

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, December 6, 2011
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, December 6, 2011. Chair Quinn opened the meeting at 7:00 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 Jack Turcotte
Assistant Town Manager V. Louise Reid**

**Pledge to the Flag
Roll Call**

PRESENTATION: **Public Works Director, William Robertson,
updated the Town Council on Public Works
Projects.**

Public Works Project Update December 6, 2011

The Public Works Director, William Robertson, updated the Council on a list of the projects that have been or are near completion. The Council expressed their appreciation for the work that has been done and the amount of savings to the Community. A time was spent on discussion of the Tide Gate projects and the request that the "Plan" be shared with the Council which would be more specific and descriptive. It was pointed out that continual discussions and meetings with the Department of Environmental Protection and more testing of the water for salinity was being done. Floodgate mitigation was discussed.

I. Capital Projects

<i>Ross Road Phase I & II</i>	Estimate:	\$396,777.00
Phase I completed		
Phase II overlay (Summer 2012)		
	Cost to Date:	\$156,456.37
	Balance:	\$240,320.61
(Note: Need costs of reclaim & binder overlay)		
Overlay Phase II		<u>\$60,000.00</u>
	Balance:	\$180,320.61

Puffin St.

(Durocher, Graham, Seabreeze & Ladd) Estimate: \$48,100.50
Cost: \$49,192.38
(- \$1,091.88)

(Note: Additional drainage on Ladd from Puffin to E. Grand)

II. Maine DOT/Federal

*Phase II E. Emerson Cummings Blvd
Sidewalk project*

Contract Sum: \$113,127.00
Fed/Maine Dot: \$117,677.00
Balance: \$4,550.00
Total completed & stored: \$125,323.96
Balance: (- \$7,646.96)

III. Small Projects by DPW

*Date Street drainage
Ocean & W. Grand drainage
Union Ave drainage
Dune rehab/plantings (Aldine & Durocher)*

IV. Bond Projects

Summit/School St. Sewer & drainage

Bond amount 2010: \$863,100.16
Wright-Pierce invoices: \$28,946.15
\$834,154.01
Public Work's expense: \$171,924.14
Balance: \$662,229.87

Remaining Work:

Reclaim School St. Binder course School St.

Overlay entire project. Estimate: \$ 81,367.20
Balance: \$580,862.57

West Grand Ave

Bond amount 2010: \$1,785,000.00
Wright-Pierce invoices: \$59,837.67
Balance: \$1,725,162.33

Drainage project

Roanoke to Pavia by Public Works \$34,303.91
\$1,690,858.42

Sewer project by Risbara Bros Construction

\$267,360.06
Balance: \$1,423,498.36

Tide Gate project

Excavation \$22,585.00

Balance: \$1,400,913.36

(Note: Need costs of reclaim & binder)

Remaining work:

Drainage: Overlay, curbing sidewalk, evacuation route

Sewerage: Overlay, curbing sidewalks, raise structures

Tide Gate electrical and controls, safety at box culvert

Estimate: \$340,698.00

\$1,060,215.36

The Department Head reviewed each of the items listed on his project list detailing various aspects of the project and the resulting savings or overages. A very lengthy conversation on the tide gate plan was discussed with the Council questioning the aspects of the project. Councilor Dayton related that she has never seen the project plan which would include a description and methodology of the project and asked again that this be provided to the Council as soon as possible. Since a portion of this project is on the agenda under Agenda Item Number 5528, the question was raised if an RFP was done for this. The Public Works Director explained that he had met with three local vendors; one from Saco; one from Scarborough; and one from Old Orchard; and explained in detail to each of them what the project consisted of and what he was looking to accomplish in this part of the overall project. The Public Works Director also explained that the complexity of this project results from the various aspects of floodgate mitigation. An update was also given relative to the Intersection project and the need for additional funding and the plan for the Town Manager to contact Commissioner Bernhardt of the DOT to arrange a meeting to see if some kind of collaboration could be involved in getting the Intersection project to move again. It is hoped that by appealing this to a higher level there might be a partnership of collaboration. At the conclusion of the presentation, several Councilors thanked the Public Works Director for his staff's diligence in moving forward with these projects and also for the money savings that have been accomplished.

ACKNOWLEDGEMENTS:

COUNCILOR COLEMAN: I would like to express thanks to OOB365 for the Volunteer recognition held a few weeks ago which I understand was well attended and great support and appreciation given to the many volunteers who so willingly serve our community.

VICE CHAIR TOUSIGNANT: I would remind everyone that Wednesday, December 7th is Pearl Harbor Day and at 12:30 we will have a flag ceremony at Memorial Park and I would invite you to join us for this moment of reflection.

COUNCILOR DAYTON: I would like to thank the Chamber of Commerce and Bud Harmon for another excellent Celebration by the Sea and to all those who participated express my thanks for the hours of preparation. It was good to see our young people and seniors participating in the event.

