

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP.
TOWN HALL CHAMBERS
Tuesday, January 24, 2012
7:00 p.m.**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Tuesday, January 24, 2012. Chair Bob Quinn opened the meeting at 7:03 p.m.

The following were in attendance:

**Chair Bob Quinn
Vice Chair Michael Tousignant
Councilor Robin Dayton
Councilor Sharri MacDonald
Councilor Michael Coleman
Town Manager Jack Turcotte
Assistant Town Manager V. Louise Reid
Richard E. Taylor – Senior Research and Planning Analyst –
State of Maine – Fireworks Division
Police Chief Dana Kelley
Fire Chief John Glass
Town Clerk Kim McLaughlin**

There have been other Council Workshop discussions on the sale and use of fireworks but now that the State law permits them it was agreed another workshop was needed to address how Old Orchard Beach will handle this issue. The 125th Maine Legislature enacted Public Law, Chapter 416 “An Act to Legalize the Sale, Possession and Use of Fireworks.” Beginning January 1, 2012, the sale, possession and use of consumer fireworks are legal. The new law authorizes municipalities, by ordinance, to prohibit or restrict the sale or use of consumer fireworks within the municipality but before municipalities undertake to do so it is important they understand what is and is not allowed under the law.

There has been discussion about leaving things as the status quo, which limited use of fireworks; outright banning; selected partial bans; and others have thought to let the law take it affect and see what happens. Citizens have called the Administration’s office with concerns over safety and increased risk of fires. Others were concerned about children using them and being injured. Councilor Coleman indicated that that is minimal. The issue is whether fireworks will get into the hands of the wrong people. Our high population density exacerbated safety concerns. The other issue raised by those against the sale and use of fireworks was that the noise complaints would be excessive and the limited ability of the police department to handle all those complaints. Those concerned about banning and other limiting policies were concerned about taking away personal freedom. Some felt we were micromanaging what fellow citizens do. The use of fireworks on the Town beach was a concern as well as the piping plovers.

Over and over again the Police and Fire personnel throughout the State have indicated that they are realizing how difficult and labor-intensive fireworks enforcement will be. The invitation for Mr. Richard Taylor, Senior Research and Planning Analyst – State of Maine – Fireworks Division, provided an interesting dialogue on fireworks providing us a more intelligent understanding of the types of explosives. The subject of explosive devices was discussed and it was stated that explosives are still illegal. Legal consumer fireworks are made by professionals who follow a permitting process and fireworks that deviate from that definition in any way are a violation of the law. The legal penalties for building, possessing or using homemade explosives vary depending on many factors such as design, explosive power what the device is used for and other aspects of the crime to determine what charges are appropriate.

Commissioner Todd Bassett, a resident of Old Orchard spoke about having to put up with illegal fireworks the three months of the summer season with the influx of tourists and that he is not, nor should he be required, to put up with it all year long. He also spoke about his concern for the closeness of properties in Old Orchard and the safety danger involved. Also his concern is heightened by the location of the 1,435 seat Pavilion Amphitheater located in the middle of the Campground and the noise and disruption that would be caused by continual use of fireworks on private properties. He acknowledged that this is a tourist community in the summer but certainly attention should be given to the wishes of those who live here year long, pay taxes, and should have the opportunity to be supported by Council. He reminded the Council that a few years back, and each year for that matter, attention is given to the cutting of police and fire and reserve officers and this certainly would lower the protection of the citizens.

The Assistant Town Manager also indicated that at a recent meeting of 50 members of The Salvation Army there was a unified support of not permitting the sale or use of fireworks in the community; their main concern the safety factor for even the injury of one child is one too many; and secondly the noise element which has always been a distraction and frustration in small communities such as ours; and thirdly the closeness of housing particularly in the campground area.

