

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, APRIL 15, 2008
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, April 15, 2008 the Town Hall Chamber. The Chairman opened the meeting at 7:03 p.m.

**Pledge of Allegiance
Roll Call:**

Present were:

**Chairman James Long
Vice Chairman Shawn O'Neill
Councilor Roxanne Frenette
Councilor Robin Dayton
Councilor Sharri MacDonald
Town Manager Stephen Gunty
Assistant Town Manager V. Louise Reid**

ACKNOWLEDGEMENTS:

CHIEF DANA KELLEY: It is with appreciation that the Public Safety Staff, Police and Fire, and on behalf of the Town Council, that we extend an enormous amount of gratitude to Kim Jones and her Committee for the marvelous outpouring of support that was received in connection with the Spaghetti Dinner to raise funds for the Joshua Richard Bolduc Scholarship Fund. This event was significant of the ability of a community to come together after a tragedy and to remind each of us how important we are to each other. I would also like to acknowledge the attendance and hard work of Governor Baldacci at the event as well as all those who served, including the families of the Public Safety Department and our Town Council as well. Obviously there are too many individuals, companies and businesses to acknowledge personally for the donation of not only money but goods in connection with the dinner and the silent auction but to all those involved, thank you, a great job well done for a worthy cause.

COUNCILOR DAYTON: I would like to encourage citizens to celebrate National Library Week by returning "Fine Free" days from April 15th through April 26th and return any books, CD's and Videos that belong to the library. The Community Watch Council will be holding an Emergency Management Seminar on April 26th at the Police Sub Station and we would invite all citizens to come and take advantage of this invitation.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to remove without prejudice the presentation to Chief Dana Kelley due to the inability of Senator Barry Hobbins and Representative George Hogan

VOTE: Unanimous.

CHAIRMAN LONG: We are pleased this evening to have a presentation by Junior Achievement Board Member Dennis Robillard, Alternative Education Teacher Mark Knowles, and Alternative Education Students Josh Rock (Chief Executive Officer) and Chelsea Morin (Assistant Vice President – Human Resources) and Klaudia Wampler and Josh Rock of their Vineland Trellis Projects.

DENNIS ROBILLARD AND MARK KNOWLES: A start up Committee, Vineland Trellis, joined together with Junior Achievement board member, Dennis Robillard, who, with fellow Rotarian Curt Scammon, have been helping the Alternative Education program and teacher, Mark Knowles, get a business underway. Market strategies and production costs for their upcoming product, a white cedar garden trellis. Students Chelsea Morin, Klaudia Wampler and Josh Rock expressed their opinions on this venture during the presentation. The business venture, in connection with a local chapter of Junior Achievement, a non-profit agency which teaches children and teens business and entrepreneurship skills. All of the students involved are in high school with the exception of one middle school student. With the help of adult volunteers from Junior Achievement, they are putting together a plan to sell garden trellises this spring. In addition attending the weekly meetings, the students have created a business plan, and come up with a product prototype. All students have been assigned positions in various departments, including human resources, marketing, sales and production. Student Chelsea Morin, (designated Assistant Vice President of Human Resources,) and the students have been working on the project since January. Students and Josh Rock (designated CEO), said he is responsible for gathering a lot of information and has become organized as a result. Both he and Morin said they now have a better idea of how a business works, knowledge which will be helpful when they pick a career path after graduation. The handmade garden trellises have the letters V and T in the design, representing the company's initial. White cedar will be used because it can last ten years without treatment. To market the trellises, they will be on display at town Hall and possibly local businesses. A slogan they are using is "A playground for your plants." The partnership with Junior Achievement sends a message that the students matter and as important as those students in the traditional school program. Fifteen percent of the proceeds will go to charity.

COUNCILOR FRENETTE: I would like to congratulate the students and the teachers for this excellent program.

COUNCILOR MACDONALD: I also would like to congratulate these young people and ask them that with the budget considerations being held how would you feel if the Alternative Education Program were cut from the school program.

RESPONSES FROM STUDENTS: I would be totally devastated if the program were to be cut. I have learned so much and become a more confident person since I have been part of the program. It would be a terrible loss for students such as myself.

I also agree that this would be just terrible and it would take me a long time to get over it because I have been so helped. I don't think I could go back to school and this has helped me get my education.

ACCEPTANCE OF MINUTES:

Town Council Meeting Minutes of April 1, 2008. Administrative Board Minutes of April 8, 2008; and Tabled Minutes of March 18, 2008.

MOTION: Councilor Dayton motioned and Councilor Frenette seconded to approve the Town Council Minutes of April 1, 2008.

**VOTE: Yea: Councilors Frenette, Dayton, MacDonald and Chairman Long
Abstain: Councilor O'Neill**

MOTION: Councilor Dayton motioned and Councilor Frenette seconded to approve the Administrative Board Minutes of April 8, 2008 and Tables Minutes of March 18, 2008.

