

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, March 6, 2012
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, March 6, 2012. Chair Quinn opened the meeting at 7:04 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: Quarterly Update by the Ballpark Commission
on the Activities of the Ballpark**

The Town Council has asked for quarterly reports and updates from the Ballpark Commissioners. The Commissioners will present that report this evening.

**Ballpark Commissions & General Manager Report presented by Ballpark Commission
Chair, Dana Furtado**

We'd like to begin this quarterly report by giving you a glimpse into the upcoming season. As many of you know, we are excited to report a two-month lease agreement has been signed for the 2012 and 2013 seasons between the Town and the Old Orchard Beach Collegiate Baseball Club, LLC. The new Raging Tide team is led by local OOB residents John and Pam Gallo, and is a member of the Futures Collegiate Baseball League. The Futures League requires at least 13 players to be from New England and is certain to attract a local fan base. In only its second season, the FCBL consists of nine New England teams including: Brocton Rox, Martha's Vineyard Sharks, Nashua Silver Knights, North Shore Navigators, Pittsfield Suns, Seacoast Mavericks, Torrington Titans, Wachusett Dirt Dawgs, and our own home team, the Old Orchard Beach Raging Tide. The 27 home-game-season will be played during June and July and the beginning of August with a home-opener on June 7th. Once the new Raging Tide website is launched, you will be able to get more information on how to purchase your season tickets, as well as to view schedules and upcoming events. In the meantime, we encourage everyone to follow the team on Facebook and Twitter or visit the websites of the FCBL and the Ballpark for more information. In addition to the Raging Tide's 27 home games, we have over 120 baseball games scheduled at the Ballpark. From youth and men's league play, as well as high school and college games, to State and Northeast American Legion multi-day tournaments, there will be plenty of baseball opportunities this season. Beyond baseball, we continue to work on

bringing quality family entertainment to the community. We have scheduled already, with the help of OOB365, the second annual State BBQ Festival, POW/MIA Event, Regional Dog Show, and Woofstock. We have plans also to bring more events for families, kids, and adults alike. In the near future, we should be ready to release those activities and on our website and facebook accounts. Since our last presentation in October, the Ballpark Commission has elected new officers, adopted a new Code of Ethics, created new policies and procedures for advertising, and has created new subcommittees to oversee various operations of the facility and to more clearly define the roles of each commission member. The focus now will be shifted to assessing and prioritizing the needs of the facility as well as fundraising efforts. As we transitioned ourselves last year from a volunteer based organization to one with a new management structure with some paid staff as well as volunteers, we continue by taking baby steps. Without a full commitment from the Town, both financially and with respect to an overall mission and long-range plan, it will be difficult for this facility to reach its full potential. As stated last fall, we, the entire community, need to take responsibility and come together to truly create a real vision for this facility. The Ballpark has the potential to be the Region's Premier Amateur Baseball, Entertainment and Recreation Complex. We must continue to work to turn this property that was once a liability into an even more revenue-driven community asset that provides valuable open space, recreational opportunities for all, and visibility to the community in a positive and meaningful way. We continue to be on the right track and realize it takes patience and time to reach our goal. We look forward to the upcoming season and to building a solid foundation with our anchor team, the Raging Tide. It will be the support of the entire community and beyond that will help our new home team to be successful. Whether you help by volunteering your time, sponsoring an event, or purchasing tickets to a game or special event, the future of the Ballpark and of the Raging Tide will lie with each one of us. Given the resources available to us, we will continue to improve the infrastructure of the facility as much as we can through fundraising and volunteer efforts and we look to you, the Town Council, for your support as we go through the budget process in the coming months. The Commission is eager for this new year for the Ballpark and we can promise that we will work hard to keep the Ballpark moving in a positive direction.

ACKNOWLEDGEMENTS:

COUNCILOR MACDONALD: I would like to remind everyone of some important community events: The ALUMNI BASKETBALL CLASSIC is scheduled for Friday, March 9, 2012; Games start at 6:00 p.m. in the Old Orchard Beach High School Gym - \$5 Admission. Want to play in the Game? Want to sponsor a game? Contact: Sharri MacDonald - smacdonald@maine.rr.com - 207-590-4201 - 100% of the proceeds for the Alumni Scholarship Fund support the Scholarship Program. The COMMUNITY ANIMAL WATCH is having a bottle drive on Saturday, March 10, 2012 at 10:00 a.m. to 4:00 p.m. at the IGA on Heath Street. If you have bottles or cans that you are willing to donate – call 934-1677 or 776-9601 for pick up. Donations will also be received. Also bring dog and cat food to the Town Hall and put in the box outside the Town Clerk's Office.

VICE CHAIR TOUSIGNANT: We would remind everyone that Thursday, March 15 at 6:30 p.m. is a night for fun at JIMMY THE GREEK'S when we will celebrate a night with the "Raging Tide." It will be a time for us to purchase 2012 Season Tickets along with a 15% discounted Raging Tide merchandise certificate; admission to special season ticket holder only

events; free home playoff tickets; and a chance to win free Futures League all-star tickets at Nashua on July 26th. Help us get ready for a great 2012 season as the Raging Tide competes in the Futures Collegiate Baseball League of New England. More information on the Ballpark web site and RSVP to the Raging Tides at their Ragingtidebaseball@gmail.com

COUNCILOR COLEMAN: We would remind you that all are welcome at the OOB365 free Community Dinner scheduled for Sunday, March 11, 2012 from 3:00 to 6:00 p.m. at the American Legion Hall, 14 Imperial Street. OOB365 is partnering with the Sons of the American Legion for the betterment of Old Orchard Beach. This is a great opportunity to join your neighbors and friends and meet new ones as well.

