

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
TUESDAY, APRIL 6, 2010  
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, April 6, 2010. Chair MacDonald opened the meeting at 7:02 p.m.

The following were in attendance:

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

**Absent:** Councilor O'Neil has an excused absence to attend a wake and funeral.

**Pledge to the Flag  
Roll Call**

**ACKNOWLEDGEMENTS:**

**COUNCILOR DAYTON:** The cold winter temperatures may be behind us, but being on the streets at any time of year can be difficult and dangerous for lost or stray animals, and the slow economy has led to more abandoned pets. The Town of Old Orchard Beach has formed a Community Animal Watch (CAW) committee of caring citizens to help address the animal population. Officers have been elected as follows: Chair: Jacqui Deveneau; Co-Chair: Steve Urbach; Secretary: Kim Hatch; Treasurer: Brandon Garette. The group is seeking to address several needs by reaching out to the community. First, Foster Homes are needed to care for rescued pets on a short term basis while permanent homes are found. Second, Donations, If you cannot Foster or Adopt a pet, but would like to contribute to the well being of rescued animals, Donations can be sent c/o Jill Eastman, Town of Old Orchard Beach, 1 Portland Ave., Old Orchard Beach, ME 04064. Please put Community Animal Watch in the subject line on your check. Owners looking for a lost pet are reminded to contact: OOB Police Dispatch at 934-4911, Animal Refuge League in Westbrook; Animal Welfare Society in Kennebunk; Local veterinarians, Local Police Departments, Animal Control Officers and Area Rescue Groups. Community Animal Watch meetings are the third Wednesday of every month and are open to the public. Sub Committees are being formed and new members and volunteers are welcome. The next meeting will be Wednesday, April 21st at 6 pm in the OOB Police Sub Station at the Grand Victorian on East Grand Avenue. For more information, call: Jacqui Deveneau at 934-1911 or Officer Will Watson at 934-4911 and their web site is [www.animalwatch.org](http://www.animalwatch.org)

**VICE CHAIR TOUSIGNANT:** I wish to take this opportunity to congratulate Tom LeChance first for an excellent presentation he made about the Ballpark Restoration Project to the Saco Bay Rotary Club. He did a superb job and the Rotary Club had previously given time in that restoration and I would not be surprised to see them dedicate more of their energy to this. In addition, they bestowed on Tom the Paul Harris award which is a great

C:\Documents and Settings\kmclaughlin\Local Settings\Temporary Internet Files\OLKE\4 6 10 minutes.doc Page 1 of 25

honor given to few by the Saco Bay Rotary and given for outstanding work in the betterment of their community and the world. Congratulations Tom. Our Assistant Town Manager submitted the Ballpark's name for the Pepsi Volunteer award which provides Pepsi Volunteers to give volunteer service to the municipality chosen and low and behold to her surprise only because of the size of our community, she was informed that the Town of Old Orchard has been awarded that honor and they will be providing volunteers to assist at the Ballpark on May 8<sup>th</sup>. Congratulations to all those who made this award possible by their commitment and hard work.

**ACCEPTANCE OF MINUTES:** Special Town Council Minutes of March 15, 2010; Town Council Minutes of March 16, 2010; Special Town Council Minutes of March 30; and Town Council Workshop of March 30, 2010.

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

**VOTE:** Unanimous.

**CHAIR:** I open up this Public Hearing at 7:10 p.m.

**PUBLIC HEARING BUSINESS LICENSES:** Alfred Simpson, Street Musician, Personal Service, request to waive the fee; Walter & Gordon Murphy (103-1-20), 184 Portland Avenue, two year round rentals; Christopher Claudio (104-3-5-3B), 26 Walnut Street, Unit 3B, one year round rental; Roger & Mindy Smith (301-6-1-202 & 203), 191 East Grand Avenue, Units 202 & 203; two year round rentals; and Thomas Byrnes (305-4-1-605), 1 Cleaves Street, Unit 605, one year round rental.

*It should be noted that no motion was made for approval.*

**CHAIR:** I close this Public Hearing at 7:11 p.m.

**CHAIR:** I open this Public Hearing at 7:12 p.m.

**PUBLIC HEARING SPECIAL AMUSEMENT PERMITS:**

William Marshall dba/The Whaler (206-31-17), 20 Staples Street, Live Music-acoustic duo's/single, no amplification; Inside – 9:00 p.m. to 11:45 p.m.; Bernard L. Orne dba/Bernie's Beach Club (307-3-1-B) 8 West Grand Avenue; Live & Recorded Music Inside, 9:00 a.m. to 1:00 a.m.; and New England Restaurant Group dba/Pirates Patio & Galley (304-2-9), 2 Walnut Street, Acoustical Music, Percussion & Dancing; Inside & Outside, 12:00 p.m. to 8:00 p.m.

Discussion went on regarding the New England Restaurant Group dba/Pirates Patio & Galley.

**ROGER MORIN:** As an abutter he wrote to the Council and again spoke to his concerns about the operation of the Pirate's Patio Bar on Walnut Street which he feels has adversely affected him and his neighbors. Specific areas of concern and complaints were discussed this evening. He indicated it was not his intent to prevent the Pirate's Patio from operating but they did request that a "good neighbor" standards of the Town Ordinances cited in his

material sent to the Council be adhered to in the summer season. Specific areas of concern and complaints included the live music being too loud the majority of the time. Neighbors are often irritated by the noise (music) even while inside of our homes which are as far as 180 feet away from where the music is played. The music is even louder when we are relaxing outside he said. He indicated they have informed the manager of the bar that the music is too loud and he has been receptive to complaints and has had the volume turned down but the problem is not the manager as he has been receptive but rather his orders have been short lived. Speakers and amplifiers are not effectively positioned and controlled to minimize excessive noise levels in adjacent residential areas. He indicated that live music should stop at 8:00 p.m. per the entertainment license that was give to the Council. It seldom stops at 8:00 p.m. on busy evenings and/or when private parties were in progress. Calls were made to Town authorities on this matter. When the police were notified and arrived, it stopped for a while. Similar to the problem with loudness, the continuation of live music beyond the license limitation occurred frequently. Loud talking and profanity were too often heard at night in the vicinity of the two (his & her) bathrooms provided for bar patrons. Patrons waiting to use the bathrooms must walk approximately seventy feet outside through a congested parking lot to the rear of an adjacent building. It is understandable that people who are drinking and have to use the bathroom get somewhat impatient when the facilities are occupied, but the loud and vulgar language used by these people is unacceptable. Additionally, male patrons have been observed urinating on the wooden fence outside the men's bathrooms when it was not accessible. This behavior is unacceptable to us. As smoking is currently not allowed in areas where beverages and food are served, a smoking area including smoking receptacles (butt cans) is provided for patrons just outside of the bathroom. This arrangement sometimes results in butts being tossed into neighboring property and may present a fire hazard as the properties are very close together.