VOTE: Unanimous.

SPECIAL AMUSEMENT PERMITS: Pine Ridge Realty, Inc. dba/Dunegrass Golf Club (105A-1-200), 200 Wild Dunes Way, Entertaining and Dancing; Eryn Steele dba/Club Oasis (306-5-3), 8 East Grand Avenue, Entertaining and Dancing; and Eryn Steele dba/Club Mirage (306-5-2), 6 East Grand Avenue; Entertaining and Dancing.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to approve the Special Amusement Permits as read.

VOTE: Unanimous.

NEW BUSINESS:

4030 Discussion with Action: Amend the Business License Ordinance, Sections 18-35 and 18-39(a) of the Code of Ordinances, to allow denial, suspension or revocation of a license when the applicant is in default on any financial obligation to the Town.

CHAIRMAN LONG: When business owners use town services such as Police, Public Works, Fire Department and other areas and fail to pay for those services when they have agreed to do so, the need for this ordinance is obvious. Citizens expect that business owners who are in operation to make a profit should not have the ability to use citizen- paid-for services free or be delinquent in meeting their financial responsibilities for those services.

EXHIBIT: AMENDMENT TO THE BUSINESS LICENSE ORDINANCE TO ALLOW DENIAL, SUSPENSION OR REVOCATION OF A LICENSE WHEN THE APPLICANT IS IN DEFAULT ON ANY FINANCIAL OBLIGATION TO THE TOWN

Be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled that section 18-35(b) of the Old Orchard Beach Code is amended by adding the following new paragraph (8):

The applicant owes any amount to the Town of Old Orchard Beach for services rendered by the Town or by Town employees to the applicant or the applicant's property, is in default on any performance guarantee or contractual obligation to the Town, or is otherwise delinquent in any financial obligation to the Town, including real property taxes.

Be it further ordained, that section 18-39(a) of the Old Orchard Beach Code is amended by adding the language shown in underscored type below:

The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under section 18-35. Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this amendment shall apply to any actions or proceedings pending on the date of its enactment.

MOTION: Councilor O'Neill motioned and Councilor Frenette seconded to Amend the Business License Ordinance, Sections 18-35 and 18-39(a) of the Code of Ordinances, to allow denial, suspension or revocation of a license when the applicant is in default on any financial obligation to the Town.

VOTE: Unanimous.

4031 Discussion with Action: Presentation of the School Budget for Fiscal Year 2009 and Notice of Amounts Adopted at Town Council Meeting for Voters at School Budget Validation Referendum.

CHAIRMAN LONG: The eleven cost centers presentation by the Superintendent are a requirement of the law.

SUPERINTENDENT MATTHEWS: The Superintendent of Schools will present the School Budget and also the Notice of Amounts Adopted at Town Council Meeting for Voters at School Budget Validation Referendum. Thank you for that introduction and here we are again. Following the presentation on March 25th the School Board authorized the use of the form in front of you and authorized me to present it to you in this format. On the reverse side of the listing of the cost centers is the numbers that represent the numbers within the cost centers. Superintendent explained the reasons for the cost of increase in the budget overage above the EPS. Our next meeting the board will sign this and once you determine the date for our budget approval, then the Town Council numbers will be included in the eleven items below. Those are the mechanisms of the form. The cost centers include some ambiguity about whether they vote on each line item of on the total. The State overrides the Town Charter. It seems a little bit like micro-management of our spending but the law is the law. Anything further would be redundant to what I gave you on March 25th.

[For municipal school units with charters providing for COUNCIL TO FINALLY APPROVE BUDGET]			
NOTICE OF AMOUNTS ADOPTED AT TOWN COUNCIL MEETING FOR VOTERS AT SCHOOL BUDGET VALIDATION REFERENDUM			
TO: Clerk of the Town of Old Orchard Beach, State of Maine.			
Pursuant to 20-A M.R.S.A. §§ 1486(2) and 2307 this Notice is to be displayed at all polling places for the school budget validation referendum to be held on _____, 2008, to assist the voters in voting on whether to ratify the school budget approved at the _____, 2008			
Town Council Meeting.			
Cost Center Summary Budget Category	Amount Recommended by School Committee	Amount Approved at the Town Council Meeting on _____, 2008	
Regular Instruction	\$5,253,382		
Special Education	\$1,648,727		
Career and Technical Education	\$0		
Other Instruction	\$0		
Student and Staff Support	\$799,246		
System Administration	\$339,119		
School Administration	\$801,613		
Transportation and Buses	\$250,249		
Facilities Maintenance	\$1,016,284		
Debt Service and Other Commitments	\$0		
All Other Expenditures	\$146,374		
Summary of Total Authorized Expenditures:	\$10,254,994	\$0	
[Note: Include the following statement only if the school budget approved at the Town Council Meeting exceeds EPS:			
The amount approved for the school budget at the Town Council meeting includes locally raised funds over and above the Town's local contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Service Funding Act.]			
A majority of the School Committee			

Completed and countersigned by:			
	Superintendent of Schools	Dated	
A true copy of the Notice, Attest:		, Town Clerk	
	Town of Old Orchard Beach		

COUNCILOR FRENETTE: I do agree with you that it should not be up to the Town Council to determine how you spend the money but again the State law does supercede the Town Charter.