COUNCILOR DAYTON: We would like to express our thanks to Rick and Eileen Payette, owners of the Landmark Restaurant and Jumpin Jakes for hosting the fundraising event for the Food Bank. It was Rick's idea, his place, his food, his staff and his excitement that made this a success. Because the list of thank you's is so long, it is best to just thank "all who donated, all who volunteered, and all those who helped "spread the word", sold tickets, and especially those who came and participated. Overall this was a huge success and all the money will be going directly to helping friends and neighbors right here in OOB. The administrative and overhead costs of the Pantry are fully paid by the Methodist Church congregation itself, so 100% of all donations to the Pantry go directly to help its clients. From the auction alone, it appears we raised over \$3,500 and the final figure will surely be more than that as they pull the final numbers from the tickets sales together.

COUNCILOR COLEMAN: Councilor Coleman acknowledged a business owner from Old orchard Beach, Bill Rogers, owner of Bill's Automotive, and a participant in the NASCAR race.

ASSISTANT TOWN MANAGER: On behalf of the OOB Community Animal Watch I would like to read the following letter that was received today: "Greetings. After reading about the good work of the OOB Community Animal Watch in the March 1st issue of the Courier, my husband and I have been inspired to make the enclosed contribution of \$200 towards this wonderful cause. We do this in memory of our most previous family member, Frankee, a 13 year old Chihuahua whom we love most dearly and still grieve at his passing. In addition, we make this contribution in memory of two of our long-time neighborhood dogs who passed away this year as well...Spencer, whom everyone knew and loved, and Marley, a beautiful Siberian husky. We are so grateful for your commitment and passion for cats and dogs in need of food, shelter and medical card, and for the assistance you provide owners for the care of their pets. Thank you. Helen and Milt Ryder of Ocean Park.

ACCEPTANCE OF MINUTES: Town Council Meeting Minutes of February 21, 2012; and Special Town Council Meeting Minutes of February 28, 2012.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Accept the Town Council Meeting Minutes of February 21, 2012; and Special Town Council Meeting Minutes of February 28, 2012.

VOTE: Unanimous.

PUBLIC HEARING SPECIAL AMUSEMENT PERMIT:

CHAIR: I open the Public Hearing at 7:15 p.m.

Dimitri Inc. dba/Jimmy the Greek's Brick Oven Restaurant (211-9-1), 215 Saco Avenue, Bands, DJ's, Comedy & More - (Amplified) – Inside and Outside – 12:00 p.m. to 1:00 a.m.

CHAIR: I close this Public Hearing at 7:16 p.m.

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

VOTE: Unanimous.

TABLED ITEM: PUBLIC HEARING BUSINESS LICENSE AND APPROVAL:

CHAIR: I open this Public Hearing at 7:17

Town of Old Orchard Beach (Old Orchard Beach Free Public Library/Libby Memorial Library) (206-27-1X), 27 Staples Street, Parking Lot – non-profit – to park motorized vehicles up to ten (10) days maximum for a fee.

At the February 7, 2012 Council meeting this item was tabled indefinitely.

A u g u s t 2 , 2 0 1 1

P a r k i n g P r o p o s a l

Purpose:

To make use of the empty parking lot at Libby Memorial Library when the Library is closed and raise funds to be put towards the building fund. Cars will be charged a fee of \$5.00 or \$10.00 depending on what the other parking lots are charging. The lot will be operated only when the library is closed. It will not affect those attending the flag raising ceremonies or concerts in the park since it will not be in operation till after those events. Library staff will not be charged. They will display a sign on their dash. The plans are to charge to park on selected weekends thru Labor Day and on Thursday Nights thru Labor day. That gives us five weekends and five Thursdays. The lot was operated for two days this year, on Monday, July 4th from 8PM to 9:30PM and on Sunday July 17th, from 1PM to 4PM. In a span of 4.5 hours a sum of \$625 was raised. The lot will be staffed by volunteers and they do not reap any benefit from this besides knowing they are doing something good for the Library. I believe this is a straight forward plan, a win-win situation for the Library and the Town. I look forward to a quick turnaround for an answer, since time is of the essence in this matter. I also feel this is something that should be decided by the Library and the officers of the town and the decision should not to be influenced by any other parties. If nothing else, the public should welcome the aggressive fundraising generated by the Library in order to reach their goal and lesson the burden on the taxpayers.

