

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, MAY 19 2009 - 7:00 P.M.
TOWN HALL CHAMBERS**

A Town Council meeting of the Old Orchard Beach Town Council was held on Tuesday, May 19, 2009 in the Town Hall Chamber. The Chairman opened the meeting at 7:00 p.m.

Pledge to the Flag and Roll Call:

CHAIR MACDONALD: Councilor O'Neill is preparing to leave for Washington DC and the ride with the "Rolling Thunder" – Tribute to the Troops. He will not be here this evening or tomorrow night. He asked that we would announce this so the public will understand why he is absent this evening and also not in the Memorial Day Parade.

Present:

**Chair Sharri MacDonald
Vice Chair Robin Dayton
Councilor Mike Tousignant
Town Manager Steve Gunty
Assistant Town Manager V. Louise Reid**

Absent:

**Councilor Shawn O'Neill
Councilor Laura Bolduc**

ACKNOWLEDGEMENTS:

COUNCILOR DAYTON: Congratulations to Paul Golzbein and Rich Redmond on the opening of Lindbergh's Landing and this will open the opportunity for many large Groups to visit and use this facility for a variety of activities.

COUNCILOR MACDONALD: Please be advised that the Regional School Unit, Saco, Dayton and Old Orchard Beach will be having their Regional Budget Meeting in which all citizens of the three communities need to participate on Saturday, May 30, 2009 at 2:00 p.m. in the Saco Middle School, and is open all all registered voters. This is a Public Meeting to ratify the RSU #23 school budget for 2009-2010 to be put on the June 9th Budget Validation Referendum on June 9ths. Polls open at Old Orchard Beach High School from 8:00 a.m. to 8:00 p.m. for all registered voters.

CHAIR MACDONALD: Thanks to all who participated in the Memorial Park Clean Up day on Sunday and the Plant Sale. I am thrilled at the work that is being done by a host of volunteers in so many efforts within our Town.

PRESENTATION: The Community Watch Council (CWC) will present a report on the work they have done over the past few years and their plans for the coming year. Chairperson Helene Whittaker will make the presentation to the Council.

HELENE WHITTAKER: Thank you Councilors for including CWC on the Agenda tonight. Our future intentions are to grow in value for Old Orchard Beach, be seen with increased importance to the Council and Town especially now when the economy and stresses are higher than normal. Thanks to organizations like OOB365, our presence and exposure on that extraordinary day was worthwhile and extremely successful. We're strengthening and nurturing the existing Neighborhood Watch areas including Campground area, Ocean Park, Town Hall, Pine Brook, Cider Hill, Patoine Area, and Dunegrass where we recently had a meeting with the Association President and Neighborhood Presidents to discuss further expansion into the Dunegrass. We are also looking at two more senior areas including the Pines and the Birches. We continue to work in the Fern Park and Park Avenue neighborhoods establishing a walkabout and meeting date to introduce Neighborhood Watch to these two groups. We are also meeting with the owner of Old Orchard and Atlantic Village and have a meeting on May 21st with residents of Birkdale area introducing the Neighborhood Watch and also the Vial of Life Program. Next month we have a meeting with Orchard Terrace, again introducing them to the Neighborhood Watch and the Vial of Life Program. The Community Watch Council will be even more viable as we continue our challenges for Neighborhood Watch. With fall training classes we will be able to motivate, maintain, and challenge our Neighborhood Watch Block Captains letting them know they are important to their neighborhoods. Our message is "know your neighbor; it takes a community to raise a neighborhood, and we're in it together." This speaks volumes. Our group wants to continue working closer with the Police Department; to expand our good causes; to be the eyes and ears of the Police Department; to promote our positive image; and to have a safer neighborhood. There is a definite need for Neighborhood Watches, now more than ever. We would ask for consideration from the Council in our request for funding to continue our programming. Allow us to expand our opportunities.

CHIEF KELLEY: He expressed his appreciation to the great work being done by the Community Watch Council and the Neighborhood Watch and particularly Helene Whittaker for her personal involvement and leadership in the many projects that they have done and we are supportive of all their efforts.

COUNCILOR DAYTON: I would also like to thank them for their work. I have been part of that group at the beginning and they have done a marvelous job in providing many programs to the citizens of our community. I would also like to thank Chief Kelley for his support and that of his staff.

CHAIR MACDONALD: I was able to go to one of their meetings and I was surprised and thrilled at all that they are doing within our community and believe they deserve the support of the Council in their endeavors.

ACCEPTANCE OF MINUTES: Administrative Review Board Minutes of April 30, 2009; Town Council Minutes of May 5, 2009; Special Town Council Meeting Minutes of May 5, 2009; Town Council Workshop of May 11, 2009; and Town Council Workshop of May 12, 2009.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to approve the following Minutes:

VOTE: Unanimous.

PUBLIC HEARINGS NUMBER ONE:

CHAIR MACDONALD: I open this Public Hearing at 7:14 p.m.

AGENDA ITEM: Shall we Approve a proposed ordinance entitled “Ordinance Prohibiting Operation of Chem-Free Dances in Drinking Establishments” (which would repeal and replace the current ordinance in Chapter 6, Article IV, “Chem-free Dances in Drinking Establishments Restricted?”)

