

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL WORKSHOP.  
SPECIAL TOWN COUNCIL MEETING  
AND EXECUTIVE SESSION  
Tuesday, November 1, 2011  
TOWN HALL CHAMBERS  
7:00 p.m.**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Tuesday, November 1, 2011. Chair Bob Quinn opened the meeting at 9:00 p.m.

The following were in attendance:

**Chair Bob Quinn  
Vice Chair Michael Tousignant  
Councilor Robin Dayton  
Councilor Sharri MacDonald  
Town Manager Jack Turcotte  
Assistant Town Manager V. Louise Reid**

**Absent: Councilor Shawn O'Neill**

Discussion this evening revolved around the subject of the sale and use of fireworks. This is a result of the 125<sup>th</sup> Maine Legislature enacting Public Law, Chapter 416 "An Act to Legalize the Sale, Possession and Use of Fireworks." Some of the basic requirements include being 21 years of age or older to obtain a license to sell fireworks in Maine; have a federal permit to sell fireworks under Title 18 United States Code, Section 843; local permit to sell; and only sell consumer fireworks in a permanent, fixed, stand-alone building dedicated solely to the sale of consumer fireworks.

Beginning January 1, 2012, the sale, possession and use of consumer fireworks will be legal. The new law authorizes municipalities, by ordinance, to prohibit or restrict the sale or use of consumer fireworks within the municipality but before municipalities undertake to do so it is important they understand what is and is not allowed under the law.

Any municipality in the State, by action of its local legislative body or local governing body, may vote to allow or to prohibit, within that municipality, the issuance of permits or licenses to sell permissible fireworks or the display or possession of permissible fireworks. If the municipality has voted to prohibit the issuance of permits or licenses or the display or possession of permissible fireworks prior to the effective date of this section, such decisions shall remain in effect unless subsequent action is taken under this section.

It should be noted that the "Restriction of Use" section of the law states that people can only use fireworks on their own property or the property of someone who has consented to such use. The pyrotechnics company is not using consumer fireworks so the law would not affect them. Even if they were to use consumer fireworks as part of their show, consent would be given through the Town acting on behalf of the citizenry who have consented via the charter of incorporation to

grant that power to city government. Simply put, say many local officials, it was a bad idea for the Legislature to lift Maine's long-time ban on the sale, use and possession of consumer fireworks. But, with the new law set to take effect on January 1, 2012, that will allow non-professionals access to fireworks such as bottle rockets, skyrockets and aerial spinners, municipal leaders are now crumbling to implement local regulations that range from a total ban on sale and use within a community to banning the discharge of fireworks in certain zones, such as downtown area. Chief John Glass stated that he felt it would be a bad idea to allow the sale and use of fireworks for our job is to ensure the public peace, health and safety of the community. He pointed out that there is a real possibility for injuries to occur to the user or innocent bystander or for a fire to occur as a result of misuse or product failure.

Vice Chair Tousignant at the previous Workshop on sale and use of fireworks indicated that what he wanted to see is what's legal today in Old Orchard Beach to stay legal. The Code Enforcement Officer said it would be pretty simple to say whatever was illegal before January 1, 2012, is still illegal but the Chair wanted more information on what we were making illegal. The remaining four councilors at that time agreed. The workshop this evening is to go over the ordinance that was proposed by the Code Enforcement Officer, the Police and Fire Chief and Deputy Police Chief as well as input from the Town Clerk. The general consensus in preparing the draft ordinance was that the idea of restricting where fireworks can be discharged, particularly in congested areas of downtown and in business areas, is a good one. It was felt that things that explode cause accidents and provide safety and health issues.

Below is the draft ordinance being considered this evening:

**Secs. 38-276--38-280. Reserved.**

Sec. 38-295. Sale and use of consumer fireworks prohibited.

Sec. 38-296. Authority

**This section is enacted pursuant to the authority of 8 M.R.S.A. § 223-A (2).**

Sec. 38-297. Purpose

**The purpose of this article is to establish rules and regulations governing the sale, possession with the intent to sell, use and discharge of Consumer Fireworks within the Town of Old Orchard Beach.**

Sec. 38- 298. Definitions

**"Consumer Fireworks" means any:**

- A. Combustible or explosive composition or substance;**
- B. Combination of explosive compositions or substances;**
- C. Other article that was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, including blank cartridges or toy cannons in which explosives are used, the type of balloon that requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents and other fireworks of like construction;**
- D. Fireworks containing any explosive or flammable compound; or**

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

Sec. 38-299. Prohibitions

**No person shall use, sell, possess with the intent to sell or offer for sale consumer fireworks in the Town of Old Orchard Beach.**

Sec. 38-300. Exceptions

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

Sec. 38-301. Violation penalties.

**Any person who violates a provision of this Section or fails to comply with any of the requirements thereof; for the first offense, the consumer fireworks shall be confiscated and a warning shall be issued. For the next offense, the person shall be subject to civil penalties, upon conviction, of a fine of not less than \$200.00 and not more than \$400.00. If a person has been previously convicted of violating a provision of this Section or the requirements thereof; a fine of not less that \$300 or more than \$600 must be imposed.**

**Discussion this evening continued on analyzing the suggested ordinance that had been submitted by the Code Enforcement Office who had met with the Fire Chief and Police Chief to establish this draft ordinance. The Council acknowledged that they had asked for the ordinance to include exactly what it was before the changes that would be instituted in January of 2012. Continued discussion by the Council found a request for more information on the various types of fireworks and Vice Chair Quinn suggested that perhaps there are some fireworks that we have not permitted before that would not be a safety issue and that he would appreciate more descriptive verbiage on types of fireworks. Fire Department Captain John Gilboy, who represented Chief Glass, spoke about the statistics that the Chief had presented before and the belief that expanding this ordinance would be a safety and enforcement issue. He reminded everyone that recent findings about the sale and use of fireworks showed that in 2009, 8,800 fireworks-related injuries were treated in the United States hospital emergency rooms. Fireworks can directly kill someone while also starting a fatal fire. The highest rates of injuries per million populations were for children aged 10 to 14. In 2009, five out of six (84%) emergency room fireworks injuries involved fireworks that Federal regulations permit consumers to use. The risk of fire death relative to exposure shows fireworks to be more risky per hour of usage than cigarettes.**

**Linda Hardecker, who lives in the Campground area, spoke on the concerns of her neighbors suggesting that she believed that the safety issue far outweighs the personal rights of individuals to set off fireworks and that Old Orchard is a fortunate community to have excellent professional fireworks all summer long which are enjoyed by all the citizens and tourists alike. The Code Enforcement Officer indicated that he would provide more information on the various types of fireworks including combustible or explosive and other articles that produce a visible or audible**

**effect on combustion, explosion, etc. He would establish a determination between what would be banned and what would still remain legal in the Town of Old Orchard Beach such as the sparklers. Insurance coverage for those selling as well as civil liability in the case of an accident were other concerns of the Council.**

**Another workshop will be planned once this information is provided to the Council.**

**The discussion on the sale and use of fireworks ended at 9:20 p.m.**

**Respectfully Submitted,**

**V. Louise Reid  
Town Council Secretary**

**I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of four (4) pages is a true copy of the original Minutes of the Town Council Workshop of November 1, 2011.**

**Louise Reid**