

TOWN OF OLD ORCHARD BEACH  
EMERGENCY SPECIAL TOWN COUNCIL MEETING  
March 12, 2013  
Town Council Chambers

An Emergency Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, March 12, 2013. Chair MacDonald opened the meeting at 7:09

**Pledge to the Flag**

The following were in attendance:

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

1. Discussion with possible action to follow, advanced under emergency dispensation of the normal notification requirements under Division 2, of the Town Council Rules of Procedure, Section 2-52, and regarding the appointment of an Interim Town Manager with possible executive session pursuant to pursuant 1 M.R.S.A. section 405 (6)(A).

Vice Chair Bolduc motioned to go into Executive Session Councilor Mailhot seconded

Councilor Coleman No  
Councilor Quinn No  
Councilor Mailhot Yes  
Councilor Furtado Yes  
Councilor Dayton No  
Vice Chair Bolduc Yes  
Chair MacDonald Yes

That failed as 5 are needed to go into Executive Session

The Chair said they would speak publically and asked the Councilors if they had any names or ideas for an Interim Town Manager. Choices are Department Heads or anyone the Council would feel fit for the town.

Councilor Mailhot said she had been contacted by two folks, George Kerr and Domenic Pugliares. Vice Chair Bolduc said she received two emails expressing interest from Gilbert Turner and Reza Namin.

Councilor Coleman said for a week we have been in chaos due to what he believes was an unauthorized action by the Council. Due to the fact that per the Charter there must be a reason given. Even though his contract said there could be removal without cause, the Charter is the guiding document. The one thing to make this whole is to have a rescission of last week's action. I believe right now the town is facing a major lawsuit. Well into six figures. He said he would like to put a well qualified person up there...Mark Pearson.

Jerome Bergert said that the fact that the buy out clause was in the contract means that it passed Charter requirements. He said he felt the lawsuit was meant to inflict emotional harm to the town

because the Council never described any wrong doing, or impugned his reputation; they simple used the buyout clause of his contract.

George Kerr said we really need the think about the town. He said he earns his money here and employs people here. There was a vote of this Council and whether you like it or not, Mark is gone. If there is a lawsuit, the courts will decide. We need to move forward. We have to get the budget process going. He used to chair the appropriations committee in Augusta and what takes us 6 months, used to take them 5 or 4 months. He is not looking for a job, he is offering his services. He does not want a pay check. He wants to bring the 7 Councilors together, the town deserves better. He said the Councilors were elected to do a job.... Let's do it.

Vice Chair Bolduc said we need someone that can build confidence with the staff and consensus with the Council. We need to move this town forward and begin to heal. She thinks Jack Turcotte would be good but that because of the split in the Council (3/4) he wasn't interested. He would return if the behavior of the Council showed that they were there to serve the best interest of the town and not about personal agendas.

Councilor Dayton said this agenda is confusing. She also noted that there was reference to Human Service Director and that should be Manager. It was pointed out by the Council Secretary that that change had already been made. Councilor Dayton was using a previous version of the agenda. She also questioned #3 the Administrative Officer to be appointed.

The Chair explained she included several options to have a backup plan so that people could get paid.

Councilor Dayton said the first step should be #3 to get the bills paid etc. There was a lot of work to do to get an Interim Town Manager. That's the emergency need. It is reckless to put it as #3.

Bill Daily said he was disappointed with Councilor Dayton. He said all this is being ridiculous. He said they all need to work together. He pointed out Councilor Coleman is making faces like Councilor Dayton. He said we need our town running at full speed Mr. Coleman. We need to do what's best for our town. Not what's best for you or the other two. We need to figure out how you are all going to get along. If we don't nothing is going to get done. Nobody is going to come here to open businesses if we don't all start to work together. He said the minority group needs to work with the major to build consensus.

Councilor Coleman said as a point of order, all Councilors should be addressed.

Bill Daily asked if the Council wanted things to stay in disarray. We need to figure out how to work together. He said George Kerr was the best name up there.