**OLD ORCHARD BEACH ORDINANCE
PROHIBITING OPERATION OF CHEM-FREE DANCES
IN DRINKING ESTABLISHMENTS**

WHEREAS, since 2007 the Town has attempted to control, through the Ordinance Regulating Operation of Chem-Free Dances in Drinking Establishments, the practice whereby drinking establishments suspend the sale, service and consumption of alcoholic beverages for specified periods of time in order to operate so-called “chem-free” dances during those times; and

WHEREAS, such chem-free dances are promoted to attract and do attract attendance by persons under the age of 21, who are not allowed to consume alcoholic beverages under Maine law; and

WHEREAS, such chem-free dances cause young people under the age of 21 to congregate and socialize on premises which are designed, arranged, configured and decorated for the purpose of selling and serving alcoholic beverages and which are ordinarily used for the consumption of alcoholic beverages; and

WHEREAS, such young persons under the age of 21 are not allowed to be present in such drinking establishments without a parent or guardian whenever alcoholic beverages are being served in such establishments; and

WHEREAS, allowing young persons under the legal drinking age to congregate and socialize in an establishment which is ordinarily used for the consumption of alcoholic beverages can have the effect of encouraging such persons under the age of 21 to mimic or imitate the behavior which normally occurs in drinking establishments and can thereby encourage underage drinking; and

WHEREAS, the Old Orchard Beach Town Council finds that the existing Ordinance Prohibiting Operation of Chem-Free Dances in Drinking Establishments has not been effective in eliminating the harmful effects of having young people congregate in and around drinking establishments; and

WHEREAS, the Old Orchard Beach Police Department reports that policing problems and public safety issues have arisen from the operation of chem-free dances in drinking establishments;

NOW, THEREFORE, be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:

I. Definitions.

As used in this Ordinance, the following terms have the following meanings:

- A. Chem-free dance means a dance, concert, party or other social event at which no alcoholic beverages are served and which is open to persons under the age of 21.**

B. Drinking establishment has the same meaning as in Section 78-1 of Chapter 78 of the Code of Ordinances, Town of Old Orchard Beach, Maine and includes, but is not limited to, Class A lounges and taverns, both as defined at 28-A M.R.S.A. § 2.

II. Chem-free dances in drinking establishments prohibited.

No person, including an owner or lessee of the premises in which a drinking establishment is located and any operator or manager of a drinking establishment, shall operate or permit the operation of a chem-free dance in a drinking establishment.

III. Violations, penalties, remedies.

Any person who violates Section II of this Ordinance commits a civil violation punishable by a civil penalty of no less than \$500 and no greater than \$1,000 for each violation. Each chem-free dance held in violation of this Ordinance is a separate offense and each person who operates or permits the operation of a chem-free dance is separately liable for the penalties set forth in this section. In addition, the Town may enjoin the operation of any chem-free dance planned or proposed in violation of this Ordinance.

IV. Enforcement.

This Ordinance shall be enforced by the Police Department of the Town of Old Orchard Beach.

V. Purpose.

The purpose of this Ordinance is not to control the sale, service or consumption of alcoholic beverages, but to regulate conduct in drinking establishments during those times when the establishments are not serving alcoholic beverages, so that minors under the legal drinking age are not congregating in an establishment which customarily serves alcoholic beverages.

VI. Applicability.

Upon enactment, this Ordinance shall apply to all drinking establishments, existing or proposed.

VII. Repeal of prior ordinance.

This Ordinance repeals and replaces the Old Orchard Beach Ordinance Regulating Operation of Chem-Free Dances in Drinking Establishments.

ARTICLE IV. ~~REGULATING OPERATION~~ PROHIBITION OF CHEM-FREE DANCES IN DRINKING ESTABLISHMENTS*

*Editor's note: Sections I--VI of an ordinance adopted March 6, 2007, did not specifically amend the Code. Therefore, such ordinance has been added as §§ 6-156--6-161 at the editor's discretion.

Sec. 6-156. Definitions.

As used in this article, the following terms have the following meanings:

Chem-free dance means a dance, concert, party or other social event at which no alcoholic beverages are served and which is open to persons under the age of 21.

Drinking establishment has the same meaning as in section 78-1 of the Code of Ordinances, Town of Old Orchard Beach, Maine 1 and includes, but is not limited to, class A lounges and taverns, both as defined at 28-A M.R.S.A. § 2.

(Ord. of 3-6-2007(1), § I)

1 Section 78-1 of Chapter 78 of the Code provides as follows: **Drinking establishment** means any establishment which is licensed by the state to serve alcoholic beverages for on-premises consumption, unless the establishment (i) is equipped with a separate and complete kitchen and with dining room equipment; (ii) has the capacity to prepare and serve full course meals; and (iii) is primarily and regularly used for the purpose of providing full course meals. The term "full course meals" means meals consisting of a diversified selection of food which ordinarily

cannot be consumed without tableware and cannot be conveniently consumed while standing or walking. The term "drinking establishment" does not include an establishment licensed under 28-A M.R.S.A § 1061 et seq. as a hotel, bed and breakfast, golf course or club.