**JOHNATHON BERTHIAUNE & MR. MORIN:** Both gave some of this information:

One of our concerned neighbors (Mr. Morin) recently talked to the former co-owner who constructed Pirate's Patio and who was the first to file for Liquor and Entertainment licenses. He is now retired and living in California. He informed Mr. Morin that the principal reason for purchasing the Walnut Street property in the late 1970's was to gain the needed (required) parking places for the Carolina Motel. The motel had 33-34 units and only had 19-20 adjacent parking spaced on Roussin Street. Therefore, motel patrons would have 14-15 additional parking places surrounding the Pirate's Patio on Walnut Street. The Pirate's Patio was initially established to primarily provide food and drink for Carolina Motel patrons. The bathrooms were erected to satisfy State regulation but were not considered a potential problem as most of the patrons were expected to return to their motel rooms to use their bathroom facilities. Obviously current "Smoking" prohibitions in food and beverage areas were non-existent at that time. The former co-owners personally filed for the licenses and convinced the authorities at that time that the operation would not be disruptive to concerned neighbors. He would be responsible for the conduct of individuals running the day-to-day operations. He would not lease the facility for others to operate. Live music was to be low-key, such as guitar/singer arrangement. No loud amplifiers were to be used. The bar would close evenings before 10:00 p.m. These policies have obviously changed over time. The above information is accurate and may be available and verifiable in Town archives. The name and telephone number of the former co-owner are available, if helpful. The Police Department provided us with a list of occurrences where officers responded to the Pirate's Patio as a result of a complaint or incident. We thought that there

would be more documented complaints citing excessive noise and music continuing after 8:00 a.m. than were recorded on the list provided. We were not consistent in how such complaints were voices (some were phone calls, some were e-mails, some direct contacts, etc.) Therefore the number of documented complaints by the Police Department does not accurately reflect the actual number of neighbor complaints. We collectively stopped complaining as the summer progressed. We felt that the local police department had more important community problems to respond to than ours. We will in the future provide more organized and better documentation of complaints if the area of concerns does not improve this summer. Some recommendations would be to revise the standards required for business and entertainment as they pertain to the Pirates Patio. Specify that speakers used for live entertainment must be positioned such that they are only facing east toward the beach. This would greatly lessen noise levels for residential properties loved to the west and still loud enough to satisfy bar patrons. Prohibit the use of amplifiers as they are not necessary to entertain patrons in such a localized area. Specify personnel to be assigned to frequently monitor and control conduct in the vicinity of the bathrooms. Emphasize that violations of the time restrictions specified in Entertainment licenses will not be tolerated.

**TONY BARBANO:** This is a matter of livelihood. We have attempted to be good neighbors. We have a period of approximately ten weeks to make our livelihood here and we have attempted to address the sound factor. I met with the Code Enforcement Officer and Deputy Chief Keith Babin and there were minimal registered complaints. I feel that to close the music at 8:00 p.m. is a hardship and would prefer it be 10:00 p.m. This is a summer resort and people come to enjoy the beach and enjoy the entertainment that is provided. The other establishments do not close at 8:00 p.m. and I feel it is segregating me to expect me to finish the entertainment at 8:00 p.m. I have a small number of individuals in the band and it is acoustical. He also reminded everyone that these places are being rented out so they are relying on people coming and staying. We certainly should work together to provide both needs. He felt that the majority of individuals who come to Old Orchard Beach understand this is an entertainment environment.

**DOMINIC VEUHHIONE:** I am speaking in favor of Pirates Patio having been here for many years. We have not had complaints issued and when someone does complain, Mr. Barbano has effectively handled it. This is a business where it has been a business before. He successfully operates this business in a professional manner.

**JOHN BIRD:** He indicated he believed that acoustical music is without external power.

**COUNCIL COMMENTS:** Councilor Dayton indicated that there is a vital need that she has made clear to the Police Department that complaints be logged in. She has the assurance of Deputy Chief Babin that this will occur. This will improve our ability to monitor each issue that is brought before us. She also indicated although understanding the business demands for success, the Council needs to take into consideration the requests of the residents as well. Councilor Bolduc felt that 9:00 is premature for an hour to close. She reminded everyone that the Fireworks are at 9:30 p.m. Discussion of what amplified music was. The general assumption was that any musical instrument not relying on external power for operation was considered an acoustical instrument. There was some disagreement on that terminology. Some felt it meant it had electronic means; some disagreed. That is something that needs to be reviewed for clarity and understanding.

*There was a misunderstanding that the Business Licenses and the Special Amusement Permits (and Liquor Licenses) need to be listed as Public Hearings and then Action taken to approve them. To make sure all issues were covered the Business Licenses and the Special Amusement Licenses were removed without prejudice to be on the next agenda.*

**CHAIR:** I close this Public Hearing at 8:15 p.m.

**MOTION:** Vice Chair Tousignant motioned and Councilor Bolduc seconded to remove without prejudice and to reconsider at the next Council meeting.

**VOTE:** Unanimous.

See also Agenda Item # 5428 under New Business.

**TOWN MANAGER'S REPORT:**

**Budget Preparation:**

1. Sewer line on E. E. Cummings to Police Station;
2. Public Bathrooms – Unexpected early Summer;
3. Storm Damager:
  - a. Beach
  - b. Maine Emergency Management
  - c. FEMA
  - d. Other
4. Fire Station – Water Leak
5. Attended a Charter Commission Meeting
6. Met with PACTS on Projects
7. Met with Wright Pierce on Project
8. Met with Department of Transportation on E. E. Cummings Safe Route to School Project

**TABLED ITEM:** #5422 Discussion with Action: Amend Chapter 18, Businesses by Amending Article II Licenses, Section 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-36, 18-38, Article III Body Piercing, Sections 18-66, 18-68, 18-100, 18-102 through and including 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage establishments, Sections 18-487, 18-488, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582 and to Delete the following: Article III Body Piercing, Sections 18-69, Sections 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 X, Auctions, Sections 18-581 through and including 18-585, and Article XI Head Shops, Section 18-601 through and including Section 18-606 of the Old Orchard Beach Code of Ordinances.

Staff is recommending this be “Removed without Prejudice and adding Agenda Item Number 5447 – Discussion with Action: Set a Public Hearing Date of April 20, 2010 to address the above Tabled Item.

**MOTION:** Councilor Bolduc motioned and Vice Chair Tousignant seconded to Remove without Prejudice and add Agenda Item Number 5447 – Discussion with Action: Set a Public hearing Date of April 20, 2010 to address the above tabled item.

**VOTE:** Unanimous.

**NEW BUSINESS:**

# 5428 Request to reconsider and immediately hold a **PUBLIC HEARING** on application for a special amusement permit of Dale Tarbox d/b/a Sunset Bar and Grill (307-1-6), 6 Fernald Street for a special amusement permit, Live Music – small band and comedy, Outside – 4:00 p.m. – 10:00 p.m.

**Discussion:** Councilor Dayton had brought to the Council’s attention that the abutters were not notified of this Special Amusement Permit and that she requested it be put on the agenda again. She again reiterated her concern that complaints be documented when they are given. Chair MacDonald indicated that opportunities to speak on any permit has always been given Abutters Brad Foster, John Coutier and Dale Tarbox indicated to the Council that they had worked together and agreed on a 9:00 p.m. ending; everything else stays the same. They indicated it was an amiable meeting and they totally expected to have a workable summer.