Councilor Coleman said when he saw something wrong for the town he was not going to move it that direction. I know George Kerr and Domenic. Both are wonderful gentlemen. But building trust is difficult when in December 7<sup>th</sup> our Chairman went into the Town Manager's office and told him he was going to have the professional courtesy to resign. Four Councilors determined outside a meeting or Executive Session that he had to go. What is being hidden? How can there be trust?

Councilor Dayton said this process smells really bad. We have a Charter which she took an oath to uphold. Some people follow it some people aren't. Some people told us we don't have to. She thinks we should follow it at all times. There is a section in the Charter for when we don't have a Town Manager or an Assistant Town Manager and it talks about appointing an Administrative Officer. That is the emergency. It is typically someone who is in town like the town planner or

police chief. Someone who knows the basics. We are jumping ahead. An Administrative Officer can function for a month, 6 weeks until the Assistant Town Manager comes back which we expect to happen. She then threw the Charter on the floor. We don't have any rules; we are making a bad situation worse. She said she didn't like that some individuals had taken it upon themselves to talk to people about the Interim position. She said she knew someone that had been a Town Manager and in the legislature who makes a point if he has anything to say to a Councilor, he calls all of them. She directed the comment to George Kerr. She said people are cutting deals and making backdoor decisions. She said we need to hire an Administrative Officer. She said she knows that people know that is what we need to do. Dana Kelley's name needs to go on there as an Administrative Officer. Until we have time to address the situation.

Council Mailhot said Section 503 of the Charter says "may appoint an Administrative Official". It doesn't say shall: it doesn't say will. She also said she would like to see a department head in the position but she struggles with taking one of those department heads and trying to sandwich them in between this seven member Council. Seeing how dysfunctional and how divisive some of them are.

George Kerr said I didn't come here for confrontation. He said he did not call Councilor Mailhot, she called him. He said he has not lost faith in the community or the Council. We need to move forward. It is about the Town. United you stand, divided you fall and right now you have fallen. Councilor Mailhot asked George to confirm that she had called to confirm a rumor she heard on the street. Mr. Kerr confirmed that.

Jerome Begert said what happened was done in an expeditious way per the buy out clause.

Councilor Coleman interjected that this was not the discussion being held tonight.

Jerome Begert said Councilor Coleman was the one that brought it up first.

He said that before the last election he could have brought up several illegal quorums that propelled 22 different counts of Charter violations. He said that some were still acting unethical and ginning up friends in the flash mob facebook media to commit slander. And if you think he won't invoke Charter section 914, his deadline was a week ago. It's over.

Freddie Dolgon referred to justice for all. What we have here is a take over. There is a terrible injustice that has happened. A man was let go but you have to explain to the community what happen. There is no moving forward until we know what happened. We can go forward when you admit we made a mistake. Maybe Mark would come back.

Domenic Pugliares. Said he would be willing to step in. He told Councilor Dayton he felt her pain. She said she seriously doubted that. He said every ship needs a captain. If the employees don't have someone to go to things are going to go wrong. He said as George said we are going into summer and we need things to be done. He called Councilor Mailhot to offer his services. The budget needs to be done. He is trying to be the voice of reason. He knows there is dysfunction on the Council. He is not saying he can fix it. He does have experience. A good leader tries to bring people together so that there is not a 4/3 vote every single time.

Councilor Dayton said have you ever hired anybody that you have had less than 5 minutes to talk to? And also someone who has never been in the business you are in.

Domenic Pugliares said the Administrator would be working with people who were hopefully doing their jobs well.