ACCEPTANCE OF MINUTES: Town Council Meeting Minutes of November 15, 2011; Special Town Council Meeting Minutes of Canvassing of results of Municipal Election; Special Town Council Meeting Minutes of Inauguration of the Town Council of November 21, 2011; and Special Town Council Meeting Minutes of November 29, 2011.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Accept the Town Council Minutes as read.

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR: I open this Public Hearing at 7:28 p.m.

Nora Nicole Parks (314-3-5), 17A Lake Avenue, one year round rental.

CHAIR: I close this Public Hearing at 7:29 p.m.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to approve the Business License as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT: Attended a legal mediation session in Portland. Spent a fair amount of time on Ballpark meetings and issues particularly dealing with the subject of securing a new ball team. Meeting with the RSU 23 Superintendent Philips regarding the subject of the proposed RSU budget. Meeting with contractors and engineers relating to the cement repairs at the Ballpark. Catherine – Finance Director and I have been spending time together to review past practices. Involved in interviews with contractors regarding the fire Station Water proofing project. Finished up negotiations with Public Works and the Police Department. Many Department Heads and I met this afternoon with the Department of Environmental Protection to discuss water quality of Goose Fare Brook. This meeting was structured by the Maine Healthy Beaches Program.

NEW BUSINESS:

5526 Discussion with Action: Amend the General Assistance Ordinance, Section 6.8, Overall Maximum Levels of Assistance and Maximum Amounts Allowed for Housing.

Amend Section 6.8 Basic necessities; Overall maximum levels of assistance

No. in Household	CURRENT MONTHLY	<u>PROPOSED</u> <u>MONTHLY</u>
1	\$802.00	<u>\$812.00</u>
2	\$952.00	<u>\$964.00</u>
3	\$1233.00	<u>\$1249.00</u>

4	\$1553.00	<u>\$1573.00</u>
5	\$1664.00	<u>\$1686.00</u>
<u>6</u>	\$1739.00	<u>\$1814.00</u>

For each additional person add \$75 per month.

Amend Section 6.8 Basic necessities; Housing maximums

UNHEATED

Bedrooms	CURRENT	<u>PROPOSED</u>	CURRENT	<u>PROPOSED</u>
	WEEKLY	<u>WEEKLY</u>	MONTHLY	<u>MONTHLY</u>
0	90.00	<u>90.00</u>	387.00	<u>387.00</u>
1	101.00	<u>105.00</u>	434.00	<u>451.00</u>
2	138.00	<u>132.00</u>	593.00	<u>567.00</u>
3	170.00	<u>167.00</u>	780.00	<u>700.00</u>
4	185.00	<u>183.00</u>	795.00	<u>800.00</u>

HEATED

Bedrooms	CURRENT	<u>PROPOSED</u>	CURRENT	<u>PROPOSED</u>
	WEEKLY	<u>WEEKLY</u>	MONTHLY	<u>MONTHLY</u>
0	98.00	<u>100.00</u>	420.00	<u>425.00</u>
1	115.00	<u>116.00</u>	484.00	<u>500.00</u>
2	145.00	<u>141.00</u>	623.00	<u>610.00</u>
3	177.00	<u>175.00</u>	761.00	<u>725.00</u>
4	188.00	<u>193.00</u>	809.00	<u>860.00</u>

Jerome Begert asked if this was a structural change and if this was is it only a spending increase. He also asked if it was calculated by our local administrator based on recent local needs or is this due to an unfunded – mandate from the State and/or the Federal Government that was theorized by using census-data that derives from Old Orchard Beach’s amorphously migratory rental population? He also asked what percentages are spent by the Federal/State? County governments (versus local taxpayers) for General Assistance and housing assistance. He also asked if the IRS Service ever cross-references/audit OOB’s rental licenses and assistance records so as to make sure that landlords who receive OOB’s housing assistance money are paying their income tax on that rental income. The Town Manager asked the Assistant Town Manager to address these questions since she had had a lengthy conversation with Mr. Begert before the meeting this evening. She indicated that the Administrator does have feedback into the funding issues but is also mandated by the State. She indicated that to her knowledge the IRS does not audit the General Assistance office per say but she does know that the General Assistance Office is audited by the State once a year. Winter rentals are a big attraction because usually electricity, cable, and heat are included in the rent. She concluded by updating the Council on the extensive numbers coming in for assistance in these tough economic time.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Amend the General Assistance Ordinance, Section 6.8, Overall Maximum Levels of Assistance and Maximum Amounts Allowed for Housing.

VOTE: Unanimous.

5527 Discussion with Action: Approve the Special Event Permit application for the Special Olympics of Maine to hold their annual Lobster Dip on the beach by the Brunswick on Sunday, January 1st, 2012 from 9 a.m. to when the “Dip” takes place at noon; and a request to waive the fee. Insurance, listing the Town of Old Orchard Beach as additionally insured, to be provided to the Town Clerk’s Office at least one week prior to the event.