*Legal Counsel indicated that both the Town’s Special Amusement Permit Ordinance and the state statute covering special amusement permits require a public hearing before a special amusement permit is granted. The March 16, 2010 Council agenda did not list the special amusement permits as a public hearing even though the present Chair has always provided the opportunity for individuals to speak. Accordingly, the agenda did not notify members of the public that they would be given the opportunity to speak on the special amusement application. That was a reasonable basis for the Council to reconsider its action, hold a public hearing before taking further action. The Council should always take the formal action of opening the public hearing, inviting public comments, and closing the public hearing. It is permissible to group the special amusement permits as one item on the agenda. There does not have to be a separately announced public hearing for each special amusement permit. However, if someone indicates a desire to be heard on any of the applications, it would be advisable then to take comments on each application. In the future we will place the agenda item under the heading “Public hearings.” The Agenda will then put the public on notice that, in the event the motion to reconsider is passed, the Council will hold a public hearing that same night. In addition, individual notice should be given to the applicant. In addition, Counsel has advised that for special amusement and business licenses, the public hearing and decision do not have to be two separate agenda items. They can be listed together as “Public Hearings and Action.” The notice requirement for a public hearing on special amusement permit is “reasonable notice.” Publication of the agenda satisfies that requirement. In addition, for new business licenses, the notice requirements are as follows: Sec. 18-34 – Notice of new applications: public hearing. (a) The license administrator shall give notice of all new license applications by posting a list of the applicants and the licenses applied for in the Town Hall at least seven days prior to the license hearing.*

**MOTION: Councilor Dayton motioned to Reconsider the Special Amusement Permit but there was no second and the motion failed.**

**VOTE: There was no second and the motion failed. There was no reconsideration.**

**# 5429 Discussion with Action: Approve the Appointment of the Public Works Director.**

**TOWN MANAGER: He announced that he wanted Bill Robertson who has been serving as Interim Public Works Director. He also discussed a new sewer line the Town is installing for the new Police Station which he described as a “challenging” project and that it is taking longer than expected because with the school and other pipes close by, blasting is not an option. “We are making headway with a great deal of determination. This project is extremely “tedious” and he thanked the Public Works team for their hard work and effort.**

**MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Approve the Appointment of William Robertson as Public Works Director, effective April 6, 2010.**

**VOTE: Unanimous.**

**# 5430 Discussion with Action: Approve the Old Orchard Beach Call Force to hold their annual yard sale at the public safety complex on Saturday, May 1<sup>st</sup>, 2010 from 8 a.m. to 2 p.m.. Request to waive the fee.**

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

**VOTE: Unanimous.**

**# 5431 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold a sand sculpture contest on the beach between Randall and Ancona Avenues on July 4, 2010, from 12:30 a.m. to 2:30 p.m. Request to waive the fee.**

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

**VOTE: Unanimous**

**# 5432 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold a parade on July 5, 2010 from 9:30 a.m. to 11:30 a.m. on Temple Avenue. 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.**

**# 5433 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold Square and Line Dances in the Ocean Park Square on July 5, 2010 and September 4, 2010 from 7:00 p.m. to 9:30 p.m. Request to waive the fee.**

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

**VOTE: Unanimous.**

**# 5434 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold the Ocean Park 5k Race on July 30, 2010 from 5:00 p.m. to 8:00 p.m. in Ocean Park. Request to waive the fee.**

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

**VOTE: Unanimous.**

**# 5435 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold Illumination Night on August 7, 2010 from 5:30 p.m. to 10:30 p.m. in Ocean Park. Request to waive the fee.**

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

**VOTE: Unanimous.**

**# 5436 Discussion with Action: Approve the Special Event Permit application for the Ocean Park Association to hold a Christian Youth Conference Block Dance on August 14, 2010 from 7:30 p.m. to 11:00 p.m. in Ocean Park. Request to waive the fee.**

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

**VOTE: Unanimous.**

**# 5437 Discussion with Action: Set a Public Hearing date of April 20, 2010 to Amend the Code of Ordinances, Section 54-187, Brown Street, to allow for a handicap parking space on the left side facing the ocean.**



**CHAIR:** A request came from a handicapped individual and was researched by the Police Department.

**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 April 20, 2010, 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 section 54-187, Restrictions and Prohibitions, of the Town of Old Orchard Beach Traffic Ordinance is amended by adding the underscored language:

**Brown Street. No vehicle shall be parked on the northeasterly side of Brown Street (left side facing the ocean), except one handicap parking space shall be designated by the Chief of Police.**

**MOTION:** Councilor Bolduc motioned and Councilor Dayton seconded to Set a Public Hearing date of April 20, 2010 to Amend the Code of Ordinances, Section 54-187, Brown Street, to allow for a handicap parking space on the left side facing the ocean.

**VOTE:** Unanimous.

**# 5438 Discussion with Action: Set a Public Hearing Date of April 20, 2010 to Amend Chapter 30, Fire Prevention and Protection, Article II Uniform Fire Code, Section 30-26, and 30-59, Article IV Life Safety Code, Section 30-76 and Chapter 38, Miscellaneous Offenses, Article II, Weapons, Section 38-25 and 38-29, Article VI, Boarding Up of Seasonal Facilities, Section 38-242.**

**Re: Ordinance Revision Summary for the 4/6/10 Town Council Meeting – Code Enforcement Officer**

---

**Chapter 18 Business Licenses:**

This final draft reflects the requested changes that keep the initial licensing authority with the Town Council and renewals to be done by staff. This is the same as the current Ordinance.

**Chapter 30 Fire Prevention:**

Section 30-26/30-76 was modified to standardize the Local Fire Prevention and Safety Codes with the State Fire Marshall's Office. This also eliminated the need to continually update the codes locally at each 3 year code cycle.

**Section 30-59** This Ordinance amendment eliminates the requirement for sprinkler installations in one and two family homes that are three stories or greater. The Ordinance Committee and Codes staff and the Fire Chief agreed that while the local requirement is a good recommendation, it is more restrictive than the current National Fire Protection Association and International Residential Code Standards adopted by the Town and State of Maine. Also the surrounding communities do not require this level of protection. It should be noted that it is likely that State Law will require sprinklers in ALL single family and two family homes in 2012.

## **Chapter 38**

**Section 38-25** This amendment creates definitions of certain firearms.

**Section 38-29** This amendment adds “rifled muzzle loader” firearms to the currently exempt “smooth bore” muzzle loader. This was done at the request of a citizen and approved by the Police.

**Section 38-242** This amendment to the Boarding Ordinance removes the automatic denial of the application if the Town fails to act on it within 30 days. The Ordinance Committee and staff agreed that this language was not necessary.

**MOTION:** Vice Chair Tousignant motioned and Councilor Bolduc seconded to Set a Public Hearing Date of April 20, 2010 to Amend Chapter 30, Fire Prevention and Protection, Article II Uniform Fire Code, Section 30-26, and 30-59, Article IV Life Safety Code, Section 30-76 and Chapter 38, Miscellaneous Offenses, Article II, Weapons, Section 38-25 and 38-29, Article VI, Boarding Up of Seasonal Facilities, Section 38-242.

**VOTE:** Unanimous.

**# 5439 Discussion with Action:** Approve the placement of a Silver Bullet across from the Department of Public Works to enhance our recycling efforts; cost of emptying the Bullet each time is approximately \$100 and will come out of Account Number 20163/50341 – Solid Waste Collection Expense with a balance of \$45,094.34.

