

**TOWN OF OLD ORCHARD BEACH
SPECIAL TOWN COUNCIL MEETING
WEDNESDAY MARCH 20, 2013 6:15 P.M.**

A motion was made to go into Executive Session by Councilor Coleman Seconded by Councilor Furtado Councilor Quinn asked that the Interim Town Council Secretary not be included in the meeting.

Councilor Furtado made a motion to end the Executive Session Seconded by Vice Chair Bolduc

**REGULAR TOWN COUNCIL MEETING
WEDNESDAY MARCH 20, 2013
CHANGED FROM TUESDAY, MARCH 19, 2013 DUE TO SNOW STORM
TOWN HALL COUNCIL CHAMBERS
7:00 P.M.**

Pledge to the Flag

Roll Call

The following were in attendance:

Vice Chair Bolduc
Councilor Coleman
Councilor Furtado
Chair MacDonald
Councilor Mailhot
Councilor Quinn

Absent: Councilor Dayton

EMERGENCY ITEM: To add discussion with action to the end of the meeting. Approved the Special Event Permit application to Thomas Falby to hold a bonfire on the beach on Saturday, March 23, 2013

Motioned Councilor Mailhot

Seconded Councilor Furtado 6-0

ACKNOWLEDGEMENTS: A tribute to Roger Stevens, a 30 year Employee at the Department of Public Works. This was tabled until April 2, 2013 due to the snow storm and the Public Works Department being up all night plowing the roads.

PRESENTATION: Recall Process Kim McLaughlin

The Recall Process in Old Orchard Beach is governed in priority first by the Charter, then Maine Law, Title 30-A, and then Maine Law, Title 21-A. Most of the process related to recall and elections for recalled officials are local law questions governed by the Town Charter. Only where the Charter specifically references State law or is silent do we need to look to State law to fill in the blanks.

The process begins by seven Old Orchard Beach registered voters submitting a letter to the Town Clerk requesting Recall Petition blanks. The seven qualified voters that request petitions are referred to as the "Recall Committee". The request must list the elected official, the title of the office, and the reason or reasons why they want to recall this individual. Each petition blank issued will list only one individual.

The Committee then has 30 days from the time the petitions are issued to gather those signatures. If the Committee does not return the petition, the recall fails and another recall petition for the same individual cannot begin for at least 180 days from the time the 30 day period closed.

If the Committee returns the petition or petitions, under Section 305.1 of the Charter, the Town Clerk's Office has the responsibility, within 10 days after the 30 day period has ended, to review and certify that parties signing petitions are proper parties and that the required number of signatures on each petition have been obtained. The number of signatures is 20% of the votes cast in the last gubernatorial election. Currently, that number is 815. If the petitions do not include the required number of signatures, they fail and no election follows. Assuming the number and qualification of the signers has been met, the Town Clerk's Office certifies the same for each petition and notifies the Council of the same by forwarding the certified petitions to the Council.

The Council's "receipt" of signed petitions may occur only at a Council meeting. At its first meeting after the Clerk issues the certification of the Petitions, the Council is directed by Section 305.2 of the Charter to order the election to be set and take place within 45 days of the Council meeting. If the Council fails to set the election, then the responsibility to schedule and hold the election falls to the Clerk under Section 305.5 of the Charter. The Clerk will set the date of the election to be held within the period 30-60 days after the date when it becomes clear the Council has not timely arranged to hold the election (i.e. the running of the 45 day period ends).

Unless the official or officials whose removal is sought resigns within ten days after the receipt by the Town Council of the Town Clerk's certification, the recall question will read, "Shall _____ be recalled?" with the name of the official whose recall is sought being inserted in the blank. The ballot shall also contain the names of the candidates nominated in place of the person recalled, as follows: "Candidates for the place of _____, if recalled";

Councilors that are subject of recall efforts may not be candidates under Section 305.3 of the Charter. They stay in their position or not depending on the votes on the recall question "Shall _____ be recalled?" as established by Section 305.3. Thus, Section 403.2 of the Charter directs that the "official shall be recalled when a majority of those voting thereon have voted in the affirmative." If the majority vote are in favor of the recall, such official shall thereby be removed and the candidate chosen shall hold office for the balance of the unexpired term. If At the same meeting the Town Council sets the date for the Special Election, (within 45 days) the Council order also needs to include the date the Clerk must make the nomination papers available and the date by which they must be returned (nomination papers must be available for at least 10 days), as well as the absentee ballot period. Time to create the ballots must also be considered.

