

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
Tuesday, February 21, 2012  
TOWN HALL CHAMBERS  
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, February 21, 2012. Chair Quinn opened the meeting at 7:02 p.m.

The following were in attendance:

**Chair Bob Quinn  
Vice Chair Michael Tousignant  
Councilor Sharri MacDonald  
Councilor Robin Dayton  
Councilor Michael Coleman  
Town Manager Mark Pearson  
Assistant Town Manager V. Louise Reid**

**Pledge to the Flag  
Roll Call**

**PRESENTATION:** Planner, Jeffrey Hinderliter, presented an update on the Comprehensive Plan.

The purpose of the presentation this evening is to provide you a brief update regarding the creation of our new comprehensive plan. As you may know, the comprehensive plan is the adopted official binding document for future planning, development and conservation. The plan solicits public comment through meetings and surveys; analyzes existing conditions and trends; describes and illustrates a vision for the physical, social and economic characteristics of our town; and outlines policies, guidelines and goals intended to implement that vision within 10 years time.

As you may know, the town formally began the creation of a new comprehensive plan during the summer of 2011. Since the effort and work to create a plan can be daunting, the first task was to organize. The comprehensive plan committee developed a schedule that includes three primary tasks to complete work towards creating a first complete draft: 1. Public Process (gathering public comment through surveys and meetings); 2. Inventory and Analysis (analyzing existing conditions and trends); 3. Goals, Policies and Strategies (developing guidelines and goals to implement the comp plan vision).

**Public Process**

As of this date, the initial public process has been complete. This process included four public meeting sessions (one was televised and held on a Saturday) and a survey (mailed to every taxpayer's address, available electronically via the town's website and a service named 'Survey Monkey', available as hard copies at public locations).

Public session feedback and survey response rate was quite good. Overall attendance at the public sessions was approximately 75 and we received 447 completed surveys. What

impressed me the most is how much of this feedback was positive and extremely thorough and helpful! Even the criticism was constructive. This truly is a reflection of the terrific people we have in our town. In regards to the survey demographic results, the committee found an age group that needs better representation- 35 and under. Also, the committee determined appropriately aged students need to be represented. This spring, the committee will work on a second round of survey collection targeting the demographic areas that were poorly represented (mentioned above). Upon completion of the second survey collection, we will analyze, interpret and report the results.

Once we begin creation of the Goals, Policies and Strategies, the survey data will prove to be a valuable resource as it will be a great help to create a vision supported by the people's input. This is where we translate the results into action.

Attached are the initial results of the survey. I think you'll find there is a lot of useful information. Please note that some of the survey questions asked for written responses which the attached document does not include. We have all written responses documented and organized according to the related survey question and section of town the responses came from.

### Next Steps

The next steps to creating the comprehensive plan include inventory and analysis and goals, policies and strategies. Southern Maine Regional Planning (SMRP) are working with the committee on the inventory and analysis. Formal meetings with SMRP and the committee begin on 1 March and I expect this work will conclude this summer. Once complete, the committee and I will begin working on the goals, policies and strategies.

Once inventory and analysis and goals, policies and strategies are done, the majority of the comp plan work will be complete. The next phase will be preparing a first complete draft, distributing the draft plan for comment and refining the town's vision as we work towards an adopted plan. During fall 2012, I expect to have a complete draft of the new comprehensive plan available for review and comment.

Below is a summary of the next steps towards development of the first complete draft of our new comprehensive plan:

~Inventory and Analysis~

### Meet with Consultants

#### Consultant and Committee meeting

- Discuss approach, timeline, work assignments

### Work on Inventory and Analysis

#### Work on each Inventory and Analysis section

- Population
- Existing Land Use
- Traffic
- Public Facilities

- **Fiscal Capacity**
- **Housing**
- **Natural Resources**
- **Cultural, Historical, Archeological**
- **Local Economy**

#### **Committee and Consultant Meeting**

- **Prepare complete drafts of inventory and analysis sections**
- **Summarize findings, identify key issues**

#### **Public/Council Meetings, Misc.**

#### **Council and Public Presentation**

- **Present inventory and analysis sections**
- **Present findings and key issues**
- **Present work completed up to this date and next steps**

#### **Identify items that need further committee consideration**

~Goals, Policies and Strategies~

#### **Committee Meeting**

- **Discuss work done to date**
- **Discuss next steps, approach, work assignments**
- **How to include public comments, survey results, meeting results**

#### **Work on Goals, Polices and Strategies**

#### **Work on Goals, Polices and Strategies for each section**

- **Population**
- **Existing Land Use (see below)**
- **Traffic**
- **Public Facilities**
- **Fiscal Capacity**
- **Housing**
- **Natural Resources**
- **Cultural, Historical, Archeological**
- **Local Economy**

#### **Work on Future Land Use Plan**

- **Identify stakeholders who should be included with this discussion**
- **Committee to review current land use ordinances**

#### **Work on Summary**

- **Findings, key issues, implications of recommendations**
- **Public release of summary**

## Public/Council Meetings, Misc.

### **Council and Public Meetings**

- Present Goals, Policies and Strategies
- Specific presentation for Future Land Use Plan
- Present summary of findings, key issues, implications of recommendations

**Identify items that need further committee consideration**

**~Complete First Draft of Comprehensive Plan~**

### Committee Meeting

- Discuss work completed up to date
- Create executive summary
- Create info sheets describing process, key issues, key changes, etc.
- Discuss next steps, approach and how to present draft plan (e.g. in what manner, public hearings v. public info meetings, etc.)

### Create Draft Plan

- Assemble complete draft plan.