MOTION: Councilor Frenette motioned and Councilor O'Neill second to acknowledge receipt of School Budget for Fiscal Year 2009.

VOTE: Unanimous.

~~# 4032 Discussion with Action: Act on Order for Referendum Election on the Regional School Consolidation of Dayton, Old Orchard Beach, and Saco and to set Referendum Election and Public Hearing date thereon.~~

~~# 4033 Discussion with Action: Be if Further Ordered that a Public Hearing on the subject of the above Referendum Question shall be conducted by the Town Council on Wednesday, May 7, 2008 at 7:00 p.m. at the Town Hall and public notice of the Hearing shall be given in the manner required by law.~~

COUNCILOR FRENETTE: At the Regional Planning Commission meeting held on April 10, 2008, it was the consensus of those on the Committee that a June date for the Regional School Unit #56 Referendum was no longer possible. This is due primarily to the inaction of the Maine Legislature in their deliberations for fine tuning to perfect the Consolidation law. Therefore the Committee is recommending that this agenda item be removed without prejudice.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to remove these two items, Agenda Item 4032 and 4033 without prejudice.

VOTE: Unanimous.

4034 Discussion with Action: Approve the Special Event Permit Application of the Normandie Motor Inn to place tents and tables on the beach in front of the Normandie in conjunction with a Lobster Bake to take place on private property, September 13, 2008, from 4:00 p.m. to 8:00 p.m.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to approve the Special Event Permit Application as read.

VOTE: Unanimous.

4035 Discussion with Action: Approve the Liquor License Renewals for Richard Payette dba/Landmark (306-5-6), 28 East Grand Avenue, s-m-v in a Restaurant; Venetia Kouzounas dba/Venetia's Restaurant (313-4-3), 93 West Grand Avenue, m-v in a Restaurant; Pine Ridge Realty, Inc. dba/Dunegrass Golf Club (105A-1-200), 200 Wild Dunes Way, s-m-v in a Golf Club; Pine Ridge Realty, Inc. dba/Dunegrass Golf Club (105A-1-200), 200 Wild Dunes Way, s-m-v in a Mobile Golf Cart; Pine Ridge Realty, Inc. dba/Dunegrass Golf Club (105A-1-200), s-m-v in a Snack Shack; Eryn Steele dba/Club Oasis (306-5-3), 8 East Grand Avenue, s-m-v in a Class A Lounge; and Eryn Steele dba/Club Mirage (306-5-2), s-m-v in a Class A Lounge.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to approve the Liquor License Renewals as read.

VOTE: Unanimous.

4036 Discussion with Action: Appoint Ginger McMullin as a Regular Member of the Conservation Commission, term to expire 12/31/08; Appoint Donald Comoletti as a Regular Member of the Design Review Committee, term to expire 12/31/09.

MOTION: Councilor Frenette motioned and Councilor MacDonald seconded to approve the appointments as read.

VOTE: Unanimous.

4037 Discussion with Action: Accept with regret the Resignation of Paul Kirvan from the Board of Assessment Review; and Accept with regret the Resignation of Cynthia Nye from the Design Review Committee.

MOTION: Councilor Frenette motioned and Councilor O'Neill second to accept with regrets the resignations as read.

VOTE: Unanimous.

4038 Discussion with Action: Appoint Michael Nugent as the Licensed Plumbing Inspector and Electrical Inspector for the Town of Old Orchard Beach, Maine.

MOTION: Councilor Frenette motioned and Councilor Dayton second to Appoint Michael Nugent as the Licensed Plumbing Inspector and Electrical Inspector for the Town of Old Orchard Beach, Maine.

VOTE: Unanimous.

4039 Discussion with Action: Approve the Purchase of a 2009 Ford Crown Victoria Cruiser from Augusta Ford for the Police Department in the amount of \$35,000 including change over and new equipment for the Cruiser from Account Number 30141-50849 Rescue Billing – Police Cruiser Expense with the balance of \$377,270.

CHAIRMAN LONG: Each year the Police Department is permitted to update their fleet (one year it will be one vehicle and the next year it will be two.) This year they have been permitted to purchase one which needs to be pre-ordered in able to have the updates necessary within the cruiser. The consensus of Council verbally was that the cruiser could be ordered even though it is part of the next year’s anticipated budget approval process and the money comes out of the Rescue Building Account.

MOTION: Councilor Frenette motioned and Councilor O’Neill seconded to Approve the Purchase of a 2009 Ford Crown Victoria Cruiser from Augusta Ford for the Police Department in the amount of \$35,000 including change over and new equipment for the Cruiser from Account Number 30141-50849 Rescue Billing – Police Cruiser Expense with the balance of \$377,270.

