, and in preparation for discussion, the Town Manager related the purpose of the Administrative Review Board.

ADMINISTRATIVE REVIEW BOARD (A.R.B.) – OUTLINE OF DUTIES

Authority of the A.R.B.

Authorized by Code of Ordinances: Businesses Section 18-38 and Section 18-39

Purpose of the A.R.B.

- 1. FACT FINDING**
- 2. PRIME GOAL = RESOLVE ISSUES**

Process

- **A.R.B. meeting is triggered by either:**
 - 1. one written complaint to License Administrator**
 - **pertaining to Business License / Code / Ordinance violation**
 - 2. three or more disturbances verified by Police Chief**
- **This does not imply that businesses appearing before A.R.B. are less than stellar**
- **Complaint goes to License Administrator, to Town Manager, to A.R.B. (to discuss complaint/disturbance with business)**
- **If unresolved: to Town Council**

Tools

- A. Resolve Complaint or Issue through Common Sense and Mutual Cooperation**
- B. Propose Consent Agreement with Applicant**
- C. (if not resolved) Recommendation to Town Council of License Revocation/Denial**

The Town Manager reviewed the material which has been presented to the Administrative Board prior to the convening of this meeting which included the original complaints. It was the mission of the Board today to provide recommendations to the Town Council to grant or deny an application for a liquor license. It was noted that there are reasons for a license to be denied which could include, but not limited to, Conviction of the application of any Class A, B or C Crime; non-compliance of the licenses premises or its use with any local zoning ordinance or other land use ordinance, not directly related to liquor control; conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licenses premise; repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licenses premises and cause by persons patronizing or employed by the licenses premises; or server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages. It also states that any applicant who does not agree with the decision may appeal to the bureau within 15 days of the decision.

In the discussion period the character of the business was discussed as it related to the request for the business/liquor license. There were many incidents of vandalism, harassment, criminal trespass, issuance of a temporary protection order, possession

of liquor after the legal hour; possession of marijuana (usable amount); sale/use of drug paraphernalia. It was also noted that Mr. O'Leary must not use any alcoholic beverages or illegal drugs per court requirements. There were charges made of violating bail conditions of release.

Chief Kelley reviewed the multiple calls for service at 41 Old Orchard Street. Attorney Gardner claimed that they were predominantly not "business related" but rather related to personal confrontation issues between Mr. O'Leary and a former employee. It was noted that the former employee worked for Mr. O'Leary both at Soho's and at 41 Old Orchard Street. It was indicated that the former employee was hired at least on two occasions to work at the 41 Old Orchard Street location. Town Manager, Larry Mead, made the point that this employment related to Mr. O'Leary's decision to hire the former employee as an employee. It was also noted that Mr. O'Leary's residence over the business also made it difficult for addressing the issues raised because they occurred at both locations. Chief Kelley also noted that pending misdemeanor charges are not clear to whether they relate to the business or the residence above. The complicating factor is that the address is both a business and a residence. Determining when the calls are for the business is difficult. The Town Manager pointed out that even when calls are made to the residence it may be when the business is open and operating which affects the customers and the business. In either case, Mr. O'Leary is responsible.

Several members of the Administrative Board agreed that the number of calls to the Police Department for service were excessive and Mr. O'Leary was placed on notice that the ongoing issues with the Police Department and calls to this address put his business at risk. Mr. O'Leary noted that he recognizes the concerns and it is his intention to address the issues in a positive, ongoing manner.

The consensus of the Board was that no action would be taken at this time. If the pending charges become convictions, it may later have a bearing on the business license. Also if other instances occur at the business going forward, it can have a bearing on the business license as well. The meeting was adjourned with no action taken at this time.

The Administrative Board Meeting concluded at 3:45 p.m.

Respectfully Submitted,

V. Louise Reid
Secretary to the Administrative Board

I, V. Louise Reid, Secretary to the Administrative Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of four (4) pages is a true copy of the original Minutes of the Administrative Hearings held on Friday, June 17, 2016.