

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, APRIL 20, 2010
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, April 20, 2010. Chair MacDonald opened the meeting at 7:00 p.m.

The following were in attendance:

**Chair Sharri MacDonald
Vice Chair Michael Tousignant
Councilor Laura Bolduc
Councilor Shawn O'Neill
Councilor Robin Dayton
Town Manager Jack Turcotte
Assistant Town Manager Louise Reid**

**Pledge to the Flag
Roll Call**

EMERGENCY ITEM:

MOTION: Councilor Bolduc motioned and Councilor O'Neill seconded to add Agenda Item 5463: Discussion with Action: Authorize the Town Manager to negotiate an Agreement for the Ballpark with Bottling Group, LLC dba/The Pepsi Bottling Group.

VOTE: Unanimous

PRESENTATION: The Assistant Town Manager, V. Louise Reid, presented a copy of the 2008 – 2009 Annual Report and Chair MacDonald read the dedication page as follows:

Dedication: The Ballpark Volunteers

It is a pleasure to dedicate this Annual Report to the host of Volunteers under the direction of Tom LaChance who have revitalized and restored the Ballpark. 2009 was the year that Old Orchard Beach's Ballpark came back to life. In the 1980's used by the Maine Guides minor league baseball team, and in the late 1980's through 1997 as a venue for concerts, the Ballpark since then had fallen into disuse. The media declared that "the volunteer movement to bring the idle property back to life has seen a rebirth of interest in the vision for the Ballpark. The ball field, long a field of seedlings, has been cleared out and leveled and electrical wires from the old sound system has been removed; the field has been sodded, a baseline painted, and a warning track laid out. New roofs have been put on buildings, the old concession stand has been refurbished, and handicapped accessible bathrooms are in working order." In May of 2010 the Ballpark will host the United States Collegiate Athletic Association's national baseball tournament for small colleges. Tom LaChance, a home-town boy, born and raised in

Old Orchard Beach, is the man leading an extraordinary two-year effort to bring back the Ballpark for the citizens of Old Orchard Beach. Along with Town Council Vice-Chair Robin Dayton, Linda Jenkins, and Dana Furtado, there has been an organizational impetus on moving projects forward. The group sings the praises of the volunteers who are responsible for the significant turning point of this publicly owned facility. Hundreds of volunteers, some of whom head to the Ballpark every Saturday at 8:00 a.m. have and are doing their part, removing debris and graffiti, installing fencing and turf on the infield and rehabilitating the buildings that make up this property. The Ballpark which was devalued because of its lack of care and a 2008 fire in the Stadium, will, as a result of the incredible work of the volunteers be revalued in the April 2010 tax season. The Ballpark rejuvenation is a significant project that is bringing together people from all over Maine. Individuals from Scarborough, South Portland, Biddeford, and several other communities are here working on the Ballpark, most of them passionate about the project because of memories of the Ballpark at its height. In addition to physical labor, local business owners and interested individuals have contributed over \$250,000 in materials. All for the citizens of Old Orchard Beach.

ACKNOWLEDGEMENT:

VICE CHAIR TOUSIGNANT: We are seeking individuals for membership on the Finance Committee and also for service on the Seal Level Adaptation Working Group. Please contact the Town Clerk for information and an application.

ACCEPTANCE OF MINUTES: Town Council Meeting Minutes of April 6, 2010; Town Council Workshop of April 7, 2010; and Town Council Workshop of April 13, 2010.

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

VOTE: Unanimous.

PUBLIC HEARINGS:

CHAIR: I open this Public Hearing at 7:14 p.m.

Number One: Shall We Amend Article II Licenses, Section 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-36, 18-38, Article III Body Piercing, Sections 18-66, 18-68, 18-100, 18-102 through and including 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage establishments, Sections 18-487, 18-488, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582 and to Delete the following: Article III Body Piercing, Sections 18-69, Sections 18-131 through and including 18-138, Article IV Tattooing Sections 18-168 through and including 18-173, Article VI Performing Arts Facilities Sections 18-286 through and including 18-360, Article X, Auctions, Sections 18-581 through and including 18-585, and Article XI Head Shops, Section 18-601 through and including Section 18-606 of the Old Orchard Beach Code of Ordinances?

CHAIR: I close this Public Hearing at 7:15 p.m..

CHAIR: I open this Public Hearing at 7:16 p.m.

Number Two: Shall We Amend the Code of Ordinances, Section 54-187, Brown Street, to allow for a handicap parking space on the left side facing the ocean?

**NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH**

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on April 20, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that section 54-187, Restrictions and Prohibitions, of the Town of Old Orchard Beach Traffic Ordinance is amended by adding the underscored language:

Brown Street. No vehicle shall be parked on the northeasterly side of Brown Street (left side facing the ocean), except one handicap parking space shall be designated by the Chief of Police.

CHAIR: I close this Public Hearing at 7:17 p.m..

CHAIR: I open up this Public Hearing at 7:18 p.m.

Number Three: Shall We Amend Chapter 30, Fire Prevention and Protection, Article II Uniform Fire Code, Section 30-26, and 30-59, Article IV Life Safety Code, Section 30-76 and Chapter 38, Miscellaneous Offenses, Article II, Weapons, Section 38-25 and 38-29, Article VI, Boarding Up of Seasonal Facilities, Section 38-242?

This final draft reflects the requested changes that keep the initial licensing authority with the Town Council and renewals to be done by staff. This is the same as the current Ordinance.

