

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, March 1, 2011
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, March 1, 2011. Chair Quinn opened the meeting at 7:02 p.m.

The following were in attendance:

**Chair Bob Quinn
Vice Chair Michael Tousignant
Councilor Shawn O'Neill
Councilor Robin Dayton
Councilor Sharri MacDonald
Town Manager Jack Turcotte
Assistant Town Manager V. Louise Reid**

ACKNOWLEDGMENTS:

VICE CHAIR TOUSIGNANT: I would like to express to all who participated and worked so hard on the Winter Fest. Although the weather didn't cooperate as we would have hoped it would; everyone made the best of it and many events were well attended and enjoyed as well. Thanks to the Public Works Department and the Police and Fire Department for their assistance and to all who gave of the personal time and effort, we are most grateful.

COUNCILOR DAYTON: It is my pleasure to congratulate the Police Department and the members of the Community Watch for their advancement into the safety and protection of our Town by instituting the new vehicle to be used by them in connection with their work with the Community Watch. We recognize that they have the opportunity as they patrol to see incidents that may be occurring and notify the Police who will handle the activity. This is an opportunity for our citizens to watch out for us but at the same time it is the Police who will cover any actual incident.

COUNCILOR MACDONALD: The Annual Old Orchard Beach Alumni Basketball Classic will be held on Friday, March 11 at the high school gym starting at 6:00PM. There will be a door prize of \$100.00 for the person holding the lucky entrance ticket number. Tickets are \$5.00 for adults and \$3.00 for students/senior citizens. Proceeds from the games will benefit the present basketball program at the high school and the Alumni Scholarship Fund. All male alumni players are requested to sign in by 6:00 PM as the format for playing has changed from in past years. Female alumni players will be playing the third period as usual. Team shirts are being sponsored by BBI/Blow Bros. and Brady Screen-print. A reminder to alumni players, it is "pay to play" since this is a fund raiser. All alumni wishing to play should contact Sharri MacDonald at 207-590-4201 or email smacdonald@maine.rr.com There will also be a foul shooting competition between present

high school classes. One girl and one boy will represent their class for money prizes being donated to their class treasury. This is a great opportunity for fun and entertainment. I am also pleased to announce our second Community Dinner will be held on Sunday, March 13th from 3:00 to 6:00 p.m. at the American Legion on Imperial Street. We had a really enjoyable time when we had our first Community Dinner at the Lions Club and many have asked that we do it again. Please put that date on your calendar and join us.

VICE CHAIR TOUSIGNANT: I am pleased to announce that I was informed today by ecomaine that the ecomaine Excellence Award is being presented to Fred Dolgan on Tuesday, March 22nd. It was my pleasure to nominate Fred for all the marvelous work that he has done in connection with the recycling program. Congratulations, Fred.

ASSISTANT TOWN MANAGER: Mr. Chairman, on behalf of the Town Council and the employees and citizens of our community, I wish to offer condolences for Vice Chair Tousignant and his wife, Aimee, on the passing of her mother, and pray that God will bring them special grace at this difficult time.

CHAIRMAN QUINN: Wednesday, March 9, 2011 – Workshop on Sewer User Fee and Pay to Throw.

ACCEPTANCE OF MINUTES: Town Council Workshop of February 9, 2011; Town Minutes of February 15, 2011; and Town Council Workshop Minutes of February 15, 2011.

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to Accept the Minutes of the Town Council Workshop of February 9, 2011; Town Minutes of February 15, 2011; and Town Council Workshop Minutes of February 15, 2011.

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR: I open this Public Hearing at 7:07 p.m.

Cathy Harden (103-1-5-3), 56 Ross Road, Unit #3, one year round rental; Sherrie Furtado & Jessica Holbrook dba/Great Lengths Hair Salon (108-2-1), 3 Old Orchard Road, Personal Service; Sarah Bowen dba/Old Orchard Healing Arts (207-2-12), 155 Saco Avenue, Massage Establishment & Massage Therapist; Linda G. Kitchin (210-1-20-25), 39 Smithwheel Road, Unit #25, one year round rental; Deena L. Eskew dba/Hoss & Mary's Tasty Grub (307-1-3), 27 West Grand Avenue, Victualers with Preparation & Alcohol on premise; Steve & Melissa Snyder (314-11-7), 105 Ocean Avenue, one year round rental; and Kevin O'Brien & Ben Bucci (315-21-1), 44 Union Avenue, one year round rental.

