

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, FEBRUARY 2, 2010
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, February 2, 2010. Chair MacDonald opened the meeting at 7:03 p.m.

The following were in attendance:

**Chair Sharri MacDonald
Vice Chair Michael Tousignant
Councilor Laura Bolduc
Councilor Shawn O'Neill
Councilor Robin Dayton
Town Manager Jack Turcotte
Assistant Town Manager Louise Reid**

**Pledge to the Flag
Roll Call**

**ACCEPTANCE OF MINUTES: Town Council Meeting Minutes of January 19, 2010; and
Town Council Workshop Minutes of January 20, 2010.**

**MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to accept
the Minutes as read.**

VOTE: Yea:

CHAIR MACDONALD: I call this Public Hearing at 7:03 p.m.

**PUBLIC HEARINGS NUMBER ONE; Shall We Amend Chapter 2, Administration,
Officers and Employees by Amending 2-126 and
deleting Section 2-126 Exhibit A only) and
amending 2-151 through 155, and amending Article
IV, Boards, Committees and Commissions, Sections
2-232, 2-234, 2-326, 2-357, 2-444 and 2-445, of the
Old Orchard Beach Code of Ordinances?**

**GEORGE KERR: He indicated that serving as the Chair has been an enormously
satisfying experience and working with the Committee has made it an effective
experience. He introduced the members of his Committee and expressed appreciation
to them for the hard work they have put into the efforts so far. He also reminded the
Council that in the long run it is their responsibility to approve changes in ordinances
and procedures.**

Section 2-126 Assistant Town Manager Position Created—This language was modified to remove the job description, the committee felt that it was not necessary to have the description in the Ordinance.

Sections 2-151 Definitions—Eliminate School Board and School Board Chair person definition. Generally all referenced to the School Board were eliminated due to the formation of the RSU.

Section 2-155 Amendments—The language was modified to clarify that changes in compensation for elected officials would become effective at the beginning of the next term of office and not the start of the next fiscal year.

Section 2-232 Name , Term and number of members—subsection (c) was modified to set up a procedure to formally disband committees when their function is complete.

Section 2-234 Powers and Duties—subsection (e) was modified to eliminate the need to provide copies of minutes to the Town Manager, as he or she has access to all minutes.

Section 2-326 Responsibilities – This section was modified to clarify the advisory role of the Finance Committee.

Section 2-357 Organization and appointment Subsection (b) to clarify that the Town Council can appoint a senior from the High School to the Recreation Committee, not the School Board.

Section 2-444 Procedures and Limits—subsection (b) this section was modified to raise the limits from \$1,000 to \$2,000 before a purchase is required to go out to bid.

Section 2-445 Joint Purchases – The Committee recommended deletion of this section as the Town can always partner with other municipalities but should still have to adhere to section 2-444.

JOHN BIRD: He spoke about the compensation and about how it would work. The differences of the stipend for the Council will be structured on the number of years served. It will be determined by terms.

COUNCILOR O'NEILL: The question was raised about purchasing coming to the Council.

COUNCILOR DAYTON: She explained that in the past some purchases had not come to the Council for approval and that this is a critically important issue.

GEORGE KERR: He explained that the changes encompasses the need for purchases to come to the Council. He also indicated that his Committee had met with the Charter Commission so there is a collaboration of their work.

PAT BROWN: She spent some minutes explaining her confidence in the Committees but her questioning that the public is being asked to digest an enormous amount of material in a short time and without a real definitive description to them of what is going on. She suggested that citizens are feeling somewhat overwhelmed since the Town is taking on two immensely important tasks at the same time; namely revamping

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both the Charter and the Ordinances simultaneously. She suggested that rather than creating a difficult situation where an average resident needs to attend multiple meetings and read volumes of paper to keep up-to-date, that perhaps the Town should consider completing it's work on the Charter first and then moving on to the work of the Ordinance Committee. It would be more manageable she felt for both the public and the Council. She indicated that both of these projects are extremely important and it's not the time to have something fall between the cracks because of everyone being overburdened with too much to follow, read and comprehend.

