

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
TUESDAY, MARCH 8, 2012
TOWN HALL CHAMBERS**

A Special Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, March 8, 2012 at the Loranger School Library. Chair Quinn opened the meeting at 7:05 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 Mark Pearson
Assistant Town Manager V. Louise Reid
Bill Robertson, Public Works Director**

Also in attendance were representatives of the two bidding firms – Extreme Clean (Liz Copeland and Robert Laberge) and BA Services of Bangor (Eric McCue).

The purpose of the Special Town Council meeting this evening was to continue discussion on the two bids which were received as a result of the Request for Proposal for the Town of Old Orchard Beach Cleaning and Maintenance Services for Municipal Restrooms, Downtown and Beachfront Area, Rolling Trash Collection Alternate; Restroom User Maintenance Fee Alternate, and Recycling Alternate. The Council hoped to provide direction to the Administration as to which, if any of the Alternative selections, they wish to be included in the contract.

A great deal of discussion centered on the possible Restroom User Maintenance Fee. It was noted that this subject has come up before and there will be public (residential and business) outcry by some if a charge is made for the use of the public bathrooms. It is obvious that there will be some who will note this as an unpopular decision by the Council. The Council noted, however, that the charge would defray the cost that has been put upon the Town coffers because of the vandalism that has occurred over the past few years. There was discussion on what to do about the vandalism; a question of who is doing the vandalism; the time of the day or night when this occurs? Further discussion continued on whether the Town would be the recipient of the funds or whether the Contractor would assume the revenue thus reducing the cost of the contract. Consensus was finally indicated by the Council that the RFP would be rewritten and submitted to the two bidders and that it would indicate the Contractor will be responsible for the employment of bathroom Attendants to assist in the reduction of vandalism while they are open to the public. The proposal should include having a single Attendant at the West Grand Bathroom (20 hours a day – the time change was noted which was changing from 9:00 a.m. to 6:00 a.m. through 2:00 a.m. – a change from that which was not reflected in the previous RFP; a single Attendant at Memorial Park 12 hours per day – 9:00 a.m. to 9:00 p.m.; and an Attendant at the Milliken Street Bathroom 9 hours a day (which was a change) to 6:00 p.m. rather

than 9:00 p.m. This adds up to approximately 41 personnel hours per day for the duration of the basic contract.

Another defining of the RFP would include the Contractor has the right to charge an admission fee up to fifty cents (\$.50) per person for access to the facility and retains the receipts of the fee. The Contractor has the right to determine who must pay and who does not. The Council discussed whether residents should be charged; what age of children; and other considerations. The Administration suggested that a bi-weekly accounting report be required including statistical use of the bathrooms and income from each bathroom so there is a means of calculating revenue but also statistics of those using the bathrooms. Discussion of how to manage entrance into the bathrooms ranged from control by the Attendants to the use of various colored bracelets and the possible installations of turn styles. Discretion of the vendor would be an option to be used. The Council noted the need for an educational program.

The fact was substantiated that the Town provides waste receptacles for waste disposal in the downtown area and along the beach that require emptying multiple times per day. There are 100 to 120 receptacles on the beach, and 70 to 80 receptacles in the downtown area. The receptacles should be emptied as they become two thirds (2/3) full. All waste that has not been placed in the receptacles should be picked up and disposed of as well. There are eight to ten pizza box containers located on Old Orchard Street which require emptying as they become two thirds full. The Town's recyclable containers are also to be emptied and brought to the Town's choice of Disposal area. Recyclable bottles and cans will be delivered to the Public Works Department.

The Town Council then discussed the Rolling Trash Collection. It was noted that the Contractor will establish a continuous Rolling Trash Collection where two vehicles will be available so that if one breaks down or is not available, trash must be picked up continually throughout the day and night time contract hours. The two vehicles as indicated to meet the needs of daily continual pickup and that if one of the vehicles becomes inoperable there needs to be a second vehicle at least available. It was also stated that the Contractor is required to make continuous trash pickups.

During the discussion of insurance and indemnity, it was noted that the Contractor must maintain liability insurance and shall provide the TOWN with a certificate of insurance in the face amount of one million dollars (\$1,000,000) general liability, one million dollars (\$1,000,000) in automobile liability that will cover the activities of the Contractor in the execution of this Agreement for the life of the Contract Period. Again it was confirmed that the Contractor will not be held responsible for repair or replacement of any major fixture. Examples include urinals, toilets, plumbing, sinks, stalls, stall doors, hand dryer, etc. unless as a result of vandalism. The Town will be responsible for any legal action taken by a visitor of the Comfort Station for acts of violence, or any other unlawful occurrence resulting from the lack of a Town employee attendance during municipal restroom operating hours. However, slips and falls will be the responsibility of the Contractor.