Sec. 6-157. Chem-free dances in drinking establishments restricted.~~restricted.~~**prohibited.**

No person, including an owner or lessee of the property on which a drinking establishment is located and any operator or manager of a drinking establishment, shall operate or permit the operation of a chem-free dance in a drinking establishment, ~~unless the following restrictions are observed.~~

(1) No alcoholic beverages shall be served, sold or consumed on the ~~a~~ **a** property occupied by the drinking establishment during the time a chem-free ~~club.~~ **club.** dance is in progress and during the one-half hour periods preceding and following the chem-free dance.

(2) ~~Attendance at any chem-free dance shall be restricted to one of two age groups, either ages 13 through 16 or ages 17 through 20, and at no time shall attendees from both age groups be present during a chem-free dance. This paragraph does not apply to persons employed in connection with the operation of the chem-free dance or to parents of attendees.~~

(3) ~~All chem-free dances must end and all attendees must leave the property, including exterior portions of the property, no later than 11:00 p.m. if the chem-free dance is for 13 through 16-year-olds and no later than midnight if the chem-free dance is for 17 through 20-year-olds.~~

(4) ~~All signage, displays or artwork advertising or depicting alcoholic beverages or the consumption of alcoholic beverages, including labels and packaging materials, shall be fully covered or removed from the property so as not to be visible at any time during the chem-free dance and during the one-half hour periods preceding and following the chem-free dance.~~

(5) ~~All alcoholic beverages shall be removed from any portion of the property where persons under the age of 21 are permitted to be present during the chem-free dance and during the one-half hour periods preceding and following the chem-free dance.~~

(6) ~~The person operating the chem-free dance shall provide police protection on the property during the chem-free dance and during the one-half hour periods preceding and following the chem-free dance at that person's expense. The police protection shall be an officer of the Old Orchard Beach Police Department, unless the Old Orchard Beach Police Department cannot provide an officer, in which case the police protection may be another police officer or a security officer approved in advance by the Chief of the Old Orchard Beach Police Department. One officer is required. The person operating the chem-free dance may elect to employ additional officers.~~

~~(Ord. of 3-6-2007(1), § II; Ord. of 1-15-2008; Ord. of 4-1-2008)~~

Sec. 6-158. Violations, penalties, remedies.

Any person who violates section 6-157 of this article commits a civil violation punishable by a civil penalty of no less than \$500.00 and no greater than \$1,000.00 for each violation. Each chem-free dance held in violation of this article is a separate offense and each person who operates or permits the operation of a chem-free dance is separately liable for the penalties set forth in this section. In addition, the town may enjoin the operation of any chem-free dance planned or proposed in violation of this article.

~~(Ord. of 3-6-2007(1), § III; Ord. of 1-15-2008)~~

Sec. 6-159. Enforcement.

This article shall be enforced by the Police Department of the Town of Old Orchard Beach.

~~(Ord. of 3-6-2007(1), § IV)~~

Sec. 6-160. Purpose.

The purpose of this article is not to control the sale, service or consumption of alcoholic beverages, but to regulate ~~conduct in drinking establishments only during those times when the establishments are not serving alcoholic beverages.~~ prohibit chem-free dances in drinking establishments.

(Ord. of 3-6-2007(1), § V)

Sec. 6-161. Applicability.

Upon enactment, this article shall apply to all drinking establishments, existing or proposed.

(Ord. of 3-6-2007(1), § VI)

Amend Chapter 18 Businesses Section 18-26 Definitions by adding:

Chem-free club/nonalcoholic establishment means a public establishment offering public dancing or live entertainment and serving exclusively nonalcoholic beverages as the primary sales item with the service or sale of food as accessory to the sale of beverages.

Amend Chapter 18 Businesses by adding:

ARTICLE XI Chem-free club/nonalcoholic establishment

(1) Attendance at any chem-free club shall be restricted to one of two age groups, either ages 13 through 16 or ages 17 through 20, and at no time shall attendees from both age groups be present during a chem-free club. This paragraph does not apply to persons employed in connection with the operation of the chem-free club or to parents of attendees.

(2) All chem-free clubs must end and all attendees must leave the property, including exterior portions of the property, no later than 11:00 p.m. if the chem-free club is for 13- through 16-year-olds and no later than midnight if the chem-free club is for 17- through 20-year-olds.

(3) No alcoholic beverages are allowed in any portion of a property where persons under the age of 21 are permitted to be present in a chem-free club.

(4) The person operating the chem-free club shall provide police protection on the property during the chem-free club and during the one-half hour periods preceding and following the chem-free club at that person's expense. The police protection shall be an officer of the Old Orchard Beach Police Department, unless the Old Orchard Beach Police Department cannot provide an officer, in which case the police protection may be another police officer or a security officer approved in advance by the Chief of the Old Orchard Beach Police Department. One officer is required. The person operating the chem-free club may elect to employ additional officers.