CHAIR MACDONALD: She explained that the Staff is completely involved in these changes and that she had confidence that each ordinance change was being looked at completely and carefully.

GEORGE KERR: He indicated that they take Ms. Brown's comments very seriously and that what was discussed this evening was more Rules and Procedures of the Council and not ordinance changes. Nothing is being done behind closed doors.

JEROME BAKER: He encouraged the Council to not underestimate the importance of what is being done and the need to keep citizens cognizant and encouraged that the meetings of both the Ordinance and the Charter Commission be televised.

VICE CHAIR TOUSIGNANT: He indicated that he has encouraged the Chair with great emphasis to have these televised and had spoken with the Assistant Town Manager about televising the meetings. She had explained about the conflict of the desire to have the Committee meetings on Tuesday evening which conflicted with the needs of the Council. He encouraged this to be worked out.

CHAIR MACDONALD: I close this session at 7:36 p.m.

CHAIR MACDONALD: I open this next Public Hearing at 7:40 p.m.

THE FOLLOWING MOTION WAS MADE PRIOR TO PUBLIC HEARING NUMBER TWO:

MOTION: Councilor Bolduc motioned and Councilor O'Neill seconded for discussion to Amend to make the following change to **Sec. 18-31. License required; expiration as follows:**

(b) Licenses shall be for a two year duration as follows:

i) For the license cycle starting in 2010-11, licenses granted for businesses on properties on tax map numbers 101-1-1 through and including 305-4-1 shall expire on May 1, 2011-12. Licenses for these parcels shall expire on May 1 every other year for future cycles. (i.e. 2013 14, 2015 16 etc.) Licenses issued to businesses without tax map numbers shall be assigned to this expiration schedule.

ii) For the license cycle starting in 2010-11, licenses granted for businesses on properties on tax map numbers 305-4-2 through and including 404-9-10 or higher numbers subsequently created shall expire on May 1, 2012-13. Licenses for these parcels shall expire on May 1 every other year for future cycles. (i.e. 201415, 201617 etc.) Any such license shall expire on May 1 of the year, unless otherwise provided therein, except that a

license for which a renewal application is filed prior to May 1 shall continue in effect until the license administrator or the town council, if council action is required under section 18-38, has acted on the renewal application.

COUNCILOR O'NEILL: He expressed his concern about this change and felt that this section should be amended and not considered at this time. He reminded everyone that the Council cannot put limitations or stipulations on Liquor Licenses but only on Business licenses and that this is a vital consideration before moving forward with this issue.

GEORGE KERR: Asked that not to prohibit the remaining items of the Public Hearing continue to consider the work that has been done by the Committee.

VOTE: Yea: Councilor Bolduc

Nea: Councilors O'Neill, Dayton, Vice Chair Tousignant and Chair MacDonald

It should be noted that the above Motion Failed.

PUBLIC HEARING NUMBER TWO: Shall We Amend Chapter 18, Businesses, by Amending Article II Licenses, Sections 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-35, 18-38, Article III, Body Piercing, Sections 18-66, 18-68, 18-100, 18-102, 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage Establishments, Sections 18-451, 18-456, 18-459, 18-486, 18-487, 18-488, and to Add Article X Victualers, Section 18-167, and to Delete Article III, Body Piercing, Sections 18-69, 18-103, 18-131 through and including 18-138, Article IV Tattooing, Sections 18-168 through and including 18-173, Article VI Performing Arts Facilities Sections 18-286 through and including 18-360, Article VIII, Massage Establishments, Section 18-455, 18-457, 18-458, 18-460, and Article X Auctions, Sections 18-581 through and including 18-585 of the Old Orchard Beach Code of Ordinances.

The following is a summary of the proposed changes with a brief explanation made by Chairman of the Ordinance Review Committee, George Kerr:

18-26 Definitions—These changes were to bring definitions found in the main body of the code (Any personal property tax and applicant) into the definition section; to better define complaints and disturbances by adding relevant (further in the ordinance there is procedural clarification. The Committee also wanted to clarify seasonal and year-round rentals.