In determining whether to go out for an RFP again, the Council received advice through the Town Attorney which indicated that in most cases Maine law contains no general requirement that municipal service contracts be put out to and are awarded by public bid. Below is legal advice provided to the Council members in a memo and presented during the

meeting to the Council. Bidding may be required in some municipal contracts under State statute such as in cases where State funds will be used or when certain kinds of public improvements like schools are the subject of the contract. See 5 MRS § 1741 et seq. Municipalities may, by charter, ordinance or article, require a bid process. In the absence of such local requirements, however, it is up to the municipal officers to review and decide who is best qualified and who should be awarded any contracts. Of course the municipal officers must act in the best interests of their municipality, but this does not necessarily mean that the lowest priced contract is the one they must accept. Under your Code of Ordinances there are only a few places where the bid process is required: sidewalk reconstruction (Section 50.523), related to purchase orders for supplies (Section 2.444) and for disposal of public surplus and tax acquired property (Section 409.15), but there are no requirements to entertain a bid process for securing service contracts. As such, the Council, in its discretion and based on its review and informed determinations may award contracts to whichever service provider they determine is qualified, capable and the best person or organization to provide the services at a fair price..

The Town Manager reminded the Council that after the Council opened the bids, a representative of one of the bidding parties indicated that the scope and terms of the services were not clear to them. The representative then proposed to advance amended terms to their bid for the Council to consider. This created some confusion and concerns about whether entertaining new terms at this juncture in the process would be proper or fair. Acting on revised bid terms in the middle of the process, even if both parties are allowed to advance such an option, could create the potential for misunderstandings and possible claims of an unfair process. One option to pursue to avoid such possible results would be for the Council to reject all bids, re- advertise and open a new RFP process. The concern with this option is that doing so will delay the process of getting the contract in place for several more weeks. Another option would be for the Council to formally reject both bids and then ask the two responding entities to separately and independently resubmit terms for the services under the four service contracts for further discussion and negotiations. The rejection of the bids formally ends the bidding process and limits the potential of unfair bidding claims, etc. being advanced. This approach would not involve another bidding process but instead would entail direct negotiations with two entities to secure from them the best prices and scope of services for the contracts. The results of this process would then be advanced to the Council to consider and act on (or not). If other contractors approach the Town to participate similarly, the Council would be within its discretion to allow or not allow them to participate.

The Council, with the concurrence of the two bidders, agreed that a new Request for Proposal would be submitted within the week to the two bidders and they would be returned to the attention of the Town Manager and in private the Town Manager will meet with each of the bidders separately and review the contract and select one to recommend to the Council at their meeting on the 20th of March.

The question was raised about the cleaning of the bathrooms at the Ballpark and a request that this be a consideration in the days ahead and in budget requirements.

The Council discussed liability insurance in the face amount of one million dollars (\$1,000,000) general liability, one million dollars (\$1,000,000) in automobile liability that will cover the activities of the CONTRACTOR in the execution of the Agreement for the life of the Contract Period.

In the discussion of recycling the subject of tonnage was raised as it has before and a need for understanding the subject itself and the tipping cost balanced by the savings through a defining recycling effort. Quantification is a major project for all of us in the coming months to determine environmental value versus actual financial cost. As in other workshops the need to increase recycling will save money on tipping fees for trash sent to Maine Energy.

The input of residents Fred Dolgan, Jerome Begart, Trish Driscoll, and Tracy Gikes, provided considerable insight into the desire for recycling consideration and the importance of the need to recognize that the citizens (residents) are paying for financial considerations that benefit the tourist industry and that from an environmental importance a request that the Council push forward on the importance of promoting of recycling. There was recognition that full recycling on the beach might not be possible or feasible at this point in time but perhaps even limiting it to cans and bottles would be a start. A discussion of contamination included recognition of what can be recycled. In terms of contamination, it is food on containers but the amount of such is relevant. It's not a splatter of food that makes something contaminated. It can also be non-recyclable materials in with recyclables. It happens regularly but when they start to get large majorities of it, it becomes an issue. Small contamination is not the be all, end all, of recyclables. Questions were raised about tonnage and it was noted that 100 barrels would result in approximately thirty to forty pounds a barrel; approximately 3,000 pounds a day – 1.5 tons to 2 tons time 100 days. Tipping fees are fees that are charged to haulers to unload trash (unrecyclable) items; fees are per ton; determined by the free market and/or by contract with Ecomaine.

The Chair thanked those for attending and for their valuable input. The Assistant Town Manager was to revise the RFP and it was projected that it would go to the vendor by Wednesday, March 14th with an opening of the bid date of Monday, March 19th; and be on the agenda on March 20th for approval so that the company that is accepted will have the opportunity to prepare for the summer which is less than eight weeks ahead.

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 four (4) pages is a true copy of the original Minutes of the Town Council Workshop meeting of March 8, 2012.

V. Louise Reid