Respectfully submitted,

Alice T. Langdon, Treasurer, Board of Trustees
Libby Memorial Library
207 934-4000
207 590-3286

The former Director of the Edith Belle Memorial Library has prepared for us this summary:

In September 1952, a special town meeting was held in the Town Hall at which, in a public vote, the people of this community accepted the terms and conditions in the will of Frank Libby, which contained a bequest to provide the means to build and equip a public library for the people of Old Orchard Beach. Also at that time, a 200x200 lot adjacent to the municipal park was formally set aside and dedicated specifically for the use of the public library. For years, part of this land has been used for parking, on the grass, during major events in the park—during that time no one has ever asked the library organization for permission to do this, or offered compensation of any kind for the inconvenience frequently experienced by library staff and patrons because of it --- nor has the library ever complained, assuming that all such events were intended for the general benefit of the community as a whole – of which we are a part. Fees have often been charged to participate in these programs, such as the car show, tow show, arts & crafts fair, various charitable or community events, and of course the Town charges a fee for parking in the lot at First and Heath Sts. These facts would seem to answer the question about charging fees on public land. That is particularly true in this case, where there is no private gain involved, not even wages – the ten days requested are covered by volunteer staffing, and all proceeds from this effort go back to the town to help defray the cost of the public library building project. People park in the library lot all summer when the library is closed, often on the flat grassy area beyond it, with or without permission – the library has neither the staff nor the funds to do anything about this, and even when we are open, they often try to park in our lot for free and go downtown or to the beach for the day. In the past, we have placed notices on the windshields of cars that we know do not belong to anyone using the library, reminding the owners that this parking lot is reserved for library use only, although there are already two signs in the lot, which clearly state that fact. If all that fails and we see them do it again, we ask Parking Enforcement to ticket them, because on a busy summer day it means that our staff and patrons have to park on the grass when all the spaces in the paved area are gone. It is unwise and unsafe to parallel park on the other side of the lot - that has resulted in more than one fender bender in the past; so when we have more patrons than there is room for we already tell them, to park on the grass rather than risk accidents no matter how minor. The library parking lot and the space directly beyond it have been used for parking for almost 60 years; it would seem reasonable then, that a limited use, not for profit permit, would cover this very modest request.

This evening the Code Enforcement Officer has prepared a map and explanation of the Library Parking Agenda Item:

“The Library is located at 27 Staples Street, a separately deeded portion of Memorial Park. The entire parcel is 200 feet by 200 feet. A paved parking area is 48 feet wide and 90 feet in depth. The proposal would not trigger any type of Administrative nor Planning Board review provided the use did not occur more than 10 days per calendar year. The use would require a business license regardless of the number of days and a \$200 fee would be assessed but could be waived by the Town Council. The existing parking lot, using the

standards in the zoning ordinance should adequately provide parking for up to thirteen (13) cars (the paved area.) The question of additional parking on the grass area was an item of discussion by the Council. The single handicapped space may be used to provide parking to a non-handicapped vehicle since the building will not be open during this event. While the handicap spot is closest to the library entrance, all spaces will be equidistant to the beach.” One of the areas of concern is what efforts by the Library will be considered to make sure people do not park in that area when special parking during the ten days is not available.

CHAIR: I close this Public Hearing.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Approve the Town of Old Orchard Beach (Old Orchard Beach Free Public Library/Libby Memorial Library) (206-27-1X), 27 Staples Street, Parking Lot – non-profit – to park motorized vehicles up to ten (10) days maximum for a fee.

VOTE: Unanimous.

TOWN MANAGER’S REPORT: Attended the Fire Department Safety Award Dinner and had the opportunity to meet those serving in the department itself. Attended with Bill Robertson and Jeffrey Hinderliter a meeting with Mr. Charles Duncan of PACTS. Several personnel issues and meetings along with the Human Resource Specialist were held almost every day. Attended the Workshop on Cleaning of the Beach and Downtown and Alternatives. Joined Larry Thomas and the Waste Water Team for Larry’s last day before he retires after 40 years at Waste Water. Attended our weekly department head meeting. Held a meeting on Conservation issues. Held a meeting on Police Matters. Met with Wastewater on a grant to replace three blowers at the Plant and am scheduled to go to Freeport to see blowers at their plant. Interviewed applicants for part time and full time positions. Met with several citizens on community issues.

NEW BUSINESS:

5566 Discussion with Action: Approve Revised Contract for Mark Pearson as Town Manager, effective February 15, 2012.

The Town Manager requested that Agenda Item 5566 be tabled.

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to Table the Revised Contract for Mark Pearson as Town Manager.

VOTE: Unanimous.

5567 Discussion with Action: Accept as a Town Way, Trotter Lane Warranty Deed with Warranty Covenants.

BACKGROUND:

Trotter Lane is proposed to be accepted by the town as a public street. Basically, it appears the road is constructed in accordance with applicable standards and can be conditionally accepted if it was based on this alone; although, the town attorney believes there are questions concerning clear title that should be considered by the Council before a decision is made. Below is a brief summary and pertinent information concerning the proposal that I hope will assist the Council with their decision.

