

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
TUESDAY, SEPTEMBER 27, 2011
TOWN HALL CHAMBERS**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Tuesday, September 27, 2011. Chair Quinn opened the Workshop at 7:05 p.m.

The following were in attendance:

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

Absent: Councilor Shawn O'Neill

The purpose of the Workshop was to discuss a Tobacco Free Beach.

A previous workshop held at the request of students Hattie Simon, Sarah Jenkins, Marykate Slattery and Sabryna Deshaies included information of their request to ban smoking from the Old Orchard Beach Beach. Also in attendance was Toby Simon, Adult Advisor to the Youth Action Group and Bethany Fortier, of the Coastal Healthy Communication Coalitions. The young women received a grant of about \$330 after attending a Sixth Annual Maine Youth Anti-Tobacco Summit in 2009.

Those who spoke for the smoking ban on the beach in addition to young people and their advisor noted above, were Jackie Tselikis, Kristen Gosselin, Jerome Begert, Ed Bouche, Trish Driscoll, Bill Patterson, Mrs. Simon, Mr. Fortier, and John Bird. The Workshop this evening continued the discussion on the issue of banning smoking on the beach. The push follows a national debate over the cost of health care and the significant health dangers on individuals subjected to others smoking in their proximity. The young presenters reminded everyone of the fact that second-hand smoke is dangerous inside and outside. Parks and beaches they indicated are places that people go with children in order to breathe the fresh air and to exercise. They indicated they felt that smokers don't have the right to impose these health risks on the nonsmoking public. It was pointed out that many times people think the sand on the beach is an ashtray. They again encouraged the Council to move toward the banning of smoking on the beach to reduce secondhand smoke exposure, cut down on litter on the beach, and improve health and quality of life generally. Chronic conditions like asthma and bronchitis which make them especially susceptible to tobacco smoke have been held to be entitled to protection under the Americans with Disability Act (ADA). Thus, if their medical conditions mean that they cannot enjoy lying on a blanket on the beach or in a park for a concern where smoking is generally permitted, they may be entitled by law to a reasonable accommodation, presumably

one which protects them from drifting tobacco smoke. This would be very difficult on the beach of Old Orchard Beach. Again it was stated and restated that the reason for banning smoking is that people should not be forced to be exposed to known carcinogenic substances for even the briefest periods of time and because even brief exposure can also be annoying and irritating to many people, nonsmokers should not be forced to “run a gauntlet” of smokers gathered around the beach. It was even suggested that this restriction on smoking could be a major factor in helping to persuade smokers to quit and to help those who want to stop smoking to do it. They noted that more than 350 jurisdictions have successfully prohibited smoking in outdoor areas such as beaches, parks, playgrounds, near building entrances, etc. They continued through their presentation to present facts about the dangers of smoking and recounted many times their arguments that smoking in Canada is fast becoming the rule rather than the exception. They provided literature to the Council substantiating the facts they were presenting. They informed everyone that 73 towns in Maine have adopted a tobacco-free policy for their town parks, recreation areas, beaches and playgrounds. All Maine State parks, beaches and historic sites became tobacco-free in 2009; Portland adopted a tobacco-free beach, parks and recreation ordinance in 2009; Westbrook, Harrison, York, Ogunquit, Scarborough and South Portland have recently adopted the same. Nationwide twenty-seven states have passed comprehensive laws prohibiting smoking in outdoor public places and workplaces. The State of Maine Law enacted in 2009: Smoking prohibited – a person may not smoke tobacco or any other substance in, on or within twenty feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place of restroom in a State park or State historic site.

In support of the smoking ban there were many who spoke publicly and basically their comments were inclusive of the following opinions. A strong media education campaign plus appropriate and clearly visible signage posted at entryways and high traffic areas makes these laws self enforcing; leads to higher compliance rates; and changes social norms regarding appropriate smoking behavior. They stated that Healthy Maine Partnership can support educational campaigns and provide free signage. The presence of “tobacco-free” signs supports non-smokers in their ability to ask someone to stop using their tobacco product on the beach. They recounted again and again that enforcement would not be needed but if necessary part of what makes these laws self-enforcing is that they are enforceable. Almost all the speakers indicated that there is no significant enforcement challenge with tobacco-free park and beach laws and that educational campaigns and visible signage plays the most critical role in giving people the knowledge and ability for people to police themselves.