CHAIR: I close this Public Hearing at 7:08 p.m.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to approve the Business Licenses as read.

VOTE: Unanimous.

PUBLIC HEARING SPECIAL AMUSEMENT PERMIT AND APPROVAL

CHAIR: I open this Public Hearing at 7:09 p.m.

Surf Six Inc., dba/Surf 6 Restaurant & Lounge (306-2-9), 2 Courtland Street, Bands, DJ, amplified, inside and outside, 12:00 p.m. to 12:00 a.m.; and Dale C. Tarbox dba/Sunset Bar & Grill (307-1-6), 4 Fernald Street, Live Music outside, 4:00 p.m. to 10:00 p.m.

CHAIR: I close this Public Hearing at 7:10 p.m.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Approve the Special Amusement Permits as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT:

I met with our Department Heads this morning and discussed the CIP Budget proposals. We have been continuing our discussions all month on the budget process and the tentative scheduling of budget hearings has been finalized. We have completed three more interviews for the Planner position since we last met with the final round-one interviews scheduled for tomorrow. We have some very strong candidates. We have been working on a possible new plan for the Dispatch microwave pathway to Sanford through Kennebunk. We have a meeting designed to provide more details to us on Thursday and I will report back to the Town Council as soon as I have something definite. If I was to guess what I am going to learn is that we may have a larger up-front cost but this will be off-set by significant annual savings. I have been meeting regularly with the Ballpark Commission and the Tournament Committee. I came home early from Moosehead family vacation last week; dropped off a box of fish at Public Works; came into the office on Friday for a short time; and visited the Winter fest activities on Saturday. I would like to thank the Public Works crew for their tireless plowing during the past few weeks. I am sure as everyone knows we are often finding ourselves plowing eleven routes with nine men and we have been without one employee all winter due to a work-related injury which happened two-years ago. Sickness has hit the Old orchard Beach municipal employees hard – very hard; in the last month many departments have been short-handed for multiple days. We had a long discussion in our department head meeting regarding employee evaluations. There had been talk about what is often called a 350-evaluation process where I evaluate the staff and they evaluate me. It was a good discussion but the majority of the department heads did not feel they were ready for this process at this time. It was decided that I will do a personal interview evaluation with follow up

documentation outlining the review. To tackle the 360-approach we would need to have more training and a better understanding of the process. For now I would like to simply have the Council evaluate me in a traditional way and then sit down with me and talk about the performance and my relationship with the Council. Just one more thank you to the many staff members who have been coming back to work when they should have stayed home recuperating from a variety of illnesses.

NEW BUSINESS:

5346 Discussion with Action: Set a Public Hearing for March 15, 2011 to Amend Chapter 78 – Zoning, Section 78-1, 78-2 through and including 78-5, 78-34, 78-93 through and including 78-95, 78-456 through and including 78-457, Division 17, Section 78-1176 through and including 78-1185, 78-1201 through and including 78-1218.

These amendments deal with mandated Shoreland Zoning.

THE 51 PAGE DOCUMENT CAN BE SECURED FROM PLANNING AND CODE DEPARTMENT.

MOTION: Councilor Dayton motioned and Councilor O’Neill seconded to Set a Public Hearing for March 15, 2011 to Amend Chapter 78 – Zoning, Section 78-1, 78-2 through and including 78-5, 78-34, 78-93 through and including 78-95, 78-456 through and including 78-457, Division 17, Section 78-1176 through and including 78-1185, 78-1201 through and including 78-1218.

VOTE: Unanimous.

5350 Discussion with Action: Amend Chapter 66, Buildings and Building Regulations by adding the new Article VIII: The Property Assessed Clean Energy Program (PACE).

MIKE NUGENT: The essence of the PACE Program is for citizens to secure low interest loans to perform necessary energy saving improvements to their home. In April, the State of Maine received approximately \$30 million dollars to create an energy efficiency loan fund. The Legislature in turn enacted a law to structure this loan fund. The Efficiency Maine Trust is administering the program and municipal participation in this fund is important to its success. For any building owner to be eligible for a loan under the program a municipality must agree to participate by enacting an ordinance. The Trust has a webpage devoted to PACE where a model “passive” track ordinance and other materials may be found:

<http://www.energymaine.com/PACE>.