Chapter 30 Fire Prevention:

Section 30-26/30-76 was modified to standardize the Local Fire Prevention and Safety Codes with the State Fire Marshall's Office. This also eliminated the need to continually update the codes locally at each 3 year code cycle.

Section 30-59 This Ordinance amendment eliminates the requirement for sprinkler installations in one and two family homes that are three stories or greater. The Ordinance Committee and Codes staff and the Fire Chief agreed that while the local requirement is a good recommendation, it is more restrictive than the current National Fire Protection Association and International Residential Code Standards adopted by the Town and State of Maine. Also the surrounding communities do not require this level of protection. It should be noted that it is likely that State Law will require sprinklers in ALL single family and two family homes in 2012.

Chapter 38

Section 38-25 This amendment creates definitions of certain firearms.

Section 38-29 This amendment adds “rifled muzzle loader” firearms to the currently exempt “smooth bore” muzzle loader. This was done at the request of a citizen and approved by the Police.

Section 38-242 This amendment to the Boarding Ordinance removes the automatic denial of the application if the Town fails to act on it within 30 days. The Ordinance Committee and staff agreed that this language was not necessary.

JOHN BIRD: He questioned the need for sprinklers and it appeared as if this requirement was being taken out and asked the reason for this?

MIKE NUGENT: He explained that sprinklers are good things. He also indicated that our ordinance is more restrictive than other communities around us and in some instances have lost businesses or houses coming to Old Orchard Beach because they could go elsewhere where the requirements were less restrictive including cost. In the future the rules will be more restrictive.

CHAIR: I close this Public Hearing at 7:32 p.m.

CHAIR MACDONALD: I open this Public Hearing at 7:22 p.m.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

Alfred Simpson, Street Musician, Personal Service, request to waive the fee; Walter & Gordon Murphy (103-1-20), 184 Portland Avenue, two year round rentals; Christopher Claudio (104-3-5-3B), 26 Walnut Street, Unit 3B, one year round rental; Roger & Mindy Smith (301-6-1-202 & 203), 191 East Grand Avenue, Units 202 & 203; two year round rentals; and Thomas Byrnes (305-4-1-605), 1 Cleaves Street, Unit 605, one year round rental. Frederick Hoffmeister, Street Musician, Personal Service, request to waive the fee; Susan P. Strommer (104-3-5-C8), 26 Walnut Street, C-8, one year round rental; Berry Hill at Design Center dba/Roma Pizza (205-3-7), 38 Old Orchard Street, Victualers with Preparation.; Garry T. Melia (207-2-13-107), 161 Saco Avenue, Unit 107, one year round rental; Mona Tibbetts (305-3-9), 5 Boisvert Street, one seasonal rental; Paul Roncallo (312-1-4), 52 ½ Highland Avenue, one year round rental; and Robert Wade & Anne Stafford-Wade (312-11-22), 22 Cedar Avenue, one year round rental.

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to approve the Business Licenses as read.

VOTE: Unanimous.

CHAIR MACDONALD: I close this Public Hearing at 7:24 p.m.

CHAIR MACDONALD: I open this Public Hearing at 7:25 p.m.

PUBLIC HEARING SPECIAL AMUSEMENT PERMIT AND APPROVAL:

William Marshall dba/The Whaler (206-31-17), 20 Staples Street, Live Music-acoustic duo's/single, no amplification; Inside – 9:00 p.m. to 11:45 p.m.; Bernard L. Orne dba/Bernie's Beach Club (307-3-1-B) 8 West Grand Avenue; Live & Recorded Music Inside, 9:00 a.m. to 1:00 a.m.; New England Restaurant Group dba/Pirates Patio & Galley (304-2-9), 2 Walnut Street, Amplified Music, Percussion & Dancing; Inside & Outside, 12:00 p.m. to 10:00 p.m.; and Vacancy Pub Inc. dba/Vacancy Pub (210-10-4), 17 Ocean Park Road, Karaoke 9:00 p.m. – 12:30 a.m.

CHAIR: Is there anyone that wishes to comment on these Amusement Permits?

MIKE MAYNARD: I live at 4 Walnut and have issues about the closing time being 10:00 p.m. We had agreed previously on the 8:00 p.m. closing and now that discussion is not being considered and he is asking for 10:00 p.m. closing. The bar has adversely affected him and his neighbors and it is their wish to be good neighbors but with the issues of the toilets and the hours being changed for entertainment to 10:00, this makes it impossible for neighbors to enjoy their own environment. He indicated that the bathrooms are 30 feet from his house. It was also noted that the application is not even in the name of Mr. Barbano.

LOUISE BERTHIAUNE: She indicated that her home is facing the business and that over the last summer there were many times that she and those who were in her home were irritated by the noise (music). She acknowledges that the manager of the bar has been receptive but there were still times when the music continued after 8:00 p.m. She indicated that live music should stop at 8:00 p.m. per the entertainment license that was given to the Council. It seldom stops at 8:00 p.m. on busy evenings and/or when private parties were in progress. Patrons waiting to use the bathrooms must walk approximately seventy feet outside through a congested parking lot to the rear of an adjacent building. It is understandable that people who are drinking and have to use the bathroom get somewhat impatient when the facilities are occupied, but the loud and vulgar language used by these people is unacceptable. Additionally, male patrons have been observed urinating on the wooden fence outside the men's bathrooms when it was not accessible. This behavior is unacceptable to us. As smoking is currently not allowed in areas where beverages and food are served, a smoking area including smoking receptacles (butt cans) is provided for patrons just outside of the bathroom. This arrangement sometimes results in butts being tossed into neighboring property and may present a fire hazard as the properties are very close together. We encourage the Council to adhere to the 8:00 p.m. limit. We pay our taxes here and we have the right to enjoy our homes.