VOTE: Unanimous.

4040 Discussion with Action: Approve the purchase from Perm Lines in the amount of \$6,026 for signs for all streets coming out onto Saco Avenue for the E-911 Program to be completed by 2011 from Account Number – 20203-50506 – PW Capital Road Maintenance with a balance of 579,887.29.

CHAIRMAN LONG: Foreman Mike Perrone of the Public Works Department has provided three bids for signs required for all streets coming out on to Saco Avenue for the E-911 Program to be completed by 2011. The following bids were received:

Perm Lines	\$6,026.00
White Signs	6,556.00
Letterco	7,315.00

The orders included seventy (70) new street signs; seventy (70) new galvanized street poles; seventy (70) new street sign brackets. The emergency 911 rules require larger letter size for improved visibility from emergency response vehicles. Foreman Mike Perrone recommends the purchase from Perm Lines.

MOTION: Councilor Frenette motioned and Councilor O’Neill seconded Approve the purchase from Perm Lines in the amount of \$6,026 for signs for all streets coming out onto Saco Avenue for the E-911 Program to be completed by 2011 from Account Number – 20203-50506 – PW Capital Road Maintenance with a balance of 579,887.29.

COUNCILOR FRENETTE: Would it be possible to put our tree emblem on the signs? It is just a suggestion for the future.

COUNCILOR O’NEILL: I agree to that suggestion and would ask that you look into the cost of this issue.

MARY ANN CONROY: We will check into that and I am not sure that there is an additional cost to that.

TOWN MANAGER: Another option might be to approve this with and up to another amount to be approved.

COUNCILOR FRENETTE: I would think that if the cost were a great deal that we would expect that you would come back to us.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to table this item until the next Council Meeting to Approve the purchase from Perm Lines in the amount of \$6,026 for signs for all streets coming out onto Saco Avenue for the E-911 Program to be completed by 2011 from Account Number – 20203-50506 – PW Capital Road Maintenance with a balance of 579,887.29.

VOTE: Unanimous.

4041 Discussion with Action: Abate certain prior years' taxes as requested by the Assessor. John Campanale, #4238 – \$44.94 – Fiscal Year 1997, \$44.94 – Fiscal Year 1998, \$44.94 Fiscal Year 1999, \$44.94 – Fiscal Year 2000, \$44.94 – Fiscal Year 2000; Federal National Mtg. Assoc., #4238 - \$44.46 – Fiscal Year 2001. Assessed to wrong party.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to abate certain prior years' taxes as requested by the Assessor and read.

VOTE: Unanimous.

4042 Discussion with Action: Amend Town Council Policy 05-01 – Transfer Station Policy.

CHAIRMAN LONG: Since the Patriot's Day Storm last year, leaves and brush are now free to all residents year round to be disposed of at the Town Transfer Station. The Transfer Station ordinance has been amended to reflect this change. The price for a permit, \$25.00, has remained the same with a total value of \$84 value– yielding a savings to each residential household of \$59.00! This amounts to approximately two truck loads of demo material per household at no cost! The staff recommends accepting approval of this ordinance change.

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL POLICY 05-01
TRANSFER STATION POLICY**

The Town Council has established the following policy for the issuance of and charges for Transfer Station permits.

PERMIT PROCEDURE:

- A. Permits are available to any real estate property owner who completes an application form. Such persons may be issued a transfer station permit, which they will show at the**

transfer station when disposing of waste material. Permits are limited to one per property owner. For purposes of this policy, all co-owners of a property shall be considered a single owner.

- B. The permit includes three yards of acceptable demolition material, ~~three yards of brush, and three yards of leaves and grass. The three yards on the permit for acceptable demolition material may alternatively be used for leaves and grass.~~ Once this allotted amount is exceeded ~~the cost for brush, leaves and grass is \$6.00 per yard.~~ The cost of acceptable demolition material will be \$28.00 per cubic yard. For the purposes of this policy, acceptable demolition material is waste to be transported to the energy recovery facility deemed acceptable by the energy recovery facility, and construction or demolition debris, white goods and brown goods, furniture, and other waste deemed agreeable by the transfer station operator. Hazardous waste, which is waste deemed hazardous by the DEP, EPA, or the State of Maine, will not be accepted at the Transfer Station.
- C. Permit holders are subject to a fee per cubic yard of waste material disposed of, this fee to be set by the Town Council annually or more often if necessitated by contract changes. Permit holders may dispose of up to three cubic yards in any one year without paying a disposal fee. For the purpose of this section, "any one year" means 12 months from the date of issuance of the permit.
- D. Application forms for permits shall be made available through the Office of the Town Clerk.
- E. Applicants agree to abide by all regulations established by the Town of Old Orchard Beach. Such regulations may include limitations on the types of waste material which may be disposed of at the transfer station, and specific fees for specific waste material as determined by the Public Works Director or his designee.
- F. Transfer station permits are \$25, and are non-replaceable.
- G. All persons transporting material to the transfer station without a permit are subject to proof of residency or proof of real estate ownership requirements.