Amend APPENDIX A SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES to include:

Chem-free club/nonalcoholic establishment (Fee to be established)

CHIEF KELLEY: The Chief explained that one of the ongoing concerns he has had has been the fact that 13 to 18 year olds are going to chem-free but they are going into what is a bar and even though there is no liquor sold and drugs are not allowed, he still felt that it is not a good environment for our youth to be going into a bar. This ordinance he indicated is not against any

particular business by denotes that a business can be a bar or it can be a chem.-free establishment, but not both. In altering an ordinance so that it would not allow chem.-free nights for teenagers at drinking establishments, this will protect youth from that environment.

DANNY SISSON – Owner of the Galaxy – spoke of what this will do to his business and also indicated that the kids have nothing else to do. He indicated that he felt this was an ordinance to shut down the only things kids have to do in Old Orchard Beach. They have nowhere to go. He gave a report on his business in the past and said that his establishment held chem-free nights for 13 to 16 year olds until 11:00 p.m. and for 17th to 20 year olds till midnight. The nights are intended to allow young people to gather socially in a setting where liquor and drugs are not available to them. He described the security that he provides including hiring a police officer at \$45 an hour. He said they do breathalyzer tests and he arranges for that himself. He said he is blamed for incidents which happen on the street and not in his business.

RI CKIE LETOWT: She agreed with Mr. Sisson and said the kids have no other place to go.

NEAL WEINSTEIN: He expressed his opinion that the ordinance was targeting the Galaxy, the only night club in Town that holds chem-free events. It's targeting one business in Town that has been successful and responsible for some fifteen years. He went on to talk about this denies resident and tourists the exposure to our town businesses. He spoke that the law is proposed because people are against children being in a place where alcohol is served and yet youngsters can see it on television twenty-four hours a day or on billboards and in magazines and newspapers. He continued by saying that if there is no place for these young people to go they will just hang out on the streets next to the adult bars. He indicated that the entire law does not make sense.

CHIEF KELLEY: He indicated that this isn't about Danny Sisson. I don't like the idea of young people in a nightclub atmosphere. I personally don't think that the place for thirteen year old children to be. The Chief did acknowledge that the problems with the young are in the parking lot and not in the establishment. There have been incidents of teenagers drinking in parking lots near the nightclub on chem.-free nights.

DANNY SISSON: He continued by defending the safety plan they have in place and said that he only allows seventeen and twenty year olds at the underage nights and that the events run until midnight and are held seasonally. He indicated he is planning on having a limited number of these events. Nine weeks is all that he is planning. He indicated he covers all signs promoting liquor. This is a parental problem and not ours.

ASSISTANT TOWN MANAGER LOUISE REID: She indicated she is not against businesses but she did not feel the venue was the right place for young people. She also said that she was disappointed that the over 40 individuals who sent e-mails in support of the ordinance did not take the time to come and speak this evening but she hoped the Town Council would recognize what those individuals have supported and written as well as those being in attendance tonight.

HELENE WHITTAKER: It is not our young people who go to this club; they come from out of town.

COUNCILOR DAYTON: She asked all young people to express their opinions to her and send her e-mails about what they thought.

CHAIR MACDONALD: I close this meeting at 7:25 p.m.

PUBLIC HEARING NUMBER TWO

AGENDA ITEM: Shall We Adopt the Ordinance entitled “Closing of Ways (Temporary Road Postings to Weight Limits).”

CHAIR MACDONALD: I open this meeting at 7:36 p.m. p.m.

BACKGROUND: Spring may seem an odd time to be thinking about closing roads to winter maintenance, but Winter road closure orders must be approved between May 1st and October 1st. In other words, to close a road to winter maintenance next winter, a municipality must act well before winter returns. (Maine Boardsman) We do not currently have an ordinance for posting roads in the Spring. The signs go up but compliance is voluntary. The new ordinance makes it mandatory. We do make exceptions under certain conditions, such as a delivery. A request needs to be made by the truck driver and we have honored several requests this past spring.

NOTICE OF PUBLIC HEARING MUNICIPAL OFFICERS OF THE TOWN OF OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on May 19, 2009, at 7:00 p.m. to consider the following:

Shall the Town Council of the Town of Old Orchard Beach adopt the ordinance entitled:
Closing of Ways (Temporary Road Postings to Weight Limits)

1. Findings; purpose; statutory authority.

A. Temporary closings are necessary at different times of the year and are not limited to springtime or mud season.

B. The following rules and regulations are necessary to ensure the proper use and to prevent abuse of all roadways/highways under our maintenance or supervision by motor-driven vehicles for the protection of public safety, health and property, to extend and retain the life expectancy of Town of Old Orchard Beach ways and bridges and to reduce the public expense of their maintenance and/or repair.

C. This article is adopted pursuant to 30-A M.R.S.A. § 3009 and 29A M.R.S.A. § 2395 and 1611.EN

2. Definitions.

The definitions contained in Title 29A of the Maine Revised Statutes Annotated shall govern the construction of words contained in this article. Any words not defined therein shall be given their common and ordinary meaning.

3. Restrictions and notices.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way or bridge so posted, unless otherwise exempt as provided herein.

A. The notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time period during which the restriction applies, the date on which the notice was posted and the signature of the posting official.