- Trotter Lane was approved by the Planning Board during 1996 as part of a subdivision proposal. Currently, Trotter Lane provides access to 5 built-upon lots and 5 vacant lot
- Trotter Lane was approved as a private way, to be built in conformance with the Subdivision Ordinance Street Design and Construction Standards.
- During the later part of 1996, supporting documentation shows Trotter Lane was constructed in accordance with applicable road design and construction ordinance standards.
- Private way's can be proposed to be accepted by the town (even if approved Planning Board related documents state it's a private way) as long as they are constructed in conformance with the Subdivision Ordinance Street Design and Construction Standards and original approved plans and supporting documentation do not state the way shall remain private.
- Supporting documentation appears to show the road was built according to applicable design and construction standards at the time the road was originally constructed (1996-98). Although, I'd like to note a few items:
 1. Public Works Director, Bill Robertson, has verbally stated Trotter Lane is up to town standards and I expect this in writing by the time of your 6 March meeting. Bill mentioned if the town accepts Trotter Lane, the Council may not wish to include streetlights and sidewalks.
 2. The current town engineer, Wright-Pierce, reviewed the record drawings (the same plans included within your packet), in order to determine if there are any issues as they relate to the Subdivision Ordinance Street Design and Constructions Standards. The town engineer notes some discrepancies in the plan and profile information (see email dated February 28, 2012). Please note: Wright-Pierce did not inspect the road during construction- they were not the town engineers at that time.
- The town attorney provides feedback concerning this proposal and I'd like to point out two important items:
 1. The 23 September 2011 memo states the Council retains discretion to accept streets in cases where there are no construction costs that need to be apportioned among the benefited properties. Any such acceptance would remain conditional upon satisfaction of any applicable conditions outlined in the Streets, Sidewalks and Other Public Places Ordinances, Conditions standards (50-211) and the acceptance must also comply with statutory provisions outlined in 23 MRSA § 3021-3035 (Both 50-211 and 23 MRSA § 3021-3035 are attached to this memo). One note about 23 MRSA § 3021-3035, most of these statute provisions are not applicable to the type of street acceptance proposed, but I thought I'd include because of the attorneys use of this reference.
 2. The 20 December 2011 letter provides additional background information but most importantly, raises the question concerning clear title to the land primarily due to the significant number of conveyances and mortgage encumbrances to the land area surrounding and likely included in part within the Trotter Lane parcel. In my opinion this is very important and I recommend a careful read of this letter.

- It has been confirmed that the deed descriptions match those in the plan and the metes and bounds description closes. Trotter Lane has been plotted according to the deed by our assessor and the town attorney's title abstractor examined the metes and bounds description in the deed against the plan.
- The town traditionally has not accepted streetlight maintenance and construction when accepting public streets. The town has accepted streetlights on Old Orchard Street, Memorial Park and Dunegrass. The submitted material (specifically, the warranty deed) does not obligate the town to accept these. It does allow an easement for construction, maintenance, etc. of such infrastructure but it does not name the town as the party responsible for performing such work.
- **Recommendations:** I believe the primary issue, as discussed in the town attorneys 20 December letter, is the element of title risk to the town. Before the Council decides on the acceptance of Trotter Lane as a public street, I believe the Council should consider three options:
 1. Accept Trotter Lane without further title research;
 2. Table acceptance until the applicant and/or owner provides acceptable documentation representing the town will have clear title; or
 3. Table acceptance and the town will incur the responsibilities and costs associated with research and representing clear title.

Additional issues for Council consideration:

1. If the Council feels construction and maintenance of streetlights and sidewalks should not be included with Trotter Lane's acceptance, these items should be specifically identified to be excluded (applying a condition to acceptance is appropriate).
2. Discrepancies mentioned in the Wright-Pierce email (28 February). This may be resolved before our meeting. If not, the Council may choose to request the applicant find resolution before acceptance or attach a condition of acceptance, noting a specific time or date for compliance.

The Planner addressed questions relative to Trotter Lane indicating that there were still some issues that needed to be resolved and that the search of the deed could have substantive cost for the title search and recommended that the applicant be responsible for the cost, not the Town. A question was asked about street lights and sidewalks and it was noted that there are neither at this time. Gary Salamanca spoke of the desire for the town to accept this private way and asked the Council consider this in a timely manner. It was noted that the Public Works Director, Bill Robertson, indicated the road is up to standard. In discussion about the deed and whether sidewalks would have to be installed before acceptance, the Planner said no to both questions. The concern expressed by Council was the number of people paying on mortgage encumbrances and the question of how that would affect the Town. There was a possibility that this might diminish the size of the lots and take people's property away. With many issues still unresolved the motion was made to table indefinitely.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Table Indefinitely the Acceptance as a Town Way, Trotter Lane Warranty Deed with Warranty Covenants.

VOTE: Unanimous.

5568 Discussion with Action: Adopt an Ordinance Prohibiting the Sale and Use of Consumer Fireworks.

After two Workshops and ample discussion and input from the citizens, the Council again addressed the issue this evening. The Town Clerk provided the following information. The Council was provided two draft ordinances, as well as the memorandum from Atty. Moser of Bernstein & Shur. These ordinances reflect suggested amendments to the ordinance prohibiting sale and use of consumer fireworks that was the subject of a public hearing on February 21, 2012. The first ordinance, titled DRAFT 3/1/2012 in the footer, is the draft ordinance that Atty. Moser compiled to reflect possible revisions. As you will see in the strikethrough and underline language, this draft (1) removes the citation to the Public Law, as the consumer fireworks law is now codified in a specific statute (Section 38-290(B)); (2) directly cites to the state statute for the definition of consumer fireworks rather than repeating the state statute's language (Section 38-291)); and (3) includes language that reflects a tiered penalty system of \$100.00, \$500.00, \$1,000.00, and \$2,500.00, based on the level of offense (Section 38-294(A)). The second ordinance, titled DRAFT 3/2/2012 in the footer, is a draft ordinance that includes all of the changes listed above, except for a slight difference in the penalty section. The second draft includes a two-tiered penalty system with the first offense being a \$100.00 fine, and the second offense and all subsequent offenses being a \$500.00 fine. Either of these ordinances will allow violators to pay the fine at the location of the Town's choosing, whether it be the police department or Tax Office, if the person alleged to have violated the ordinance chooses to pay the fine and avoid going through the court process. The Town Clerk spoke to Atty. Moser, and because the amendments reflected above narrow the scope of the ordinance and do not otherwise change substantially the meaning of the ordinance that was the subject of the public hearing, the Council will not be required to conduct a second public hearing.