Adopted 4/5/2005

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to Amend Town Council Policy 05-01 – Transfer Station Policy.

VOTE: Unanimous.

4043 Discussion with Action: Accept a thirty day business license suspension advisory recommendation from the Administrative Board of Review concerning Paul McClellan dba/Friendly's Market (312-13-11), 31 Washington Avenue, victualers and grocery store.

CHAIRMAN LONG: The Old Orchard Beach Business License Ordinance states that any business license may be suspended, revoked or non-renewed by the Town Council after a

hearing. This business had two hearings; one on October 22, 2007 and another one on April 8, 2008 and it is now coming forward to the Council.

MOTION: Councilor Frenette motioned to Accept a thirty day business license suspension advisory recommendation from the Administrative Board of Review concerning Paul McClellan dba/Friendly's Market (312-13-11), 31 Washington Avenue, victualers and grocery store and Councilor O'Neill seconded it for discussion.

ATTORNEY NEAL WEINSTEIN: I represent Paul McClellan dba/Friendly's Market (312-13-11), 31 Washington Avenue, victualers and grocery store. I do not believe that my client has had a hearing. What the Administrative Board gave was an advisory hearing. I would point out that no evidence has been reported and I am in disagreement that this is a hearing and it appears as Ms. Frenette has motioned that you are willing to resent this individuals license and form of livelihood without a hearing.

COUNCILOR FRENETTE: Was there not an Administrative Hearing held you're your client? Wouldn't your client have the duty to ask for this hearing?

ATTORNEY WEINSTEIN: There was an Administrative Hearing but again that Administrative Board only provides an advisory hearing and it is your responsibility as the Council to provide a hearing for this individual to present his case and you have not done that. It is the constitutional right – the right of due process that demands that you provide the opportunity for a hearing with this individual business owner.

CHAIRMAN LONG: Conducting a business is a privilege and of course we would not want to take away a person's constitutional right. It is my understanding that the Administrative Board held two separate hearings on this license; one in October and one in April. You are representing the business licensee? I do believe that we have provided the proper venue for your client to present his side of the situation.

ATTORNEY WEINSTEIN: But you have not provided him a hearing and you are 'railroading him'....

CHAIRMAN LONG: I object to that characterization that we are railroading anyone. We have done everything to provide for a business review at which time your client was represented and his case was presented.

ATTORNEY WEINSTEIN: Well none of you were present at that hearing so you have not provided him with a hearing for you to hear his case. The Police, Fire, your town manager were there but you were not present so you do not know the circumstances and your ordinances indicates you must provide this business owner with a due process of a hearing.

COUNCILOR FRENETTE: Well you know that we are a judicial branch and should we attend that hearing we would be prejudices against your client.

ATTORNEY WEINSTEIN: You are no part of the judicial branch. You stated it wrong. I am not trying to be..

COUNCILOR O'NEILL: I would recommend that we have a short adjournment.

COUNCILOR O'NEILL: (After a five minute adjournment.) Reading from the Charter...

CHAIRMAN LONG: We have reconvened after the short recess.

COUNCILOR O'NEILL: Thank you Mr. Chairman for that. Reading from the Ordinance Section 18-38 © - "Action undertaken by the administrative board will be viewed as advisory to the Town Council. The Town Manager will place recommendations on the agenda for the next regular meeting of the Town Council. The Town Council will act upon such recommendations in the same manner as used for license hearings. Reading further – Section 18-39 – Suspension or Revocation – (a) The Town Council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state of local license that is a condition precedent to the issuance of a license pursuant to this article. Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the Town Manager or the Town Council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee received written notification of the suspension and the reasons therefore, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter." I believe it is now up to the Council how we react on this agenda item.

TOWN MANAGER: I would just reiterate that this is from the Ordinance, not the Charter.

COUNCILOR FRENETTE: I would have thought the only change would have been to put it under the name of the Town Manager.

COUNCILOR DAYTON: Mr. Chairman, I understand what has been read but I am asking if this is a hearing?

COUNCILOR LONG: The Administrative Review Board acted on its purpose which was to review what came be for it and they had as an advisory Board brought it to the Council in this agenda item and I believe we can act upon this agenda item.

COUNCILOR DAYTON: Mr. Chairman, with respect, I don't believe we have had a hearing.

COUNCILOR O'NEILL: Again, the Ordinance states that licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the Town Manager or the Town Council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee received written notification of the suspension and the reasons therefore, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

CHAIRMAN LONG: We have this item on the agenda this evening and need to act on it.