The cost for a Special Election is estimated to cost between \$2,500 and \$3,000.

Kim noted that the Town Attorney has approved the presentation.

ACCEPTANCE OF MINUTES: Town Council Minutes of March 5, 2013. Approved with the word Agenda deleted from the front page and with the addition of Councilor Coleman's no vote on item #5861 EXECUTIVE SESSION per Councilor Quinn's comments. An email at the end that was questioned as being inappropriate by Councilor Quinn remained in as it was read for the record.

Motion was first made by Councilor Coleman to approve with all Councilor Quinn's comments.
Seconded by Councilor Furtado.

Pat Brown questioned if the Town Attorneys quoted the amount in the email and said her figures were accurate.

The Chair called for a vote

Councilor Furtado No

Councilor Mailhot No

Councilor Quinn Yes

Councilor Coleman Yes

Vice Chair Bolduc No

because the \$8000 amount was included in the previous minutes

Chair MacDonald No

Failed 4-2

Motion to Accept was amended by Councilor Coleman to exclude taking out the email.
Seconded by Councilor Furtado.

Councilor Coleman Yes

Councilor Quinn No

Councilor Mailhot Yes

Councilor Furtado Yes

Vice Chair Bolduc Yes

Chair MacDonald Yes

5-1

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL: 7:18

Briarwood Realty Trust (202-3-6), 200 East Grand Avenue, one year round rental; GFB Scottish Pub LLC (Kelly C. Greenlaw & Robert T. Greenlaw) d/b/a GFB Scottish Pub (205-3-1), 32-34 Old Orchard Street, Victualers with preparation with beer, wine, and or liquor on premise; Timothy L. Berry (205-19-6), 46 Foote Street, one seasonal rental; Daniel Riiff & Anne-Marie Schenk (305-3-2), 9 Boisvert Street, two year round rentals; Nick Quinci (305-4-1-507), 1 Cleaves Street Unit # 507, one year round rental; and Edward Nasta (311-15-10), 6 Prospect Street, three year round rentals.

Motioned Councilor Coleman Seconded Councilor Furtado 6-0

PUBLIC HEARING LIQUOR LICENSES: 7:19

Scottish Pub LLC (Kelly C. Greenlaw & Robert T. Greenlaw) d/b/a GFB Scottish Pub (205-3-1), 32-34 Old Orchard Street, m-s-v in a Restaurant.

Motioned Councilor Coleman Seconded Councilor Furtado 6-0

PUBLIC HEARING SPECIAL AMUSEMENT PERMITS: 7:20

Scottish Pub LLC (Kelly C. Greenlaw & Robert T. Greenlaw) d/b/a GFB Scottish Pub (205-3-1), 32-34 Old Orchard Street, Live Music Inside 11:00 am – 1:00 am.

TABLED ITEMS:

- #5839** Discussion with Action: Accept the bid of \$79,315.45 for a five year lease purchase agreement from Specialized Purchasing Consultants for Printers and Copiers for the Municipality as a result of a municipality bidding process. The first lease of \$10,791.24 will be due in FY2014 in the Proposed FY2014 Budget under Debt Service.

Town Clerk
Kim McLaughlin

Town Clerk Kim McLaughlin addressed this item and said the cost was actually \$50,540.52 due to items not deemed necessary by staff. She will provide new description which is shown following these notes. There was discussion regarding reduced pricing due to tying in with the schools. August 1, 2013 will be the amortization date.