PAUL GOLZBEIN: He asked what the closing time of other bars?

GARY LAMB: He indicated 1:00 a.m.

SHAWN MCGRATH: He indicated he is a new resident and enjoys going to the bar. He said it is even a family friendly environment and feels that 10:00 p.m. is even an early time to close the entertainment.

TONY BARBANO: This is a matter of livelihood. We have attempted to be good neighbors. We have a period of approximately ten weeks to make our livelihood here and we have attempted to address the sound factor. This is a summer resort and people come to enjoy the beach and enjoy the entertainment that is provided. The other establishments do not close at 8:00 p.m. and I feel it is segregating me to expect me to finish the entertainment at 8:00 p.m. I have a small number of individuals in the band and it is acoustical. He also reminded everyone that these places are being rented out so they are relying on people coming and staying. We certainly should work together to provide both needs. He felt that the majority of individuals who come to Old Orchard Beach understand this is an entertainment environment.

SANDRA NEWMAN: She indicated she has enjoyed for seven years and feels that 10:00 p.m. is not unreasonable. It is 1:00 a.m. in the rest of the Town. This is a family friendly, mellow, no argument environment. He needs to be able given the opportunity to succeed in the business.

Vice Chair Tousignant asked what could be done about the bathrooms to which it was obvious that because of the location there was nothing much that could be done. The Chair asked if there was an entrance to the bathrooms from the restaurant/bar itself and the answer to that was also no. Councilor O'Neill said he appreciated the remarks made by the abutters and also has measured the effect on the business. He recommended that there be a mutual agreement that 9:00 would be the end of the amplified entertainment.

MOTION: Councilor O'Neill read the agenda item for Amusement Permits and Vice Chair Tousignant seconded with the exception of the time period for New England Restaurant Group dba/Pirates Patio & Galley be 12:00 p.m. to 9:00 p.m.

VOTE: Unanimous

CHAIR MACDONALD: I close this Public Hearing at 7:45 p.m.

TOWN MANAGER'S REPORT:

April 20, 2010

Eight Day Review:

1. Several meetings regarding the Ballpark:
Tom
Chair
Walk through with Pre-inspection
Public Works
2. Attended Budget Workshops
3. Department Head Meeting

4. Meeting with the State Police on Rules for Gambling
5. A number of Special Event Permit meetings – process.
 - a. Department Head Meeting Agenda
 - b. Circulated to Department Heads
 - c. Special Event Special Meeting – 7:00 p.m. Tuesday, April 27 –
At the High School in the Achievement Center
6. Personnel Matters
7. Discussion with the Department of Environmental Protection on Beach for events
8. Meeting with Assistant Superintendent of Schools and Principal on E. Emerson Cummings – Phase II Project. \$180,000 to Spend. Plan will be reviewed with Council when finalized.
9. U.S. Rural Development official – regarding low interest loans to municipalities –
Library and Sewer & Water –User Fees
10. Meeting with Chair of the Recycling Committee
11. Spent time with the Finance Committee and Public Works on projects
12. Temple Avenue Parking meeting.
13. E. Emerson Cummings Phase II
14. Atlantic Avenue – Financial review – research
15. Police construction meeting
16. Working on Health Insurance Review
17. Telephone Conference with the Department of Environmental Protection

NEW BUSINESS:

TOWN MANAGER: The Town Manager explained that earlier in the day he had met with staff and had considered pulling the Special Event Permits for Agenda Items 5448, 5449, 5550, 5551 considering the fact that there were a number of unanswered questions on the application. Councilor Robin Dayton had previously in the day questioned the omission of information including insurance information, serving of alcohol question, who is applying for the permits, who filled out the applications, how will trash be taken care of, questions on bathroom facilities, etc. The Town Manager explained that with Monday being a holiday the time required to address these issues made it impossible for us to review the permits as we normally would, however the issues were resolved later in the day and because of the timeliness of the permits, we are moving forward on them. He also explained that some of the confusion related to the Special Event permits is that some are

definitely Special Events and fall under the rules indicated in Special Events ordinance but that others could be considered an athletic event and is not considered a special event. The Town Manager indicated that there are specifics placed on these permits and those limitations were read into the Minutes:

Sec. 42-234. No rights created.

This division grants no rights to and creates no property or other legal interests in any person. The town council, as trustee of public property, retains full control over public property and may in its sole and exclusive discretion issue, issue with conditions or deny special events permits. Decisions of the town council under this division shall be final, and this division provides no right of appeal.

(Ord. of 5-17-1988, § XI(1); Ord. of 4-2-2002, § XI(1))

The following are a list of required improvements that must occur prior to the use of the Ballpark for public events:

- Seating must be limited to areas where missing or damaged seats have been replaced or repaired.
- All construction/repairs of the sky boxes and clubhouse must be complete. Areas not fully completed at final inspection must be properly secured and off-limits.
- Stair and stadium guards must be 42 inches in height with openings less than 4 inches with graspable handrails or otherwise compliant with applicable sections of ICC 300
- The club house can not be used until all plumbing, electrical and heating/hot water must be in good working order; repairs must be done by licensed masters of their trades.
- Access must be limited to areas where the Expansions joint voids are properly repaired.
- Fencing around the field, under the stadium seating must be replaced.
- All miscellaneous rubble; debris must be removed from the premises and properly disposed of.
- Accessible areas for event attendees with the need for special accommodation must be properly graded; barrier free to the designated parking areas and all facilities be made available to provide a reasonable accommodation to all.
- If the Canteen building is to be used, the Food Service facilities must conform to The State of Maine Food Code and must be properly licensed.
- Prior the first event of each group of events, the applicant must meet with Town Manager including but not limited to review the facility, all facets of the proposed event for compliance with all applicable laws, ordinances, and conditions of approval.