ATTORNEY WEINSTEIN: I would remind the Council that this does not constitute a health or safety issue – it is the matter of selling bread, soup, milk and should not be defined as a safety issue. The State is responsible for dealing with the violation and penalty connected with the selling of liquor to a minor which in this case was a police officer just a few months shy of the drinking limit. What you are doing is prohibiting the ability of

someone to make a living and also a neighborhood where this is the only market making it impossible for many citizens to have the availability of a local convenient store for shopping for household items. The State has the means of fining and taking away the liquor license but the Town can inflict great financial stress on a business owner by revoking their license. You are also denying the neighborhood the value of the store where bread and milk are sold. It is the only small store in the area of the Campgrounds. I believe this goes far being the rational basis – you are putting a person right out of business. This is not only bad for the business owner but for the people in the neighborhood.

CHIEF KELLEY: This is the fourth violation of this business and we need to send a message. We had a hearing in October where we made it very clear to the owner that if it happened again we would take this to the Town Council. We did have a hearing and made it very clear to him and it is a safety issue because they are selling to underage young people who then drink and drive. We were comfortable with the decision that the Administrative Board made and it was the intent of setting up the Administrative Board that we could make these recommendations to the Council.

CHAIRMAN LONG: I believe that the illegal sale to minors is a public safety issue and it behooves us as municipal servants to accept the recommendation of the Administrative Board, including the police and fire.

COUNCILOR MACDONALD: Mr. Chairman, has the State of Maine revoked his license?

ATTORNEY WEINSTEIN: It is my understanding that those penalties are pending with the State. It was our desire to have a Consent Agreement with the Town to let Mr. McClellan keep his business open; not be permitted to sell liquor for thirty days; but have the ability to service the community in which his store is located. It is the only convenience store in the Campground area and what you are doing is taking the opportunity for local citizens to have the convenience of that business. It is also a harsh action you are taking on this business owner and his livelihood.

COUNCILOR MACDONALD: Mr. Chairman, can we legally stop him from selling liquor?

COUNCILOR DAYTON: Mr. Chairman, was Gary Lamb part of this Administrative Board? Does he agree that the recommendation to not allow him to sell liquor was made? Was he in attendance when these motions were made?

GARY LAMB: I am Gary Lamb and I am the Licensing Administrator and I was in attendance for the hearing. There was a recommendation made that he not be permitted to sell liquor but I must also say there was a harder motion made that failed in which there was the suggestion to remove suspend or deny him a business license for a year and to actually close him down. Again that failed to get a second. The Administrative Board took their responsibilities seriously and felt that a fourth violation was serious enough to bring this to the Council in an advisory manner.

COUNCILOR DAYTON: Are we limited to one month? Would we be able to do that for a longer period of time?

GARY LAMB: I don't know. That would be a legal question.

COUNCILOR FRENETTE: I feel that we should move ahead with this and have a hearing within a week and work on a possible consent agreement. This way he cannot sell the liquor as a means to get rid of it. I believe this would be fair otherwise he can stay open now and sell the liquor.

GARY LAMB: The Administrative Board felt strongly about this because it was a blatant disregard of the Board's recommendation in October to Mr. McClellan that if this happened again we would recommend revocation or suspension of his business license.

COUNCILOR DAYTON: I understand the concern here and I definitely agree with a possible Consent Agreement. I am fully aware of the area of this store and it is the only convenience store in the area and many of the local citizens use that as a means of shopping and other businesses have closed. It would put them at a great disadvantage. I like Councilor Frenette's suggestion about a hearing in a week and a possible Consent Agreement. I guess my question is can we legally take away his business license and then come back with a Consent Agreement?

CHAIRMAN LONG: We need to remember that the applicant has the right to appeal to the Superior Court. He could initiate a number of actions but this is an ongoing problem which has been addressed several times. We had a sweep of stores last year and we all recognized that this is a serious issue in our community. Again, this is an unpleasant experience but we must protect the underage young people. We have a motion and a second.

COUNCILOR DAYTON: I again agree with Councilor Frenette's suggestion that we move forward and come up with a fair hearing and the development of a Consent Agreement and work from there.

COUNCILOR FRENETTE: Again I suggest that we move forward with a date for a fair hearing and work then on a Consent Agreement.

ATTORNEY WEINSTEIN: No matter what you do I believe it is important that if you take his business license away you will be denying him of a yearly income and he will be losing \$30,00 to \$40,000 in sales a month. This is not a rationally based decision. You are closing down a business that deals in perishable foods and what do you think is going to happen with that food. It will be wasted. There will be over \$10,000 in food losses. His livelihood is what you are placing in jeopardy. I do not wish to minimize the selling of liquor to a minor; I am fully aware of the issues in Old orchard Beach but I think this is an overreaction to an issue. We are not trying to minimize the problem but I believe that your determination to take his business license away is extremely harsh action in which you are inflicting business damage on his livelihood.