**TOWN MANAGER:** The Recycling Committee, recently honored by Eco Maine Excellence award, has requested that another Silver Bullet be put across from the Public Works Department. They believe this will enhance citizen’s ability to dispose of recycling material in a more frequent manner.

**JOHN WEAVER:** We have been picking up about once every five days. The Silver Bullet has been very successful and we believe that placing one at the Public Works Department will encourage citizens even more to recycle.

**MOTION:** Councilor Dayton motioned and Vice Chair Tousignant seconded to Approve the placement of a Silver Bullet across from the Department of Public Works to enhance our recycling efforts; cost of emptying the Bullet each time is approximately \$100 and will come out of Account Number 20163/50341 – Solid Waste Collection Expense with a balance of \$45,094.34.

**VOTE:** Unanimous.

**# 5440 Discussion with Action:** Approve the Liquor License Renewal for William Marshall dba/The Whaler (206-31-17), 20 Staples Street, s-m-v in a Class A Lounge; Bernard L. Orne dba/Bernie's Beach Club (307-3-1-B), 8 West Grand Avenue, s-m-v in a Class A Lounge; and New England Restaurant Group dba/Pirates Patio & Galley (304-2-9), 2 Walnut Street, s-m-v in a Restaurant.

**MOTION:** Councilor Bolduc motioned and Vice Chair Tousignant seconded to approve the Liquor Licenses as read.

**VOTE:** Unanimous.

**# 5441 Discussion with Action:** Re-appoint Tianna Higgins as a regular member of the Planning Board, term to expire 12/31/11; Appoint Timothy Perrigo as an alternate member of the Planning Board, term to expire 12/31/11.

**CHAIR MACDONALD:** We were informed by Mr. Perrigo that as a result of time constraints he must withdraw his application at this time. We thank everyone who considers serving in these capacities and perhaps at a further time Mr. Perrigo will have the time to volunteer again. We appreciate Tianna's efforts in the past and her continued professional knowledge to the Planning Board.

**MOTION:** Councilor Dayton motioned and Councilor Bolduc seconded to re-appoint Tianna Higgins as a Regular Member of the Planning Board, term to expire 12/31/11.

**VOTE:** Yea: Councilors Bolduc, Dayton and Vice Chair Tousignant.  
Nea: Chair MacDonald

**# 5442 Discussion with Action:** Appoint the following as regular members of the Ballpark Commission—David Goyet, Lucien Huot and Sheila Flathers, terms to expire 12/31/12; Michael Bouffard, Paul Crossman and Dana Furtado, terms to expire 12/31/11; Mark Gustin term to expire 12/31/10.

**MOTION:** Vice Chair Tousignant motioned and Councilor Bolduc seconded to Appoint the following as regular members of the Ballpark Commission—David Goyet, Lucien Huot and Sheila Flathers, terms to expire 12/31/12; Michael Bouffard, Paul Crossman and Dana Furtado, terms to expire 12/31/11; Mark Gustin term to expire 12/31/10.

**VOTE:** Unanimous.

**# 5443 Discussion: Initial Presentation of Piping Plover Beach Management Agreement as proposed by Maine Department of Inland Fish and Wildlife.**

**GARY LAMB: The Planner presented the following:**

**Town of Old Orchard Beach  
Beach Management Agreement  
2010 through 2012**

**In 2009, representatives of the Town of Old Orchard Beach (the Town), the U.S. Fish & Wildlife Service (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed the following Beach Management Agreement for the Town of Old Orchard Beach.**

**This agreement allows the Town of Old Orchard Beach to continue their beach management program without filing federal and state Incidental Take Plan's (ITP) for each Town activity that occurs near or within Piping Plover nesting areas, as long as the Town implements protection measures outlined in this agreement.**

**There is an incentive for the Town to promote the nesting success of plovers, because plovers that nest successfully in April will fledge their chicks by mid-to-late June, thus removing restrictions on the beach. However, if April nesting fails, or the plovers are forced to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.**

**1) Introduction**

**The Piping Plover (*Charadrius melodus*) is a small sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina and is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the Piping Plover is listed as Endangered under the Maine Endangered Species Act (MESA), and the east coast population is listed as Threatened under the federal Endangered Species Act (ESA). In 2008, only 22 pairs of Piping Plovers nested in the entire state of Maine.**

**Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable nesting beaches that may have supported up to 200 pairs of Piping Plovers. However, the construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. Continuing development and intense recreational use of nesting beaches is further reducing the capacity of the remaining habitat to support nesting plovers. Ensuring the availability of this limited habitat is essential for the continued existence of Piping Plovers and other coastal wildlife, such as the state listed endangered Least Tern.**

**Historical records document that Piping Plovers nested on Old Orchard Beach in recent decades. In fact, under ideal conditions, these 3 miles of sand-beach habitat may have once supported as many as 10 pairs of Piping Plovers at densities of 3.5 pairs/mile of beach. Unfortunately, development and associated human disturbance and predation greatly reduced the ability of the habitat to support these rare birds. Piping Plovers were a rare summer resident in Maine in the late 1800s, and in the early 1900s, were extirpated as a breeding bird from the state. With protection from the Migratory Bird Treaty Act in**

1918, plovers rebounded, and by 1940, they were common on sandy beaches from Kittery to Cape Elizabeth. Nesting of plovers on Old Orchard Beach resumed in 1993. From 1993 to 2008, one to three pairs of Piping Plovers have consistently nested on Old Orchard Beach; clearly, habitat management of Old Orchard Beach is essential to the recovery of Piping Plovers in Maine.

In 1995, the MDIFW designated a portion of Old Orchard Beach (PPLT04 and PPLT08) as Essential Habitat for Piping Plovers, and is in the process of designating two more areas as Essential Habitat in 2010 (PPLT14 and PPLT15).

## II) Authority to Enter Agreement

Maine Endangered Species Act of 1975 (MESA)

Federal Endangered Species Act of 1973 (ESA)

## III) Geographic Scope of Agreement

The area under this agreement is the entire, Town-owned beachfront commencing from the Saco/Old Orchard Beach town line at Goosefare Brook, north to the Old Orchard Beach/Scarborough town line. The beachfront includes the seaward side of the frontal dune to the mean low water mark.

The intent of this agreement is to provide a means to protect Piping Plovers on Old Orchard Beach. Success of this agreement depends on the participation and cooperation of the Town, Maine Audubon, USFWS, and MDIFW.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

## IV) Beach Management Guidelines for Piping Plovers

**IMPORTANT!** These guidelines are in effect from April 15 through August 31 when nesting activity is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. The Town must keep in weekly communication with Maine Audubon to know when Piping Plover nesting activity is occurring. When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect.

### A) Daily Pickup of Trash Barrels on the Town's Beaches and Rights-of-ways.

**The Town does not place trash barrels on the beach near plover nest sites.** If the Town does decide to place trash barrels on the beach, the Town must place them as far away from areas of plover nesting activity as possible but no closer than 100 feet from a stake and twine symbolic fence. Any Town vehicle picking up waste from the barrels shall have a trained spotter (trained by Maine Audubon or MDIFW staff) walk in front of the vehicle, which shall proceed no faster than walking speed.