B. The notice shall be conspicuously posted at each end of the restricted portion of the way or bridge in a location clearly visible from the travel way. Whenever a restriction expires or is lifted; the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices.

C. No person may remove, obscure or otherwise tamper with any notice so posted, Except as provided herein.

4. Designation of ways and bridges.

The Director of Public Works or his/her designee is hereby directed and authorized to designate such Town of Old Orchard Beach ways and bridges or portions thereof, over which, during such periods of time as he/she may determine are necessary for the protection of such ways and bridges in implementing the within rules for the purpose herein stated.

5. Signs.

The Director of Public Works or his/her designee is further directed and authorized to cause the construction and/or painting of conspicuous signs for the posting of the closed portions of ways and bridges with the information as provided herein.

6. Exemptions.

The following vehicles are exempt from this article:

A. Any two-axle vehicle while delivering home heating fuel.

B. Any emergency vehicle (such as fire-fighting apparatus or ambulances) while responding to an emergency or routine training or maintenance activities.

C. Any vehicle while engaged in highway maintenance or repair under the direction of the city or state.

D. Any school transportation vehicle while transporting students.

E. Any public utility vehicle while providing emergency service or repairs.

F. Any vehicle whose owner or operator holds a valid permit from the Director of Public Works or his/her designee as provided herein.

7. Permits.

A. The owner or operator of any vehicle not otherwise exempt as provided herein may apply, in writing, to the municipal officers for a permit to operate on a posted way or bridge notwithstanding the restriction. The Director of Public Works or his/her designee may issue a permit only upon all of the following findings:

(1) No other route is reasonably available to the applicant.

(2) It is a matter of economic necessity and not mere convenience that the applicant uses the way or bridge.

(3) The applicant has tendered cash, a bond or other suitable security

(4) tendered to The Town of Old Orchard Beach in an amount sufficient, in the official's judgment, to repair any damage to the way or bridge which may reasonably result from the applicant's use of the same.

B. Even if the Director of Public Works or his/her designee makes the foregoing findings, he/she need not issue a permit if he/she determines the applicant's use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage. The Director of Public Works or his/her designee may also limit the number of permits issued or outstanding as may, in his/her judgment, be necessary to preserve and protect the roadways/highways.

C. In determining whether to issue a permit, the Director of Public Works or his/her designee shall consider the following factors:

- (1) The gross registered weight of the vehicle.**
- (2) The current and anticipated condition of the way or bridge.**
- (3) The number and frequency of vehicle trips proposed.**
- (4) The cost and availability of materials and equipment for repairs.**
- (5) The extent of use by other exempt vehicles.**
- (6) Such other circumstances as may, in their judgment, be relevant.**

D. The Director of Public Works or his/her designee may issue permits subject to reasonable conditions, including, but not limited to, restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

8. Administration and enforcement.

This article shall be administered and may be enforced by the municipal officers or their duly authorized enforcement designee.

9. Violations and penalties.

A. Any violation of the provisions of this article shall be considered a civil infraction and subject to a minimum mandatory fine of \$250 up to a maximum of \$1,000. In addition to any fine, the Town may seek restitution for the cost of repairs to any damaged way or bridge and reasonable attorney fees and costs. All penalties shall accrue to the municipality.

B. Prosecution shall be in the name of the Town of Old Orchard Beach and shall be brought in the Maine District Court.

CHAIR MACDONALD: There not being anyone wishing to speak on this, I close this Public Hearing at 7:37 p.m.

BUSINESS LICENSES: Alfred T. Simpson, 25 Ninth Street, Street Musician - Downtown Area, Personal Services, request to waive the fee; Norman Robinson (207-2-12-AB), 155 Saco Avenue, Massage Therapist – Office of Steve Bryant; Judd Sher (305-5-4), 55 East Grand Avenue, one seasonal rental; Paul Roncallo (312-1-4), 52 Highland Avenue, one year round rental; Judith & Ralph Hogan (319-10-5), 12 Tripoli Avenue, two seasonal rentals; West Opportunities, LLC dba/West Opportunities Student Center (205-3-4), 50 Old Orchard Street, Internet Café Services without Food; Sokoki Properties (322-3-10), 12 Connecticut Avenue, one year round rental; Sokoki Properties (322-2-2), 15 Connecticut Avenue, one year round rental; Kelly Decker dba/Sugar Beat Bakery (206-31-9), 41 Old Orchard Street, Bakery; and Justin Frady dba/Pier Bicycle Rentals (306-1-2-R), 1 East Grand Avenue, Unit R, Bike Rentals..

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Approve the Business Licenses as read.

VOTE: Unanimous.

**PUBLIC HEARING LIQUOR LICENSES: Primo's LLC dba/Primo's
(307-3-1), 8 West Grand Avenue, 2nd Floor, s-m-v in a Class A Lounge.**

CHIEF KELLEY: I would just like to mention that in the past, with a previous owner, we did have noise issues when there was outside entertainment and I would ask that the new owner recognize that this could be a problem and would affect the way they conduct their business.

NEAL WEINSTEIN: My client has no desire to have outside entertainment and didn't ask for it.