## Meetings

### **Council Meetings**

- Present complete draft to council along executive summary
- Discuss process from here

### **Public Hearings/Public Info Meetings**

- Present draft through formal public hearings and informal public info meetings
- Present key findings and identify issues that could result in changes to the town.
- Media
- Discuss process from here

### **Committee Meeting**

- Discuss results from council meetings, public hearings, public info meetings, reconsider/revise
- Identify items that need further committee consideration
- Discuss preparation for final comp plan

### State Planning Office Submission

- Prepare plan and associated paperwork for SPO submission (Note: this does not need to be done last, it can be done once we complete the complete draft)

**In conclusion, comprehensive plans address a broad range of interrelated topics in a unified way. The plan development process provides a chance to look broadly on a community-wide**

basis at programs on housing, economic development, public infrastructure and services, transportation, natural resources, land use, demographics, local economy, and cultural, historical and archeological assets. The most important function of a comprehensive plan is to provide valuable guidance to those in the public and private sector as decisions are made affecting the future quality of life of existing and future residents and the natural and built environment in which the live, work, shop, and play. One final note, I'd like to specifically thank Megan McLaughlin for the tremendous help she provided with survey data collection. Megan is a University of Southern Maine undergrad who interned with us this fall.

The Chair thanked the Planner for the positive feedback. The Planner indicated that the progression of the Comprehensive Plan is a result of the feedback received and it is a testament to the people of our community. He reported that they would go out this spring and survey the young age group so they are better represented. Once completed the plan can be amended to include the new survey material and a new report can be completed. This is a living and working document and the 447 surveys received are the beginning of the understanding of the desires of our community citizens.

**COUNCILOR DAYTON:** I would like to acknowledge forty years of service to the citizens of Old Orchard by our Waste Water Department employee, Larry Thomas, who is retiring this week. Larry is a rather humble gentleman and although we wanted to recognize him personally to night we trust that he will accept our thanks for his commitment to his job; and wish him blessings and good health in the days and months ahead and enjoyment during his retirement. Chris White and members of the Waste Water facility join us this evening in words of thanks and appreciation.

**COUNCILOR MACDONALD:** She offered her congratulations to the Boys Basketball Team from Old Orchard Beach, Maine for their success in Augusta and wishes them the best of luck for success in Portland in the next week.

**COUNCILOR DAYTON:** Welcomed our new Town Manager, Mark Pearson to his new position as Town Manager.

**ACCEPTANCE OF MINUTES:** Town Council Workshop of January 24, 2012 and Town Council Workshop of January 31, 2012 which were tabled at the meeting of February 7, 2012; and Town Council Minutes of February 7, 2012.

**MOTION:** Councilor Coleman motioned and Councilor MacDonald seconded to Accept the Town Council Workshop Minutes of January 24, 2012 and January 31, 2012; and the Town Council Minutes of February 7, 2012.

**COUNCILOR MACDONALD:** Thank You, Louise, for going over that long 3 hour tape. It was awesome. Thank you.

**VOTE:** Unanimous.

**PUBLIC HEARING:** Shall We Adopt an Ordinance Prohibiting the Sale and Use of Consumer Fireworks?

**CHAIR QUINN: I open this Public Hearing at 7:22 p.m.**

**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 February 21<sup>st</sup>, 2012, 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 Article IX, Sale and Use of Consumer Fireworks Prohibited, Section 38-290 through 38-296 is hereby added to the Town of Old Orchard Beach Code of Ordinances:**

**Sec. 38-290. PURPOSE AND AUTHORITY.**

**A. Purpose. This Ordinance governs and prohibits the sale and use of consumer fireworks to ensure the safety of the residents and property owners of the Town of Old Orchard Beach and of the general public.**

**B. Title and authority. This Ordinance shall be known as the "Town of Old Orchard Beach Consumer Fireworks Ordinance." It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S. § 3001, the provisions of 8 M.R.S. § 223-A, and Section 410.1 of the Old Orchard Beach Town Charter.**

**Sec. 38-291. DEFINITIONS.**

**The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:**

**Consumer Fireworks – "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:**

**A. Missile-type rockets, as defined by the State Fire Marshal by rule;**

**B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and**

C. Sky rockets and bottle rockets. For purposes of this definition, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

**Sec. 38-292. USE AND SALE OF CONSUMER FIREWORKS PROHIBITED.**

No person shall use, sell, or offer for sale consumer fireworks within the Town of Old Orchard Beach.

**Sec. 38-293. EXCEPTIONS.**

This Ordinance does not apply to a person issued a fireworks display permit by the Town of Old Orchard Beach and/or the State of Maine pursuant to 8 M.R.S. § 227-A.

**Sec. 38-294. VIOLATION PENALTIES AND ENFORCEMENT.**

A. **Penalty for Violation.** For each violation of a provision of this Ordinance or other failure to comply with any of the requirements thereof, the person shall be subject to a fine of not less than \$100 and not more than \$2,500, plus attorney's fees and costs, to be recovered by the Town for its use.

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

C. **Injunction.** In addition to any other remedies available at law or equity, the Town of Old Orchard Beach, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

D. **Seizure & Disposal.** The Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.

**Sec. 38-295. EFFECTIVE DATE.**

This Ordinance takes effect immediately upon adoption.

**Sec. 38-296. SEVERABILITY.**

Should any section, subsection or portion of this Ordinance be declared by any court of competent jurisdiction to be invalid for any reason, such a decision shall not be deemed to invalidate any other section, subsection or portion of this Ordinance.