Trash pickup using All Terrain Vehicle (ATV) does not require a spotter if:

1. Personnel picking up trash are in weekly communication with the Town's Plover Monitoring Coordinator and Maine Audubon to know the location of nesting plovers and their chicks;
2. ATV operators are trained by Maine Audubon or MDIFW staff; and
3. ATV vehicles proceed no faster than walking speed.

All vehicles will travel at least 50 ft. from the grass edge of the beach, close to the mean high water mark, to assure no conflicts between nest initiation and vehicular traffic.

## B) Seaweed and Debris Cleanup

The Town agrees not to use mechanical means to clean beaches within stake-and-twine delineated Piping Plover areas. If however, the need arises to use mechanical means to clean the beach, the Town shall follow these guidelines.

1. All beach-cleaning vehicle entrances/exits to the beach will be at locations agreed upon by the Town, MDIFW, and Maine Audubon.
2. The Town will provide a spotter, trained by Maine Audubon or MDIFW staff, to guide all Town beach-cleaning vehicles on the beach. Failure by the Town to use a spotter is a breach of this agreement and gives MDIFW and USFWS the option to implement other protective management actions as identified by the MESA and the ESA.
3. Spotters will use the map given to them by the Town's Plover Monitoring Coordinator (see Section IV, H). They will record observations of adult birds, nests, eggs, and chicks, every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake those 100 feet while the spotter stands and watches in that zone. Records of these observations will be submitted to MDIFW or Maine Audubon at the end of the nesting season or at any time upon request.
4. The spotter will proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.
5. Beach cleaning will not occur within 100 feet of stake-and-twine symbolic fencing. This gives the birds a buffer from disturbance by vehicles and leaves additional foraging habitat intact.
6. Town personnel conducting beach cleaning will record the date, time, and location of each beach cleaning activity in a log kept at the Department of Public Works. Nesting sites and dates will also be noted in the log and submitted to MDIFW or Maine Audubon at the end of the nesting season, or at any time upon request.
7. The Town will clean rights-of-way by hand unless it is clearly outside any area of plover nesting activity or conducted outside the plover-nesting season. Instances of need for heavy seaweed removal have historically been few. However, should heavy seaweed removal require using a dump truck and an excavator, a trained spotter will be required on site. No such work will take place within 100 feet of a stake-and-twine symbolic fence.

## C) Lifeguards.

Lifeguard stands will be at least 100 feet from a stake-and-twine symbolic fence. In the event that a site does not allow for the required 100-foot buffer, MDIFW, or Maine Audubon, and the Town will determine an appropriate placement for the lifeguard stand. This mutually agreed upon location will maintain the public safety requirements as well as protect nesting Piping Plovers. When feasible and appropriate, as determined by the Town, lifeguards will assist in educating the public about safeguarding plovers.

#### **D) Police, Emergency, and Non-Emergency Vehicle use**

**It will be the policy of the Town of Old Orchard Beach that non-emergency vehicle use will not occur within 100 feet of designated Piping Plover nesting areas. Outside nesting areas, essential vehicle use will avoid driving on the wrack line whenever possible and will avoid frequent driving on the beach in a way that would create deep ruts that could impede movement of Piping Plover chicks. At least two employees shall respond to any non-emergency incident (such as removal of dead or injured marine mammals) within an area of plover nesting activity, with one employee acting as the spotter to and from the scene.**

**All emergency response personnel will account for and avoid nesting areas and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. All Public Safety or Town personnel assigned or normally required to use vehicles (including ATV's) on the beach shall annually receive specialized education and training from Maine Audubon or MDIFW in the spotting and protection of plover habitat (see Training below). All other personnel shall have training materials and aids available to assist in spotting plover nests, chicks, and fledglings, during their beach management activities. Maine Audubon training workshops shall be available for each nesting season.**

#### **E) Recreational Activities**

- 1. Beach parties, clambakes, volleyball, fires, etc.: Because these activities could seriously threaten plover nests, eggs, and young, the Town should discourage such activities within 100 feet of symbolic stake-and-twine fencing.**
- 2. Kite, sand surfer (wind-driven sand cart), parasail, or paraboard sail. These activities should not occur within 650 feet of symbolic stake and twine.**
- 3. Fireworks. If the Town approves a fireworks display, MDIFW and USFWS require that:**
  - a. The fireworks launch site be located a minimum of 1/2 mile from the nearest Piping Plover nesting and/or foraging area.**
  - b. For smaller, weekly fireworks displays, at least one uniformed officer is available to control crowds around nesting areas.**
  - c. For the annual 4<sup>th</sup> of July fireworks display, the Town has adequate law enforcement personnel, as defined by MDIFW, to protect nesting areas and assist IFW and MA staff/volunteers.**
  - d. The Town submits a fireworks plan by April 1.**

#### **F) Animal Control**

**Dogs can be a significant source of disturbance and mortality for Piping Plovers. Ideally, dogs should not be allowed on Piping Plover nesting beaches when territorial pairs, nests, and chicks are present. According to Section 14-6 of the Town ordinances, dogs will not be permitted to enter the beach between the hours of 10:00 a.m. and 5:00 p.m. inclusive, from Memorial Day to Labor Day. In addition, the Town agrees that all dogs on the beach must be on leash at all days and times when the ordinance is not in effect from April 15 through August 31, unless MDIFW, USFWS, and Maine Audubon determine that Piping Plovers are no longer attempting to nest on the beach. The Town also agrees not to allow dogs within 100 feet of symbolic stake-and-twine fencing and to erect signs alerting beach-goers of the prohibition on dogs in those areas.**

Signage used will be agreeable between the Town and MDIFW. The Town, MDIFW, and USFWS enforcement officers will enforce this prohibition.

#### **G) Stake-and-twine Fencing and Nest Enclosures**

Plover nests that are not quickly fenced are vulnerable to disturbance. In an effort to afford plovers the immediate protection they require, the Town of Old Orchard Beach grants MDIFW, or Maine Audubon, approval to erect symbolic stake-and-twine fencing and nest enclosures, as needed.

**Stake-and-twine Fencing:** Temporary, stake-and-twine fencing and signage is for managing recreational use of the beach in the vicinity of Piping Plover nesting areas, and for protecting nesting and feeding habitat for plovers. Ideally, when courtship and nest scraping first occur, biologists erect stake-and-twine fences and signs around the nesting area. Plover nesting areas are fenced using wooden stakes and baling twine; MDIFW, or Maine Audubon, provide the signs. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Fenced areas should extend 150 feet on either side of the nest whenever feasible. If the 150-foot radius is inadequate to protect incubating adults and unhatched chicks, biologists may expand the fenced area. In some instances, fenced areas may encompass more than one nest. Monitoring of nesting territories should occur frequently (daily if possible) until nests are located. Stake-and-twine fencing will remain on the beach until all chicks in the vicinity have fledged.

**Nest Enclosures.** Predation by crows, gulls, foxes, dogs, and cats is a major source of nest failure for Piping Plovers. Therefore, MDIFW, or Maine Audubon, will erect approximately eight-foot radius nest enclosures around each nest after the birds lay their third egg; this helps protect the eggs and young until hatching is completed. Nest enclosures consist of 2 x 4-inch welded wire fence supported by metal stakes. Biologists string bird netting over the top of the enclosure to help deter avian predators.