The following spoke in opposition to the ban on smoking including Peter Bishop, Rich Redmond, Amanda Warner, Mike Coleman, Joe Mokarzel, and Pat Brown. It should be noted that there was consensus on the need for education and signage about keeping the beach clean. There were those in attendance who spoke indicating that they felt the banning of cigarette smoking on the beach in Old Orchard would greatly hinder the tourist trade. Some expressed the opinion that total banning goes too far. The question was raised about the precedent being set and infringing on individual liberties. It was pointed out that the strongest and most effective argument used to pass anti-smoking laws has been that the bans protect people from second-hand smoke where they work and live. It has been suggested that waitresses and bartenders, for example, deserve to work in environments that won't greatly increase their

chances of developing cancer. But this same argument doesn't apply some feel to parks and beach goers. People who wish to avoid second-hand smoke there can – all they have to do is find a different bench to sit on, or move their beach blanket a few feet to the right or left. While finding a new place to relax may be annoying, it's not that burdensome. Parks and beaches are big places and you can avoid smoke if you want to. Laws should not be created banning annoying activities that are easily avoidable by the people who wish to avoid them. Some feel that it is a free country. It is recognized that smoking is not good for your health but the government should not get involved and is going too far. It has been pointed out that studies on second-hand smoke indicated that there is no greater health risk from second-hand smoke in open places like parks as there are on the roads with cars and trucks and are we going to ban cars and trucks. The other issue that was brought up strongly was who is going to be the enforcer of the law? Of course it will be expected that the Police will be the enforcers on this and you will wind up with selection approach which is illegal. Certainly if there is a law on the books the Police will have to enforce it, especially if it's collateral to other things, but how effective that enforcement will be and how expensive both public relations wise and staff salary wise is another consideration. It was suggested to answer the question of whether prohibition of drinking alcohol was successful in our country. Though well intentioned, the law simply reflects the limited ability to consider logic. The issue of the negative affect on tourism was raised often.

The question was raised about a buffer zone – a zonal area that lies between the beach and where a person can smoke – and how it is determined where that buffer zone might be and how one would feel if that buffer zone was in front of your own home where people would be permitted to smoke. Buffer zones have various purposes, political and otherwise but they mean decisions have to be made on the political level and this is always an issue. Considerations to a buffer zone would have to include environment, protected residential and commercial zones, and several other scenarios. We do not have the luxury in Old Orchard Beach of large buffer zones in uninhabited regions. It was pointed out that this could definitely be a discrimination issue if you are a smoker and your options are limited. The Canadian population visiting Old Orchard Beach was a primary issue because the business owners who did speak recounted that the majority of the Canadian tourists smoke. Perhaps the most important message that seemed to unit those questioning the ban was that we have a tourism economy. Take a look at the population that comes from tourism. If we lose them, then we lose our tax revenue.

Since the last Workshop on this issue many e-mails were received from Sherri Tripp, President and Owner of The Ocean Tripp Inn, a Guest House on the Beach at 6 Union Avenue. In those e-mails she speaks of her picking up thousands of cigarette butts over the summer months. She indicated and so many agree that beach litter is harmful and costly in many ways and the number one form of litter on beaches is cigarette butts. The desire not to permit smoking is both environmentally and aesthetically important but health and economic factors are important factors as well. Some of the arguments of business owners included the fact that beach tourism is often the most important source of revenue for a community, as is the case in Old Orchard Beach, and that not permitting smoking will affect tourism in our community. Each e-mail that she sends she recounts picking up on September 1 over 205 butts on Union Avenue; 1,500 butts in a six day period around the middle of August; and over 200 butts on August 10th. She recounts daily the number of butts just strewn along the area of her business and the beach which encompasses a good part of the recreational use in that area of the Town.