VOTE TO BE ADOPTED**Town of Old Orchard Beach, Maine**

Voted: That, the Town Manager of the **Town of Old Orchard Beach, Maine** be and hereby is authorized to execute and deliver a tax-exempt lease purchase agreement with M.S.T. Government Leasing, LLC in the name and on behalf of the **Town of Old Orchard Beach, Maine** (the "Issuer"), for the purpose of refunding and refinancing existing lease purchases of photocopier equipment and lease purchasing additional new and reconditioned photocopier equipment, any service agreements specifically financed in connection with certain equipment, consulting fees and related costs of issuance with an aggregate purchase price not exceeding **Fifty Thousand Five Hundred Forty Dollars and Fifty-Two Cents (\$50,540.52)**, at a rate of interest of not more than **2.68%** per year through **August 1, 2017**, and otherwise in such form as the Town Manager may approve; and that the appropriate officials of the Issuer be and hereby are authorized to execute and deliver on behalf of the Issuer such other documents and certificates as may be required in connection with such tax-exempt lease purchase agreement; and that no part of the proceeds of said tax-exempt lease purchase agreement shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause the tax-exempt lease purchase agreement to be a "private activity bond" or an "arbitrage bond" within the meaning of Sections 141 and 148, respectively, of the Internal Revenue Code of 1986, as amended (the "Code"); and that the tax-exempt lease purchase agreement issued pursuant hereto be designated as a qualified tax-exempt obligation within the meaning of Section 265(b)(3)(B) of said Code; and that the Town Manager be and hereby is authorized to covenant on behalf of the Issuer to file any information report and pay any rebate due to the United States in connection with the issuance of said tax-exempt lease purchase agreement, and to take all other lawful actions necessary to insure that the interest portion of the rental payments under and pursuant to the tax-exempt lease purchase agreement will be excluded from the gross income of the owners thereof for purposes of federal income taxation and to refrain from taking any action which would cause such interest portion of the rental payments to become includable in the gross income of the owners thereof.

Motioned Councilor Coleman
Kim thanked the Council

Seconded Councilor Furtado

6-0

NEW BUSINESS:

#5862 Discussion with Action: Approve Liquor License Renewals of Big Daddy's Bar & Grill, LLC d/b/a Big Daddy's Bar and Grill (307-3-4), 13 Old Orchard Street, m-s-v in a Restaurant; New Pier Pizza Corp. d/b/a Pier Pizza (306-6-1-I), 2 Old Orchard Street, m-v in a Restaurant.

Chair Sharri MacDonald

A motion was made to separate the two by Councilor Quinn

Seconded Councilor Coleman

Councilor Coleman Yes

Councilor Quinn Yes

Councilor Mailhot Yes for discussion

Councilor Furtado Yes

Vice Chair Bolduc Yes

Chair MacDonald Yes

6-0

Councilor Quinn asked to separate these two renewals for discussion as he said there was a question of a code and electrical violation dated October 4th on Big Daddy's Bar and Grill. Vice Chair Bolduc said she had not seen anything on this and Councilor Quinn pointed out it was included in the December or January packet from the former Town Manager.

Councilor Mailhot said she believed there had been some discussion on work shopping this. The Chair referenced a document they had received to do an easement like they did for IGA but said that should not hold up Big Daddy's Liquor license. Councilor Coleman said he was concerned they would be approving a license for a property that was in violation of code.

Guy Loranger, owner of Big Daddy's Bar and Grill. Spoke to Mark Pearson who said there was no electrical permit which is sitting the file. The other was for a permanent structure... there is no permanent structure. There is a walk in cooler which is a temporary structure. There was going to be an appeal but Mr. Loranger said he was never notified of a date. Mr. Pearson said he thought it was posted in the paper somewhere. Guy spoke to Jim Bulter about the letter he had signed. Mr. Butler said the letter came from upstairs. Guy has spoken to both Mr. Pearson and Code Enforcement and he has come before the Council. He took a dive bar and turned it into a nice restaurant and needs the cooler space for food not alcohol. The space is about 5 feet wide and has been used for the same purpose for about 50 years. Councilor Coleman said that he understood Guy's issues but that the land is town owned and the town could be liable if anything happened. The Chair asked if there had been any concerns when he got all his okays last year. He said he was approved to do business as is. Councilor Quinn said they have not seen the electrical permit. Guy said that he had an electrical permit when they did the work. No footprint has changed. Council Coleman asked at what point did the town realize the structure was on town property? He was not personally informed but heard from his contracture that the folks who came down including code, sewer and police said they were looking at selling the property. Mr. Pearson however told Guy that it was a citizen complaint.