Chair Quinn indicated that as a result of the 125<sup>th</sup> Maine Legislature enacting Public Law, Chapter 416 – “An Act to Legalize the Sale, Possession and Use of Fireworks, this Public Hearing is being held to get feed back from the citizens of our community. He thanked everyone for attending this evening. Fireworks are devices designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Every year United States residents celebrate the use of fireworks on festive occasions. Discussion

**this evening will be on the Ordinance that has been written for our community and whether this is something the Council agrees to after receiving input from the citizens.**

**The following individuals spoke during the hearing:**

**CHERYL POULOPOLUS:** As the Director of the The Salvation Army Seaside Pavilion and a citizen of the community she objects to the State law and requests the Council to consider the passing of the Ordinance. She indicated there are safety issues with the close proximity of properties, particularly in the Campground area as it would be almost impossible to limit fireworks to their own property with three feet between some homes. She reminded everyone of the Seaview Avenue fire in which a house fire in one house resulted in fire spreading to the second home because of the closeness of most properties in that area of the Campground. You would have had two disasters that day if it were not for the quick response of our Fire Department – good job Fire Department. The Police Department will have no tools to address these issues and having worked with the Police Department in the past I know they address all issues with professionalism. She said it is a matter of a quality of life. She reminded everyone that such noise and safety issues would affect not only the Ballpark, the Pavilion, the Campground Area, Memorial Park, the Beach area, etc. She asked that the Council look forward, not back to the past. With our being considered a more family-friendly town, I would ask the Council to adopt this Ordinance.

**ERNIE YOUNG:** He also reminded everyone of the Seaview Fire and indicated as a citizen living in the Campground area – this is definitely a safety issue and a quality of life issue. This is not Saco he said where buildings and homes are logically farther apart. This is a community of 9,000 people all year long and the Council needs to give consideration to its year-round residents as it does as much to the tourists. The density issue is a recipe for disaster. Our Police and Fire staff has enough to do and last year the thought was to cut this force and now you are considering making their jobs more difficult. If we find out after a year that it isn't working out; we have taken the option of giving a person the chance to open up a business and now what do you do?

**LINDA HARDACKER:** I live in the historic Salvation Army campground. I have attended all the workshops and we become the center of a place to have destruction if this is allowed. She indicated that she supported the ordinance and that not passing it is putting the citizens and the lives of our citizens in jeopardy. She also explained the close proximity of the locations of homes in our community. We hope that our residents will continue to visit the fireworks display provided by the Pier and Palace Playland and not institute the danger and loudness that will happen if we allow fireworks on public places. She reminded everyone of the noise calls that will come to the Fire and Police Department and the additional responsibility that will be placed on our staff is another obvious consideration. She asked the Council to come to the right decision in favor of the year-round citizens of our community and to consider safety, noise, additional impact on staffing and come to the right place and make the decision that is not only morally correct but fiscally responsible. Our town's reputation is growing as a family-oriented community and we like that. I heard at the Workshop that not allowing fireworks would make it not a place people would like to come. We have seven miles of a beautiful beach, a beautiful Memorial Park, a Ballpark that offers great activities, and these are just three of the great destination attractions that bring many visitors to our community.



**FRED DOLGAN:** He indicated that it is obvious that the same eloquent conversations of the past two speakers will be reiterated by the large majority here this evening in the Chamber. It is all about where we live and the quality of life that we want. He also indicated that he believes there are about 25 communities who have banned fireworks. Don't we have the intelligence to learn from past mistakes, he asked? You are the people that represent us. Imagine, he said – “do we need fireworks? This is the last thing we need.” Where we live we abut Pinehurst Campground and we go through the fireworks problem already so I can imagine when this is legalized, what is going to happen. The dangers are there and I had a conversation with someone who is also in favor of the prohibition; let the Council pass it and then they will be sorry. Why do that? Don't we have intelligence working here? For people to represent me that I have elected; take the word of the Police and Fire leaders who know about this situation. This is silliness; who got up in the morning and said, “We need fireworks in Old Orchard Beach.” We need our brain to work out our many issues in Old Orchard not on something that is obvious.

**JEROME BEGART:** There are consequences, consequences and more consequences if we pass this ordinance. There enthusiasm for the important groups in our community – Chamber of Commerce, OOB 365, The Salvation Army, BRASS, and other groups that bring great enjoyment to our communities. Let's not put into place something that will bring consequences of concern, safety issue and fiduciary aspects as well. We go from 8,000 citizens to the tourist season to 90,000 or more and these are not the people who take ownership of their surroundings like the residents do. In the future you might consider the following to make a few people happy and who don't want prohibition. Perhaps Chamber of Commerce and OOB 365 could set up an event at the Ballpark and have Fire and Police there and on the Fourth of July and then have trolleys to downtown to watch the big fireworks.

**PAT HOLLAND:** She indicated she had not attended the previous to Workshops but had watched it on television and supports the majority of individual who spoke on behalf of the ordinance. I have concern not only for the public and the citizens but for our animals. The noise to them causes chaos and anxiety and they shake with fear when they hear the loud noise. You have parents who put their children down for naps and breathe a sigh of relief only to have them awoken by the noise of fireworks. They are fearful and can't get back to sleep and you find the distress of the child and the parent. My mother had dementia and the sound of fireworks set her back in distress and it was difficult to calm her down and it was and is impossible to remove that stress from them. I believe the Council owes it to us who elected them to consider that most of the individuals in this hall tonight are here to speak in favor of the Ordinance. Again, the suddenness of a loud sound is not a reassuring event for children, animals, seniors or those suffering from dementia.

**JOHN BIRD:** I don't want to speak to the prohibition but to the Ordinance itself. He asked about the involvement of legal Counsel in the preparation of this Ordinance. He also spoke about the MRS Title 8, Chapter 9-A- Fireworks 8 Section 222 – Possession of Fireworks. He read into the record: “Possession prohibited. A person may not possess or have fireworks under that person's control.” John Bird found this language interesting.” He indicated that “Possession” means the intentional or knowing possession of what the possessor knows or “believes” to be fireworks” – (emphasis added – Evidently doesn't

have to actually “Be fireworks.” He said that it looks like the Legislature taketh away, and then giveth back, and then taketh away again, etc. in other parts. The Legislature couldn’t have made a bigger mess of this if they tried. He also spoke about the confusion of the fire rockets. This whole thing is a whole mess of exceptions, etc. He spoke about the confusion in what is allowed and what isn’t allowed.