5448 Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the Maine Blizzard AAU 14-year-olds Baseball Tournament at the Ballpark on May 1, 2, 30, and June 12, 19, 26, and 27, 2010 from 9 a.m. to 4 p.m. Request to waive the fee.

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

VOTE: Unanimous.

5449 Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the SMBL Over 25 League at the Ballpark on May 9, 23, 30, June 6, 13, 20, 27 and July 3, 4, 11, 18, 25, and August 8 and 15, 2010, from 9:30 a.m. to 12:30 p.m. Request to waive the application fee. League to pay field usage fee.

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

VOTE: Unanimous.

5450 Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the CANAM Baseball Games at the Ballpark on May 22, 2010 from 6:00 p.m. to 10 p.m. and May 23, 2010 from Noon to 5 p.m. Request to waive the fee.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Special Event Permit application as read.

VOTE: Unanimous.

5451 Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the SMBL over 35 League on May 24, 25, 26, and June 1, 2, 7-9, 14-16, 21-23, 28-30, 2010 from 6:30 p.m. to 9:30 p.m. Request to waive the application fee. League to pay field usage fee.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Special Event Permit application as read.

VOTE: Unanimous.

5452 Discussion with Action: Approve a Town Council Appreciation "Hot Dog" DAY for Employees, Volunteers, and Community Members including a Ballpark Walk-around at the Ballpark on Sunday, April 25, 2010 from 1:00 p.m. to 3:00 p.m. with hotdogs, chips, rolls and condiments from Bradley's Supermarket at cost in the amount of approximately \$1,500 from Account Number 20101-50502 – Town Council, with a balance of \$5,000.

The Chair explained that the Council is inviting residents to a community, employee and volunteer appreciation day to give them an opportunity to walk around the ballpark and see what has been done but also to express appreciation to employees, volunteers and residents for their supports.

MOTION: Councilor Bolduc motioned and Councilor O'Neill seconded to Approve the Special Event Permit application as read.

VOTE: Unanimous.

5453 Discussion with Action: Approve the transfer of \$25,000 from Account Number 20308-59150 –RSU Subsidy to Ballpark Account Number 30414 – 50804.

Discussion: There were comments made on the necessity for accounting of this money. Councilor Dayton indicated that she was concerned that the Committee had not even met to which the Secretary indicated that this was the first date that the entire group could meet. There was no listing of exactly what this funding would be used for but the Town Manager explained that there were several issues that needed to be addressed before the events happen including breakaway fire doors and other security and building code matters. The Chair

indicated that she had been approached by business people in the community looking to support the ongoing restoration effort by loaning the Town money. The Town Manager said he had received similar offers but no mechanism exists for people to loan the Town money. It was indicated that the current year's town budget includes more money for the Regional School Unit 23 budget than needed and this account could be used to find the \$25,000. Councilor Dayton pointed out that if it is true that the RSU difference was included in the FY2011 Budget then that means we just took \$25,000 of earmarked dollars for the FY2011 for the Ballpark – from where? The Council again has misled the public by not providing all the facts. The Chair reiterated that the Town needs to step up in consideration of all the work that has been done by these volunteers and the money that has been raised. Vice Chair Tousignant twice reminded the Council that the purchase of forming the Commission was to have these kinds of items discussed and moved forward to the Council by the Commission. Commission member Lucien Huot said he would appreciate funding support from the Town and told the Councilors not to worry about how to spend it. He indicated they would take good care of it. Vice Chair Tousignant who often indicated he would not give money to the Ballpark because they had indicated it would not be needed, he said he would vote for this exchange with the understanding that everyone has that this is not involving taxpayer's money.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded approved the transfer of \$25,000 from Account Number 20308-59150 – RSU Subsidy to Ballpark Account Number 30414-50804.

VOTE: Unanimous.

5454 Discussion with Action: Approve the request for OOB 365 and the Town of Old Orchard Beach to Conduct a Balloon Festival June 24-27, 2010 on the beach and Memorial Park. Request to close the Square. Request for a banner on Cascade Road (and Square if not in use). Request to waive the fee.

MOTION: Councilor Bolduc motion and Councilor Dayton seconded to Approve the Balloon Festival as read.

VOTE: Unanimous.

5455 Discussion with Action: Approve the request for the Town of Old Orchard Beach to hold our Annual Memorial Day Parade, followed by a gathering at the Veteran's Memorial in Memorial Park, on Monday, May 31, 2010, from 10:00 a.m. to 3:00 p.m. Request to waive the fee.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to Approve the Memorial Day Parade as read.

VOTE: Unanimous.

5456 Discussion with Action: Approve the Liquor License Renewal for Vacancy Pub Inc. dba/Vacancy Pub (210-10-4), 17 Ocean Park Road, s-m-v in a Class A Lounge.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to Approve The Liquor License Renewal as read.

VOTE: Unanimous.

5457 Discussion with Action: Set a Public Hearing for May 4, 2010 to Amend Ordinance Section 42-201 To Allow Vehicles on the Beach as part of a Town Council approved Special Event Permit.