It has been almost an entire year. Dana asked if the town could be listed on his insurance. Guy said he would look and if need be get a rider for the town on his insurance.

Councilor Mailhot made a motion to approve Big Daddy's Liquor and also set up a Workshop within the next 14 days to discuss the cooler issue. Seconded Vice Chair Bolduc

Councilor Furtado Yes

Councilor Mailhot Yes

Councilor Quinn No

Motioned by Councilor Mailhot with the time change noted

Seconded Councilor Furtado

6-0

#5866 Discussion with Action: Approve the Special Event Permit application for the St. Augustine Anglican Church to hold a Christmas Party in Memorial Park on Saturday, July 27th, 2013, from 1 p.m. to 4 p.m., with a rain date of Saturday, August 3rd, 2013. Insurance certificate of the St. Augustine Anglican Church to be provided to the Town Clerk's Office at least one month prior to the event. Request to waive the fee.

Motioned Councilor Coleman

Seconded Councilor Mailhot 6-0

#5867 Discussion with Action: Appoint Vice-Chair Bolduc and Councilor Quinn to the negotiation team for the Public Works Union Contract. The Chair said Mike Tousignant used to do this before and since we now have a larger Councilor it would be appropriate to have two on the team. Councilor Quinn said he wished he was asked before but that the way it is worded sounds like they are going to be doing the negotiations. He said in the past he has said he thinks these negotiations need to be in public as is allowed by state law. He does not want to be in a closed meeting, this is an over \$800,000 package. The Chair said it was fine if Councilor Quinn did not want to do it. She had suggested him as he had asked great questions in the past and might be more able to attend meetings as they were usually held during the day when some other Councilors were no available. Councilor Quinn declined the offer. Vice Chair Bolduc accepted

Councilor Mailhot made a motion to appoint Vice Chair Bolduc to the Public Works negotiating team

Seconded Councilor Furdato

6-0

Councilor Coleman No

Councilor Quinn No

Councilor Mailhot Yes

Councilor Furtado Yes

Vice Chair Bolduc Gladly since the Town had received a complaint that the Town had not bargained in good faith

Chair MacDonald Yes

4-2

#5868 Discussion with Action: Approve the Transfer of the Defendant in Rem, or any portion thereof, pursuant to 15 M.R.S.A. Section 5824(3) and Section 5826(6) and accept the seizure money (\$865.00-Defendant(s) In Rem #1) and (\$8,000.00-Defendant(s) In Rem #2) should it be awarded by the Courts, Docket #CR-12-1258.

Vice Chair Bolduc asked which line item it would go to. Chief Dana Kelley asked that it be put in the overtime account. The Chair confirmed with the Finance Director that that was okay.

Motioned Councilor Furtado

Seconded Councilor Coleman

6-0

Motioned Councilor Coleman

Seconded Councilor Mailhot

6-0

The Chair noted that this is taking money out of Contingency again; the others were out of some of their other accounts.

#5873 Discussion with Action: Approve the line item transfer \$600 from **Contingency Account #20118-50350** to Advertising Expense account number 20173-50320 ; Transfer \$1000 from **Contingency Account #20118-50350** to Professional/Engineering account number 20173-50300.

The above is a reflection of the changes due to the comments below: Councilor Quinn questioned why the money was coming out of Undesignated Surplus versus the Contingency fund as is everything else. Diana Asanza said it was supplied that way but we could just change it to Contingency. She said if they wanted to take it out of Planning they would want to check with Planning.