Guidelines for constructing and maintaining enclosures are in Appendix F of the federal Piping Plover Revised Recovery Plan (U.S. Fish and Wildlife Service 1996).

MDIFW, or Maine Audubon, will remove nest enclosures when territorial pairs, nests, and chicks are no longer present.

#### **H) Monitoring**

The goal of monitoring is to establish regular, daily observational walks to maintain an up-to-date account of Piping Plover activity on Old Orchard Beach to better protect them from predation and human activities. Monitoring of Piping Plovers requires frequent visits by plover biologists and volunteer monitors each week throughout the nesting season to ascertain nesting status, nest location, nest success, and success of young. As the season progresses, monitors may discover new nests at any time as re-nesting occurs, or as new pairs establish nests on the beach. Adult birds and their chicks commonly move 325 to 650 feet away from the nest to preferred foraging areas (wrack line and intertidal flats). Frequent visits are required to track the survival and movements of family groups.

The keystone of the monitoring program is deployment of trained, Volunteer Plover Monitors (Monitors). The Town's Plover Monitoring Coordinator (Coordinator) recruits and supervises these Monitors.



**Plover Monitoring Coordinator:** the Town will provide the Plover Monitoring Coordinator as needed for the months of April through August. The Coordinator will work under the supervision of the Director of Public Works. In the event the Town cannot find or hire a Plover Monitoring Coordinator, the Town will assume responsibility of fulfilling the duties of this position.

The Plover Monitoring Coordinator will be in charge of recruiting and scheduling volunteer plover monitors. The Coordinator will communicate with landowners adjacent to Old Orchard Beach to inform them of Piping Plover biology and management needs, and to solicit their support for the monitoring project. The Coordinator will collect daily reports from the volunteer monitors, compile data, and act as liaison between the Town, Maine Audubon, and MDIFW. At the end of each week, The Coordinator will have all volunteers complete a “Volunteer Time and Activity Record Sheet” provided by MDIFW. The Coordinator is responsible for collecting all Volunteer Time and Activity Record Sheets at the end of the nesting season and delivering them to MDIFW or Maine Audubon. Neither the Coordinator nor the volunteer plover monitors will be involved in enforcement of regulations.

**Volunteer Plover Monitors:** Volunteer Plover Monitors must be available for training and should pledge to make at least a weekly commitment of time. Monitors may also be asked to attend a monthly meeting for program review and reinforcement of training. Monitors shall fill out a standard daily report (provided by MDIFW or Audubon) following their monitoring activities, and deliver it to the established collection point for pick up by the Coordinator. Monitors will report on the location of Piping Plover nests and on adherence to the provisions of this beach management plan. The Town will provide free parking, if necessary, for Monitors during the time of their monitoring activities.

#### **I) Education and Outreach**

Educational efforts will take many forms, and will rely heavily on local organizations to promote proper stewardship of the Piping Plover and other shorebirds on Old Orchard Beach. Local organizations should be encouraged to include educational materials in their newsletters, at meetings, on bulletin boards, and through other forms of communication.

The Plover Monitoring Coordinator and Volunteer Plover Monitors will utilize opportunities for face-to-face contact with adjacent property owners and beach users to educate them about Piping Plovers and the importance of respecting their habitat.

MDIFW or Maine Audubon will develop renter educational packets specifically designed to acquaint renters that use the beach with the guidelines affecting beach use. The Town will encourage landowners and local realtors who handle rental properties, to deliver the educational packets to renters. MDIFW, or Maine Audubon, will put information about regulations governing dogs on the beach in the renters’ packet and in the newsletter mailed to landowners. Volunteer Plover Monitors will also distribute copies of the dog regulations on the beach.

#### **J) Training**

In support of the volunteer monitoring program, MDIFW, or Maine Audubon, will conduct annual training sessions for the Plover Monitoring Coordinator, Volunteer Plover Monitors, lifeguards, police and summer cadets, appropriate Department of Public Works employees, Emergency Responders, and other appropriate employees of the Town. These training sessions will be held in April and May, and will include

information regarding Piping Plover biology, conservation/management, monitoring protocol, record keeping, and regulations, including dogs on the beach. When possible, MDIFW, or Maine Audubon, will include enforcement personnel of the USFWS and MDIFW for these training sessions to address issues of “take” under the federal ESA and Maine ESA. Maine Audubon has developed a Volunteer Monitoring Handbook for the Volunteer Plover Monitors, which contains background and training materials, regulations (including those pertaining to dogs on the beach), and daily monitoring check-off sheets.

When feasible and appropriate, MDIFW, and/or Maine Audubon, will train all Town personnel at the same time, unless it is not reasonable to do so.

#### **K) Beach Restoration, Maintenance, Nourishment, and Dune Creation**

Activities within the sand dune system at Old Orchard Beach occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system; however, all federal activities are subject to review by the USFWS under the Endangered Species Act. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated by the Town of Old Orchard Beach and reviewed by MDIFW, DEP, USFWS, and the Corps to ensure that state and federal regulations are adhered to and that Piping Plovers are not adversely affected.

#### **L) Permit Review Process**

Landowners and the Town of Old Orchard Beach must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Cooperative Beach Management Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal law.

This Cooperative Beach Management Agreement can facilitate state and federal environmental review and permitting provided that such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS and MDIFW on any future project that could affect plovers or their habitat within the geographic area subject to this Agreement is contingent upon the successful implementation of all Piping Plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding “take” as defined under the federal Endangered Species Act (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federal Threatened Piping Plover (U.S. Fish and Wildlife Service 1973), or “take” as defined under the Maine Endangered Species Act (...the act or omission that results in the death of any endangered or threatened specie.) of the state Endangered Piping Plover (12 MRSA §12808), or “harass” as defined under 12 M.R.S. section 10001(29) as any “intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns.”

Situations, activities, or projects may arise that are not addressed in this Agreement that affect the Piping Plovers on Old Orchard Beach. Successful resolution of such eventualities requires communication and coordination--landowners and the Town of Old Orchard Beach are encouraged to seek early and frequent consultation with MDIFW and the USFWS prior to initiating activities or projects that may affect Piping Plovers.

**V) Time Frame of Agreement**

Recognizing that habitat and other management issues may arise that could require modified management, the Town, Maine Audubon, USFWS, and MDIFW will meet annually in the winter to review this agreement. This Agreement will commence \_\_\_\_\_ 2010 and terminate on October 1, 2012.