Councilor Dayton said she has had 25 years government administrative experience. She said she is very well versed on what needs to be done here. And she asked the Chair before the vote was taken. Who is going to do the budget; who is going to pay the bills? She said she got blank stares. Domenic said he would be that person. Councilor Dayton said again have you ever hired anyone sight unseen who you have talked to less than five minutes and have never seen a resume. Domenic said she could have gone on Google and checked him out. He said he was there to offer his services. If they wanted him fine: if they didn't fine. He said he didn't come to get into an argument with her. He said he owns a large amount of property and doesn't want to see the town run improperly. Councilor Dayton said that the pervious Town Manager had been running it properly, had been following the rules, following the law. She said the person would need to work with the whole Council but he had chosen to only call one. Councilor Coleman tried to correct her. Domenic said he only knew two people on the Council and that's what makes him perfect. He has no history with the Council. He reached out to help and he will not stand there and be chastised for doing the right thing for this town.

Councilor Furtado apologized for Councilor Dayton's behavior. He said Domenic has made a success of himself and to chastise him or belittle him for not being worthy enough to come to this community to help when he sees there is a problem is an issue. He understood where she was coming from but to talk to Domenic in that manner was disrespectful. He apologized for the Council.

Councilor Dayton said he did not need to apologize for her. She said if he did feel chastised she apologizes but she needs to represent the whole town. We need a Town Manager that knows government. She said if he really wanted the job wouldn't he want to talk to everybody on the Council?

Domenic said he did send an email to the whole Council.

The Chair thanked him. She asked the Council if they would be willing to move item 3 up to the top.

Councilor Coleman said both 3 and 2 should be move up.

Chair said to be clear that 2 and 3 are to be moved up so that bills can be paid and advertising can be done for seasonal positions. No hiring but advertising then item 1 would be discussed.

Councilor Mailhot made a motion to move 2 and 3 up    Councilor Coleman seconded    7-0

2. Discussion with possible action to follow, advanced under emergency dispensation of the normal notification requirements under Division 2, of the Town Council Rules of Procedure, Section 2-52, and under the emergency authorizations of Section 411 of the Town Charter, and regarding authorization of the Human Resources Manager to immediately commence advertising for temporary summer positions of employment with the Town to serve the Police, Fire, Public Works and other Departments requiring temporary staffing for the summer season.

Vice Chair Bolduc motion to accept as read    Councilor Dayton seconded    7-0

3. Discussion with possible action by Resolution of the Counsel to follow, advanced under emergency dispensation of the normal notification requirements under Division 2, of the Town

Council Rules of Procedure, Section 2-52, and regarding the immediate need, under Section 503 of the Town Charter, to appoint an administrative officer of the Town to perform certain limited duties of the Town Manager as necessitated to honor the Town's obligations to its employees and vendors, including all authorizations required to timely pay its employees and vendors, due to the absence of the Manager and current medical leave of the Assistant Manager.

Councilor Coleman made a motion to appoint Police Chief Dana Kelley as Administrative Officer (he asked to strike the word medical) Councilor Dayton seconded

The Chair said when she called Chief Kelley to ask if he wanted that he said no.

Councilor Dayton said oh well. The call of duty is the call of duty and he surely understands that.

Councilor Furtado asked if there was going to be any additional stipend for this position.

The Chair said no. She said she thinks we should ask the chief as he had said no.

Councilor Coleman said Chief Kelley was referring to the acting Town Manager not the Administrative Officer.

Councilor Dayton said it is the call of duty, it has to be done. She said she doesn't believe it is up to Chief Kelley. It is up to Council to appoint an Administrative Officer. It is up to Council. Call for the vote.

Councilor Dayton Yes

Councilor Furtado said he found it hard to vote for someone who doesn't want it

After Councilor Dayton said No one is going to want to do it.

Councilor Furtado said due to her attitude he is voting No

Councilor Dayton said he was going to say that anyway.

Councilor Mailhot agreed that it need to get done but that she knew Chief Kelley did not want to do it. At this time she is respecting his request and said No

Councilor Quinn said he understands that is Chief Kelley's position but he thinks it can be presented to him as a temporary position and we can move forward on item one. Maybe a little arm twisting might be in order here. He said they should go into Executive Session to discuss the names presented here for Interim Town Manager. He voted Yes

Councilor Coleman Yes

Vice Chair Bolduc said out of respect to Dana Kelley's wishes she is saying No

Chari MacDonald said that since she spoke to him several times and tried to get him to do it No

Linda Mailhot made a motion to appoint our Finance Director Diana Asanza Seconded by Vice Chair Bolduc

Councilor Coleman said we may have some problems with a separation of duties where the same person authorizing the payments would also be paying the payments.