CHAIRMAN LONG: You are an excellent advocate. I would like to call for some motion either to amend, table, remove without prejudice, set a hearing date, but we need to move on with this agenda item.

COUNCILOR FRENETTE: He has known for sometime that if this happened again this action would be forthcoming. I would like to move forward.

MOTION: Councilor Roxanne Frenette motioned to amend the original motion to accept a thirty day business license suspension advisory recommendation from the Administrative Board Review and Councilor Shawn O'Neill removed his second to the original motion.

CHAIRMAN LONG: Is there a date available for everyone. Madam Secretary?

SECRETARY TO THE COUNCIL: Tuesday, April 22, 2008 at 6:15 p.m.

COUNCILOR O'NEILL: I do not support this new motion because we have a system in place. The Council worked diligently to establish the Administrative Board, to heighten the awareness of the need to adhere to ordinances and the laws under which we are governed and we are now giving someone an out. I do not support this. I support the staff's diligence in bringing this forward and the work that they have done which has been excellent and we are now going from a 30 day suspension to perhaps a one or two day suspension. I do not support this and will not vote for it.

LINDA JENKINS: I didn't realize that this item was on the agenda and I do not condone sale of liquor to a minor but I am very familiar with this neighborhood and there are many citizens, old and young, who do not have a car and depend on this store for their groceries. We have lost AZ's and to lose another community neighborhood business I think would be devastating and I would hope that there would be some way that we could permit him to sell the food but not the liquor. This is a store within walk able distance for those residents living in the community.

CHAIRMAN LONG: I support Councilor O'Neill's decision. The Administrative Board of Review was established by the Council and the process has worked and the staff has done an outstanding job in that regard. I do not wish to discourage the staff. It is the owner's responsibility to obey the law and to assure that his staff is trained so that they also obey the law.

CHAIRMAN FRENETTE: I understand the need to get rid of the perishable goods and to work on a Consent Agreement and determine any penalty at that time. This is not a sign that I do not support the work of the staff. I feel that they have done an excellent job and they need to be congratulated for it. I am attempting to work out something that will cause the least amount of damage to everyone.

COUNCILOR DAYTON: I agree with Councilor Frenette that this is something that needs to be dealt with in a timely manner.

COUNCILOR O'NEILL: I would suggest to the Council that perhaps we table this item for a couple of weeks. There is history here where we did suspend a license for a business in the middle of the summer. We want to make sure that we are acting procedurally and that would be my recommendation.

CHAIRMAN LONG: I acknowledge that this is something fairly new for most of us and we want to prudently act in the best manner and would concur with Councilor O'Neill's recommendation.

CHAIRMAN FRENETTE: I believe two weeks is too far out. I have a problem with the extended amount of time. I believe we should have the meeting next week and that he will

have the opportunity to midnight on April 20th to do what is necessary to adhere to the motion.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to suspend his license as of midnight April 20, 2008 and to schedule a hearing with the business owner on April 22, 2008 at 6:15 p.m. in the Town Council Chamber.

VOTE: Yea: Councilors Frenette, Dayton and MacDonald
Nea: Councilor O'Neill and Chairman Long

4044 Discussion with Action: Approve the Agreement between the Town of Old Orchard and Moshe Agam, owner of Beach Fantasy (205-4-3), 26 Old Orchard Street to share equally in the amount of \$5,100 each in the cost of replacement of 100 feet of Imperial Street Sewer Line with the Town's portion of \$5,100 coming from Account Number 20151-50508 – Sewer Maintenance with a balance of \$25,860.

TOWN MANAGER: Mr. Agam has requested that the contract be given to Gobeil Enterprises, Inc. since this is the contractor that has been working on his building and would provide a continuation of support from ongoing projects being done in the building.

CHAIRMAN LONG: A commercial building construction project has been underway at 26 Old Orchard Street by Mr. Moshe Agam, Owner / DEVELOPER of Beach Fantasy. He was encouraged to connect his sewer lateral to Imperial Street instead of Old Orchard Street due to intrusive trenching that would have impacted Old Orchard Street. Imperial Street is likely slated for future pavement overlay so its impact was regarded as less severe, however the TOWN's main line is an old clay line in very poor condition. The TOWN's past practice has required the DEVELOPER to either connect to it at DEVELOPER'S own risk should any further collapse or obstruction occur either during or after connection as a result of the excavation or connection, or to replace any deficient length prior to connection.

In this case, the TOWN has a significant interest to replace as much of the old clay line as feasible with a new main sewer line and to replace the existing older sewer manhole at Francis Street with a new manhole, prior to any scheduled pavement overlay on Imperial Street.