**VI) Amendments**

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall not be effective unless documented in writing, dated, signed by all parties, and attached to the agreement. Amendments will be considered annually at the winter meeting

Signatories to the Agreement

DATE:

\_\_\_\_\_  
Old Orchard Beach Town Manager \_\_\_\_\_  
Chairman, Old Orchard Beach Town Council \_\_\_\_\_  
U.S. Fish and Wildlife Service \_\_\_\_\_  
Maine Department of Inland Fisheries & Wildlife \_\_\_\_\_  
Maine Audubon \_\_\_\_\_

**DISCUSSION:** Some of the discussion this evening included the fact that taking your dog for a walk on the beach may require a little extra care by the dog owner; getting a Special Event permit may be limited as well. A new draft beach management plan will require the protection of the nests of piping plovers and the biggest threat to those nests are dogs running free. The plan which was developed in the past year between the Town and the Maine Department of Inland Fisheries and Wildlife would also require every activity or event on the beach to take into account the plover nests. This would include everything from beach volleyball to the Fourth of July and smaller weekly fireworks displays. Town Manager Jack Turcotte indicated "This short of affects everyone even our visitors." The piping plover is a small shorebird found on the sandy beaches and dunes in Southern Maine. It breeds on coastal beaches from Newfoundland and Southeastern Quebec to North Carolina and it is protected under the Federal Endangered Species Act and the Maine Endangered Species Act. Plover nests will start appearing on the beach this month according to the Planner, Gary Lamb. He indicated that it is the best interest of the Town to ensure successful first births to avoid second and third attempts by plovers to nest. The sooner the birds are successful, he said, the sooner some restrictions can be lifted. He suggested that the Council review the draft plan and determine if there are any areas it wishes to discuss further with the Maine

Department of Inland Fisheries and Wildlife. He reminded everyone that the Town ordinance does not allow any dogs on the beach from 10:00 a.m. to 5:00 p.m. between Memorial Day and Labor Day. As part of the management plan, the Town would agree dogs must be on leashes to come on the beach when the Ordinance is not in effect from April 15 to August 31, unless the Department of Inland Fisheries and Wildlife, Maine Audubon and the U.S. Fish and Wildlife Service determine piping plovers are no longer attempting to nest on the beach. Gary Lamb indicated that half of the Town's 3.25 miles of beach is designated essential piping plover habitat. But the plan does give OOB some teeth in enforcement and provides the Town with some protection from liability in the event of an inadvertent plover death. Every activity from cleaning up the beach and removing seaweed to clambakes to flying a kit would take into account piper plover nests. Recreational activities should be discouraged within 100 feet of nests while kites, sand, surfing, should stay at least 650 feet away from nests, which will be protected with a small fence. "A kite or a (hot air) balloon looks like a predator to these birds," said Lamb. The Council will now take time to review the plan and a public hearing will be set to give citizen input.

# 5444 Discussion with Action: Approve membership with Scarborough, Saco and Biddeford on the Sea Level Adaptation Working Group (SLAWG); and approve Payment of \$3,125 (cash match), payable to Southern Maine Regional Planning Commission from Account Number 20117 – 50549 – Miscellaneous, with a balance of \$6,247.97.

**GARY LAMB:** The wonderful acronym SLAWG, or Sea Level Adaptation Work Group, is a newly formed multi-town group (Biddeford, Saco, Scarborough) that hopes to add Old Orchard Beach to include all four Saco Bay towns. The group is participating in work on how best to prepare for sea-level rise, increased flooding, etc. They hope to have their first meeting in late April. The group will be looking at floodproofing, armoring shorelines, dune creation/restoration and perhaps offshore activities/uses. Flooding and sea-level rise does not recognize municipal boundaries. Staff recommends that we join the group so we can help shape the parameters and work plan. Council properly held off on joining this group in 2009 until our boundary was moved out three miles. Now that the boundary is moved and the dust has settled, Council is asking to revisit the matter. Costs to join are under \$3,125 in cash and the same amount in staff time. SPO grant money is involved to keep the costs reduced.

Some of the areas of study will include:

Duties for this Working Group are yet to be finalized but could include

1. Provide non-binding comments to authorities having jurisdiction on multi-town beach nourishment/erosion control or development projects that affect more than one community.
2. Identify infrastructure vulnerable to storms and sea level rise such as roads, culverts, bridges, tide gates and storm drains...and those that need replacement or enlargement.
3. Recommend standardizing floodplain management and building code standards.
4. Recommend standardizing development review procedures for coastal infrastructure or development activities.

**Discussion by Council:** The Town has reversed a 2009 decision and agreed to be part of a regional group that will work on how to prepare for rising sea level and flooding. The group involved four municipalities that border Saco Bay; Biddeford, Saco, Scarborough, and Old Orchard Beach. The responsibilities of this group have not been finalized but could include

providing advising authorities on beach nourishment and erosion control and projects that involve more than one community identifying infrastructure which needs to be replaced; and recommending standardized flood plain management and building code standards. The group is expected to have its first meeting sometime near the end of April. A steering committee for the group will be comprised of two people appointed from each municipality. Gary Lamb, the Town Planner, indicated that the Committee will “take a blank piece of paper and create the parameters of what the working group is going to do.” He indicated that he felt the decision to hold off in 2009 was wise and recommended that now that OOB join. The working group, Lamb said, would be a good vehicle to discuss issues that cross municipal lines such as flooding at Goosefare Brook which impacts Old orchard Beach and Saco and the rout 9 and railroad culverts in Scarborough which cause flooding in Old Orchard Beach. Councilor Robin Dayton said that she hoped a \$93,000 study done a few years ago by Milone and MacBroom on flooding problems in Town would be incorporated in the group’s studies. “In my opinion, quite frankly, we’re ahead of the game,” Councilor Dayton indicated. She also indicated that with the regional group she hoped the Town could make some headway with the information in the study which points out that the Town needs the assistance of Scarborough. The cost for the Town to participate in the group is \$3,125. The local cost for the group is \$50,000. Half of this is paid by a grant from the State Planning Office. The other \$25,000 is split between the four municipalities. Chair Sharri MacDonald indicated that she remains sensitive to concerns regarding Saco Bay and Town control.

**MOTION:** Vice Chair Tousignant motioned and Councilor Bolduc seconded to Approve membership with Scarborough, Saco and Biddeford on the Sea Level Adaptation Working Group (SLAWG); and approve Payment of \$3,125 (cash match), payable to Southern Maine Regional Planning Commission from Account Number 20117 – 50549 – Miscellaneous, with a balance of \$6,247.97.

**VOTE:** Unanimous

# 5445 Discussion with Action: Authorize Town Manager to solicit bids for new ambulance.

**CHIEF JOHN GLASS:** In the mid-nineties when the Old Orchard Beach Rescue Unit was combined with the Old Orchard Beach Fire Department, it was determined by the Town Council that revenues recovered from insurance claims generated by ambulance runs, would be placed into a separate account from Town General Funds. Until recently it was also mandated that this fund be used exclusively for replacement of ambulances, fire apparatus and police vehicles. A five year replacement rotation for ambulances was adopted within this policy. This time period was determined according to historical data regarding maintenance records, total run data, safety & dependability of available vehicles and accumulated mileage. The Town’s policy has been to keep two ambulances in service with one replacement ambulance being purchased every five years for primary response and the newest ambulance of the remaining two vehicles commonly regulated to secondary/reserve duty. Our oldest ambulance is a Ford chassis Road Rescue manufactured ambulance and has performed well during its 10 years of service. The last five years it has been utilized extensively during the summer months partially due to our increased staffing funding and as a reserve unit during winter. Its accumulated mileage is over 102,000 miles and the chassis is experiencing weakening from carrying its payload. Maintenance costs have also increased as is typical of older vehicles. This ambulance would be retired with the purchase of a new vehicle. Industry changes in the areas of environmental controls, serviceability issues, limited design availabilities and supply versus demand concerns have increased the costs of these units by 20