BACKGROUND: Passage of this Ordinance Amendment is necessary to allow the Balloon Festival which will bring thousands to our community.

EXHIBIT:

**TOWN OF OLD ORCHARD BEACH
REGULAR TOWN COUNCIL MEETING
NOTICE OF PUBLIC HEARING**

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on May 4, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that section 54-187, Restrictions and Prohibitions, of the Town of Old Orchard Beach Traffic Ordinance is amended by adding the underscored language and deleting the strikethrough language:

Sec. 42-201. Use of the beach areas.

No motorized or vehicular traffic of any kind may enter or use the beach for any purpose, with the exception of public safety vehicles, ~~and the town's public works vehicles, designated for public safety or beach cleaning purposes,~~ and vehicles authorized by the Town Council as part of a Special Event Permit.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to Set a Public Hearing for May 4, 2010 to Amend Ordinance Section 42-201 To Allow Vehicles on the Beach as part of a Town Council approved Special Event Permit.

VOTE: Unanimous.

5458 Discussion with Action: Accept with regret, the resignations of Pat Carter and Peter Prinz, from the Finance Committee; and Appoint Pat Carter to the Comprehensive Plan Committee, term to expire 12/31/11.

BACKGROUND: We encourage individuals to apply for positions on the Finance Committee as there are two openings.

MOTION: Councilor Dayton motioned and Councilor O'Neill seconded to Accept with regret, the resignations of Pat Carter and Peter Prinz, from the Finance Committee; and Appoint Pat Carter to the Comprehensive Plan Committee, term to expire 12/31/11.

VOTE: Unanimous

5459 Discussion with Action: Set a Public Hearing Date of May 4, 2010 to amend Section 54-187, Traffic and Vehicles by disallowing parking on the right side (facing the Ocean) of Temple Ave. from Free Street to West Grand Avenue; and designating two handicap spaces in front of the Temple on Temple Avenue.

BACKGROUND: This plan is to be tried this summer with any adjustments or considerations once the summer is over. A trial plan for 2010 is planned.

Review Plan – need ordinance change allowing to park on curb side of Temple and create additional handicapped parking spaces as indicated on the map.

1. Need to set Public Hearing on April 20, 2010
2. Public Hearing May 4, 2010
3. Final Approval May 18, 2010
4. Ocean Park will attend Public Hearing Meeting
5. Ocean Park has already notified all residences that the plan is under consideration.
6. New space will be created by Public Works as outline in the map.
7. At the end of the summer the group will get together to review the plan and report to Council.
8. Signs will be erected within five working days of final Council approval, weather permitting.
9. Will use “No Parking” signs for now. Public Works has them already. If plan becomes more permanent we will design new signs that are date related. (“No Parking on this side from May – to September -. (Consider Columbus Day?)

**EXHIBITS: NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
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Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that section 54-187, Restrictions and Prohibitions, of the Town of Old Orchard Beach Traffic Ordinance is amended by adding the underscored language:

Temple Avenue. No vehicle shall remain parked on Temple Avenue between West Grand Avenue and Seaside Avenue for a period of time longer than one hour. Parallel parking shall be allowed on the left side (facing the ocean) of Temple Avenue from Seaside Avenue to the seawall; diagonal parking shall be allowed on

the right side (facing the ocean) of Temple Avenue from Seaside Avenue to the seawall, except that three consecutive parking spaces shall be designated by the chief of police and shall have a two-hour limit from 7:00 a.m. to 7:00 p.m. No vehicle shall be parked on the right side (facing the Ocean) of Temple Ave. from Free St. to West Grand Ave. and two handicap spaces will be located in front of the Temple on Temple Ave.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Set a Public Hearing Date of May 4, 2010 to amend Section 54-187, Traffic and Vehicles by disallowing parking on the right side facing the Ocean) of Temple Ave. from Free Street to West Grand Avenue; and designating two handicap spaces in front of the Temple on Temple Avenue.

VOTE: Unanimous.

5460 Discussion: Update on the new Police Station.

MIKE NUGENT: The Police Station project is moving forward on schedule. The following is a summary: The Department of Public Works has installed a sewer extension to accommodate the new Building as well as future expansion on E. Emerson Cummings Blvd. This work was challenging due to the presence of ledge and a water line. The cost saving to the Town is estimated to exceed \$50,000. Conservatively. Because the estimated cost of a Fire Suppression system (sprinklers) exceeded \$70,000. due to insufficient water pressure, the floor area of the building was reduced from 10,300 sq. ft. to 9,980 sq.ft. negating the requirement for the system and saving over \$70K. The remaining design challenges include telephone, data and communications between the New and Old buildings. Members of the design team met with Bill Botting (Town IT coordinator) and George MacDonald (Town telephone vendor) on Tuesday to discuss equipment needs and options.

GROUND BREAKING! Plans are in the works for a Ground breaking ceremony some time in the next several weeks, Details will be released as soon as we know more.

Anticipated Schedule of Events

- o April 8, 2010, The Town of Old Orchard Beach Planning Board gave final Site Plan approval to the project.
- April 19, 2010, Foreside Architects will provide bid quality construction plans and specifications. These will be made available to bidders through Spiller's Reprographics. Benchmark is inviting over 200 subcontractors, many of which will be from the Old Orchard Beach, Biddeford, Saco and Scarborough area, to submit bids for the different elements of the project.
- April 29,2010 Bids close for subcontractors
- April 30, 2010, Benchmark anticipates that they will be providing the projects "Guaranteed Maximum Cost" figure to the Town. This will be submitted to the Town Council for discussion w/ action at their May 4th meeting. Benchmark estimates the current figure to be \$1,953,000. which is within budget. This will

evolve once the estimates are received. Once the Town and Benchmark contract the “Guaranteed Maximum Cost”, this is locked and barring any Council approved changes, this will be the cost of the building, not including “Soft Costs”. “Soft Costs” include furniture, computers, telephones etc. There is a project budget of \$300,000. for these items.