The Council was also provided a memo from the Town's attorney and also a suggested ordinance revision which according to the Attorney does not require another Public Hearing.

From: Geoff Hole and Joel Moser

Date: March 1, 2012

Re: Draft Consumer Fireworks Ordinance

You asked us to memorialize our conversation regarding the draft consumer fireworks ordinance. Specifically, we discussed the statutory definition of consumer fireworks and a tiered system of penalties.

A. Definition of Consumer Fireworks

Under Maine law, the possession and use of fireworks is illegal, with an exception for certain approved and permitted fireworks displays and an exception for consumer fireworks, as explained in more detail below. *See* 8 M.R.S. §§ 221-A, 222, 223, 227-A (2012). Fireworks are defined as follows:

4. Fireworks. "Fireworks" means any:

A. Combustible or explosive composition or substance;

B. Combination of explosive compositions or substances;

C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;

D. Fireworks containing any explosive or flammable compound; or

E. Tablets or other device containing any explosive substance or flammable compound.

The term "fireworks" does not include consumer fireworks or toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing 25/100 grains or less of explosive compound are used if they are constructed so that the hand can not come in contact with the cap when in place for the explosion, toy pistol paper caps or plastic caps that contain less than 20/100 grains of explosive mixture, sparklers that do not contain magnesium chlorates or perchlorates or signal, antique or replica cannons if no projectile is fired.

8 M.R.S. § 221-A(4).

Maine's new consumer fireworks law carves out a limited category from the definition of fireworks. Sale and use of consumer fireworks is legal, subject to certain limitations. State law defines this new category of consumer fireworks as follows:

"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 paragraph, "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.

8 M.R.S. § 221-A(1-A). The definition of consumer fireworks under state law excludes the products enumerated in subsections (A)-(C). In other words, these products remain

prohibited under state law pursuant to the definition of fireworks and applicable regulations.

The new consumer fireworks law allows a municipality to prohibit the sale and/or use of consumer fireworks within the municipality. Thus, the municipality may maintain the status quo before the consumer fireworks law took effect.

Many of the municipal consumer fireworks ordinances across the state have directly cited the state statute language when defining consumer fireworks. As you indicated, there could be confusion as to whether the products listed in subsections (A)-(C) are permitted within the municipality, as one might incorrectly interpret the ordinance to mean that these products are not regulated and therefore legal. As stated above, however, our understanding is that because these products are not within the definition of consumer fireworks, they remain prohibited as fireworks.

Given the complexity of the language in the state statute's definitions, we suggest two approaches. The first would be to add a statement to clarify that the products in subsections (A)-(C) remain prohibited under state law. The second approach would be to simply cite the state statute directly. The second approach also provides the benefit of not having to amend the ordinance should the State change the definition of consumer fireworks.

Thus, the two options would be:

Option 1:

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:~~ "Consumer fireworks" does not include the following products, which remain prohibited under state law pursuant to 8 M.R.S. §§ 221-A to 223 and applicable state regulations:

- 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.

Option 2:

"Consumer fireworks" has the same meaning as in 8 M.R.S. § 221-A(1-A), as may be amended from time to time.

B. Tiered Penalty System

We also discussed a tiered penalty system and enforcement procedures. As we understand it, the Town wishes to initiate the formal court process through the issuance of a citation by a police officer. We anticipate that the enforcement process would be as follows:

- The Old Orchard Beach Police Department may issue a citation when an officer has probable cause to believe that a civil violation under the consumer fireworks ordinance has occurred. The Police Department or the Town must maintain a violation tracking system that the citing officer may access to determine whether the violation is a first, second, third, or fourth and subsequent offense.
- The officer would use a Uniform Maine Summons and Citation form. Attached would be a Town form, to be developed, that indicates that if the individual makes payment of the fine to the Town's Finance Department within 10 days, the Town will write to the Court and dismiss the citation.
- The citing officer will file the original citation with the District Court as soon as practicable after service upon the defendant.
- If the Town's Finance Department receives payment of the fine, the Finance Department will inform the Police Department, and either the Police Department or the Town Attorney will write to the Court and dismiss the citation.
- If the person cited does not pay the fine to the Town, the case will proceed through the court process in the ordinary course.

We also understand that the Council is interested in the following penalty schedule: \$100 for first offenses, \$500 for the second offense, \$1,000 for the third offense, and \$2,500 for the fourth and subsequent offenses. It is worth stressing, however, that this tiered system would require the Town or Police Department to develop a violation tracking system, consistent with principles of due process, that the police officer may access when issuing a citation.

If the Council were to adopt the tiered system, we recommend the following language:

- A. Penalty for Violation. Any person who violates any provision of this Ordinance or otherwise fails to comply with any of the requirements hereof shall commit a civil violation punishable by a penalty of one hundred dollars (\$100.00) for the first offense, five hundred dollars (\$500.00) for the second offense, one thousand dollars (\$1,000.00) for the third offense, and two thousand five hundred dollars (\$2,500.00) for the fourth offense and all subsequent offenses, to be recovered by the Town for its use. If the municipality is the prevailing party, the municipality must be awarded

reasonable attorney fees, expert witness fees and costs, unless the Court finds that special circumstances make the award of these fees and costs unjust.