In 2009, the Maine Legislature enacted, “An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act”. That Act authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE program so that

owners of qualifying properties can access financing for energy saving improvements to their properties located in the municipality, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program.

PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) desire and intend to assist and cooperate with the Trust in its administration of the municipality's PACE program.

There is little staff involvement with the program as Efficiency Maine administers the program on behalf of the Town. This Ordinance simply gives our Citizens a financing option.

A representative from Efficiency Maine will likely be at the Public hearing.

PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.

PREAMBLE

WHEREAS, the 124th Maine Legislature has enacted Public Law 2009, Chapter 591, "An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act"; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy ("PACE") Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the municipality, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

WHEREAS, the Town wishes to establish a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent; and

WHEREAS, PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) desire and intend to assist and cooperate with the Trust in its administration of the municipality's PACE program;

WHEREAS, the Town may from time to time amend this article to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program; however, the Trust has indicated that the Town shall be responsible for administration of loans made from those other funding sources.

WHEREAS, if the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Town's adoption of this article and those standards, rules or model documents substantially conflict with this article, the Town may, as needed, conform this article and its PACE program to those standards, rules, or model documents, subject to the final determination at that time of the Town Council.

NOW THEREFORE, be it ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 66, BUILDINGS AND BUILDING REGULATIONS, of the Old Orchard Beach Code is amended by adding the following new Article VIII:

ARTICLE VIII. PROPERTY ASSESSED CLEAN ENERGY ORDINANCE

Sec. 66-231. Establishment of PACE program.

By and through this article and in conformity with applicable federal and State laws, the Town of Old Orchard Beach establishes a municipal program to enable its citizens to participate in a Property Assessed Clean Energy ("PACE") program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town.

Sec. 66-232. Enabling legislation.

The Town enacts this article pursuant to Public Law 2009, Chapter 591 of the 124th Maine State Legislature -- "An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses," also known as "the Property Assessed Clean Energy Act" or "the PACE Act" (codified at 35-A M.R.S.A. § 10151, et seq.).

Sec. 66-233. Title.

This article shall be known and may be cited as "the Town of Old Orchard Beach Property Assessed Clean Energy (PACE) Ordinance."

Sec. 66-234. Definitions.

Except as specifically defined below, words and phrases used in this article shall have their customary meanings; as used in this article, the following words and phrases shall have the meanings indicated:

Energy saving improvement means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

(1) will result in increased energy efficiency and substantially reduced energy use and:

a. meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or

b. involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or

(2) involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the Trust.

Pace agreement means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

PACE assessment means an assessment made against qualifying property to repay a PACE loan.

PACE district means the area within which the Town establishes a PACE program hereunder, which is all that area within the Town's boundaries.

PACE loan means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.

PACE mortgage means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

PACE program means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.

Qualifying property means real property located in the PACE district of the Town.

Renewable energy installation means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems,

wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

Trust means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

Sec. 66-235. PACE administration contract.

Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Town will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Town. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

(a) the Trust will enter into PACE agreements with owners of qualifying property in the Town's PACE district;

(b) the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;

(c) the Trust, or its agent, will disburse the PACE loan to the property owner;

(d) the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;

(e) the Trust, or its agent, will be responsible for collection of the PACE assessments;

(f) the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;

(g) the Trust or its agent on behalf of the Town, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

Sec. 66-236. Adoption of education and outreach program.

In conjunction with adopting this article, the Town shall adopt and implement an education and outreach program so that citizens of the Town are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

Sec. 66-237. Assistance and cooperation.

The Town desires to and intends to assist and cooperate with the Trust in its administration of the Town's PACE program.

Sec. 66-238. Assessments not a tax.

PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Sec. 66-239. No liability created.

(a) Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors, tax collectors, town councilors and the town manager are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

(b) The Town has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Amend Chapter 66,

Buildings and Building Regulations by adding the new Article VIII: The Property Assessed Clean Energy Program (PACE).

VOTE: Unanimous.

5351 Discussion with Action: Amend Chapter 22 – Emergency Services by adding the new Article III: The Emergency Management Ordinance.

EMERGENCY MANAGEMENT ORDINANCE

Be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 22 of the Old Orchard Beach Code, Emergency Services, is amended by adding the following new Article III:

ARTICLE III. EMERGENCY MANAGEMENT

Sec. 22-40. Authority.