Resident Linda Hardacker said that the law states that only those 21 or older can use fireworks, but should there fireworks remain legal in town there would likely be minors using them illegally. Also many of the buildings in town are in close proximity to one another and should fireworks be allowed, it would create more work for the fire department which is already stretched to the limit. Councilors Coleman and MacDonald disagreed and said there would be more police issues if fireworks were illegal in Old Orchard Beach. Tourists who come from out of State who have heard that fireworks are legal in Maine may not realize they are illegal in Old Orchard Beach. This would overburden the police. Below are comments made by Ms. Hardacker: “I live at 12th Street in the Historic Salvation Army Encampment area. I have been in Community and Economic Development for over 18 years and my specialty is Neighborhood Revitalization. I am against creating an ordinance that allows for any fireworks other than what has been allowed in the past or prior to January 1st. We are a small community of 7.6 square miles and most of our buildings are very old and very close together. Living in the encampment area we are all very vigilant about open burnings and are on the watch every Fourth of July. We have also had a number of fires in our downtown and any fireworks store and/or the sale of fireworks would certainly add to this problem. In addition we already have wonderful professional fire works displays weekly in the summer time out over the water. In saying that, this past

Fourth of July while standing in the Town square I observed many folks standing and stomping through our dune grass protected area. I also observed two men smoking with their children twirling sparklers while standing in the midst of the dune grass. I would have made a call to the Police but I did not have my cell phone with me. I and a number of people asked them to get out of the area but they just kept standing their smoking and their children twirling the sparklers. This was also as you know in close proximity to our wooden pier. And you want to allow more fireworks? We need adequate control over these situations not adding more. The increase risk of fire by allowing more fireworks than what we already have is an increase risk to those of us in the encampment area. Also, our Fire Department is stretched to the limit now and who will answer the call to my home or yours when they are called to a fire or accident elsewhere started by fireworks. As other communities around us say “no” to the sale and use of fireworks we will become the destination for those seeking to do it elsewhere. As a community we have nothing to gain by allowing more than what we have now and I urge you to stay with what we have, continue our advancement as a community and reserve the use of our City departments for serious life safety situations as opposed to those that are preventable. In closing I would really like to have Chief Glass come forward and speak to me and the citizens as to how he sees this decision, the increased fire danger, accident probability, and the effect it will have on his department including overtime, need for additional staff, etc., if passed.”

Chief John Glass presented a survey from the National Fire Protection Association – Fire Analysis and Research Division of June 2011. He indicated that on Independence Day in any typical year, far more U.S. Fires are reported than on any other day and fireworks account for more than half of those fires, more than any other cause of fires. In 2009, fireworks caused an estimated 18,000 reported fires including 1,300 structures, 400 vehicle and 16,300 outside and other fires. These fires resulted in no reported deaths and an estimated 30 civilian injuries and \$38 million in direct property damage. There were 32% hand or finger injuries; 45% head or face injuries; 27% eye injuries; 12% leg injuries; 9% arm, shoulder and wrist injuries; and 5% trunk injuries. Males accounted for 73% of firework injuries in 2009. Another survey suggested that there were 51% burn injuries; 25% contusions or lacerations; and 9% other related injuries. He said that the highest risks of fireworks injury are to school-aged children under the age of 15. The highest relative risks of fireworks injury were for children aged 10 to 14. In percentage factors 45 years or older accounted for 5% of the injuries; 25-44 years of age accounted for 29% of the injuries; 5-9 years of age accounted for 14% of the injuries; 20 -24 years account for 12% of the injuries; 10 to 14 accounted for 18% of the injuries; and 15-19 year olds accounted for 15% of the injuries.

Councilor Coleman would remind the Council and the citizens that the Maine law allowing the use of Consumer Fireworks prohibits sale, use or possession by anyone under 21 years of age and that the 25% of all fireworks related injuries are from sparklers which have been legal even before the passage of the new State law. When we consider that the total property damage in 2009 of \$38 million in the United States, a country of over 300 million people, which works out to about 13 cents per person. Furthermore Maine having a minimum age of 21 for the possession and use of fireworks should experience a better than average safety record. The representative from the State Fire Marshall’s Office agreed with that assessment.