John Bird said he had no specific reason for saying Undesignated Surplus. Vice Chair Bolduc asked if it could come out of the Town Manager Advertising Fund since there is \$10,000 currently in that fund. Diana said we could and could do that tonight. Councilor Coleman said it makes more sense to have it come out of Contingency... Councilor Quinn agreed so that it was consistent. After tonight the Contingency is down to \$45,273.04. Councilor Coleman also mentioned the unanticipated line. Diana said we have about \$68,000 in that line.

Motioned to approved the transfer from Contingency Councilor Coleman

Seconded Vice Chair Bolduc

6-0

#5874 Discussion with Action: Approve the line item transfer from the Planning Department; transfer \$2,973.00 from Contingency, account number 20118-50350, to Dues/Memberships, account number 20110-50256. Councilor Quinn said what we budgeted this year was \$3500 and 2012 \$4465 and \$4274 was spent. With this transfer we end up spending over \$6000. He wants to know why the jump. Diana explained some of that should be in the Town Managers line. Councilor Mailhot said there was documentation in the packet that showed the dues about. Councilor Quinn asked if should really come out of that account.

Motioned Councilor Mailhot

Seconded Councilor Furtado

6-0

#5875 Discussion with Action: Approve the line item transfers from the Tax Collector Department; transfer \$10,800.00 from Contingency, account number 20118-50350, to Full Time Wages, account number 20104-50106, with a balance of -\$65.61. Vice Chair Bolduc asked if this was for a new position that never came before Council. Diana said in 2013 there was a shared employee and now there is a full time position. Councilor Quinn added that a lot of the fund went to Temps. Diana cleared up that it also included the money spent in letting an employee go. Vice Chair Bolduc asked if we had any temps left. Diana said only the person filling in for Louise.

Motioned Councilor Coleman

Seconded Vice Chair Bolduc

6-0

#5876 Discussion with Action: Approve the line item transfers from the Treasurer/ Finance Department; transfer \$11,909.94 from Contingency, account number 20118-50350, to Dept. Head Salary account number 20105-50101, with a balance of \$11,659.54.

Motioned Councilor Quinn

Seconded Councilor Coleman

6-0

EMERGENCY ITEM: To add discussion with action to the end of the meeting. Approved the Special Event Permit application to Thomas Falby to hold a bonfire on the beach on Saturday, March 23, 2013

Motioned Councilor Quinn

Seconded Councilor Coleman

6-0

GOOD AND WELFARE:

Robin Dube wanted to thank the Councilors for having a civil meeting and the Old Orchard Beach Food Pantry is going to be losing their storage space so if anyone has something available the pantry would appreciate it.

Christy Kennedy Road repair needed on St John St. There is an area that has sunken. The Chair suggested she call the Public Works Department of email Sharri and she will talk to them. The Chair asked Councilor Furtado to follow up since she would be out of town.

Freddie Dolgon Outraged citizen, he brought up the Taxpayers for Truth. He called it a piece of trash. Nowhere is there a source provided. Are there any Councilors involved in it? This attempt to tarnish the Town Manager is unsupportable. Character assassination. He brought up several issues such as the budget oversights. Mark Pearson became a fall guy. What ever happened to justice for all?

Carri-Lyn said she was a major part in the publishing of the document. She said she doesn't hide anything; she is not ashamed of it. The only things that are documented on the sheet are proven facts and public information. She is more than happy to answer any questions about the sheet or Mr. Pearson's release. The Council was being directed by the Attorneys not to comment... that is not their fault.

Cris Johnson the reason I am speaking is because of an event that has occurred. He referred to a website for taxpayerfortruth.com. He tried to secure the name of the individuals who were responsible. He is curious that it is a locked sight. That means you can not comment on it. There is no opportunity for discussion. If it has been supported by Councilors, what happened to the fact that they said things could not be revealed and yet were. This nonsense needs to stop. He would hope the website would be taken down or discussed openly.