ASSISTANT TOWN MANAGER: It was noted on the license the request for outside entertainment and a motion on this would not be the issue on this liquor license but rather on the discussion of the Special Amusement Permit.

CHIEF KELLEY: I believe I raised this issue at the wrong time but should have done so under Special Amusement Permit.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Approve the Liquor License as read."

VOTE: Unanimous.

**SPECIAL AMUSEMENT PERMIT: Brentland Beth, Inc. dba/Bell Buoy Restaurant
(205-4-5), 24 Old Orchard Street, Music; Goodtunes Dance Club, Inc. dba/Referees (206-31-19-B), 2 First Street, Live Music & Dancing; Jeanne LaChance dba/JJ's Eatery, (306-5-1-F), 2 West Grand Avenue, Jukebox; and Michelle Bouthot & Robert Bouthot dba/Strike Zone Restaurant & Pub (205-4-1), 20 Old Orchard Street, Music.**

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to approve the Special Amusement Permit as read."

VOTE: Unanimous.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to add Agenda Item Number 5204 for a Special Amusement Permit for Primo's LLC dba/Primo's (307-3-1). 8 West Grand Avenue, 2nd Floor, DJ, Live Music, Inside and Outside.

VOTE: Unanimous.

TOWN MANAGER'S REPORT: Congratulations to Mark Beaudoin of the Public Works Department who was recognized in an article in the Journal Tribune detailing his desire to secure a college degree. Mark, 42 years old, with three children, a fiancé, and a busy job as a truck driver at Public Works decided it was time to face his fear of algebra and give college another try. He indicated he was not only interested but motivated and by securing the

degree be able to contribute more to his work. He enrolled in the OOB/Saco Adult Education Program and learned that he was eligible for the College Readiness Certificate Program, a free college preparatory program. The Public Works Director, herself a college algebra teacher, supported his decision 100%. Mark is now enrolled at York County Community College.

Mike Nugent has achieved a wonderful honor that is a testament to his expertise and professional reputation. He has been chosen by the ICC Evaluation Service to assist in evaluating new technology, building products, and new innovations that are regulated by the International Family of Codes. Specifically, Mike has been appointed to the Product Listing Committee and will start on July 1, 2009. Committee members evaluate proposed listing criteria prepared by staff concerning plumbing, mechanical and fuel gas (PMG) products. ICC-ES is the United States' leader in evaluating building products for compliance with code. A nonprofit, public-benefit corporation, ICC-ES does technical evaluations of building products, components, methods, and materials. The evaluation process culminates with the issuance of reports on code compliance, which are made available free of charge to code officials, contractors, specifiers, architects, engineers, and anyone else with an interest in the building industry and construction. ICC-ES evaluation reports provide evidence that products and systems meet code requirements. Not only is this a professional development opportunity for Mike but it also enhances the profile of the Town of Old Orchard Beach nationally by having our name recognized by the construction industry and by code enforcement officials across the country. On behalf of the entire Staff and Council, we extend a hearty congratulations to Mike for this honor that we also share in.

Mary Ann Conroy, our Public Works Director has been accepted into the Rho Class of Leadership Maine. This is an opportunity like no other, and the 2009-2010 program promises to be very exciting. There are 44 members in her class, representing 14 of 16 counties. Sector representation includes 16 businesses, 5 education institutions, 10 government related organizations, and 14 non-profit health care companies. To be accepted into this program requires that you meet a high number of specific qualifications and professional background and we are not surprised that Mary Ann excelled in them all.

CHAIR MACDONALD: Is this going to take them away from the demands of their jobs?

TOWN MANAGER: That which is gained from their participation is well worth the readjustments of schedules.

NEW BUSINESS:

5194 Discussion: Update on Bill LD 1119 presented to the Maine Legislature by Representative George Hogan Regarding the Saco Bay Boundary Issue

GARY LAMB: Little has changed since my last update. LD 1119 is still in State and Local Committee awaiting final language changes from the May 4th 12-1 Ought to Pass Committee vote. The bill goes to the House floor...then Senate...possibly this week or next...we just don't know when. It would be very helpful if Town Manager or Council Chair could ask Sen. Hobbins if he will be trying to amend this bill on the Senate

floor...and if so, why? We greatly appreciate Sen. Hobbins time and input to date...but OOB wants this bill to be debated and voted as is on its own merit...without last minute amendments. We have worked for 18 months to get this bill crafted to protect OOB interests and our beach economy...and LD 1119 is a reasonable request for jurisdictional protection.

5195 Discussion with Action: Approve the Special Event Permit application for the 6th Annual Captain Christopher S. Cash 5K on June 26, 2010; and a Request to waive the fee.

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to Approve the Special Event Permit Application as read.

VOTE: Unanimous.

5196 Discussion with Action: Approve the Contract with Lincoln/Haney Engineering Associates, Inc. for an engineering study of the roofing project at Loranger Middle School in the amount of \$14,500 from Account Number 10012-20120 – Teachers Summer Salary – School Booked, with a balance of \$353,979.71.