**KATHY SMITH:** She said that she loves her peace and quiet and that there is enough noise in our community that affects children, pets, senior citizens and the general public. Dogs shake, babies cry, and even with the safety concerns we have; it is just something that is disruptive and annoying. No to fireworks and yes to peace and quiet. We have enough noise and excitement in Old Orchard Beach. We have Fireworks every Thursday night at the goodness of the Pier and Palace Playland. I agree with Pat Holland who spoke about the concern for children and pets.

**TODD BASSETT:** I support the Ordinance and agree with the Police involvement in determining the extent of the event they are investigating. I don’t believe there is any malicious intent on the part of our Town Police Officers and they will do what has to be done in the ticket enforcement issue. I have spoken before about the need for an Ordinance because we in our home have been the recipient of noise and interference because of people shooting off firecrackers during the summer month. I believe it is time for the Council to address the requests and desires of the public when they study the worthiness of this Ordinance.

**JOSEPH BASSETT:** Think about the non-domesticated animals also such as raccoons, skunks, etc. which cause disruption and chaos as well. Yes, go down the street on garbage pick up day and you will know we have raccoons. The close proximity of that fire on Seaview is enough to convince us all that this destruction not only to one house, but to two, we would encourage you as the elected officials to ban fireworks. He encouraged the Town Council to pass the ordinance that was submitted to them. The chaos that is caused is more than is needed.

**TODD BASSETT:** You have heard from nine people who have spoken on this issue and I would ask that you listen to what they have to say. The additional responsibility on our fire and police force will increase. Thank you.

**VICE CHAIR TOUSIGNANT:** I have been asked to read the following into the Minutes: I will read a letter into the Minutes that had been sent by Helen Whittaker, President of the Community Watch.

**Dear Councilors,**

**My primary concern and focus is public safety, I strongly support an ordinance that leaves the use of fireworks as it has always been which is to ban the sale and use of fireworks in Old Orchard Beach.**

**This letter is to make you aware of the potential dangers when allowing fireworks to be used. The possibilities of these fireworks being in the wrong**

hands of minors, people under the influence and people who just don't care can be stressful. Allowing fireworks would be creating a noisy, fearful and possibly harassing situation for our residents. I take an active role in Neighborhood Watch and I can say from experience that allowing fireworks to be used on private property with the common close proximity of properties in Town, enables one neighbor to have a new weapon to badger another, and all within the law. It would also create a serious public safety issue.

Our residents tolerate enough noises in the summer. From May to September, the noise level increases 10 fold and echo throughout our community, all happening when we all would like to leave our windows open to enjoy the summer breezes. Depending where we live, we hear instead;

1. The hum of Waste Water Treatment Plant,
2. The constant traffic,
3. Honking of car horns,
4. Trucks down shifting when entering into town,
5. Motorcycles,
6. Trains,
7. Small aircrafts,
8. Construction noises,
9. Thursday night fireworks,
10. Clip clopping of the horse drawn carriage going home after 10 pm,
11. Loud music from the Pier and elsewhere,
12. People coming out of bars walking and sometimes fighting on the streets etc. etc.....

I understand wanting to recognize the rights of people, but I suggest recognizing the rights of the local residents first. These are the very people who voted you all into office. It came through loud and clear at the workshop...OUR RESIDENTS WANT PUBLIC SAFETY.

I don't know why a Town would disregard the professional opinions of both its Fire and Police Chiefs. Public Safety is what they do, day in and day out. Both Chiefs are extremely experienced. Our community trusts their judgment and simply expects you to do the same.

We should be satisfied with the marvelous display of fireworks every Thursday night all summer long. Please ensure the fireworks ordinance being discussed leaves things as they always have been which is to ban the sale and use of fireworks in Old Orchard Beach.

Thank you,  
Helene Whittaker  
CWC President  
OOB Neighborhood Watch



[oobcwc@yahoo.com](mailto:oobcwc@yahoo.com)

**VICE CHAIR TOUSIGNANT:** I have a couple of questions but under violations and penalties it says that for each violation certain penalties will be meted out.

**POLICE CHIEF KELLEY:** This gives us a little flexibility and flexibility to the Judge.

**COUNCILOR COLEMAN:** Who will make that decision?

**POLICE CHIEF KELLEY:** The Judge would have the option but we could request it.

**COUNCILOR COLEMAN:** I have great concerns about that \$2,500 fine because even a cocaine possession doesn't amount to that much and I am concerned that this is not a reasonable manner in which to assess fines. What would cause a \$2,500 fine?

**POLICE CHIEF KELLEY:** I believe the legal counsel came back with this based on other circumstances.

**COUNCILOR COLEMAN:** Of course the question of the fee and the extent of the fee would cost us attorney fees. Do you foresee difficult in enforcing this since people are going to assume, quite logically, that fireworks are legal in Old Orchard Beach.

**POLICE CHIEF KELLEY:** No I don't. There are many communities that have adopted this and signage to indicate this would be an acceptable way to do that. Safety is a problem but I do think our citizens have the right to peace and quiet. Aggravating the neighbors is a bigger problem.

**COUNCILOR COLEMAN:** Ever since I have been coming to Old Orchard Beach I have heard fireworks even when it wasn't legal. I understand there have been no injuries or prosecutions in Old Orchard Beach.

**POLICE CHIEF KELLEY:** I can think of a couple of things that happened. I am just not sure why we need to have fireworks because they make the potential for problems increase. I asked at the last Workshop what is the reasoning for this.

**VICE CHAIR TOUSIGNANT:** I would suggest that \$100 is a 'slappable' offense. Why not \$500?

**POLICE CHIEF KELLEY:** The Legal Counsel has worked with many other communities and came up with this. I don't see people being summoned for this but I believe this would change if it is legal and people go over the boundary of what they are allowed to do. Even the cost of a new business selling this seems out of the realm of possibility for someone in our community.