- Second Week of May—Projected Start of Construction!!!! Estimated Time of Construction 190 days with a completion in January 2011.

5461 Discussion: Update on the mandatory State-Wide Building Code that becomes effective in June, 2010.

MIKE NUGENT: In 2007 , the State Legislature passed a law creating the first ever “State Wide Building Code”.

MAINE UNIFORM BUILDING AND ENERGY CODE

§9724. Application

2. Prior statewide codes and standards. Effective December 1, 2010, the Maine Uniform Building and Energy Code adopted pursuant to this chapter replaces, and is intended to be the successor to, the Model Energy Code established in Title 35-A, section 121 and the Maine model radon standard for new residential construction set forth in Title 25, section 2466. [2009, c. 261, Pt. A, §8 (AMD) .]

3. Ordinances. Effective December 1, 2010, except as provided in subsection 4 and section 9725, any ordinance regarding a building code of any political subdivision of the State that is inconsistent with the Maine Uniform Building and Energy Code is void. [2009, c. 261, Pt. A, §9 (AMD) .]

4. Exception. This section does not prohibit the adoption or enforcement of an ordinance of any political subdivision that sets forth provisions for local enforcement of building codes. The requirements of the Maine Uniform Building and Energy Code do not apply to:

A. Log homes or manufactured housing as defined in chapter 951; or [2007, c. 699, §6 (NEW).

B. Post and beam or timber frame construction. [2007, c. 699, §6 (NEW).]
[2007, c. 699, §6 (NEW) .]

1. Limitations on home rule authority. This chapter provides express limitations on municipal home rule authority. Beginning December 1, 2010, the Maine Uniform Building and Energy Code must be enforced in a municipality that has more than 2,000 residents and that has adopted any building code by August 1, 2008.

Pursuant to MRSAs Title 10 ss 9724 , all towns in Maine population of 2000 or more, must use the new standard which will be the 2009 International Building Code, International Residential Code and International Energy Conservation instead of any local building code. The building Code for the Town of Old Orchard Beach is the 2003 International Building Code and International Residential Code with some local amendments.

The good news for a Town like Old Orchard Beach, is that there will be no major impact on how we do business today. The 2009 Code is substantially the same as the 2003 Code.

I have been appointed to 3 Technical Advisory Groups (TAG's) and have been attending meeting . Those are the Sprinkler/ Fire Suppression TAG, the Energy Standards TAG and The Life Safety TAG.

These groups will shape the Rule making process that will create modifications to the national standards and personalize them to better serve the Communities in the State of Maine.

It looks like mandatory sprinklers in residential construction has been taken out of the model for this Code Cycle. This is actually a hotly disputed issue nationally.

The new laws also change the Code Enforcement Certification program. While many Code Officers will be "grandfathered" due to their tenure or because they hold National Certifications and experience enforcing similar standards; others will not.

5462 Discussion with Action: Accept Piping Plover Beach Management Agreement as proposed by Maine Department of Inland Fish and Wildlife.

BACKGROUND:

Town of Old Orchard Beach Beach Management Agreement 2010 through 2012

In 2009, representatives of the Town of Old Orchard Beach (the Town), the U.S. Fish & Wildlife Service (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed the following Beach Management Agreement for the Town of Old Orchard Beach.

This agreement allows the Town of Old Orchard Beach to continue their beach management program without filing federal and state Incidental Take Plan's (ITP) for each Town activity that occurs near or within Piping Plover nesting areas, as long as the Town implements protection measures outlined in this agreement.

There is an incentive for the Town to promote the nesting success of plovers, because plovers that nest successfully in April will fledge their chicks by mid-to-late June, thus removing restrictions on the beach. However, if April nesting fails, or the plovers are forced to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.

1) Introduction

The Piping Plover (*Charadrius melodus*) is a small sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina and is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the Piping Plover is listed as Endangered under the Maine Endangered Species Act (MESA), and the east coast population is listed as Threatened under the federal Endangered Species Act (ESA). In 2008, only 22 pairs of Piping Plovers nested in the entire state of Maine.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable

nesting beaches that may have supported up to 200 pairs of Piping Plovers. However, the construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. Continuing development and intense recreational use of nesting beaches is further reducing the capacity of the remaining habitat to support nesting plovers. Ensuring the availability of this limited habitat is essential for the continued existence of Piping Plovers and other coastal wildlife, such as the state listed endangered Least Tern.

Historical records document that Piping Plovers nested on Old Orchard Beach in recent decades. In fact, under ideal conditions, these 3 miles of sand-beach habitat may have once supported as many as 10 pairs of Piping Plovers at densities of 3.5 pairs/mile of beach. Unfortunately, development and associated human disturbance and predation greatly reduced the ability of the habitat to support these rare birds. Piping Plovers were a rare summer resident in Maine in the late 1800s, and in the early 1900s, were extirpated as a breeding bird from the state. With protection from the Migratory Bird Treaty Act in 1918, plovers rebounded, and by 1940, they were common on sandy beaches from Kittery to Cape Elizabeth. Nesting of plovers on Old Orchard Beach resumed in 1993. From 1993 to 2008, one to three pairs of Piping Plovers have consistently nested on Old Orchard Beach; clearly, habitat management of Old Orchard Beach is essential to the recovery of Piping Plovers in Maine.