CHAIR MACDONALD: The roofs at Loranger School have been in need of repair for some time and has become a safety issue. The Council at a recent School Board Workshop authorized the School Board to come forward with the request for proposal for repairs to the school roof.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Approve the Contract with Lincoln/Haney Engineering Associates, Inc. for an engineering study of the roofing project at Loranger Middle School in the amount of \$14,500 from Account Number 10012-20120 – Teachers Summer Salary – School Booked, with a balance of \$353,979.71.

VOTE:

5197 Discussion with Action: Award a Contract to Dayton Paving for the bid item prices in the Contract to be paid from Account Number 20151/50506 – Operating Street Maintenance with a balance of \$27,677.

TOWN MANAGER: DPW has negotiated another year's contract with Dayton Sand and Gravel Company for paving and other related work for the Town of Old Orchard Beach. OOB has contracted with Dayton for the past four+ years and beyond. The other area communities have also negotiated a price similar to our contract with Dayton. Dayton has promised a one year commitment to \$60.85 (up slightly from \$58.30 last year) per ton of asphalt; this includes an escalator clause for drastic changes in asphalt binder mix. The escalator clause has been approved by MDOT and the current escalator rate is posted on their website daily. All paving contractors operating in the State of Maine are required to use the same escalator clause. Our contracted price is below the Council of Government bid tabs, which range from \$61.48 to \$87.10 per ton of pavement mix. Dayton is our primary

contractor for the large road paving projects; however, the hand pavement patch work may be done by any contractor who meets or is less than the contracted hand placed price of \$100 per ton of asphalt, as shown in this contract. This is the best deal for us financially (the comparable quotes the Council has in their packets) and professionally their services has been excellent. Their current contract runs out June 1st. We cannot pave the repairs that are scheduled for the first week in June without a contract. We have tentatively scheduled for repair work on Saco Avenue and Cascade Road. We do not guarantee any certain tonnage per year in this contract.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Award a Contract to Dayton Paving for the bid item prices in the Contract to be paid from Account Number 20151/50506 – Operating Street Maintenance with a balance of \$27,677.”

VOTE: Unanimous.

#5198 Discussion with Action: Award a Contract to Shaw Brothers for \$13.50 per yard of Type “B” Gravel to be paid from Account Number 20151/50506 – Operating Street Maintenance with a balance of \$27,677.

TOWN MANAGER: This is a housekeeping item which occurs each year.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Award a Contract to Shaw Brothers for \$13.50 per yard of Type “B” Gravel to be paid from Account Number 20151/50506 – Operating Street Maintenance with a balance of \$27,677.

VOTE: Unanimous.

5199 Discussion with Action: Approve the Liquor License Renewals for Brentland Beth, Inc. dba/Bell Buoy Restaurant (205-4-5), 24 Old Orchard Street, s-m-v in a Restaurant; Venetia Kouzounas dba/Venetia’s Restaurant (313-4-3), 93 West Grand Avenue, m-v in a Restaurant; Goodtunes Dance Club Inc. dba/Referees (206-31-19 - B), 2 First Street, s-m-v in a Class A Lounge; Jeanne LaChance dba/JJ’s Eatery (306-5-1-F), 2 West Grand Avenue, s-m-v in a Class A Lounge; and Michelle Bouthot & Robert Bouthot dba/Strike Zone Restaurant & Pub (205-4-1 - C), 20 Old Orchard Street, s-m-v in a Restaurant Lounge.

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to Approve the Liquor Licenses as read.

VOTE: Unanimous.

5200 Discussion with Action: Approve the Special Event Permit application for the 6th Annual Back to the Beach Corvette Weekend on June 13, 2009, for a parade at 4:30 p.m.

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

VOTE: Unanimous.

5201 Discussion with Action: Approve the Special Event Permit application for the Towing Recovery Association of Maine to hold their Tow Truck Trade Show in Memorial Park and First Street on September 11, 12, and 13, 2009. Request to Close First Street from 8 a.m. to 5 p.m. on all three days. Request to waive the fee. Applicant to provide insurance prior to event.

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to Approve the Special Event Permit Application as read.

VOTE: Unanimous.

5202 Discussion with Action: Abate certain prior years' taxes as requested by the Assessor. Susan Lambert, #5024 - \$19.98 – Fiscal Year 2007, \$20.25 – Fiscal Year 2006, \$30.15 – Fiscal Year 2005, \$30.15 – Fiscal Year 2004. Did not have an active business license for above years; Brian McGee, #50908 - \$219.09 – Fiscal Year 2004, \$243.21 – Fiscal Year 2003. The camper wasn't in Maine for those years; Earl Meuse, #50676 - \$176.88 – Fiscal Year 2004. Deceased, uncollectible; Mike St. Louis, #50089 - \$38.19 – Fiscal Year 2003, \$51.24 – Fiscal Year 2002, \$53.82 – Fiscal Year 2001. Registered with plate #L96255 each year above; Jim Taft, #56127 - \$263.31 – Fiscal Year 2005, \$293.46 – Fiscal Year 2004. The camper was not in the campground those years; William Lumb, #3026 - \$48.24 – Fiscal Year 2003. Sold in May 2001; Don Creswell, #50956 - \$183.60 – Fiscal Year 2006. Camper was not in campground that year; Christopher Gallagher, #6199 - \$60.30 – Fiscal Year 2004, \$60.30 – Fiscal Year 2003. Camper was sold in June 2001; Barbara Belloir, #57397 – \$193.42 – Fiscal Year 2008. Camper was previously registered; Linda Rhodes, #57839 - \$138.53 – Fiscal Year 2007. Registered in NH, and camper does not stay in Maine; and Doris Welding, #50791 - - \$21.35 – Fiscal Year 2008, \$22.64 – Fiscal Year 2007, \$22.95 – Fiscal Year 2006, \$34.17 – Fiscal Year 2005, \$34.17 – Fiscal Year 2004, \$34.17 – Fiscal Year 2003. The trailer was registered in Lewiston for all above years.