**percent over the past few months. In order to maintain the dependability of our ambulance service to our citizens, maintain environmental standards and insure the safety of our response personnel the department recommends we begin soliciting proposals for a new ambulance.**

**MOTION: Councilor Dayton motioned and Councilor Bolduc seconded to solicit bids for new ambulance.**

**VOTE: Unanimous.**

**# 5446 Discussion with Action: Order Authorizing the Loan Agreement between the Town of Old Orchard Beach and the Maine Municipal Bond bank for issuance of a \$2,500,000 Bond to permanently finance the costs of the design, construction, furnishing and equipping of a new police headquarters building as authorized by voters on November 3, 2009.**

**TOWN MANAGER: Town of Old Orchard Beach 2010 General Obligation Bond - \$2,500. This is a housekeeping item related to the new Police Station that is being built. It substantiates the vote for the Council Meeting which is scheduled for April 6, 2010 at which time this will be submitted to the Council for approval.**

**All executed copies will be returned to our Attorney and then to the Maine Municipal Bond Bank.**

**MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Order Authorizing the Loan Agreement between the Town of Old Orchard Beach and the Maine Municipal Bond bank for issuance of a \$2,500,000 Bond to permanently finance the costs of the design, construction, furnishing and equipping of a new police headquarters building as authorized by voters on November 3, 2009.**

**VOTE: Unanimous.**

**# 5447 Discussion with Action: Set a Public Hearing Date of April 20, 2010 to Amend Chapter 18, Businesses by Amending Article II Licenses, Section 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-36, 18-38, Article III Body Piercing, Sections 18-66, 18-68, 18-100, 18-102 through and including 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage establishments, Sections 18-487, 18-488, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582 and to Delete the following: Article III Body Piercing, Sections 18-69, Sections 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 X, Auctions, Sections 18-581 through and including 18-585, and Article XI Head Shops, Section 18-601 through and including Section 18-606 of the Old Orchard Beach Code of Ordinances.**

**MOTION: Councilor Dayton motioned and Councilor Bolduc seconded to Set a Public Hearing for April 20, 2010 to April 20, 2010 to Amend Chapter 18, Businesses by Amending Article II Licenses, Section 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-36, 18-38, Article III Body Piercing, Sections 18-66, 18-68, 18-100, 18-102 through and including 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage establishments, Sections 18-487, 18-488, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582 and to Delete the following: Article III Body Piercing, Sections 18-69, Sections 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 X, Auctions, Sections 18-581 through and including 18-585, and Article XI Head Shops, Section 18-601 through and including Section 18-606 of the Old Orchard Beach Code of Ordinances.**

**VOTE: Unanimous.**

## **GOOD AND WELFARE**

**JEROME BENARD: Math (equation) comparison Between Beach and Ballpark.**

The Beach attracts people to Town, like a magnet. They spend money, though not directly to Town government. Money is not spent point blank, where ocean meets the sand. It's spent at hotels, motels, rental dwellings, campgrounds, carry outs, restaurants, grocery stores, gas-stations, gift shops, night clubs, bars, bookstores, candy stores, lobster stands, Laundromats, amusement parks, etc. Local government must patiently wait for a miniscule percentage from this fluid free=enterprise capitalism (miniscule, because there's no local=option sales tax.) This miniscule=percent eventually trickles in as real-estate property-taxes, business-license fees, and rental-license fees – that's presuming that everyone who rents rooms, houses (to tourists) has actually paid for a rental license. Based on this tax-revenue, expectation, Old Orchard Beach government invests taxpayers' money at the Beach on lifeguards, beach cleaning, trash removal (on and near the beach); police patrols (on and near the beach), electricity for streetlights that illuminate the beach; bio-chem tests, to ensure healthy-safety for ocean swimmers, dunegrass planting and who know what more. Check the town budget to total that investment. Local government expects a little tax-revenue sharing from income taxes (capital gains taxes?) that are paid to State and Federal Governments. Some slick business owner incorporates elsewhere and thus doesn't pay State income taxes in Maine. A possible example might be companies that supply cheap foreign workers to the tourism industry. Since they are doing business in Old Orchard Beach, they should also pay for a local business license. Some businesses doctor their income tax numbers, either honestly (with ingenious deductions), or dishonestly...pretending that the tourist-season was not-so-profitable as it would seem. And this equation gets no help from landlords who don't pay income taxes from their tourist-rentals. When Federal Government receives less business income-taxes than expected, it sends less revenue-sharing to the State government. When the State government receives less revenue from the Federal Government it sends less revenue sharing to the Towns. That creates deficits for school-funding, heat-fuel-assistance, housing assistance, circuit breaker/tax relief, etc. As that happens, Town government must struggle to find budget efficiencies till it hurts; and then, despite their best efforts at fiscal sanity and fiduciary responsibility, town officials are forced to increase real estate property taxes. Unlike that entropy-riddled equation of tax-economics of the Beach. We have more favorable mathematics at our Old orchard Beach Ballpark. The Ballparks is also a magnet that will attract tourists and locals to: baseball games, dog shows, and garden and landscape shows, automobile shows, Native American Festival/POW WOVES, light music and comedy concerts. Major political candidates/campaigns- visits (think: governor, congress and two senators) and the prospects go on and on. Unlike the beach-economics, spending at the ballpark will be point blank, straight into an Old orchard Beach Government (non profit) bank account from main even admission fees; tent-table rental fees from locally licensed businesses to capitalize on customer-traffic (to publicize the location of their regular business-address); fees from large commercial advertisements, signs, skybox, and more. There's no waiting for months or a year) to received income and it's not just a miniscule percentage. It's total income. After setting aside some money for maintenance and insurance there will be money to pay back any investment that the Town council sees fit to approve as a start up loan to guarantee: insurability/per building codes, legal fees and last minute maintenance (if charitable donations fall short). If our new ballpark commission is prepared to discuss any such needs, I suggest



that this go on the Council's next agenda. Given that comparison between the economics of government investment on the Ballpark versus the Beach and having been enough of a fiscal conservation grouch to deliver a civic sermon on fiduciary responsibility during council's last Good and Welfare as well as prior forays about budget efficiencies. I gladly spend my credibility to say: I would view with profound cynicism anyone who tries to obstruct such a redeemable investment on the Ballpark as being someone who is either disingenuously posturing for a prospective council candidacy; a crony of the shadow investors who hysterically want the Ballpark's 50-acres to end up in another for sale referendum; just one big super master sourpuss. Let's all keep thinking positive. Thank you.

**JACK SARNO:** He raised several questions and asked for reporting on them. He asked what was being done about the West Grand Bond \$1.85 million. There is funding out there and if it is not going to move forward the citizens have a right to know and what is going to happen with that funding. He also asked about the dredging issue and asked for an update from the Council on that issue. He again mentioned the Engineering Study that was done. He asked why there was no advertising of the Ballpark events and certainly if we want to promote this we need to get information out to the citizens and others so that they are aware of days, times, events, etc.

### **ADJOURNMENT**

**MOTION:** Vice Chair Tousignant motioned and Councilor Bolduc seconded to adjourn.

**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 twenty-four (24) pages is a true copy of the original Minutes of the Town Council Meeting of April 6, 2010.

V. Louise Reid