The argument to this, however, is that the foremost requirements for beachgoers are clean sand and clean water. There is a two-edged sword here – controversy inevitably surrounds smoking bans, with advocates citing concerns for health of their consumers, citizens, tourists; while some bar, restaurant owners and businesses are concerned with the potential adverse impact on their business and smokers are concerned about the infringement of their rights. The controversy over the net effects on businesses is not resolved by appealing to economic theory, as both sides can claim support. The opposition claims that regulations will stifle the restaurant/bar/beach businesses by reducing patronage of smokers and hence limiting the ability to maximize profits. Policy advocates, on the other hand, claim that smoking regulations do not hurt establishments and may even add to revenue as well as lower costs. It was pointed out that if there were the potential for increased revenues and reduced costs from going smoke-free, businesses would have done it a long time ago. The French population that flock to Old Orchard Beach in the summer months include many smokers. Overall, having a better understanding of how smoking bans impact business and how these effects may differ across communities must be considered if policymakers are to make informed choices on this issue.

There were no direct winners to the arguments this evening but there was indeed collaboration on suggested opportunities to move ahead. Below is a synopsis of the areas that were agreed upon:

1. Town Council to provide a resolution – a written motion adopted after deliberation by the Council with the substance of the resolution to move forward on discussion relative to the smoking issues; including possible banning of smoking; emphasis on signage and an educational program.
2. Consideration of a referendum in November of 2012 so that the citizens of Old Orchard Beach decide the fate of the smoking issue. It is their beach and they pay for the upkeep of that beach; it should be their decision to make.
3. Continued discussion on other alternative resolution options.

4. Continued survey options including input from the Comprehensive Plan Survey as well as possible survey of the Canadian population who visit and stay in Old Orchard Beach over the 2012 summer months.
5. Unanimous support that the issue is a voter consideration.

Below is the draft ordinance that was submitted prior to this workshop by the young students:

DRAFT ORDINANCE

TOWN OF OLD ORCHARD BEACH TOBACCO-FREE BEACHES

Section 1.0. SHORT TITLE: This Ordinance shall be known as the “Town of Old Orchard Beach Tobacco-Free Beaches Ordinance.”

Section 2.0. PURPOSE: This Ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the residents and visitors that use the Town of Old Orchard Beach municipal beach facilities.

Section 3.0. DEFINITIONS:

• **BEACH FACILITIES**: Shall mean all Town-owned property located within 25 feet of any beach.

• **TOBACCO**: Shall mean any use of tobacco products including, but not limited to cigarettes, cigars, pipes, snuff, dip, chewing tobacco, weed, plant, or other combustible substance in any manner or in any form.

Section 4.0. TOBACCO USE PROHIBITED: It shall be unlawful for any person to use tobacco products within the confines of, or within 25 feet of any municipal beach at any time.

Section 5.0. ENFORCEMENT: This Ordinance shall be enforced by the Old Orchard Beach Police Department and Old Orchard Beach Life Guards.

Section 6.0. PENALTIES:

• **CIVIL PENALTIES**: Any person in violation of any provision of this Ordinance shall be subject to a civil penalty and upon adjudication thereof shall be fined in an amount of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) for each separate violation. The municipality may be awarded attorney’s fees and costs incurred in enforcing this Ordinance.

Section 7.0. SEVERABILITY: If any Ordinance in the Town of Old Orchard Beach now in effect or any future Ordinance is more stringent than this one, then that Ordinance shall be in

force. If for any reason, any word, clause, paragraph, or section of this Ordinance shall be held unconstitutional, this Ordinance shall not thereby be invalidated and the remainder of this Ordinance shall continue in effect.

Section 8.0. EFFECTIVE DATE: This Ordinance shall become effective upon adoption by the Town Council of Old Orchard Beach.

Section 9.0. AMENDMENTS: This Ordinance may be amended by vote of the Town Council.

Adopted on this ____ day of _____

Attest: _____, Town Clerk

Again, the Chair expressed to all his appreciation for their attentiveness; to the presentation by the young students; and to the addressing of issues relative to this important matter.

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 six (6) pages is a true copy of the original Minutes of the Town Council Workshop of July 19, 2011.

V. Louise Reid