MOTION: Councilor Dayton motioned and Councilor Coleman seconded to Approve the Special Event Permit application as read.

VOTE: Unanimous.

5528 Discussion with Action: Accept the bid from MacDonald’s Excavating for New Salt Road Tide Gate modification project, with respect to excavation, electrical conduit, reinforced steel and concrete, backfill, compaction and paving, in the amount of \$22,585.00 from Account Number 31141-50867 - West Grand Bond Project, with balance of \$1,400,913.36.

BILL ROBERTSON: The Public Works Director received three votes as a result of the RFP request:

MacDonald Excavation	\$22,585.00
Risbara Brothers	24,715.69
SBB Excavation, LLC	25,880.00

The Public Works Director is requesting approval of the lowest bid to MacDonald Excavation in the amount of \$22,585.

This item had been discussed at length at the beginning of the Council Meeting during the presentation by the Department of Public Works Director. He again indicated that he had talked with two of the individuals and they were asked to come in and review the plan. It was indicated that they would hire local electrical, concrete and pavement contractors which the Council had indicated in the past they would appreciate as much as possible to use local workmen. The Chairman stated that one of the bidders seemed to have more detail in the project than the other two and he was concerned. The Public Works Director said that one contractor went far beyond what was requested. He also spoke about the asphalt being used for reclaim, a product they use like gravel. Councilor Dayton spoke at length about her concern that each contractor was given the same instructions for requirements of the project and the Public Works Director indicated they all were provided the same instructions. She indicated concern that the Council had not seen the plan and as such really had no knowledge on which to vote on this item. “It is important,” Councilor Dayton stated, “that the Council needs to be assured that all three were given instruction, in writing, which would be done with an RFP. What I am trying to discuss is that we have not seen the plan. So do you have it? Can I get a copy of it? What I am trying to point out Bill is that we have not been kept apprised of what the plan is and all of a sudden we are asked to approve a \$22, \$24,\$26 thousand dollar contract

and we do not have any written information about the project is, this is why you get so many questions. I am concerned that this was not sent out for RFP. I am concerned that I have no written information that describes what the job entails and as a result I have 3 bids that look very different. There are different levels of details comparatively speaking between the three so it just makes Council a bit uneasy. I heard that you said that this is an easy project, I get that. What I am concerned about is how do I know all three bidders were given the same information. How do I know that? If you just picked up the phone and asked for bids, how do I know all three bidders received the same information? I think in the future in order to avoid these types of questions, the bids need to be publicized so that we have some idea of what is going on. I am looking for some consistency too between Departments. Before the Dept of Recreation goes out for a contract we are apprised of the RFP process; we are kept informed of what is going on. There just needs to be some consistency. I am not saying no to anything, I am not saying I am against the project. I am not against the project. I have been very concerned about Jordon Marsh, about the tide gate, and about the salinity and the fresh water factor, I think sometimes more than most. This is something I am focused on but I would like to see some consistency and uniformity on how we handle contracts particularly anything over \$5 to \$10 thousand dollars. I must have some idea of what the project is, what the plan is before I am asked to approve a large contract. Again, I am not saying no. I would just like to see some uniformity across the board when it comes to communication with Council about these contracts. Thank you.” Again the Public Works Director stated that he had personally discussed with all three the requirements of the plan. The request was made by Council Dayton, again, that she wanted to see the plan and the detailed instructions provided to those who bid for the proposal. She indicated that she felt consistency and uniformity in how the plan is presented to bidders is very important. At this time Councilor MacDonald indicated that although she does not own the business, the vendor is related to her, and therefore she would abstain from voting on the issue.

MOTION: Councilor Dayton motioned and Councilor Coleman seconded to Accept the bid from MacDonald’s Excavating for New Salt Road Tide Gate modification project, with respect to excavation, electrical conduit, reinforced steel and concrete, backfill, compaction and paving, in the amount of \$22,585.00 from Account Number 31141-50867 - West Grand Bond Project, with balance of \$1,400,913.36

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

5529 Discussion with Action: Approve the Special Event Permit application for the Recreation Department to hold their annual Frozen 4-miler Road Race on Sunday, January 15th, 2012, with a snow date of Sunday, January 22nd, 2012, from 12:30 p.m. to 2:30 p.m.; and a request to waive the fee.

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Approve the Special Event Permit as read.

VOTE: Unanimous.

5530 Discussion with Action: Accept, with regret, the resignation of John Weaver from the Recycling Committee.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Accept, with regret, the Resignation of John Weaver from the Recycling Committee.

VOTE: Unanimous.

Councilors Dayton and John Bird both expressed keen appreciation to John Weaver for the work that he has done on the Recycling Committee.

5531 Discussion with Action: Approve Liquor License Renewal of Ocean Pizza Inc. dba/Ocean Pizza & Pasta (210-2-51), 2 Ocean Park Road, s-m-v in a Restaurant/Lounge.