This article is enacted pursuant to and in accordance with the provisions of subchapter 3 of Chapter 13 of Title 37-B of the Maine Revised Statutes.

Sec. 22-41. Intent and purpose.

It is the intent and purpose of this article to establish a mechanism and procedures that will ensure the complete and efficient utilization of all the Town's facilities to combat disaster as defined herein.

Sec. 22-42. Definitions.

Disaster means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, extreme public health emergency, air contamination, blight, drought, critical material shortage, infestation, explosion, riot or hostile military or paramilitary action.

Emergency management means the coordination and implementation of an organized effort to mitigate against, prepare for, respond to or recover from a disaster.

Emergency management forces means persons, including volunteers, engaged in performing emergency management, including, but not limited to, persons acting pursuant to an emergency proclamation by the Governor or an emergency declaration under this article.

Sec. 22-43. Emergency Management Director.

The Emergency Management Director shall be appointed by the Town Council upon recommendation of the Town Manager for the Town of Old Orchard Beach. The Emergency Management Director shall coordinate the activities of the fire, police, code enforcement, public works and planning departments with respect to emergency management. Collectively, such departments shall constitute the municipal emergency management agency for the Town of Old Orchard Beach.

Sec. 22-44. Duties of Emergency Management Director.

The Emergency Management Director shall be responsible for the planning, coordination and operation of emergency management in the Town and shall maintain liaison with county, state and federal authorities and the authorities of other nearby cities and towns so as to ensure the most effective operation of the emergency management plan. His duties shall include, but are not limited to, the following:

- (a) Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the Town for emergency management purposes.**
- (b) Development of plans for the immediate use of all the facilities, equipment, manpower and other resources of the Town for the purpose of minimizing or preventing damage to persons and property; and protecting and restoring to usefulness governmental services and public utilities necessary for the public health, safety and welfare.**

(c) Subject to approval of the Town Council (or the Town Manager during a declared emergency), negotiating and concluding agreements with owners or persons in control of buildings or other property for emergency management purposes and designating suitable buildings as public shelters.

(d) Through public informational programs, educating the civilian population as to actions necessary and required for the protection of their persons and property in case of disaster, either impending or present.

(e) Conducting public practice alerts or providing educational resources to ensure the efficient operation of the emergency management forces and to familiarize residents with emergency management regulations, procedures and operations.

(f) Coordinating the activity of all other public and private agencies engaged in any emergency management activity.

(g) Assuming such authority and conducting such activity as the Town Manager may direct to promote and execute the emergency management plan.

Sec. 22-45. Declaration of emergency.

Whenever a disaster exists or appears imminent within the Town of Old Orchard Beach, the Emergency Management Director, in consultation with the Town Manager and after notification to the members of the Town Council where feasible, may, by written declaration, declare that an emergency exists in the Town. A copy of the declaration shall be posted in the Town Office and a copy filed with the Town Clerk. The Emergency Management Director may contact representatives of the news media to inform them about the declaration, when appropriate.

Sec. 22-46. Emergency powers and duties.

(a) During any period when an emergency has been declared by the Emergency Management Director under section 22-45 of this article or when the Governor has proclaimed an emergency pursuant to state statute, the Emergency Management Director may promulgate such rules and regulations as he deems necessary to protect life and property and preserve critical resources. Such regulations may include, but are not limited to:

(1) Regulations prohibiting or restricting the movement of vehicles in order to facilitate the work of emergency management forces to facilitate the mass movement of persons from critical areas within or outside the Town.

(2) Regulations pertaining to the movement of persons from areas deemed hazardous or vulnerable to disaster.

(3) Such other regulations necessary to preserve public peace, health and safety.

(b) The Emergency Management Director, with the approval of the Town Manager, may obtain or commandeer vital supplies, equipment and other property needed for the protection of health, life and property of the people and bind the Town for the fair value thereof.

(c) The Emergency Management Director may require emergency services of any Town officer or employee. If regular Town forces are determined inadequate, the Director may require the services of such other personnel as he can obtain that are available, including citizen volunteers. All duly authorized persons rendering emergency services shall be entitled to all immunities provided by law.

Sec. 22-47. Termination of emergency.

When the Emergency Management Director is satisfied that an emergency no longer exists within the Town, he shall terminate the declaration of emergency by issuing a written declaration of termination of emergency, in the same manner as a declaration of emergency is issued under section 22-45 above.