Police Chief Dana Kelley said he is also opposed to allowing use and sale of fireworks. He said he didn't see any advantage for the Town to allow fireworks and that there are already problems with fireworks when they were illegal and he could see problems such as irate neighbors complaining of noise from those who light fireworks at night.

Councilor Coleman pointed out that allowing the sale and use of fireworks will see new businesses and jobs created as a result of this law but most importantly some additional fees will come to the town to assist citizens in funding concerns. Freedom – autonomy, civil liberty, control, empowerment, liberties, political independence, freedom of conscience and personal freedom ought to be valued. He indicated he understood that the boundary of individual freedom coincides with the boundary of personal freedom of others but he felt it was his duty as an elected official to protect personal freedom. He also indicated that some of the basic requirements of the 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.

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. The pyrotechnics company is not using consumer fireworks so the law would not affect them. Even if they were to use consumer fireworks as part of their show, consent would be given through the Town acting on behalf of the citizenry who have consented via the charter of incorporation to grant that power to city government.

Councilor MacDonald said the issue is about choice being taken away from people. She agreed with Councilor Coleman that tourists coming into town will understand that fireworks are allowed in the State of Maine and assume that it is legal to use them in Old Orchard. She objected to having signs all over to alert people that they can't use fireworks. She indicated she believed that it is possible to address the issues as they arrive. Councilor Michael Coleman said that the State law is responsible only allowing those 21 and over to buy and use fireworks and only allowing them to be set off until 10:00 p.m. He said he was in favor of allowing fireworks to be used and sold in Town. We will be taking rights away from people if we enact an ordinance against them.

Also speaking on behalf of those supporting the law which was just passed regarding the sale and use of fireworks was Kristopher Fish, an Old Orchard Beach Firefighter, and Stephanie McCollum. Both gave their conviction that people should not have their rights restricted when the State law says it is legal. Mr. Fish also provided statistics supporting the statistical analysis of how little of an impact there really is in the use of fireworks compared to the population of our country. He urged the Council to give opportunity to the citizens to have the freedom of choice. Ms. McCollum, as a business owner, encouraged the Council as a business owner to permit opportunity to sell and use fireworks not be hampered by ordinances or rules.

Councilor Dayton who said that someone nearby her home lit off bottle rockets that ended up in her front yard also said she was in favor of banning fireworks and it was a public safety issue. Vice Chair Tousignant asked for more specific information on who can sell fireworks and what are some of the stipulations in place to sell. It was pointed out by Mr.

Taylor that you must be 21 years of age or older to obtain a license to sell fireworks in Maine and you must have a federal permit to sell fireworks under Title 18 United States Code, Section 843. A local permit may be needed. You can only sell consumer fireworks in a permanent, fix, stand-alone building dedicated solely to the sale of consumer firework. No motor vehicle used for temporary storage of consumer fireworks shall be parked for more than 90 days on the premises for the consumer fireworks retail facility. In order to be licensed to sell consumer fireworks, a person must be at least 21, must get a federal permit from the Bureau of Alcohol, Tobacco, Firearms and Explosives and any municipal permit that may also be required. Mr. Taylor said that the ATF would conduct a background check on all those seeking permits and that a State license to sell fireworks would not be issued to anyone convicted of violating State, Federal or Municipal law involving fireworks or explosives within the last two years. In addition under the new State law, fireworks retailers must locate their shop 60 feet from any other building and can't locate any closer than 300 feet to where gasoline line, propane or other flammable materials are sold or dispensed. Also, the law prohibits the sale of cigarettes, tobacco products, lighters or other flame-producing devices within such shops. When selling fireworks the retailer must provide the purchaser with written guidelines describing the safe and proper use of consumer fireworks. That State law also limits the discharge of fireworks to between 9 a.m. and 10 p.m., daily, exception July 4 and New Year's Eve, when fireworks can be let off until 12:30 a.m. The State law also stipulates that people can discharge consumer fireworks only on their own property or with the prior permission of the property owner. This provision would mean that most beaches would be off limit.