In 1995, the MDIFW designated a portion of Old Orchard Beach (PPLT04 and PPLT08) as Essential Habitat for Piping Plovers, and is in the process of designating two more areas as Essential Habitat in 2010 (PPLT14 and PPLT15).

II) Authority to Enter Agreement

Maine Endangered Species Act of 1975 (MESA)

Federal Endangered Species Act of 1973 (ESA)

III) Geographic Scope of Agreement

The area under this agreement is the entire, Town-owned beachfront commencing from the Saco/Old Orchard Beach town line at Goosefare Brook, north to the Old Orchard Beach/Scarborough town line. The beachfront includes the seaward side of the frontal dune to the mean low water mark.

The intent of this agreement is to provide a means to protect Piping Plovers on Old Orchard Beach. Success of this agreement depends on the participation and cooperation of the Town, Maine Audubon, USFWS, and MDIFW.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

IV) Beach Management Guidelines for Piping Plovers

IMPORTANT! These guidelines are in effect from April 15 through August 31 when nesting activity is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. The Town must keep in weekly communication with Maine

Audubon to know when Piping Plover nesting activity is occurring. When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect.

A) Daily Pickup of Trash Barrels on the Town's Beaches and Rights-of-ways.

The Town does not place trash barrels on the beach near plover nest sites. If the Town does decide to place trash barrels on the beach, the Town must place them as far away from areas of plover nesting activity as possible but no closer than 100 feet from a stake and twine symbolic fence. Any Town vehicle picking up waste from the barrels shall have a trained spotter (trained by Maine Audubon or MDIFW staff) walk in front of the vehicle, which shall proceed no faster than walking speed.

Trash pickup using All Terrain Vehicle (ATV) does not require a spotter if:

- 1. Personnel picking up trash are in weekly communication with the Town's Plover Monitoring Coordinator and Maine Audubon to know the location of nesting plovers and their chicks;**
- 2. ATV operators are trained by Maine Audubon or MDIFW staff; and**
- 3. ATV vehicles proceed no faster than walking speed.**

All vehicles will travel at least 50 ft. from the grass edge of the beach, close to the mean high water mark, to assure no conflicts between nest initiation and vehicular traffic.

B) Seaweed and Debris Cleanup

The Town agrees not to use mechanical means to clean beaches within stake-and-twine delineated Piping Plover areas. If however, the need arises to use mechanical means to clean the beach, the Town shall follow these guidelines.

- 1. All beach-cleaning vehicle entrances/exits to the beach will be at locations agreed upon by the Town, MDIFW, and Maine Audubon.**
- 2. The Town will provide a spotter, trained by Maine Audubon or MDIFW staff, to guide all Town beach-cleaning vehicles on the beach. Failure by the Town to use a spotter is a breach of this agreement and gives MDIFW and USFWS the option to implement other protective management actions as identified by the MESA and the ESA.**
- 3. Spotters will use the map given to them by the Town's Plover Monitoring Coordinator (see Section IV, H). They will record observations of adult birds, nests, eggs, and chicks, every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake those 100 feet while the spotter stands and watches in that zone. Records of these observations will be submitted to MDIFW or Maine Audubon at the end of the nesting season or at any time upon request.**
- 4. The spotter will proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.**
- 5. Beach cleaning will not occur within 100 feet of stake-and-twine symbolic fencing. This gives the birds a buffer from disturbance by vehicles and leaves additional foraging habitat intact.**

6. Town personnel conducting beach cleaning will record the date, time, and location of each beach cleaning activity in a log kept at the Department of Public Works. Nesting sites and dates will also be noted in the log and submitted to MDIFW or Maine Audubon at the end of the nesting season, or at any time upon request.
7. The Town will clean rights-of-way by hand unless it is clearly outside any area of plover nesting activity or conducted outside the plover-nesting season. Instances of need for heavy seaweed removal have historically been few. However, should heavy seaweed removal require using a dump truck and an excavator, a trained spotter will be required on site. No such work will take place within 100 feet of a stake-and-twine symbolic fence.

C) Lifeguards.

Lifeguard stands will be at least 100 feet from a stake-and-twine symbolic fence. In the event that a site does not allow for the required 100-foot buffer, MDIFW, or Maine Audubon, and the Town will determine an appropriate placement for the lifeguard stand. This mutually agreed upon location will maintain the public safety requirements as well as protect nesting Piping Plovers. When feasible and appropriate, as determined by the Town, lifeguards will assist in educating the public about safeguarding plovers.

D) Police, Emergency, and Non-Emergency Vehicle use

It will be the policy of the Town of Old Orchard Beach that non-emergency vehicle use will not occur within 100 feet of designated Piping Plover nesting areas. Outside nesting areas, essential vehicle use will avoid driving on the wrack line whenever possible and will avoid frequent driving on the beach in a way that would create deep ruts that could impede movement of Piping Plover chicks. At least two employees shall respond to any non-emergency incident (such as removal of dead or injured marine mammals) within an area of plover nesting activity, with one employee acting as the spotter to and from the scene.

All emergency response personnel will account for and avoid nesting areas and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. All Public Safety or Town personnel assigned or normally required to use vehicles (including ATV's) on the beach shall annually receive specialized education and training from Maine Audubon or MDIFW in the spotting and protection of plover habitat (see Training below). All other personnel shall have training materials and aids available to assist in spotting plover nests, chicks, and fledglings, during their beach management activities. Maine Audubon training workshops shall be available for each nesting season.