**VICE CHAIR TOUSIGNANT:** Are bottle rockets legal or not.

**CHAIR QUINN:** Below are the exclusions and bottle rockets are not permitted.

**JOHN BIRD:** If you unwind what they say they are still outlawing bottle rockets but the Town is excluding bottle rockets from the jurisdiction of this ordinance. Therefore the wording needs to be changed. The State messed it up.

**COUNCILOR DAYTON:** It does need to be cleared up and if we remove the word "not" it will be corrected. I agree it needs to be corrected.

**COUNCILOR COLEMAN:** State law takes precedence.

**VICE CHAIR TOUSIGNANT:** It is prudent this be as clear as possible and mimic the State law as possible. I would echo Councilor Dayton's comments that it be clearer.

**TOWN CLERK:** I just wanted to let you know that the wording put in there at the recommendation of the State Fire Marshall. Even though State law didn't allow it, he suggested the wording be put it. Bernstein and Shur agreed with the State Fire Marshall so they need to make it clear.

**JOHN GALLO:** He indicated his concern about the safety issue but also understood the personal freedom issue. Do you really think that an 18 year old is going to understand what is allowed in this?

**COUNCILOR COLEMAN:** He indicated this Ordinance's legal issue is "terribly horrendous." He asked how much Legal Counsel charged to create this document. How much will this cost to enforce? He indicated it is too vague and listed his concerns about the vagueness of the fining system as indicated in this Ordinance. It's important to realize that some of the basic requirements of this law include being 21 years of age or older to obtain a license to sell fireworks in Maine; have a federal permit to sell fireworks under Title 18 United States Code, Section 843; local permit to sell; and only sell consumer fireworks in a permanent, fixed, stand-alone building dedicated solely to the sale of consumer fireworks. He stressed the fact that it should be noted that the "Restriction of Use" section of the law states that people can only use fireworks on their own property or the property of someone who has consented to such use. He expressed concerns of the public that by banning and other limiting policies we are taking away personal freedom and micromanaging what fellow citizens do. He again reiterated important facts including that the total property damages in 2009 was \$38 million in the United States; a country of over 300 million people which works out to about thirteen cents per person. He emphasized he appreciates the rights of individuals to express their opinion on the subject but facts should be looked at. The minimum twenty-one years of age for possession and use of fireworks should bring assurance that this increases the safety factor. Remember

some States allow for twelve year olds. The time of using these is specific as well. The positive aspects would see new businesses and jobs created; and that freedom – autonomy, civil liberty, political independence need to be considered. The stipulated regulations should be recognized as controlling the arguments being raised. The responsible individual will follow the manufacturer’s instructions and there is no need to restrict fireworks on days that it is o.k. to have a burn permit and it should also be restated that bottle rockets were still not permitted for consumer use under the new law. He also reminded everyone that the sale of fireworks creates sales taxes for local governments and provides affordable entertainment for millions of Americans. Fireworks are safe when used correctly. Policies banning fireworks are too restrictive and fireworks are not the problem; irresponsible users of fireworks are the problem. It is a fact that fireworks have increased and the injury rate has fallen. Fireworks cause fewer injuries in children than bicycles, skateboards, and pellet guns and yet fireworks are the only category where prohibition, instead of education and adult supervision, is urged. The real culprit, he explained, is illegal fireworks, not legal fireworks. It is a jailable offense to furnish to a minor. We should do more to make citizens aware of our town laws while encouraging safe practices. Policies banning fireworks are too restrictive and I would urge the public to maintain their personal freedom in this regard. Finally he reminded everyone that reports analyzing injury data shows that in instances where legal types of fireworks were involved in accidents, either from misuse or malfunction, the resulting injuries were relatively minor and did not require hospitalization and that the majority of injuries from the consumer or family type involved misuse rather than malfunction. The bottom line is that we have too many laws.

**PAT HOLLAND:** What are we discussing here? Why is every single paper saying we have the right as a community to make a decision on what we want to do? If we go with your argument – we shouldn’t be doing it. You should do what our citizens want not the people that just come here.

**LINDA HARDACKER:** This is a well written ordinance. I would like the fine to be higher and posted at our town’s entrance. I trust our Town Clerk and our Police and Fire Department. Enforcement is what we need to help our community to move forward and not go backward.

**KATHY SMITH:** Isn’t the choice of the voting citizen what is important here? I didn’t even know about the State law discussion on this subject so attending as Councilor Coleman suggested was not possible.

**COUNCILOR MACDONALD:** At the last Workshop one person said one thing interesting to me. As far as the violation and I asked the Chief if he had given any summons or fines out – I don’t like the subjectivity of the charges that will be fined. I don’t think the Ordinance is well written. I can’t drink on the beach because it is illegal. It is subjective whether they get a ticket or not. I want to see the record of how many times they have actually gotten a fine. I struggle with someone writing a policy on this. I don’t think it should be subjective. We better put our foot down and say no but we better make sure our Police are giving a ticket. I think this is weak and I would ask the Council to think about it more.

**VICE CHAIR TOUSIGNANT:** I didn't think the \$100 was enough but obviously the suggestion is now \$100, \$500, \$1,000, \$2,500. Fines need to be defined.

**POLICE CHIEF:** There is a disorderly conduct law. There are steps in place to make people comply. We aren't trying to give people a hard time but just that they comply with the Ordinance.

**VICE CHAIR TOUSIGNANT:** Are increments legal?

**POLICE CHIEF:** Yes, that is why the Judge has the range of fines.

**COUNCILOR MACDONALD:** If you give me a ticket for \$100. I can just pay that ticket, right. I don't have to go before a Judge nor does the Police Department decide? I don't think people should go to Court. Just my opinion.