Jerome Begert Regarding the recalls. He said the flyer could be a hint of what is going to come out. He questioned authenticity of the signatures. What is state election law for challenging signatures? What happens if folks want to have their names removed? What happens if folks complain they were sort of forced to sign? If the process progresses, the Council could come to a complete stop.

Freddie Dolgon He is upset about the process.

Kathy Smith Mark asked to leave 12/7/2012. Without having a meeting to talk about the Town Manager, how did the Chair get a consensus that the majority would agree. Vice Chair Bolduc said she was well known for not thinking he was a good fit before she got elected. Media folks are making comments about Old Orchard Beach. At one of the sessions Sharri held someone said there was bumping with Pat Brown. That is not true. Both should have been asked to removed. Things should not be on Facebook. You are in leadership; you need to have some dignity. Why is this all coming up now when Mark Pearson can't defend himself? She was most upset about the question of the funeral expense.

She said it was the most tasteless thing she has ever seen written in a newspaper. You can take a little bit of truth and weave it in things. Make sure the facts are true.

Carri-Lyn there are two sides and that is the reason for the flyer. She thinks all 7 should be recalled. People are making this a vendetta against a family. People aren't listening to the truth. If you can't be civil, stop throwing things maybe you shouldn't be there

Jerome Begert In December the Manager said he wanted direct direction on what to do. But there are still Charter violations. Jerome said he was going to bring the violations to the forefront. Several Councilors said please don't do that. We want to try to work things out. If I had done that that could have removed not only the Manager but some Councilors. On the other hand, the others have rung the bell you can't unring. Having meetings

in a basement, starting the recall. Does this not show a difference in the two? One wants to do what is best for the town the other wants to set fire to Old Tortured Beach.

Jerome Begert There were charter violations on the elections.

Richard Greenly I think the road we are heading down is disrespectful to the Town. You have a chance to turn back. You can't fix what has been done. The Manager is gone. Talk with each other. We had an election. Do you want to pit family against family? It is time to take a breath, discuss, listen and iron your differences out.

Guy Loranger Cleared up an earlier question regarding the Free-Standing Cooler at Big Daddy's Bar and Grill in reference to licensing.

Tom LaChance Tonight he saw change, he saw them working together. To see people in playgrounds talking about signing petitions, outside a church...putting people on a spot they don't really want to be in. If we spent all that energy doing something positive for the town it would be time better served for everybody.

Beverly Russel She agrees with Freddie and Kathy Smith. She said others use Facebook by we only hear about Councilor Coleman.

Freddie Dolgon wanted to clear up that there is no gang of 3... two maybe but not three

Pat Brown there will be viable candidates if the recall happens. She feels the personal vendetta is being directed to her. She communicates on fact based decision. She does hours and hours of research. She wants to bring it out the camps in the recall. She said she feels the recall 4 group is accurate. She has witnessed the other side saying that signing theirs would recall all seven. She said to ask the right questions. Who is this recalling? All of this is about the process and the way it was not followed.

Jerome Bergert Brought up several examples of candidates not being qualified.... Like a former councilor who has violated the Charter with conflict of interest, a former councilor who still voted in OOB after having moved out. Someone who has established citizenship in another state but still votes in OOB. He had more but stopped.

Laura Bolduc No member of recall 4 has had any conversations with her. If they had perhaps she could help them understand. Please don't go around saying you don't understand unless you first listen to me.

Freddie Dolgon What's to understand? Laura said until we have any conversations we are going to get no where. There is so much to do in this town. We have got to stop dividing family and personally attacking people privately and professionally. If you don't like my decisions, oust me out. If we can't talk we can never have a good working relationship. Freddie said be honest with yourself and the town... he said I give up.

Councilor Mailhot made a motion to adjourn

Councilor Coleman seconded

Respectfully Submitted,

Sheila M. Flathers
Interim Town Council Secretary

I, Sheila M. Flathers, Interim Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of eleven (11) pages is a copy of the original Minutes of the Town Council Meeting of March 20, 2013.

Sheila M. Flathers