C. Conclusions

We have included a draft ordinance that directly cites the state statute for the definition of consumer fireworks (option 2) and which includes the tiered penalty language above. Please let us know if you have any questions.

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The following are two Ordinance suggestions that were provided to the Council. One lists the tiered penalty system up to \$2,500 and the second one limits second and subsequent offenses to \$500.00.

From: Geoff Hole and Joel Moser

Date: March 2, 2012

Re: Draft Consumer Fireworks Ordinance – DRAFT 2

**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 21st, 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 ~~P.L. 2011, ch. 416, § 5 (effective Jan. 1, 2012), codified at~~ 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" has the same meaning as in 8 M.R.S. § 221-A(1-A), as may be amended from time to time.

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. Any person who violates any provision of this Ordinance or otherwise fails to comply with any of the requirements hereof shall commit a civil violation punishable by a penalty of one hundred dollars (\$100.00) for the first offense, and five hundred dollars (\$500.00) for the second and subsequent offenses, to be recovered by the Town for its use. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the Court finds that special circumstances make the award of these fees and costs unjust.

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.

Per Order of the Municipal Officers this 7th day of February, 2012.

A True Copy

Attest:

Kim M. McLaughlin, Town Clerk

The suggested ordinance preventing the use and sale of consumer fireworks in Old Beach was brought again to the Council under new business. There had been two workshops on the subject which saw expressions of not supporting the ordinance in consideration of individual right of choice; and those opposed indicating concerns about safety and noise issues. First time offenders will receive a \$100 fine; the second offense and all other subsequent offenses will receive a \$500 fine. Council Coleman spoke about personal freedom and also that people from out of state coming to Maine will hear that fireworks are legal in Maine and won't understand that they are not legal in Old Orchard Beach. He indicated that it will create a tremendous burden on our police force. He also stated that forty-six states allow the use of fireworks and some states have minimum ages of 16 and some states even allow 12 year olds to use fireworks. He expressed his willingness to trust the citizens but felt there was no need to control them or micro-manage them. Council MacDonald indicated that she wasn't in favor of government regulating people but she

supported the banning of fireworks because the majority of residents with whom she had spoken were not in favor of allowing the use or sale of fireworks in town. Council Chair Quinn said he shared Council MacDonald's concern about taking personal freedom away but said the overwhelming majority of residents he had spoken with did not want fireworks used or sold in town. He said he was supporting it and it errs on the side of safety in a high-density situation that we have in Old Orchard Beach. Residents spoke as well and Fred Dolgan reminded the Council that the people have spoken and that the state has given us the opportunity to have an ordinance should we choose to do that. He indicated it was about quality of life. Linda Hardacker spoke about the closeness of properties particularly in the campground area and a concern over the safety issues. She also indicated that she supported the position of the Police Chief on this issue as well. Paul Ladakakos also spoke about the quality of life and the elimination of more noise than is usual in our community.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to adopt the Town of Old Orchard Beach Consumer Fireworks Ordinance, as reflected in the March 2, 2012 draft.

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

5569 Discussion with Action: Approve the Special Event Permit application for OOB365 to hold a St. Patrick's Day Parade on Saturday, March 17th, 2012 at 11 a.m., along Heath St, Saco Ave, Old Orchard Street, the Square and First Street; and request to waive the fee.

Councilor MacDonald and Vice Chair Tousignant acknowledged their affiliation with OOB365.

MOTION: Councilor Coleman motioned and Chair Quinn seconded to Approve the Special Event Permit application for OOB365 to hold a St. Patrick's Day Parade on Saturday, March 17th, 2012 at 11 a.m., along Heath St, Saco Ave, Old Orchard Street, the Square and First Street; and request to waive the fee.

VOTE: Unanimous.

5570 Discussion with Action: Approve the Special Event Permit application for OOB365 to hold the "Back to the Beach" Corvette Weekend on Saturday, June 9th, 2012, closing Old Orchard Street from the top of the hill to Milliken Street, from 11 a.m. to 2:30 p.m. Insurance, listing the Town of Old Orchard Beach as additionally insured, to be provided to the Town Clerk's Office before May 9th, 2012.

Again Councilor MacDonald and Vice Chair Tousignant indicated their affiliation with OOB 365. Vice Chair Tousignant detailed the event and the opportunity to bring more visitors to town during a slow period of the summer. He indicated that he had met with the department heads and reviewed the application and answered questions and that the department heads signed off on the event. There were a couple of questions that were not answered on the form and the

Chair encouraged that individuals filling out special event applications needed to supply all the information that is requested.

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Approve the Special Event Permit application for OOB365 to hold the “Back to the Beach” Corvette Weekend on Saturday, June 9th, 2012, closing Old Orchard Street from the top of the hill to Milliken Street, from 9 a.m. to 2:30 p.m. Insurance, listing the Town of Old Orchard Beach as additionally insured, to be provided to the Town Clerk’s Office before May 9th, 2012.

VOTE: Unanimous.

5571 **Discussion with Action:** Approve Liquor License Renewal of Dimitri Inc., dba/Jimmy the Greek’s Brick Oven Restaurant (211-9-1), 215 Saco Avenue, s-m-v in a Restaurant Lounge.