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Approve Liquor License Renewal of Ocean Pizza Inc. dba/Ocean Pizza & Pasta (210-2-51), 2 Ocean Park Road, s-m-v in a Restaurant/Lounge.

VOTE: Unanimous.

5532 Discussion with Action: Appoint 2012 annual appointments as follows: General Assistance Director – Patricia Saunders; Tax Collector – Deborah Mulherin; Plumbing Inspector – Mark Mitchell; Electrical Inspector – Mark Mitchell; Alternate Electrical Inspector – William Southwick; and Animal Control Officer - William Watson.

Jerome Begert again reminded the Town Council that in their form of government all legislative and executive power resides with the Town Council and that this is a legal fact. So, theoretically, Council can appoint (hire). He indicated that during the Charter Commission meetings they decided to respectfully compromise with the Town Manager's perspective on mainstream municipal hiring practices. The compromise was that that Town Manager nominates; Council confirms; Manager appoints. The Assistant Town Manager indicated that she has followed the previous procedures of the past eight Councils and she would be happy to change the verbiage in the future and that it would be changed in light of the Charter changes. Vice Chair Tousignant indicated we should wait till those go into finality which is July.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Appoint 2012 annual appointments as follows: General Assistance Director – Patricia Saunders; Tax Collector – Deborah Mulherin; Plumbing Inspector – Mark Mitchell; Electrical Inspector – Mark Mitchell; Alternate Electrical Inspector – William Southwick; and Animal Control Officer - William Watson.

VOTE: Unanimous.

5533 Discussion with Action: Re-appoint Anita Anderson as Health Officer, term to expire December 31, 2014.

MOTION: Councilor Dayton motioned and Councilor Coleman seconded to Re-appoint Anita Anderson as Health Officer, term to expire December 31, 2014.

VOTE: Unanimous.

5534 Discussion with Action: Accept the bid from Wescott & Sons, Inc. in the amount of \$13,095 for the purchase of two 2011 ATV's and an ATV Trailer to include delivery and complete assembly, including assembly of all accessories, from Account Number 10013-30100, Undesignated Fund, with a balance of \$4,297,631.81 until receipt of the ATV Grant from the Department of Justice.

TOWN MANAGER: Below is the RFP from which two bids were received:

Abbott's Power Equipment	\$13,458.30
Wescott & Sons, Inc.	13,095.00

The Police Department is recommending the acceptance of the lowest bidder – Wescott & Sons.

**TOWN OF OLD ORCHARD BEACH
POLICE DEPARTMENT**

The Town of Old Orchard Beach Police Department is currently accepting bids on two (2) 2011 ATV's and an ATV Trailer.

All bids must be sealed and are to include delivery and complete assembly, including assembly of all accessories. Bids can be sent to:

**Deputy Chief Keith Babin
16 E Emerson Cummings Boulevard
Old Orchard Beach, Maine 04064
207-937-5802**

Bids must be received no later than November 15, 2011 at 12:00 noon.

**Bids will be opened on November 16, 2011 at 12:00 noon at the
OOB Police Department.**

**Specifications for the ATV's and ATV Trailer can be found on
the Town's web site: www.oobmaine.com**

The Town reserves the right to reject any or all bids, to waive any technical or legal deficiencies, and to accept the bid that it may deem to be in the best interest of the Town.

Town of Old Orchard Beach, Maine



Police Department

**16 E Emerson Cummings Blvd.
Old Orchard Beach, Maine 04064**

**Dana M. Kelley
Chief of Police**

Keith F. Babin

Tel: (207) 934-4911

Deputy Chief

The Town of Old Orchard Beach, Maine is currently accepting bids on two 2011 ATV and an ATV Trailer that meets the following specifications.

Engine:

- A) Engine Type: 4 Stroke Single Cylinder**
- B) Displacement :498cc High Output (H.O.)**
- C) Fuel System: Carbureted**
- D) Cooling: Liquid**

Drive- Train:

- A) Transmission/Final Drive: Automatic PVT P/R/N/L/H: Shaft**
- B) Drive System: On-Demand True AWD/2WD**

Suspension:

- A) Front Suspension: MacPherson Strut with 8.2in (20.8 cm) Travel**
- B) Rear Suspension: Dual A-Arm Rolled 8.75 in (22.2 cm) Travel**

Brakes:

- A) Front/Rear Brakes: Single Lever 4-Wheel Hydraulic Disc with Hydraulic Rear Foot Brake**
- B) Parking Brake: Park in Transmission/Lockable Hand Lever**

Tires & Wheels:

- A) Front Tires / Model 25x 8-12; 489**
- B) Rear Tires / Model 25x 11-12; 489**
- C) Wheels: Stamped Steel**

Dimensions:

- A) Wheelbase: 57 in, (144.8 cm)**
- B) Dry Weight: 740 lbs. (335.7 kg)**
- C) Overall Vehicle Size (LxWxH) 83in. x 48in. x 48in.**
- D) Ground Clearance: 11.25 in.**
- E) Seat Height; 33.75in.**

Color

- A) Sage Green**

Accessories:

- A) Sportsman Lock & Ride Rear Cargo Box**

II.) ATV Trailer:

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79X101” 2 place side loading ATV trailer, carrying capacity 1480lbs, bed width 79, bed length 101, hitch height 18 and side loading style.