18-28 Violations and Penalties—The word “may” was inserted instead of “shall” to provide discretion to the police, some “or” ‘s were added to (b) and some repetitive language in (b) 5 was eliminated.

18-30 Payment of Fees—clarification that all fees must be paid prior to the issuance of the license. The specific department reference was eliminated to provide for procedural adjustments is necessary in the future.

Sec. 18-31. License required; expiration.—The Committee asked that staff survey surrounding communities to ascertain if licenses (other than liquor) were sent to their City or Town Council. In Saco, Biddeford, Scarborough and Portland, their Clerk issued these licenses without Council action. The Committee inserted language that provides for a similar procedure in Old Orchard Beach, with the Council holding Public Hearings on all liquor and special amusement licenses as required by statute and staff issuing all other business licenses. Staff currently issues all renewals without Council

action. If there is a potentially contentious license, the proposal allows for staff to refer the matter to the Town Council for a public hearing.

The second change is for two year license cycles with a staggered renewal program for the convenience of the businesses. The first half on the odd year and the second half on the even year (by map, block and lot) Pro-ration is allowed to make it affordable and fair for new businesses entering mid cycle or is there is a change in ownership (see subsection C).

18-33 Application and 18-34 Notice of New Applications—This language was modified to support the concept that the Council would hear Liquor and Special Amusement Licenses and that the License Administrator would issue other licenses.

18-35 Denial— This language was modified to support the concept that the Council would issue or deny Liquor and Special Amusement Licenses and that the License Administrator would issue or deny other licenses; to give the Police chief and License administrator discretion when reviewing complaints; plus the definitions were eliminated and moved to the definition section.

18-38 Renewals—This language was modified to support the new license cycle (2 years) and to give the Police chief and License administrator discretion when reviewing complaints. Also the same definitions in 18-35 were moved to the definition section.

18-66 Body Piercing—This language was modified to recognize that the State Department of Health and Human Services is the primary regulatory authority with similar standards. Because they monitor these establishments, the duplicate performance standards were removed by the committee. The town inspects new establishments for zoning, building and life safety code compliance and would respond to complaints.

18-166 Tattooing--This language was modified to recognize that the State Department of Health and Human Services is the primary regulatory authority with similar standards. Because they monitor these establishments, the duplicate performance standards were removed by the committee. The town inspects new establishments for zoning, building and life safety code compliance and would respond to complaints.

Article VI Performing Arts Facilities—At the advice of the Town’s Attorney, the committee proposed deleting this section entirely. This section was created for the agreement between the Town and the Seashore Performing Arts facility, which does not exist.

Article VII Ice Cream Trucks This language was modified to support the concept that the License Administrator would issue these licenses and the limitation on numbers of vehicles was removed.

Article VIII Massage Establishments—After meeting with the Chief of Police, the committee modified the language to remove much of the limitations within this section citing that the nature of the businesses had changes since 1991, eliminating the need for much of the language.

Article X Auctions—The Committee recommends the deletion of this section entirely. The new Article X-Victualers references the State Food Code, the standard that all victualers are required to comply with. Currently the State Department of Health and Human Services provides the enforcement of these standards.

Article XI. Headshops has been stricken as it was a temporary ordinance that expired in November. The Planning Board and Council adopted zoning amendments to make them prohibited.

During this segment the following questions were asked:

COUNCILOR DAYTON: She asked how involved had legal been in these changes.

GARY LAMB: He indicated it would depend on the complexity.

COUNCILOR BOLDOC: She questioned the insertion of the “may” instead of “shall” and also questioned the possibility of opening up to liability the word relevant. She also felt the issue of the Performing Arts Center needed to be reconsidered and questioned relevancy to Pavilion.

GARY LAMB: He indicated the Performing Arts Center is not related to the Pavilion where the occupancy is less than 5,000.

COUNCILOR DAYTON: She raised issues of the regulation of Tattoo Parlors and the need to specifically monitor the wording so that the required compliance with State Statues and Rules by reference is clearly defined.

MIKE NUGENT: He explained that the State of Maine has similar standards for Massage therapists so like the Tattoo Parlors and Body Piercers, language could be added to require compliance with States Statutes and Rules. He also indicated that a State License is required prior to the local license issuances.