MOTION: Councilor Coleman motioned motioned and Vice Chair Tousignant seconded to Approve Liquor License Renewal of Dimitri Inc., dba/Jimmy the Greek’s Brick Oven Restaurant (211-9-1), 215 Saco Avenue, s-m-v in a Restaurant Lounge.

VOTE: Unanimous.

5572 **Discussion with Action:** Accept the bid for the printing of the 2010-2011 Annual Report from Account Number 20101-50502 –Printing & Copying, with a balance of \$3,000.

BACKGROUND: The Assistant Town Manager sent RFP’s to seventeen printers, a listing being provided to the Town Council. The following advertisement was also placed on our town’s web site.

**TOWN OF OLD ORCHARD BEACH
SEALED BIDS FOR THE TOWN’S ANNUAL REPORT**

The Town of Old Orchard Beach is now accepting sealed bids for the printing of the Town’s 2010-2011 Annual Report which will consist of approximately 96 to 98 pages – to be double sided, (report size 11 x 17, provide price for both fold/TAPE BIND, SADDLE STITCH/trim to 8 ½ by 11 size). A total of 800 Annual Report is required. All pages will be camera ready with the exception of the cover (in a four color process) and the pictures. The report is in both Word and PDF format.

Questions or review of the Annual Report may be addressed to or reviewed at:

V. Louise Reid, Assistant Town Manager
Town of Old Orchard Beach,
1 Portland Avenue
Old Orchard Beach, ME 04064
207-934-5714, extension 226
lreid@oobmaine.com

Bids are not accepted through e-mail or fax. They must be sent through U.S. Mail, Express Mail or hand-delivered. Failure to require requested information at the time the bid is submitted may result in the bid being rejected. RFP's can be secured from Town Hall or from our web site:

We are asking the Printer to bid on a three year contract for the Annual Report (2010-2011); the Annual Report (2011-2012); and the Annual Report (2012 – 2013). Bids must be received by _____, 2012 at NOON and reports available for public distribution on _____, 2012. References must be provided and samples of previously done Annual Reports. The Town reserves the right to accept or reject any and all bids.

Bids are not accepted through e-mail or fax. They must be sent through U.S. Mail, Express Mail or hand-delivered. Failure to require requested information at the time the bid is submitted may result in the bid being rejected. RFP's can be secured from Town Hall or from our web site:

www.oobmaine.com

THE FOLLOWING BIDS FOR THE ANNUAL REPORT WERE OPENED AT NOON ON WEDNESDAY, FEBRUARY 22, 2012 BY THE ASSISTANT TOWN MANAGER AND THE PLANNING ASSISTANT:

<u>RECEIVED FROM:</u>	<u>BID</u>
Bangor Letter Shop Penobscot Plaza 99 Washington Street Bangor, Maine 04401-6518	\$2,647.42 – 1 year Shipping \$75 to \$100 Extra 4 pages - \$80 Additional
X Copy 100 Fore Street Portland, Maine 04101	\$1,976.10 – 2010-2011 \$1,976.10 – 2011-2012 \$1,976.10 – 2012-2013
Lincoln Press 3 Maine Avenue Sanford, Maine 04073	\$3,597.00 – 1 year
Select Print Solutions Box 188 North Brookfield, MA 01535	\$1,490.00 – 2010-2011 \$1,535.00 – 2011- 2012 \$1,582.00 – 2012 - 2013
Attention: Gary Fuller	

Returned as undeliverable:

Laura Marr Printing – Forward Expired

The Assistant Town Manager informed the Council that the Town went out for bid for the Annual Report and during the process was asked by the Massachusetts printer if the Council was adverse to accepting the bid from an out-of-state printer and I indicated that I did not think so but over the past eight years we have not received a bid from an out-of-

state printer. The question is since the cost is approximately \$500 less than the bid from the printer who has done our last three Annual Reports, is there more comfortableness in sending the printing out of state with the distance in personal contact being a concern. However, it is noted that with the economic circumstances being faced, cost is a consideration. She also suggested that one other issue that has been raised is whether the Council would like to accept the bid from either the Massachusetts printer or X-Copy for only one year and next year consider possibility not having a printed Annual Report as Saco does and putting a smaller, less expensive report on the web. Many municipalities have gone to this type of availability for the public. We purchase 800 reports at a cost of approximately \$2,000 and we could decide, should the Council choose, to do a web report with just the audit results which are legally required and a more simplistic and less expensive town report on the web next year. Perhaps the Council could consider this option in their choice for the Motion.

The Council discussed this issue and recommended that the Assistant Town Manager go back to those who bid and see what the cost would be for 400 Annual Reports rather than the 800 and that the issue of putting it on the web be not only considered but done.

MOTION: Councilor Coleman motioned and Vice Chair Tousignant seconded to Table indefinitely the bids for the printing of the 2010-2011 Annual Report from Account Number 20101-50502 –Printing & Copying, with a balance of \$3,000 and to secure from the bidders the cost of 400 annual reports and research putting the annual report on the web.

VOTE: Unanimous.

5573 Discussion with Action: Consider the bids for Auditing Services for the next three years; 2011- 2012; 2012 – 2013; and 2013 – 2014.