**VICE CHAIR TOUSIGNANT:** He expressed his personal opinion on the Ordinance and indicated that he had received many calls from citizens relative to this issue. He did indicate that he was concerned about the fines and how it has been related. He felt that it should be in steps - \$100 first violation; \$500, \$1,000 and \$2,500. It should also be noted that these fines are the responsibility of the Judge, not the Police.

**CHIEF KELLY:** He indicated there is flexibility in the fines depending on the judgment of the Courts.

**CHAIR QUINN:** He indicated that flexibility in the fine structure is the important way to go.

**COUNCILOR DAYTON:** I am in favor of the defining of the fines.

**COUNCILOR COLEMAN:** This subjectivity blows my mind. I am not impressed with our Legal Counsel. The way this is written a person can be summoned and fined \$2,500. This is as it came from our Legal Counsel. I am against this Ordinance. If we pass this ordinance, I want this to be vigorously enforced. If they blow off fireworks they better be fined. We are passing an ordinance that needs to be adhered to if it is passed. When we pass laws that are not enforceable we lower the expectation of the law. I want the Police to enforce the laws and be respected by the people of the Town.

**CHIEF KELLEY:** It is not a high priority and has a high number staff looking at this.

**COUNCILOR COLEMAN:** That is just my point.

**CHIEF KELLEY:** We don't look for trouble. We address the issues. I can assure you it will be enforced to whatever level it needs to be.

**COUNCILOR DAYTON:** I don't know where this is going but I have 100% confidence in our Police and Fire to enforce the law as they have been doing.

**FRED DOLGAN:** Councilor Coleman. You said something like the Police Department needs to enforce the law. What are you going to do if the Police do not immediately fine a person?

**COUNCILOR COLEMAN:** If we pass an ordinance we are passing it to be observed.

**FRED DOLGAN:** Never is a law obeyed. Why are we dealing with all these obvious things that you are bringing up?

**LINDA HARDACKER:** We have this type of fine structure for our Police Department in Biddeford and it has worked. We have confidence in our Police and Fire Department and we do trust them to make the call and it has worked.

**COUNCILOR MACDONALD:** She expressed concern about the fee structure and asked how people coming into the town during the summer months are going to know that we don't allow firecrackers and then they set them off and where does the fairness issue come in on how they are fined?

**CHIEF KELLEY:** Again the Police Chief indicated that the Police Officers understand the sensitivity of these issues and react accordingly.

**VICE CHAIR TOUSIGNANT:** He indicated that the fee structure needs to be looked at again. And that adding more appropriate language is the way to go.

**JOHN MARTINEZ:** He spoke with the business perspective that he felt there was no need for an Ordinance and State law requirements that people be 21 and over and who are not impaired by drugs or alcohol, another requirement. There are too many good reasons to say that we should have fireworks. It is legal in the State so I am very careful when a law has been passed and instead of being more focused on compliance and the already restrictive nature of the law Statewide, very careful to undo in a general sense, but more in a larger sense, there is money to be made. The same things with gambling. We are a business community and I own a house but I also own a business and we need more people to come to our town during the season. It is not like we are making this a 360 day event. We are overstating this. It says something about the possibility of opening a business and bringing business to our Town. I do not advocate for children to have fireworks but this is a 21 year and older restriction. Sure there could be a misuse but there is the ying and the yang in everything. Compliance is the answer and not outlawing it.

**COUNCILOR DAYTON:** Portland and other Towns have followed suit and are not allowing fireworks and the State has given us this option.

**GINA MARTINEZ:** She said she has mixed feelings on this subject but that it would not hurt to wait to see what happens and then address this issue. She also indicated that although, controversial, it is an issue that compliance is the issue not controlling the situation. I have concerns about those who come up during the summer and own property here and they are not going to know the laws. I called the Police and the Police have to give a ticket to the kid because of the law. We are just bringing up another controversial issue.



**VICE CHAIR TOUSIGNANT:** So as we look at the fine issue, is there consensus to move forward with the defining of the fines.

**TODD BASSETT:** I agree with the Chairman's comment that the Police can use good judgment. There will be times when it is only a warning because it wasn't intentional. I don't see the \$100 to \$2,500 difficult using reasonable judgment. The other thing I want to mention was that I was the person who made a comment to the Councilor who mentioned it this evening and the fact that I did apologize immediately after the meeting where I misspoke and I assumed that my apology had been accepted.

**LINDSAY CARTER:** We have heard a lot of good things but I think there should be a structure. I can't afford a ticket so that is enough to make me obey the law. I support creating a structure.

**CHAIR QUINN:** He thanked all who attended and have provided their opinion on this subject. I close this Public Hearing at 8:47 p.m.

#### **PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:**

**CHAIR:** I open this Public Hearing at 8:48 p.m.

McCullums LLC dba/Mr. Bills Pizza & Subs (206-24-4-C), 34 Saco Avenue, Victualers with Preparation, No Alcohol; Ronald Vance dba/Go Driving. Co (207-3-4X), 128 Saco Avenue, Personal Service; Meghan LaPlante and James LaPlante dba/Miss Meghan LaPlante's Lobster Catch (210-2-44-A), 1 Olympia Avenue, Victualers without Preparation, No Alcohol; and Richard Meoli (319-15-5), 6 Reggio Avenue, one year round rental.

**COUNCILOR COLEMAN:** Meghan LaPlante and James LaPlante dba/Miss Meghan LaPlante's Lobster Catch (210-2-44-A), 1 Olympia Avenue, Victualers without Preparation, No Alcohol. Councilor Coleman indicated he was happy to support this business license. He said he knows the LaPlante family personally and that Meghan goes out with her father and has a student lobster license and this will be an excellent opportunity for her to understand the business world. She gets up in the morning, baits the traps, and picks up the lobster and actually gets a value for that. I am happy to support this and to support the LaPlante's in this endeavor.