Sec. 22-48. Emergency management plan.

The Emergency Management Director shall prepare, maintain and periodically update as needed a comprehensive emergency management plan and submit the same to the Town Council for adoption by Town Council order.

Sec. 22-49. Prohibited acts.

It shall be unlawful for any person to violate any of the provisions of this article or of the regulations or plans issued pursuant to this article or to willfully obstruct, hinder or delay any emergency management forces in the exercise of their duties under this article.

Sec. 22-50. Violations and penalties.

Any person violating any provision of this article or rule or regulation promulgated under this article commits a civil violation punishable by a civil penalty of a minimum of \$100 to a maximum of \$500 per occurrence.

Sec. 22-51. Effect on existing ordinances and regulations.

At all times when the orders, rules and regulations made and promulgated pursuant to this article are in effect, they shall supersede any inconsistent provisions of existing ordinances, orders or rules for as long as the declared emergency exists.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Amend Chapter 22 – Emergency Services by adding the new Article III: The Emergency

Management Ordinance.

VOTE: Unanimous.

5352 Discussion: Presentation of a Business Proposal by Anthony Barbano relative to his possible Jet Ski rental business venture.

MIKE NUGENT: Anthony Barbano has requested that he be able to launch Jet Ski's from the beach near the Pirate's Patio (Walnut St.) Attached is his request.

In order to do that, because it is not currently allowed, the Council would have to repeal or modify the follow:

Sec. 42-144. Prohibitions and restrictions.

- (a) It shall be unlawful and a violation of this division to engage in any commercial use or operation of any water toy or no motorized watercraft on or from the town beach.**
- (b) It shall be unlawful and a violation of this division to park, launch, use or operate any water toy on or from the town beach and in the adjacent tidewaters during the period June 21 through Labor Day of each year, except between 5:00 p.m. and 9:00 a.m.**
- (c) It shall be unlawful and a violation of this division to park any non motorized watercraft on the town beach in the area located between Union Avenue and Walnut Street, during the hours of 9:00 a.m. through 5:00 p.m., inclusive, between June 21 through Labor Day of each year.**
- (d) It shall be unlawful and a violation of this division to store on the town beach any water toy or non motorized watercraft during the period June 21 through Labor Day of each year.**
- (e) The use of non motorized watercraft other than surfboards is permitted and shall not be a violation of this division on and from the town beach and in the adjacent tidewaters. However, the chief lifeguard may prohibit or restrict the use of such non motorized watercraft when in his judgment factors, including but not limited to crowd conditions, weather conditions and tides, make such action necessary. The use of surfboards is prohibited except as allowed by subsection (f) and (g) of this section.**
- (f) The use of non motorized surfboards is permitted and shall not be a violation of this division in the following designated area of the town beach and adjacent ocean tidewaters: on the northerly side of the Old Orchard Pier from such pier to a point 125 yards from the pier. Such designated area shall be identified by appropriately placed signs, notices, ropes, buoys and/or other marks.**
- (g) The use of non motorized surfboards is permitted and shall not be in violation of this division along the entire town beach during the following dates and times:
 - (1) Between the dates of Labor Day and June 21, at all times; and**
 - (2) Between the dates of June 21 and Labor Day, during the hours from 5:00 p.m. to 9:00 a.m.****
- (h) This section shall not apply to a marina; a passenger transportation service, such as excursion boats, charter boats, water taxis or water shuttles; or a waterborne amusement ride, which is: (i) operated at, to, from or adjacent to the pier; (ii) operated pursuant to an annual license issued by the town council under article II of chapter 18; and (iii) operated only in areas approved by the town council and marked off by buoys, ropes, floats or other devices designed to keep swimmers and bathers from entering the operations area. The town council may approve such an operation only upon finding that it will not create a hazard to the public health, safety or welfare by**

endangering swimmers, distracting lifeguards from the performance of their duties, contributing to noise or water pollution or otherwise interfering with the public's use and enjoyment of the town beach and adjacent tidewaters, and the town council may impose conditions to ensure compliance with such findings.*

***Notwithstanding the provisions of Title 1, section 302 of the Maine Revised Statutes, this amendment shall affect proceedings pending at the time of its passage.**

If it is the Council's wish to pursue this, we could look at how other Communities regulate these activities and we could create some proposed language.