Jerome Begert agreed with Councilor Coleman.

The Chair said she had asked Diana about this and she said she would be willing to step in.

Town Clerk Kim McLaughlin said it has been done in the past.

Council Coleman said he would be comfortable with Diana

John Bird said he didn't think it would be appropriate. It is not a good accounting practice.

Chair MacDonald said numerous department heads have called her to say everything will be fine and we are going to get through this. With that and Diana saying yes she feels with the checks and balances and with the great department heads we have that we will be in good shape.

John Bird suggested the Council sign the warrants first to protect the Treasurer

Chair MacDonald said that now the Councilors were getting the warrants earlier thanks to Diana and Fran.

Kim checked with the Town Attorney and he said it would be okay to appoint Diana. He doesn't see any conflict of interest.

The Chair called for the vote.

Councilor Dayton Yes

Councilor Furtado Yes

Councilor Mailhot Yes

Councilor Quinn Yes

Councilor Coleman Yes

Vice Chair Bolduc Yes

Chair MacDonald Yes

7-0

The chair said going back to item one, is it the Councils wishes to go into Executive Session.

Councilor Coleman said the emergency part is over. He would like time to talk to some on the list. He said he would like to talk to Mr. Kerr and Domenic. He said Mark Pearson would not make the cut and Dana Kelley is not interested and he doesn't know the other two. And Jack Turcotte is also not interested.

Councilor Dayton said she didn't think that was ethical. She said the Council needs to this in the proper way. She did not hear Jack was not interested. She said there are no terms on what the duties or pay would be. She said two weeks max, maybe one. She is not going to make a decision tonight.

Vice Chair Bolduc asked if they could go into Executive session and establish the criteria. Council Dayton agreed that they need to established terms and conditions and salary. Time period, rules and responsibilities. Past government experience...what a concept.

Jerome Bergert said Reza Namin was on the school board and was a school superintendent.

Councilor Quinn said the starting point would be an application and then we could fast track the process.

Councilor Dayton agreed and that if others were interested they could certainly also fill out applications. She said she would go into Executive Session for determining conditions terms and salaries.

Councilor Coleman said we may be putting the horse before the cart as we don't know what we will see for resumes. Let's get a deadline. Do we have to advertise?

Vice Chair Bolduc said based on Maine Media she thinks we have advertised already.

Council Coleman agreed.

Chair Bolduc sees two processes. One being the Interim Town Manager and the other a permanent Town Manager. She suggested we get a diverse search committee for the Town Manager position.

Councilor Dayton, Councilor Quinn and Councilor Coleman differed on if it would be appropriate to go into Executive Session since it would not be about a personnel issue.

The Chair said they would be discussing salary ranges. She said perhaps they could set a date for when applications for the Interim Town Manager need to be in and then she could set a date next week to discuss those. They can then have on the agenda next week to start the search for a permanent Town Manager.

.Council Dayton said she thinks an Executive Session would be in order.

John Bird said it could go into Executive Sessions because it would be discussing negotiations

Vice Chair Bolduc made a motion that they enter Executive Session regarding the terms and conditions of the appointment of the Interim Town Manager with possible action to follow.

Councilor Dayton seconded the motion.

Councilor Coleman No

Councilor Quinn No he believes this is the publics business

Councilor Mailhot Yes

Councilor Dayton Yes

Councilor Furtado Yes

Vice Chair Bolduc Yes

Chair MacDonald Yes

5-2

**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 twenty (20) pages is a copy of the original Minutes of the Town Council Meeting of March 12, 2013.**

**Sheila M. Flathers**