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to Abate Taxes as read.

VOTE: Unanimous.

5203 Discussion with Action: Set the Public Hearing Date of June 2, 2009, on the Ordinance Establishing Moratorium on "Head Shops".

BACKGROUND: NOTICE OF PUBLIC HEARING - MUNICIPAL OFFICERS OF THE TOWN OF OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on June 2, 2009, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that the following Ordinance be adopted by the Town Council:

**TOWN OF OLD ORCHARD BEACH
ORDINANCE ESTABLISHING MORATORIUM
ON "HEAD SHOPS"**

WHEREAS, Town staff have received inquiries concerning the establishment and operation of retail stores which would display, sell or offer to sell merchandise which may meet the definition of "drug paraphernalia" under state law, which stores are sometimes referred to as "head shops"; and

WHEREAS, sale of drug paraphernalia is unlawful under Maine law; and

WHEREAS, head shops raise a number of concerns related to the public health, safety and welfare, including, but not limited to, promotion and encouragement of illicit drug use, adverse secondary effects on the Town's tourism businesses, adverse secondary effects on neighborhoods and the possibility of significant detrimental changes to neighborhood and community character; and

WHEREAS, the Town's current ordinances do not provide an adequate mechanism to regulate and control head shops; and

WHEREAS, the Town's existing ordinances are inadequate to prevent the potential for serious public harm from the establishment and operation of head shops.

NOW THEREFORE, be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:

1. **DEFINITIONS.**

As used in this Ordinance, the following terms have the following meanings:

"Drug Paraphernalia" has the meaning as in 17-A M.R.S.A. § 1111-A.

"Head Shop" means a building or place where drug paraphernalia is sold or offered for sale or where merchandise is displayed for the purpose of sale and/or for the purpose of promoting sales and where either the nature of the merchandise or the nature of some of the merchandise and the context in which it is displayed would indicate to a reasonably knowledgeable person that some of the merchandise is equipment, products or materials designed or marketed for use as drug paraphernalia. An establishment which meets this definition is considered a head shop, notwithstanding that it may also sell or display other types of merchandise.

2. **ESTABLISHMENT AND OPERATION OF HEAD SHOPS PROHIBITED.**

During the time this Ordinance is in effect, no person shall establish or operate a head shop.

3. **APPLICATIONS NOT TO BE ACCEPTED OR ACTED UPON.**

During the time this Ordinance is in effect, no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application for any approval relating to the establishment or operation of a head shop.

4. **ENFORCEMENT, VIOLATION AND PENALTIES.**

This Ordinance shall be enforced by the Code Enforcement Officer of the Town of Old Orchard Beach. Any person who violates section 2 of this ordinance shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452.

5. EFFECTIVE DATE.

This Ordinance takes effect immediately upon adoption and shall expire on November 2, 2009, unless earlier extended, repealed or modified by the Old Orchard Beach Town Council.

6. APPLICABILITY.

Notwithstanding the provisions of 1 M.R.S.A. § 302, this Ordinance shall apply to any proposal to establish or operate a head shop, whether or not an application or a proceeding to establish or operate a head shop would be deemed a pending proceeding under 1 M.R.S.A. § 302.

7. SEVERABILITY.

Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

MOTION: Councilor Tousignant motioned and Councilor Dayton seconded to Set the Public Hearing Date of June 2, 2009, on the Ordinance Establishing Moratorium on “Head Shops.

VOTE: Unanimous.

5204 Discussion with Action: Approve Special Amusement Permit for Primo’s LLC dba/Primo’s (307-3-1). 8 West Grand Avenue, 2nd Floor, DJ, Live Music, Inside and Outside.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Approve a Special Amusement Permit for Primo’s LLC dba/Primo’s (307-3-1). 8 West Grand Avenue, 2nd Floor, DJ, Live Music, Inside and Outside.

VOTE: Unanimous.

GOOD AND WELFARE:

CHAIR MACDONALD: Does anyone wish to speak under Good and Welfare? There being none I will ask for a motion to Adjourn.

ADJOURNMENT:

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Adjourn the meeting at 8:35 p.m.

VOTE: Unanimous.

Respectfully Submitted,

V. Louise Reid
Town Council Secretary

I, V. Louise Reid, Secretary to the Safety Committee of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of seventeen (17) pages is a true copy of the original Minutes of the Town Council Meeting of May 19, 2009.

V. Louise Reid