The following presentation was made by Anthony Barbano who has presented this project for consideration to be run by him as described in the Business Proposal:

PRESENTATION MATERIAL GIVEN TO TOWN COUNCIL

BUSINESS PROPOSAL

HOT WATER JETSKI RENTALS

Dear Council,

I am writing you to consider my proposal for JetSki rentals on Old Orchard Beach

Title

JetSki Rentals

Project Description

JetSki rental business; Rent JetSkis off of Walnut St.. Hot Water JetSki Rentals is proposing to rent four Yamaha 4 stroke jetskis, located off of Walnut St. The projected area to ride would be from Walnut St. to the Pier and outward bound away from the beach. The JetSki rental business is important to Old Orchard Beach because Saco Bay is under utilized for a tourist destination and it is time that we start utilizing our natural resources. Having a JetSki rental business on Old Orchard Beach will also give the Lifeguards access to a very important life saving tool, as we all know could have used last summer.

Anticipated Challenges/Difficulties

We will have a Mooring system in place to direct the JetSkis to and from the beach with out interfering with swimmers.

All renters will be required to sign a Waiver releasing Old Orchard Beach and Hot Water JetSki Rentals of any Liability.

All employees will be certified in First Aid and CPR.

There will always be one JetSki available for the monitoring of the rentals as well as any Lifeguard needs.

Fueling and nightly storage will be done in the parking lot of Pirates Patio, 2 Walnut St.

Project Timeline

There will be no timeline as far as seasonal operating hours, most likely Memorial Day to Labor Day. Business hours will be 9am to 6pm 7 days a week.

Applicants;

Anthony Barbano; CPR - First Aid certified, Ocean Surf Rescue certified.

Sean McGrath; CPR - First Aid certified, Ocean Surf Rescue certified, Lifeguard certified.

Thank you for your consideration,

Anthony Barbano
207 450-5999

Discussion Period:

Discussion was lengthy between the Town Council, Anthony Barbano and Sean McGrath (who is funding this project.) The proposal includes renting out four personal watercraft at Walnut Street and four near the Brunswick from May through October. Users would have to stay at least 150 feet away from the low water mark and that a personal watercraft in use 160 feet offshore would produce a noise level that would be the sound of a normal conversation. Mr. McGrath, himself, gave an extensive introduction as to why this project is so important to him as a returning veteran and also to the Town of Old Orchard Beach which he felt could benefit greatly from such an activity within the Town. The Jet Ski is the brand name of a personal watercraft. The law states that it is a pleasure craft which means that the individual using one has to follow the laws and rules that apply to other pleasure crafts with motors. The need to bring along the right gear and safety equipment is vital. Safety issues included the wearing of life jackets or personal flotation devices when in the water. The need to know the laws; ability to apply safety measures in case of problems; being aware how to safely operate the PWC; and have proof of competency on board, is vital to the success of the business. They explained that the key to finding a great location for a ski business is finding a place where water sports are in demand and would bring enjoyment and entertainment to those participating. They spoke of the initial investment being great not only for the purchase of the Jet Skis but also repair, maintenance and insurance for the operation. Jet Skis are small recreational machines that serve as personal watercraft or PWC. It was also mentioned by both the presenters and also some members of Council that while Jet Skis are easy for people to operate on their own; they also can be very dangerous. Maneuverability and the ability to make quick, tight turns; as well as the ability to go very fast; are areas of safety consideration. It was also stated by some Council members that inexperienced drivers can operate these watercraft which could be near swimmers and boaters and put them in danger. Such ventures as cutting across other's paths or cutting between each other or driving too fast in the waters are areas of concern. These actions can cause a Jet Ski to crash into others or dump its driver. The presenters indicated that there would be a training course for each person taking part in this adventure and there would be rules of the body of water that will have to be maintained. The presenters indicated that the Jet Ski can be operated as slowly as surf conditions permit and in such a manner as to avoid swimmers. They stated that they knew the rules relegated to the mean high water mark and the mean low water mark. The need to mark off a safe zone for participants to enter and leave the water is a requirement as well. Personnel will be provided on the beach to keep people out of the safe zone and to assist in the launching and beaching of the Jet Skis and to assist the customers and keep people from going into the safe zone. The question was also raised about where Jet Skis would be refueled and the need for this to be done in a safe and prudent manner. It was indicated by the presenters that this would be done in the parking lot although doing it on the beach would be much easier. The question of doing it on the beach