A father, James LaPlante, came in to apply for a business license for his twelve-year-old daughter, Meghan, who has a student lobstering license and wants to see her fresh lobsters from her home. She goes out each morning and baits her traps on her father's boat. Here is a young lady at the age of 12 who is learning about the value of work and the joy it brings. Just thought a little recognition is noted here.

**CHAIR:** I close this Public Hearing at 8:50 p.m.

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

**VOTE:** Unanimous.

## **PUBLIC HEARING: SPECIAL AMUSEMENT PERMITS**

**CHAIR:** I open this Public Hearing at 8:51 p.m.

**Surf Six Inc., dba/Surf 6 Restaurant & Lounge** (306-2-9), 2 Cortland Street, Bands & DJ's, Inside and Outside, 12:00 p.m. – 12:00 a.m.; and **Fly by Night Inc. dba/Mr. Goodbar** (306-5-2), 6 East Grand Avenue, Live Bands, PA, DJ, Karaoke, Inside 7:00 p.m. – 1:00 a.m.

**CHAIR:** I close this Public Hearing at 8:52 p.m.

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

**VOTE:** Unanimous.

### **TOWN MANAGER'S REPORT:**

I am delighted to attend my first Town Council Meeting and thank the Council, Department Heads, Staff and citizens that I have had a chance to meet in my first week. I look forward to working in this position and establishing a good working relationship with all. It has been a busy time since my arrival last Wednesday. Former Town Manager, Jack Turcotte, has been extremely helpful in briefing me on issues facing the community and past history on some of these items. I worked three days or twenty-four hours plus and spent twelve hours with Jack. I enjoyed the opportunity to meet for short periods of time with Department Heads as well as meeting as many of the employees as I could. As you know there is a lot to work on in Old Orchard Beach. We are prioritizing projects and Council items in order to meet all of the expectations and time lines. This involves assigning contracts, hiring the seasonal full-time employees, working with the Finance Director on compliance issues as well as the day-to-day operations of OOB. I also will reassure you that the Finance Director and I are speaking on a daily basis with respect to setting up the budget for the next fiscal year. My management reports will certainly contain more detail in the days ahead but for this evening, I am just happy to be here.

### **NEW BUSINESS:**

**#5562 Discussion with Action: Amend FY2012 Budget to reduce Account Number 20205-50837 – CIP (designated as a Skateboard Contribution) by \$15,000.**

**COUNCILOR DAYTON:** She motioned that this be tabled. She felt that the account codes were not presented in its entirety and we have requested this always in the past. These funds are already appropriated. We are already paying for these and to use the term reduce is not correct. This has already been passed. The use of the term reduction tends to imply there is a savings and there is not a savings and we are not giving back money to the citizens. If it is a savings, it is a false savings. You could suspend the funds or reprogram these funds. There is no designation where this is going. They are

appropriated. They exist. You can't take them away. You are not going to get them back. No one should be fooled to think that this is going to save money. There has not been public discussion. In all cases when the Council has said they will not support a CIP amount, it is discussed at budget time. It provides public access to weigh in on the subject and to move this forward during vacation week when the kids are away is questionable to me. No one on the Recreation Board was invited tonight. How much we get done is dependent on going out for RFP. If we had gotten \$50,000 instead of \$18,000 in a grant I might not have had a problem with this but I don't understand why we are moving this forward and using the word reduction. It is not a paper chase. The money does exist and your tax bills show this. So to take money away from kids who have worked so hard to make this possible, I can't support. The public needs to weigh in. We need to follow past process and discuss this in the budget process. I am asking that this item be removed indefinitely.

**CHAIR QUINN:** It should be noted that \$15,000 is in the CIP Budget designated for the Skateboard Park and this needs to be amended per the Finance Director and Chair Quinn. It should also be noted that the regular Skateboard Account, not CIP, contains two \$15,000 donations by the Council; a \$5,000 and \$3,000 grant awards; and \$4,000 in fundraising for a total of \$42,000 with another grant award of \$18,000 which has been given to the Skateboard project but has not been received at this time making a total of \$60,000.

**COUNCILOR MACDONALD:** I believe the Minutes reflect that what Chair Quinn is saying is correct. Councilor MacDonald asked the Assistant Town Manager if indeed the minutes of the April 21, 2011 Workshop Minutes indicated the \$15,000 was not approved as part of the budget proposal for the CIP/Skateboard Park. The Assistant Town Manager read the following from the Minutes: "Vice Chair Tousignant and Councilor MacDonald both indicated that, although they praised and appreciated the work of the Skateboard Group toward raising money, they made it clear in the budget process last year that they would not support more money this year. The Chair, Bob Quinn, who acknowledged the work of the youth, said he felt the group should look at a "scaled-down" version and do more fundraising. He indicated that "the youth of today you'll be half the age I am before it gets built at the rate it is going." The courtesy and sincerity of all in attendance was acknowledged." Councilor Dayton again raised the issue that the Budget was approved in June of 2011 and this is not following proper procedure to amend the budget at this point in time. Councilor Dayton requested several times that the Finance Director appear and answer questions but the Finance Director had already left the meeting. The parents of the Skateboard Park are clear on this and agree to it as well.

**COUNCILOR COLEMAN:** Whether it was a mistake or not. If it is part of the budget then that \$15,000 was passed, shouldn't remain there? Can we ask the Finance Director to answer that?