Therefore, the TOWN agrees to provide the sewer pipe for the main line and the manhole, with the DEVELOPER agreeing to split the excavation and installation costs related to the sewer line, service stub and manhole replacement occurring under Imperial Street. The scope of work is detailed in a proposal dated 4/1/08 from ~~SBB Excavation, LLC (109 Cascade Road, Old Orchard Beach, ME)~~ GOBEIL ENTERPRISES, INC. (73 BERRY ROAD, SACO, MAINE 04072), in an estimate of \$10,200 for the entire project, consisting generally of excavation and installation of a new manhole and approximately 100 linear feet of 8" sewer line and a 4" service stub. The TOWN will provide materials consisting of: a manhole with cover, 100 feet of SDR-35 pipe and 10 feet of 4"-SDR pipe. The \$10,200 cost will be split between the TOWN and DEVELOPER. Any cost overruns determined to be necessary due to unforeseen site conditions, will be jointly shared by the TOWN and DEVELOPER.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to Approve the Agreement between the Town of Old Orchard and Moshe Agam, owner of Beach Fantasy (205-4-3), 26 Old Orchard Street to share equally in the amount of \$5,100 each in the cost of replacement of 100 feet of Imperial Street Sewer Line with the Town's portion of \$5,100 coming from Account Number 20151-50508 – Sewer Maintenance with a balance of \$25,860.

VOTE: Unanimous.

#4045 Discussion with Action: Approve the Special Event Permit for Maine's First Annual Candlelight Vigil for Shaken Baby Syndrome, hosted by the Don't Shake Jake Awareness Program, on April 23, 2008 at 7 p.m. on the beach at the end of Union Avenue. Request to waive the fee.

MOTION: Councilor Frenette motioned and Councilor Dayton seconded to approve the Special Event Permit as read.

VOTE: Unanimous.

GOOD AND WELFARE

LINDA JENKINS: I am pleased to speak under Good and Welfare. I am writing today as chairperson of the Ballpark Committee, a subcommittee formed by the Conservation Commission. The purpose of the Ballpark Committee is to research land use options for the property commonly known as The Ballpark. As per Council Chairman Long's request during the November 27, 2007 workshop, we have focused on scenarios for community uses with a commitment to serving the community in a positive manner. While we realize that it is unrealistic at this time to ask the taxpayers to incur any costs of renovating any part of the ballpark, we also believe that it is detrimental to the community to allow the property to continue to sit in disrepair and allow it to deteriorate. The committee has held several meetings with citizens bringing their input and ideas for using and maintaining this property in the interim. We believe this parcel can be rejuvenated and once again become a vital part of the community of Old Orchard Beach. Our short term goal for this property is to bring the playing field back to a usable condition so that it can be utilized by the OOB High School baseball team. We believe that this small accomplishment will lead to greater things, but we realize that great projects need to move one step at a time. We have outlined our plan on the attached sheets. After speaking with you, Gary Lamb of the planning department and Chief Glass of the Fire Department, we have come up with a checklist of 11 items we feel would deal with all necessary concerns. We would appreciate your support in this endeavor and would like to remind everyone involved that all work mentioned on the attached project outline will be at no cost to the town of Old Orchard Beach.

COUNCILOR DAYTON : I would personally like to thank Sheila and Linda for all their hard work in this endeavor. I think it is just great.

COUNCILOR MACDONALD: I would remind citizens that Councilor Dayton and I will be here tomorrow evening to listen to any citizens that would like to stop in and share with us their thoughts on the school and municipal budget.

COUNCILOR O'NEILL: I would just question the wisdom of these meetings considering the fact that should a third councilor attend it would be considered an illegal meeting.

CHAIRMAN LONG: The Chair agrees and it is assumed that a third Councilor will not show up at this discussion.

COUNCILOR O'NEILL – I would trust that nothing would be considered the decision of the Council on budget issues since none of these issues have been decided yet through workshop presentation.

COUNCILOR MACDONALD – I assure Councilor O'Neill that I would not presume to speak for the Council but only for myself.

COUNCILOR FRENETTE: I believe it is a good thing and commend Councilor MacDonald and Dayton. It is hard to get trapped in the grocery store and have a conversation about important issue so this is a good outlet for that.

COUNCILOR DAYTON: I thank Councilor Frenette for those kind works. It is our intent to listen to the public and to their concerns. We are not speaking for the rest of the Council.

4046 Discussion with Action: Personnel Matters. (Note: This item discusses privacy issues defined under Title 1 M.R.S.A. Section 405(6)(A), and the Council anticipates the discussion will occur in Executive Session.)

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to enter into Personnel Matters. (Note: This item discusses privacy issues defined under Title 1 M.R.S.A. Section 405(6)(A), and the Council anticipates the discussion will occur in Executive Session.)

VOTE: Unanimous.

EXECUTIVE SESSION

This discussion being in a Personnel Matters. (Note: This item discusses privacy issues defined under Title 1 M.R.S.A. Section 405(6)(A).

ADJOURNMENT

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to close the Executive Session at 9:45 p.m.

VOTE: Unanimous

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of nineteen (19) pages is a true copy of the original Minutes of the Town Council Meeting of April 15, 2008.

V. Louise Reid