did not seem to have the support of Council. In the event of spillage, the spill will need to be contained and official notification as required by law. The subject of the mooring was raised and a description of how that would be maintained. Placement of the docking and mooring facility must be done as established by law. The issue of permitting was raised and the need for State and Town regulations to be met. Both presenters indicated they were willing to meet whatever requirements were requested. In the discussions Councilor Dayton raised the issue of the “beach being the possession of the public” and that this was permitting commercialization of a public beach. The question of possible impacts on marine life was raised as well. It was noted that insurance is a vital concern and the Town Manager was asked to look into the documentation required by our insurance company and the dollar limit required. The presenters indicated that they have a million dollar insurance policy quote and that the Town would be named under their policy. Since the amount of coverage was a question that was raised it was requested that for future discussion the type and how much insurance is required and what is the minimum and maximum requirement be provided to the Council. The presenters indicated that all equipment would be well maintained and all efforts to make sure that the noise level would not be a nuisance to those in the area of the business. The age of the participant in driving the Jet Ski would be eighteen but the person who could ride with them could be as young as twelve. This was to be studied as well not only for safety issues but for State law requirements. In the area of safety it was noted that the lifeguards would have the availability to use their Jet Skis in an emergency situation. A red flag with a diagonal white strip running from the upper left corner to the lower right would be displayed in the case of an emergency situation being noted. Littering or polluting of the water in any way detrimental to public health and welfare as well as to the environment would be a major consideration of the owners of the business. Council raised the issue of how important personal judgment is as far as safety. The cost for use of the Jet Ski would be approximately \$85 per hour. The Town Manager was asked to get the prospective of the Fire Department and the Lifeguard Captain on this project and to bring that back to the Council for further consideration. Vice Chair Tousignant indicated he is favor of further study of this project and bringing back further information to the Council for consideration. It was noted that the Ordinance would have to be changed which would require setting a public hearing date, having the public hearing, and then presenting the agenda item under new business; a process that takes a month-and-a-half.

John Bird asked questions on the Jet Ski operation itself. Jerome Begart indicated that he hoped the sentence “Old Orchard Beach will be listed on our insurance” means that taxpayers will not face increased liability to lawsuits for accidents. To say that this “will bring income to this community” – that will be true when there is a local-option sales tax. We don’t have that now. How will you regulate individuals using the Jet Skis from illegally going around on the island which is our wildlife-refuges for seals and birds when State-law prohibits human activity? With an hour time length for the Jet Ski use, they may get bored going side to side and might decide to go out to the island. It was noted by Vice Chair Tousignant that there are

rocks near each island that would make this difficult but also it is maintained and monitored by the Audubon Society. Councilor Dayton again reiterated that she had multiple concerns and that there was not enough transparency in this presentation and asked how much conversation had occurred between the presenters and individual Council members before this actual presentation? It was noted that minimal interaction had been taken place. Councilor MacDonald said she supported further study of this project as she felt it would bring additional people to our community. Chair Quinn indicated his major concern was safety issues. He said he had serious concerns about the lack of control once people are out in the water. Another suggestion by Vice Chair Tousignant was that they could put buoys out 150 feet from the low water mark. Councilor O'Neill said he agreed with Vice Chair Tousignant that we should be provided more information on the project before it brought to the Council for consideration again. Chair Quinn thanked the presenters and the Council for the direct conversation on the issue at hand.

5353 Discussion with Action: Approve Liquor License Renewals of Surf Six Inc., dba/Surf 6 Restaurant & Lounge (306-2-9), 2 Courtland Street, s-m-v in a Restaurant; and Dale C. Tarbox dba/Sunset Bar & Grill (307-1-6), 4 Fernald Street, s-m-v in a Restaurant.

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

VOTE: Unanimous.

5354 Discussion with Action: Approve the purchase of pump replacements equipment for the Waste Water Department Pump Stations and Facility in the amount of \$47,993, from Account Number 20204-50846 – Waste Water Treatment Plant – Capital, with a balance of \$398,161.47.

It should be noted that replacements are needed on a regular basis. As pumps/motors age they become less efficient and more prone to breakdowns. The Superintendent, when he first arrived, replaced most pumps/motors with a combination of what was in stock; purchased new or could be rebuilt ones. We are currently out-of-stock on almost all spare pumps.

Item Number One

The OOBWW department is requesting the purchase of three (3) pumps from Mechanical Solutions.