JOHN BIRD: He suggested going slow on the removal of the Performing Arts Center as there is a lot of good language in that.

CHAIR MACDONALD: I close this Public Hearing at 8:20 p.m.

BUSINESS LICENSES: Perley W. Vance, Jr. (107-2-3), 61 Smithwheel Road, two year round rentals; Raymond A. St. Cyr (205-19-18-9), 47 Milliken Street, Unit 9, one year round rental; Christopher Vigue dba/Beach Glass and Window Company (208-2-1-D), 162 Saco Avenue, retail; and Gavin Lilly LLC dba/Halfway Video (211-2-1), 227 Temple Avenue, Rental of Merchandise & Personal Service.

MOTION: Councilor O’Neill motioned and Councilor Dayton seconded to Approve the Business Licenses as read.

VOTE: Unanimous.

SPECIAL	<u>Surf Six Inc. dba/Surf 6 Restaurant & Lounge (306-2-9)</u> ,
AMUSEMENT	2 Cortland Street, Bands & DJ Outside & Inside 11:00
PERMIT	a.m. to 1:00 a.m.

MOTION: Councilor O’Neill motioned and Vice Chair Tousignant seconded to Approve the Business License as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT:

- 1. Attended a Regional meeting on MERC with all the town officials involved in the current 20 year contract with Maine Energy Recovery Center. Our trash is down 2,901 tons from our Guaranteed Annual Tonnage (GAT) everywhere except Shapleigh – Sanford is down 7,000 tons.**
- 2. I have been talking to the Portland Area comprehensive Transportation System (PACTS) regarding the existing improvement project. John Duncan is meeting with Gary Lamb and Bill Robertson next week. As I learn more about PACTS/OOB, I might be suggesting a workshop with the Council. One of the biggest questions relating to our relationship with PACTS is, do we want to continue requesting funds.**
- 3. Spent some quality time with Bill Robertson and the full team of Wright Pierce engineers in Portland reviewing all the Old Orchard Beach construction projects, past, present and future.**
- 4. Hosted and attended an advance level of Harassment Training which has been provided to all employees of Old Orchard Beach.**
- 5. Have visited the Ballpark on a number of site visits.**
- 6. Met with the Benchmark team and with the Police Department staff in pre-construction meeting which are now scheduled for every Thursday morning.**
- 7. The Chair and I addressed the Recreation Department's nice lady club and talked about all the Old Orchard Beach projects and the positive development of the Ballpark. Other topics in which they were interested including, other than the Ballpark, included Saco Bay, West Grand Flooding, OOB365, Budget issues, Railroad Station and train schedules, and the Police Station.**

NEW BUSINESS:

5391 Discussion with Action: Approve the Liquor License Renewal for Surf Six Inc., dba/Surf 6 Restaurant & Lounge (306-2-9), s-m-v in a Class a Lounge.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Liquor License as read.

VOTE: Unanimous.

5392 Discussion with Action: Approve the Special Event Permit Application from the Recreation Department and OOB365 to hold a Winter Carnival at the Ballpark, Memorial Park, and the Square on Friday, February 19, 2010 and Saturday, February 20, 2010, from 8 a.m. to 5 p.m. Request permission to close Old Orchard Street; and a request to waive the fee.

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

VOTE: Unanimous.

5393 Discussion with Action: Approve the Special Event Permit application from the Recreation Department to hold a Mother's Day Parade for the Baseball Tournament on Sunday, May 9, 2010 at 2 p.m., from the Chamber of Commerce to the Ballpark; and a request to waive the fee.

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

VOTE: Unanimous.