Despite our use and exposure to fireworks, few people consider the minerals that make them such a spectacular part of the festivities. Mr. Taylor indicated that barium, strontium, copper, sodium, titanium, zirconium and magnesium alloys are used. Bright flashes are used to create shower affects. We discussed types of rockets and Mr. Taylor explained them. There are missile type rockets which are devices similar to sky rockets in size, composition and effect that uses fins rather than a stick for guidance and stability. Missiles shall not contain more than 20 grams of total chemical composition. There are Helicopters and Aerial Spinners. This is a tube containing more than 20 grams of chemical composition with a propeller blade attached. Upon ignition the rapidly spinning device rises into the air. A visible or audible effect may be produced at or near the height of flight. There are sky rockets and bottle rockets which are cylindrical tubes containing no more than 20 grams of chemical composition as prescribed under Section 3.7 and Table 4.3-1 of the American Pyrotechnics Association Standard 87-1 with a wooden stick attached for guidance and stability. Rockets rise into the air upon ignition. A burst of color and/or sound may be produced at or near the height of flight. Consumer fireworks has the same meaning as in 27 Code of Federal Regulations, Section 555.111, but includes only products that are tested and certified by a third party testing laboratory as conforming with the United States Consumer Products Safety Commission standards. It is noted that Pyrotechnics of fireworks expels smoke and hazardous metals which can be toxic.

Another citizen, Bob Riley, also spoke emphatically about the need to have an ordinance to prohibit the sale and use of fireworks. He admonished the Council to consider the people who live here year round and not to always give into the needs and wishes of the tourist community. He said he was tired of being kept awake by the noise of fireworks when they were illegal and he is not prepared to allow it to be a 24 hour a day event.

The Chair thanked those who attended the meeting and suggested that this item will go on the next agenda with a possible vote on the issue.

Chair Quinn then introduced the subject of the next workshop which is on the subject of a parking permit for non-residents for Milliken Street Parking Lot. The Town Clerk gave an excellent presentation on the history of the parking permit. In August of 1997, the Town Council adopted a Parking Permit Policy authorizing Memorial Park municipal parking permits be sold only to Town residents, \$10.00 per permit, no more than two permits issued per household. Seasonal permits could be sold to businesses on a first come, first served basis, at \$270 per permit, allowing for no more than two permits per business, and no more than five businesses to be issued permits; however, at the time Milliken Street was just a dirt parking lot, so businesses could purchase an unlimited amount of permits for that parking lot at \$100 each. The history on parking permits begins in 2001, the year the Town Clerk's Office started selling the permits. No one purchased the business permits from 2001 to 2004. In May, 2005, the Town Council amended the policy, authorizing the sale of permits for the Milliken Street municipal parking lot at \$25 per permit, or a resident could purchase a combination Milliken Street/Memorial Park municipal parking permit for \$50. A resident could not purchase the Memorial Park permit separately. In 2005 and 2006, the larger number sold is for the \$25 permit. In February of 2007, the Town Council rescinded the policy, and created a new one. Residents could now purchase the combo permit only, including both Milliken Street and Memorial Park municipal parking lots, at a cost of \$50 per permit, limit of two per household. A non-resident permit was created for \$300, and anyone could purchase those permits, and they were unlimited. From 2007 to 2011, no one purchased the non-resident parking permits.

Discussion this evening involved the question of reduction of the \$300 non-resident parking permit for Milliken Street Parking lot. There was a question of whether to sell a limited number of permits; some thought 200 and some suggested only 100 based on the drive-in tourist parking down there during the summer. It seemed the consensus was to sell 100 non-resident parking permits. Discussion continued on what to charge for those 100 permits and some thought \$100 and others suggested \$125 or \$150 and it appeared to be a consensus at \$150 for a permit. The final instruction before a public hearing is that the permit will be \$150 for the first 100 non-residents who come into purchase the permits with no limitation on the number of permits to be issued to one individual or business. A Public Hearing date of February 21, 2012 will be set at the February 7, 2012 Town Council meeting.

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 Special Town Council Meeting of January 24, 2012.

V. Louise Reid