All bids are to include delivery and complete assembly, including assembly of all accessories. Bids can be sent to Deputy Chief Keith Babin, 16 E Emerson Cummings Blvd, Old orchard Beach, Maine 04064 no later than November 15th 2011. Any questions please call Deputy Chief Keith Babin at 937-5802.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Accept the bid from Wescott & Sons, Inc. in the amount of \$13,095 for the purchase of two 2011 ATV’s and an ATV Trailer to include delivery and complete assembly, including assembly of all accessories, from Account Number 10013-30100, Undesignated Fund, with a balance of \$4,297,631.81 until receipt of the ATV Grant from the Department of Justice.

VOTE: Unanimous.

5535 Discussion with Action: Enactment of Emergency Ordinance on the “Sale/Use of Consumer Fireworks.”

ASSISTANT TOWN MANAGER: Under a new State law that legalizes consumer use and sale of fireworks, individual municipalities have the ability to come up with local ordinances to set limits or prevent sale and use of fireworks. The law goes into effect on January 1, 2012. The Council had previously had two workshops regarding an ordinance that would ban the sale and use of fireworks. Mark Mitchell, the Code Enforcement Officer and Chief Dana Kelly and Chief John Glass met regarding the new law regarding the sale and use of consumer fireworks. The concern of possible grandfathering if something was not in place led to two suggestions: Setting a public hearing for the draft fireworks ordinance or enacting an Emergency Ordinance on the Sale and Use of Consumer Fireworks. It was felt that this moratorium would permit the staff the opportunity to provide more information requested by the Council. The Chair said before enacting a permanent ordinance he wanted to get more information on the types of fireworks to make sure the Town wasn’t banning some items that may be relatively harmless. The issue of enacting a temporary, sixty-one day moratorium came after the Town administration raised some grave concerns that if nothing were on the books, a business could come in and get a fireworks license and then be grandfathered. The Assistant Town Manager indicated she had several calls from Campground residents who had a grave concern about the sale and use of fireworks, where the homes are close together. Councilor Michael Coleman indicated he didn’t see what the rush was to move this forward and that statistically if you look at the accidents that have happened, they are minimal in the percentage of uses. He said he didn’t see the need for a moratorium and said the State law had regulations in place. The State law requires people who use fireworks to be twenty-one year olds on their own property and those who sell fireworks have to meet stringent fire codes and setback requirements. Some States don’t have a minimum age or allow people as young as twelve to use fireworks. He objected to the fines from \$100 to \$2,500 indicating that this isn’t realistic. You can get less of a fine for a felony. He also indicated that people coming to Maine from outside the State will know fireworks are legal here but won’t understand that individual municipalities can establish

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their own rules. He said that fireworks would be in this Town whether we like it or not. Vice Chair Tousignant said there were discussions previously that the Town would enact a fireworks ordinance that would replicate what is currently allowed in Town and he favored a moratorium to allow the Town to have another workshop. He said he was perplexed why this wasn't moving forward. Councilor Robin Dayton said if the Town doesn't do anything about the use and sale of fireworks, it won't be able to prevent a fireworks business from coming into Town and could later wind up in court to try to prohibit it. She said the Town Council's priority is protecting the citizens and this is what the proposed moratorium would do. This is temporary and would give the Town sixty-one days to figure out exactly what it wants to do. This buys time for the Town Council to figure out what is best for the Town. Councilor MacDonald said businesses can be stopped if the Town does not feel they are appropriate, noting the Town once prevented an alleged drug paraphernalia business claiming to sell "glass art." She said she wanted to wait and see and get more information before addressing the issue. Councilors Dayton, Vice Chair Tousignant and Chair Quinn voted yes to the Moratorium; but Councilors MacDonald and Councilor Coleman voted against the proposed motion. The motion failed because under Section 410.1 of the Charter regarding emergency ordinances, it states it must pass by four Councilors voting in favor.

**TOWN OF OLD ORCHARD BEACH
EMERGENCY ORDINANCE
PROHIBITING THE SALE AND USE OF CONSUMER FIREWORKS**

WHEREAS, the Legislature of the State of Maine has modified laws pertaining to the use and sale of consumer fireworks; and

WHEREAS, such laws take effect January 1, 2012; and

WHEREAS, the Legislature has provided that "[t]he legislative body of a municipality may adopt an ordinance to prohibit or restrict the sale or use of consumer fireworks within the municipality"; and

WHEREAS, the Town's current ordinances do not provide an adequate mechanism to prohibit or restrict the sale and use of consumer fireworks; and

WHEREAS, the Town's existing ordinances are inadequate to prevent the potential for serious public harm from the sale and use of consumer fireworks;

WHEREAS, the Town Council concludes that these circumstances constitute a public emergency within the meaning of Section 410.1 of the Old Orchard Beach Town Charter.