5394 Discussion with Action: Abate certain prior years' taxes as requested by the Tax Collector. Bonnie Baltus, #T1075 – \$808.06 – Fiscal Year 1994, \$743.71 – Fiscal Year 1995, \$720.41 – Fiscal Year 1996, \$724.08 – Fiscal Year 1997, \$716.02 – Fiscal Year 1998, \$451.94, Fiscal Year 1999, \$455.66 – Fiscal Year 2000, \$461.03 – Fiscal Year 2001, \$472.82 – Fiscal Year 2002, \$502.75 – Fiscal Year 2003, \$497.88 – Fiscal Year 2004, \$497.10 – Fiscal Year 2005, \$319.00 – Fiscal Year 2006, \$356.44 – Fiscal Year 2007, TOTAL: \$7726.90. This Mobile Home was abandoned and is not fit for human habitation. For the last 3 years, a tax bill was not generated because of the low value. This is considered an un-collectable tax. Writing off this outstanding tax liability will at least provide the opportunity for the park owner to either remove the trailer from the site, or salvage and repair the trailer for re-sale to a party that would pay the taxes in the future.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Abate Certain prior years' taxes as read.

VOTE: Unanimous.

5395 Discussion with Action: Waive any and all fees for the new RSU 23 - Alternative Education building at Old Orchard Beach High School. Such fees include, but are not limited to, Site Plan Review application to Planning Board (\$300), sewer connection fee (\$3,300), street opening permit (\$100), and other miscellaneous building, electrical, and plumbing permits as needed.

MIKE NUGENT: Per ordinance, only the Town Council can waive permit fees. The RSU obtained Site Plan Review approval for the new Alternative Ed building on a 5-0 vote at the January 14, 2010 Planning Board meeting. Nearly \$4000.00 in permit fees are supposed to be collected for sewer connection (\$3300), Site Plan Review application (\$300), plumbing, electrical and building permits. It makes sense to waive them because the net gain to the town is zero whether they are collected or not. Since this building only serves OOB students, no cost sharing with Saco or Dayton will occur and OOB taxpayers will pay 100 percent of any fees assessed. Waived fees net the town zero. Fees paid by the RSU, and then the RSU being reimbursed completely with OOB tax dollars still net out as zero, except for admin/finance processing time.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Waive Any and all fees for the new RSU 23 – Alternative Education building at Old Orchard Beach High School. Such fees include, but are not limited to, Site Plan Review application to Planning Board (\$300), sewer connection fee (\$3,300), street opening permit (\$100), and other miscellaneous building, electrical, and plumbing permits as needed.

VOTE: Unanimous.

5396 Discussion with Action: Accept, with regret, the resignation of Kenneth Blow from the Charter Review Commission.

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to Accept with Regret the resignation of Kenneth Blow from the Charter Review Commission.

VOTE: Unanimous.

GOOD AND WELFARE:

MR. GREGG KIDD: I live at 1 Rosedale and am bringing to your attention this evening Town Ordinance Section 58-201 which says: Development and enforcement of pretreatment regulations for existing and new sources of pollution. (a) The Town shall develop and enforce pretreatment regulations for existing and new sources of pollution that are discharged or proposed to be discharged into the Town-owned wastewater treatment facilities as set forth in Title 40, Chapter 1, Part 128 and part 403 of the Final Rules of the United States Environmental Protection Agency. 40CFR, Part 23 – Subpart D – Butter Subcategory – He brought to the attention of the Council introduction of pollutants into the wastewater collection and treatment system from an indirect discharger in a primary industrial category discharging process wastewater. Pollutants introduced into the wastewater collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment plant. Mr. Kidd spoke about an article from the Boston Globe about Kate's Butter. It indicates that the higher-than-expected-cost of building the plant has forced Patry to delay plans to move out of the garage. To help tide the company over, Patry bought a 6,000 gallon tank and attached it to his house which will enable him to churn more than one million pounds of butter a year. Those trucks are parked and are making it impossible and unsafe for the citizens in that area. I would ask the Council to take action on this.

TOM LECHANCE: Expressed his appreciation to the countless volunteers who have participated in the renovation and restoration of the Ballpark. Community involvement has made this a successful venture and we are grateful to all who have contributed to its success whether through contribution or actual labor.

ADJOURNMENT:

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant second to adjourn the meeting at 9:00 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 ten (10) pages is a true copy of the original Minutes of the Town Council Meeting of February 2, 2010.

Louise Reid