The first request is in the amount of \$5,891.00 to replace an existing pump at the Dune Grass 100 pump station. The existing pump was installed in 1996 and will be investigated for a possible rebuild.

The second request is in the amount of \$3,714.00 to replace an existing pump at the Ross Road pump station. The existing pump was installed in 1996 and will be investigated for a possible rebuild.

The third request is in the amount of \$3,089.00 to replace an existing pump at the Dune Grass 200 pump station. Both of the existing pumps have been rebuilt and it is recommended that we keep a spare.

Included in the packet are the quotes from Mechanical Solutions. Shipping for three (3) pumps is estimated to be \$600.00

Competitive quotes have not been included since major piping and control modifications would be needed.

Item Number Two

The OOBWW department is requesting the purchase of two (2) pumps from ITT Flygt Company.

The first request is in the amount of \$7,434.70 to replace an existing pump at the East Grand pump station. The existing pump was installed in 1996 and will be investigated for a possible rebuild.

The second request is in the amount of \$7,434.70 to replace an existing pump at the Milliken pump station. The existing pump was installed in 1996 and will be investigated for a possible rebuild.

Included in the packet are the quotes from ITT Flygt Company. Shipping for two (2) pumps is estimated to be \$400.00

Competitive quotes have not been included since major piping and control modifications would be needed.

Item Number Three

The OOBWW department is requesting the purchase of replacement parts for the grinder in the primary pump room at a cost of \$8,477.00. OOBWW staff will be rebuilding the grinder.

Included in the packet are the quotes from the Franklin Miller Company. Shipping for the parts is estimated to be \$150.00

Franklin Miller is the sole provider of parts for Franklin Miller grinders.

Item Number Four

The OOBWW department is requesting the purchase of three (3) Gorman Rupp rotating assemblies and miscellaneous parts from Hayes Pump.

The first request is in the amount of \$5,019.77 to replace an existing 10 “rotating assembly at the Comfort pump station. Both existing 10” assemblies were installed seven years ago and it is recommended that we keep a spare. The existing assembly will be investigated for a possible rebuild.

The second request is in the amount of \$2,817.46 to replace an existing 6 “rotating assembly at the Comfort pump station. The existing 6” assembly was installed approximately eight years ago and is due for replacement. The existing assembly will be investigated for a possible rebuild.

The third request is in the amount of \$2,365.37 to replace an existing 3 “rotating assembly at the Portland avenue pump station. One 3” assembly was installed in 2008 and the date of the other installation is unknown. We will replace the assembly that was installed at the unknown date. The existing assembly will be investigated for a possible rebuild.

Included in the packet are the quotes from Hayes Pump. Shipping for three (3) assemblies and parts is estimated to be \$600.00. All assemblies will be installed by OOBWW staff.

Hayes Pump is the sole vendor for Gorman Rupp pumps in this area.

MOTION: Councilor Dayton motioned and Councilor O’Neill seconded to Approve the purchase of pump replacements and equipment for the Waste Water Department Pump

Stations and Facility in the amount of \$47,993, from Account Number 20204-50846 – Waste Water Treatment Plant – Capital, with a balance of \$398,161.47.

VOTE: Unanimous.

GOOD AND WELFARE:

TOWN MANAGER: He gave an explanation of the community watch police vehicle and the success of their program. The National Sheriffs’ Association created the National Neighborhood Watch Program in 1972 with financial assistance from the Law Enforcement Assistance Administration to unite law enforcement agencies, private organizations, and individuals in a massive effort to reduce residential crime. Our program was structured after the Scarborough program and has been so successful for our community. The vehicle that is now being used by the Crime Watch group is an old police car which would have been traded in for about \$200 but instead has been cleaned up and repaired at no Town expense. He continued to speak about an issue that Vice Chair Tousignant raised about the insurance coverage and legal responsibility for any injury that might occur and the possibility of volunteers purchasing their own policy to protect them in this regard. He again explained that this is not a new car but a refurbished old one previously used by the Police Department.

DONALD COMOLETTI: He spoke of his concerns about street plowing in the Ocean Park area.

ADJOURNMENT:

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to close the Town Council Meeting of March 1, 2011.

VOTE: Unanimous.

The meeting was closed at 8:15 p.m.

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-one (21) pages is a true copy of the original Minutes of the Town Council Workshop of March 1, 2011.

Louise Reid