NOW THEREFORE, be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:

1. 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.

2. 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 – "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 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.

3. 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.

4. 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.

5. VIOLATION PENALTIES AND ENFORCEMENT.

- A. **Penalty for Violation.** For each violation of a provision of this Ordinance or other failure to comply with any of the requirements thereof, the person shall be subject to a fine of not less than \$100 and not more than \$2,500, plus attorney's fees and costs.
- 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.

6. EFFECTIVE DATE.

This Ordinance takes effect immediately upon adoption and shall expire on the 61st day following the date of its adoption, unless earlier extended, repealed or modified by the Old Orchard Beach Town Council.

7. 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.

It should also be noted that discussion was held and a vote taken for an emergency ordinance to disallow the sale of fireworks beginning December 10, 2011. The vote was taken with the same
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Councilors voting on both sides of the issue as was in the final motion below.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Enact an Emergency Ordinance on the “Sale/Use of Consumer Fireworks.”

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

5536 Discussion with Action: Approve a Concept Proposal to move forward in preparation to host a College Futures League Baseball Team in Old Orchard Beach and to Authorize the Town Legal Counsel to prepare a final Contract document for approval by the Town Council and the Ballpark Commission at a meeting to be held in the near future.

BACKGROUND: The following was presented to the Council by Commission Chair Paul Crossman and Jen DeRice, the General Manager of the Ballpark. In light of a recent development with the Ballpark, I thought it would be a good idea to update you on what’s been happening as well as to give you an idea of what we’re planning for next season. For the past several weeks, we have been working with a local investment group from Old Orchard Beach who is interested in bringing a collegiate level team to the Ballpark. The team we are considering would be a new team entering into the Futures Collegiate Baseball League (FCBL). You can learn more about this league by visiting the website www.thefuturesleague.com. The Ballpark Commission has met a few of times in executive session to discuss terms of a potential lease agreement with this group. Likewise, we have explored the options of not having an anchor team at our facility and worked through some those options as well. Given the inevitable capital expenditures (namely with the lights and structural integrity) that will arise, we feel that by having a home team to call our own, we are putting the Town and the Ballpark in a good position to generate some significant revenue and really work toward reaching its full potential while allowing the town to reap the benefit. Ultimately, the commission and I agree that a best case scenario for reaching its full potential, while continuing to honor our commitment to those who donated time and money to the rejuvenation of the Ballpark, is to share the season between baseball and special events. An anchor team, with a lease agreement, will provide us with a guaranteed revenue source. Other baseball events such as high school and youth teams, men’s league, and Legion Tournaments will also help us to be self-supporting. Our plan is to utilize the stadium for baseball from mid-April to mid-August. From mid-August through October, we would like plan special events to attract people from all over the State and beyond. This past Monday, the Commission and the investment group, known as the Old Orchard Beach Baseball Club, met to work out the core details of an agreement. While the more complex logistics of the agreement have yet to be spelled out, the Commission unanimously agreed through a straw poll to move forward with this conceptual agreement. The Commission intends to vote on this at the next scheduled meeting which is Wednesday, December 7th. Because of the time sensitivity of this issue, we need to get initial approval from you at the next Council meeting on Tuesday, December 6th to determine whether or not we can move forward with this plan. Before garnering any expense through attorney’s fees to compose an agreement, we seek your permission to move forward. Likewise, the Futures League Commissioner is pressed for time as he prepares his league schedule. Old Orchard will be the newest addition to this league which plans to have a total of 7 teams for 2012. The 6th team, located in Pittsfield, MA, was just approved last week by its local Parks Commission and City

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Council. There are several dozen points of interest to be written into the official agreement, but the basic details we've worked out are as follows:

The team agrees to:

- 1) Two year agreement for season beginning June 1st through July 31st and/or season's end (first week of August)**
- 2) Pay \$15,000 lease per year for June and July plus \$1.00 per ticket over 500 tickets sold per game**
- 3) Host 27 home games and the ability to apply for up to 3 special event permits with the Town (cannot include concerts, festivals, or other events to conflict with Ballpark events) – must be approved by the commission and the council.**
- 4) Pay \$5,000 per year for two years, by April 1st of 2012 and 2013 to use for Ballpark improvements at the discretion of the Ballpark Commission**
- 5) Operate and maintain the concession stand for June and July only. Retain 100% of the profit for 27 home games and up to 3 special events hosted by the team.**
- 6) Incur all game day expenses for 27 games: including field prep, stadium cleaning, trash pickup, and general operational expenses.**
- 7) Pay the Ballpark 25% of the gross for all non-team concessions sold in June and July (i.e., BBQ Fest, non-team games, etc.)**
- 8) Ballpark retains all revenues from field rentals and non-team ticket sales for the entire 2012 – 2013 seasons**
- 9) Retain exclusive rights to outfield signage/advertising (after approval by the Ballpark Commission) with the exception of the scoreboard (Ballpark can solicit sponsors for that space) and the Ballpark can continue to use signs as a bartering tool for services rendered**
- 10) The Ballpark will make a reasonable attempt to provide a safe, functional facility that includes stadium lighting for all games. If for some reason, the Ballpark is deemed unsafe or unable to provide lights, the team will not hold harmless the Town of OOB or the Ballpark and has agreed to proceed with day games as necessary.**