**FINANCE DIRECTOR:** Yes it has been appropriated.

**CHAIR QUINN:** Yes, that is the reason it was on Jack Turcotte's list of follow up items.

Discussion continued between Council members. Jerome Begert explained that, although supporter of the skateboard park, he felt that in this case the correct allocation of funding should be noted and that as a Skateboard proponent he felt budget restrictions are

required this year because of the economic situations facing the municipality. You have a covenant here. An error can be corrected. Vice Chair Tousignant indicated he knew it was very clear we were not going to appropriate any more money to the Skateboard Park. There is a lot of pressure on the Council on this issue. We have given then \$30,000 as Councilor MacDonald has indicated. He said it is amazing to him that this error has been done and it has come back as an embarrassment to the Council. He agreed this should go back into Undesignated Fund because he knows for a fact that the Council agreed not to give the additional \$15,000. The Assistant Town Manager has brought the Minutes forward as well. John Bird reminded everyone that come July as a result of the Charter revisions, such a request to amend will be more difficult. Councilor Dayton spoke at length about this being an inappropriate way to address the already approved budget which was passed last June for the fiscal year 2011/2012. She also indicated that nothing has been done underhanded in this. I don't believe our former administration would do this. She said she believed the Minutes are not reflective of the confusion that existed during the Budget Hearings. I am asking for a second to my motion to have this Agenda Item Removed Indefinitely. There was no second to her Motion. Councilor Coleman indicated that he was confused at the beginning of the Meeting how to address this but it appears from the Minutes that there was not agreement to allocate the funds for the current year. If we find new evidence we can revisit this. Linda Hardacker indicated that she felt if it was tabled it would give her and others a chance to understand the issue better and it didn't appear that this was so urgent it had to move forward. Councilor MacDonald indicated that the Assistant Town Manager had \$30,000 from taxpayers; grants of \$5,000 and \$3,000; and \$18,000 from another grant; there is a bucket of about \$60,000 in the bank when they receive the \$18,000. Linda Hardacker said that will barely build you a rail, mount and drainage. We did some things in house but it costs a lot of money. I knew this would be a lot of money involvement. We, of course, would love to see a Skateboard Park here. Vice Chair Tousignant said this is about correcting an accounting error. It is simply to correct a misguidance that happened earlier. We have heard from the Minutes so why we are going on about the building of the Park I don't know. You were misled at the beginning since we never promised them the \$15,000. Can we move forward with this? Again, Councilor Dayton continued to argue that inaccuracy of the agenda item. Jerome Begart again said the Minutes state the \$15,000 was not allocated. It is just a clerical error.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Amend FY2012 Budget to reduce Account Number 20205-50837 – CIP (designated as a Skateboard Contribution) by \$15,000.

**VOTE:** Yea: Vice Chair Tousignant, Chair Quinn, Councilors Coleman and MacDonald  
Nea: Councilor Dayton

# 5563      Discussion with Action: Approve Liquor License Renewal for Surf Six Inc. dba/Surf 6 Restaurant/Lounge (306-2-9), s-m-v in a Restaurant; and Fly by Night Inc. dba/Mr. Goodbar (306-5-2), 6 East Grand Avenue, s-m-v in a Class A Lounge.

**MOTION:** Councilor Coleman motioned and Vice Chair Tousignant seconded to Approve Liquor License Renewal for Surf Six Inc. dba/Surf 6

Restaurant/Lounge (306-2-9), s-m-v in a Restaurant; and Fly by Night Inc. dba/Mr. Goodbar (306-5-2), 6 East Grand Avenue, s-m-v in a Class A Lounge.

**VOTE: Unanimous.**

**# 5564 Discussion with Action: Amend the Travel/Mileage Reimbursement Policy Item III, Reimbursable Expenses (A) Transportation Mileage – Personal car to increase employee reimbursement for use of personal vehicle on Municipal business from .48 cents per mile, to the IRS mileage rate of .55.5 cents per mile; with IRS mileage rates being established each year beginning January 1<sup>st</sup>; with this change in effect February 22, 2012.**

Discussion on this item included the second to the Vice Chair Tousignant motion from Councilor Coleman that the State government rate of \$.44 cents be the mileage rate for the municipality since this was a result of union bargaining but there was no second to his motion and so the motion remained dead. Councilor Coleman amending the motion to match the State amount. Further discussion continued about the economic situation that we are currently in and Chair Quinn asked if adjusting to the IRS approve rate has come up previously on a regular yearly basis to which the Assistant Town Manager indicated it had not. There was not second to the Amendment.

**MOTION: Vice Chair Tousignant motioned and Councilor Coleman second to Amend the Travel/Mileage Reimbursement Policy Item III, Reimbursable Expenses (A) Transportation Mileage – Personal car to increase employee reimbursement for use of personal vehicle on Municipal business from .48 cents per mile, to the IRS mileage rate of .55.5 cents per mile; with IRS mileage rates being established each year beginning January 1<sup>st</sup>; with this change in effect February 22, 2012.**

**VOTE: Yea: Vice Chair Tousignant  
Nea: Councilors MacDonald, Dayton, Coleman, Chair Quinn**

The agenda item failed and the rate will remain as it has been of \$.48 cents per mile.

**GOOD AND WELFARE:**

**# 5565 Discussion: Enter into Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(E), concerning the Town's legal rights and responsibilities related to financial and employment matters.**

**Joining the Executive Session:**

**Tammy Lambert – Human Resource  
Glenn Israel, Esquire – Bernstein & Shur  
Jim Houle, Esquire – Bernstein & Shur**

**MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Enter into Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(E), concerning Town's legal rights and responsibilities related to financial and employment matters.**

**VOTE: Unanimous**

**MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to adjourn the Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(E), concerning Town's legal rights and responsibilities related to financial and employment matters.**

**VOTE: Unanimous.**

**ADJOURNMENT:**

**MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Adjourn the Town Council Meeting at 11:30 p.m.**

**VOTE: Unanimous.**

**Respectfully Submitted,**

**V. Louise Reid  
Town Council Secretary**

**I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty-one (21) pages is a copy of the original Minutes of the Town Council Meeting of February 21, 2012.**

**V. Louise Reid**