BACKGROUND:

With the advertising of an RFP for a basic contract and alternatives, the following two bids are submitted for consideration of the Town Council with the request that they give consideration as to which contract they feel would be in the best interest of the community.

TOWN OF OLD ORCHARD BEACH
Request for Proposal for
Performance of Audit of Financial Statements and Records

The municipality of Old Orchard Beach invites qualified, certified, independent public accountants to submit Sealed proposals for the performance of an audit of its financial accounts and records covering the period July 1, 2011 through June 30, 2014 (a three year period) for the purpose of rendering an auditor's opinion regarding the fairness of applicable financial statements and compliance with applicable legal provisions, in accordance with generally accepted auditing standards. Experience in municipal auditing practices is a requirement. Sealed bids are due on Friday, February 24, 2012 by 12:00 noon. SEALED bids should be marked AUDIT PROPOSAL and sent to:

V. Louise Reid
Assistant Town Manager

1 Portland Avenue
Old Orchard Beach, Maine 04064
207-934-5704, extension 226

A copy of the RFP can be secured from the Assistant Town Manager.

Bids are not accepted through e-mail or fax. They must be sent through U.S. Mail, Express Mail or hand-delivered. Failure to require requested information at the time the bid is submitted may result in the bid being rejected. RFP's can be secured from Town Hall or from our web site:

www.oobmaine.com

Additional information or clarification can be secured by contacting:

Catherine Saltz, Town Treasurer
207-934-5714, extension 222
csaltz@oobmaine.com

The Town of Old Orchard Beach, Maine reserves the right to accept or reject any or all bids.

The Assistant Town Manager mailed on February 7, 2012 the following Auditor RFP to the following Audit Firms and the advertising was done not only on the Town's web site but twice in the Portland Press Herald:

Berry, Talbot & Royer
6 Fundy RD, Suite 100
Falmouth, ME 04105

Cummings Lamont & McNamee PA
PO Box 328
305 Lafayette Center
Kennebunk, ME 04043

Joel F. Patterson & Associates
819 Main ST
Sanford, ME 04073-3520
Mowry & Associates
PO Box 360
Limington, ME 04049-0360

Ouellette & Associates
1111 Lisbon St
Lewiston, Maine 04240
Purdy Powers & Company
130 Middle Street
Portland, ME 04101

RHR Smith & Company

3 Old Orchard RD
Buxton, ME 04093

Runyon Kersteen Ouellette CPA, PA
20 Long Creek DR
S. Portland, ME 04106-2425

Smith and Associates, CPAs
50 Forest Falls Drive, Suite 3
Yarmouth, ME 04096
846-8881

MacDonald Page & Co. LLC
30 Long Creek Drive
South Portland, Maine 04106
774-5701

**BIDS FOR AUDITING FIRMS RECEIVED FOR 2/24/11 OPENING AT 12:00 NOON –
OPENED BY ASSISTANT TOWN MANAGER AND VOTER REGISTRAR**

	Bid	
Ouellette@ Associates PA	\$35,000	2011-2012
1111 Lisbon Street	\$36,000	2012-2013
Lewiston, Maine 04240	\$37,000	2013-2014
Stephen T. Hopkins, CPA, PC	\$13,750	2011-2012
214 Holmes Road	\$13,750	2012-2013
Scarborough, Maine 04074	\$13,750	2013-2014
Runyon Kersteen Ouellette	\$18,750	2011-2012
20 Long Creek Drive	\$19,000	2012-2013
South Portland, Maine 04106	\$19,400	2013-2014
RH Smith & Company	\$17,000	2011-2012
3 Old Orchard Road	\$17,000	2012-2013
Buxton, Maine 04093	\$17,000	2013-2014

The Town Manager, Mark Pearson, and the Finance Director, Catherine Saltz, both have indicated that they believe it would be in the best interest of the municipality to wait until next year in selecting a new Auditor since both of them are new to their positions. This, of course, would mean going out again with an RFP. The Council discussed their suggestion accordingly and Councilor MacDonald indicated concerns regarding financial issues of which the council has been informed.

MOTION: Councilor MacDonald motioned and Councilor Vice Chair Tousignant seconded to Table the bids for Auditing Services.

VOTE: Yea: Councilors MacDonald, Coleman, Vice Chair Tousignant and Chair Quinn.

Nea: Councilor Dayton

5574 Discussion with Action: Approve the Democrat and Republican Ballot Clerks, terms to expire March 6, 2014.

MOTION: Councilor Dayton motioned and Councilor Coleman second to Approve the Democrat and Republican Ballot Clerks, terms to expire March 6, 2014.

VOTE: Unanimous.

#5575 Discussion with Action: Accept, with regret, the resignation of Paul Niemczyk from the Community Animal Watch Committee, effective March 15th, 2012.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Accept, with regret, the resignation of Paul Niemczyk from the Community Animal Watch Committee, effective March 15th, 2012.

VOTE: Unanimous.

GOOD AND WELFARE:

5576 Discussion with Action: Enter into Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(A), concerning Personnel matters.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Enter into Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(A), concerning Personnel matters.

VOTE: Unanimous.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Exit Executive Session pursuant to 1 M.R.S.A., Section 405 (6)(A), concerning Personnel 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)(A), concerning Personnel matters.

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Adjourn the Town Council Meeting at 11:50 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-two (22) pages is a copy of the original Minutes of the Town Council Meeting of March 6, 2012.

V. Louise Reid