This potential lease agreement has taken numerous meetings, and several weeks to construct. Extensive research and dialogue has contributed to this proposal. We trust you will give this all due consideration as we look to you for support and your guidance as we move forward to the next phase of completing this agreement. Commission Chair, Paul Crossman, will present these details to you at Tuesday night's Council meeting. So that I am clear, I want to reiterate that we seek only your permission to move forward with the terms listed above. The legal aspects and finer details of the agreement will be worked out with an attorney in the next couple of weeks. In the meantime, the league commissioner must work now to put together the schedule for the season and the Old Orchard Beach Baseball Club must begin the process of hiring a General Manager and support staff to get started. Thank you for your consideration.

There were a number of supporters of the Ballpark in the audience who reminded the Council that this facility rose from the ashes through the dedication and sweat of volunteers and that the proposal they made this evening is the best they feel they can do for the Ballpark and the citizens of this community considering all the details including not only financing but programming as well. They reminded the Council of the infrastructure needs of the Ballpark itself and the limited financial ability to meet them at this time and that was a consideration of this proposal. Councilors also congratulated the volunteers for their hard work and encouraged

them not to be discouraged in their continued planning. There were financial considerations that were discussed and concerns about the validity of baseball bringing in funds required to meet the needs of not only programming but facility upgrades. Other attendees and some who spoke were Pam and John Gallo and Jason Hirst who are part of the investment group known as Old Orchard Beach Collegiate Baseball Club and Chris Hall who is the Commissioner of the Futures Collegiate Baseball League. Comments from those in the audience included how much it is doing for the Town and for its young people. Sheila Flathers and Jerome Begert also encouraged the Council to move forward with this proposal. The Chair did question how successful baseball really is in evaluating the future of the Ballpark. He recalled former financial challenges related to the Ballpark which eventually fell to pocketbooks of the citizens. Discussion on the use and responsibility of the Concession Stand occurred also with mandates on whose responsibility and financial considerations to be defined in the contract. Finally the Ballpark Commission made it clear that at this point in time there is nothing to fill the void at the Ballpark and that this is the best move forward which is being supported by the Ballpark Commissioners. With the approval of the Town Council, a move forward will be made in securing a contract for the new team which will operate under the newly formed Futures Collegiate Baseball League, a spin-off from the New England Collegiate Baseball League, under which the Raging Tide played last summer. The Commissioners indicated that the Futures Collegiate Baseball League is attractive because it would draw players not just from Division 1 teams, as the Raging Tide did, but also from Division II and III teams which would mean local players from St. Joseph's or the University of Southern Maine would participate. The Futures League is proposing a 27-game home schedule which is an increase of six games over the schedule played by the Raging Tide. The League consists of seven teams and the plan is for there to be ten teams competing in 2012 including a team from Old Orchard Beach and teams from Massachusetts and New Hampshire. The basic contract details include a two-year commitment from the new team; a \$15,000 lease payment per year, plus \$1 for every ticket sold over 500; a \$5,000 annual payment for Ballpark improvements; and 25 percent of the gross for all non-team concessions sold in June and July. Given the inevitable capital expenditures the Commissioners felt that by having a home team to call their own, they were putting the Town and the Ballpark in a good position to generate some significant revenue and really work toward reaching its full potential while allowing the Town to reap the benefit.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Approve a Concept Proposal to move forward in preparation to host a College Futures League Baseball Team in Old Orchard Beach and to Authorize the Town Legal Counsel to prepare a final Contract document for approval by the Town Council and the Ballpark Commission at a meeting to be held in the near future.

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

5537 Discussion with Action: Authorize the Town Manager to apply on behalf of the Town for federal financing assistance under the provision of the Land and Water Conservation Fund Act, Public Law 88-578, for the development of a Skateboard/BMX complex; and further authorize the Town Manager to enter into the Land and Water Conservation Fund Project Agreement with the State, subsequent to Federal approval of the project. Upon approval of the Federal funds the Town tax appropriations are being used for all or part of the local share of the project cost, the

Town must raise the funds through Council action; and the local sponsor is obligated to pay all costs of the project “up-front;” therefore, there may be the need to authorize the borrowing of funds which will be repaid by Federal reimbursement.

JASON WEBBER: The Land and Water Conservation Fund Act of 1964 (LWCF) was established to assist Federal, State and local governments in the acquisition and/or development of public outdoor recreation facilities. Administered at the Federal level by the National Park Service and at the State level by the Bureau of Parks and Lands in the Maine Department of Conservation, LWCF grants can provide up to 50% of the allowable costs for approved acquisition or development projects. The 2011 application is available in the Recreation Department. The Recreation Department has gone through the pre-inspection with Mick Roger, the Alternate State Liaison Officer for Land and Water Conservation Fund. The application deadline is Friday, December 9, 2011 by 5:00 p.m. at the office of the Bureau of Parks and Lands. The total project cost we hope to receive is \$100,000. Of the total \$50,000 will come from LWCF and \$50,000 will come from the Town of Old Orchard Beach. Our contribution will be made of the \$40,464.33 that we already have in the Skateboard Account (30401/50311) and \$10,000 in in-kind services. Town tax appropriations are being used for all or part of the local share of the project cost. The Town must raise the funds through Council action. The local sponsor is obligated to pay all costs of the project “up-front;” therefore there may be the need to authorize the borrowing of funds which will be repaid by Federal reimbursement.

DESIGN & CONSTRUCTION SERVICES FOR THE Ball Park Skate Park

The proposed building a Skateboard Park has had the support of previous Councils and money has been provided for this project. The Councilors encouragement the Recreation Director to move in a timely manner since there has been such a lengthy delay in moving this to completion. The Recreation Director explained that this process goes slowly because there are requirements that need to be met. It was explained that the Skate Park can be designed in many different designs as is obvious from the various designs of other parks. The Skate Park Committee set the following priorities for our Skate Park including elements for both bikers and boards; the park should have elements for all skill levels with the majority of park for beginners and intermediate riders; and a flow of ramps and elements is really important. There are several steps to the process. First a bowl with three depths and pool coping; the deepest section of the bowl should have some vert to it, with a tight transitions; tiles under the coping are a definite plus. Secondly, a dirt track for BMX bikes. Other aspects of consideration including visibility, street oriented objects incorporated, an entrance that includes shading and sitting opportunities, a snake run, large stairs set with walls on each side and a three sided pyramid with a hubba. Again, the Town Council encouraged the Recreation Director to move forward with this project and get it completed in a timely manner.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Authorize the Town Manager to apply on behalf of the Town for federal financing assistance under the provision of the Land and Water Conservation Fund Act, Public Law 88-578, for the development of a Skateboard/BMX complex; and further authorize the Town Manager to enter into the Land and Water Conservation Fund Project Agreement with the State, subsequent to Federal approval of the project. Upon

approval of the Federal funds the Town tax appropriations are being used for all or part of the local share of the project cost, the Town must raise the funds through Council action; and the local sponsor is obligated to pay all costs of the project “up-front;” therefore, there may be the need to authorize the borrowing of funds which will be repaid by Federal reimbursement.

VOTE: Unanimous.

5538 Discussion with Action: Approval of the Old Orchard Beach Patrolmen’s Association – Maine Association of Police Union Contract, effective July 12, 011 through June 30, 2013.

The Chair in his discussion indicated that he felt as in the other contracts he has a strong opinion that more needs to be given by the Unions in the area of insurance coverage payment and that as a result he would vote against this, as he did the other contracts.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approval of the Old Orchard Beach Patrolmen’s Association – Maine Association of Police Union Contract, effective July 12, 011 through June 30, 2013.

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

GOOD AND WELFARE:

AUSTIN SWINNEN: He introduced the Council to the MAINE ATTRACTION - WINTER GUARD – 2011/2012 Season. Asking for financial support, he indicated he recognized these are very difficult time economically but they feel the program has an intangible benefit for our youth which gives them the opportunity to participate through the arts and there is no priced tag that can be put on that. The life skills they achieve and benefits of teamwork, competition, and sportsmanship, are invaluable to each of the young people in the program and it costs approximately \$500 for each individual to participate. Sponsorships and fund raising are the only ways they can continue as this is a non-profit organization. He asked for the help of the Council who advised him to contact the Assistant Town Manager who would see information got on the web site, television and also to the press. Contact could also be made and checks sent to Gloria Johnston, Director, 15 Amherst # 101, Biddeford, Maine – checks payable to Maine Attraction Winter Guard.

5539 Discussion: Personnel Matters (Note: This item discusses privacy issues defined under Title 1 M.R.S.A., Section 405(6)(A), and the Council anticipates that the discussion portion will occur in Executive Session.

EXECUTIVE SESSION

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Enter into Executive session for the purpose of discussing a Discussion: Personnel Matters (Note: This item discusses privacy issues defined under Title 1 M.R.S.A., Section 405(6)(A), and the Council anticipates that the discussion portion will occur in Executive Session.

VOTE: Unanimous.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Exit the Executive Session for the purpose of discussing a Personnel matter.

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Adjourn the Town Council Meeting at 10:18 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 nineteen (19) pages is a copy of the original Minutes of the Town Council Meeting of December 6, 2011

V. Louise