E) Recreational Activities

1. Beach parties, clambakes, volleyball, fires, etc.: Because these activities could seriously threaten plover nests, eggs, and young, the Town should discourage such activities within 100 feet of symbolic stake-and-twine fencing.
2. Kite, sand surfer (wind-driven sand cart), parasail, or paraboard sail. These activities should not occur within 650 feet of symbolic stake and twine.
3. Fireworks. If the Town approves a fireworks display, MDIFW and USFWS require that:

- a. The fireworks launch site be located a minimum of 1/2 mile from the nearest Piping Plover nesting and/or foraging area.
- b. For smaller, weekly fireworks displays, at least one uniformed officer is available to control crowds around nesting areas.
- c. For the annual 4th of July fireworks display, the Town has adequate law enforcement personnel, as defined by MDIFW, to protect nesting areas and assist IFW and MA staff/volunteers.
- d. The Town submits a fireworks plan by April 1.

F) Animal Control

Dogs can be a significant source of disturbance and mortality for Piping Plovers. Ideally, dogs should not be allowed on Piping Plover nesting beaches when territorial pairs, nests, and chicks are present. According to Section 14-6 of the Town ordinances, dogs will not be permitted to enter the beach between the hours of 10:00 a.m. and 5:00 p.m. inclusive, from Memorial Day to Labor Day. In addition, the Town agrees that all dogs on the beach must be on leash at all days and times when the ordinance is not in effect from April 15 through August 31, unless MDIFW, USFWS, and Maine Audubon determine that Piping Plovers are no longer attempting to nest on the beach. The Town also agrees not to allow dogs within 100 feet of symbolic stake-and-twine fencing and to erect signs alerting beach-goers of the prohibition on dogs in those areas. Signage used will be agreeable between the Town and MDIFW. The Town, MDIFW, and USFWS enforcement officers will enforce this prohibition.

G) Stake-and-twine Fencing and Nest Exclosures

Plover nests that are not quickly fenced are vulnerable to disturbance. In an effort to afford plovers the immediate protection they require, the Town of Old Orchard Beach grants MDIFW, or Maine Audubon, approval to erect symbolic stake-and-twine fencing and nest exclosures, as needed.

Stake-and-twine Fencing: Temporary, stake-and-twine fencing and signage is for managing recreational use of the beach in the vicinity of Piping Plover nesting areas, and for protecting nesting and feeding habitat for plovers. Ideally, when courtship and nest scraping first occur, biologists erect stake-and-twine fences and signs around the nesting area. Plover nesting areas are fenced using wooden stakes and baling twine; MDIFW, or Maine Audubon, provide the signs. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Fenced areas should extend 150 feet on either side of the nest whenever feasible. If the 150-foot radius is inadequate to protect incubating adults and unhatched chicks, biologists may expand the fenced area. In some instances, fenced areas may encompass more than one nest. Monitoring of nesting territories should occur frequently (daily if possible) until nests are located. Stake-and-twine fencing will remain on the beach until all chicks in the vicinity have fledged.

Nest Exclosures. Predation by crows, gulls, foxes, dogs, and cats is a major source of nest failure for Piping Plovers. Therefore, MDIFW, or Maine Audubon, will erect approximately eight-foot radius nest exclosures around each nest after the birds lay their third egg; this helps protect the eggs and young until hatching is completed. Nest exclosures consist of 2 x 4-inch welded wire fence supported by metal stakes. Biologists string bird netting over the top of the exclosure to help deter avian predators.

Guidelines for constructing and maintaining exclosures are in Appendix F of the federal Piping Plover Revised Recovery Plan (U.S. Fish and Wildlife Service 1996).

MDIFW, or Maine Audubon, will remove nest exclosures when territorial pairs, nests, and chicks are no longer present.

H) Monitoring

The goal of monitoring is to establish regular, daily observational walks to maintain an up-to-date account of Piping Plover activity on Old Orchard Beach to better protect them from predation and human activities. Monitoring of Piping Plovers requires frequent visits by plover biologists and volunteer monitors each week throughout the nesting season to ascertain nesting status, nest location, nest success, and success of young. As the season progresses, monitors may discover new nests at any time as renesting occurs, or as new pairs establish nests on the beach. Adult birds and their chicks commonly move 325 to 650 feet away from the nest to preferred foraging areas (wrack line and intertidal flats). Frequent visits are required to track the survival and movements of family groups.

The keystone of the monitoring program is deployment of trained, Volunteer Plover Monitors (Monitors). The Town's Plover Monitoring Coordinator (Coordinator) recruits and supervises these Monitors.

Plover Monitoring Coordinator: the Town will provide the Plover Monitoring Coordinator as needed for the months of April through August. The Coordinator will work under the supervision of the Director of Public Works. In the event the Town cannot find or hire a Plover Monitoring Coordinator, the Town will assume responsibility of fulfilling the duties of this position.

The Plover Monitoring Coordinator will be in charge of recruiting and scheduling volunteer plover monitors. The Coordinator will communicate with landowners adjacent to Old Orchard Beach to inform them of Piping Plover biology and management needs, and to solicit their support for the monitoring project. The Coordinator will collect daily reports from the volunteer monitors, compile data, and act as liaison between the Town, Maine Audubon, and MDIFW. At the end of each week, The Coordinator will have all volunteers complete a "Volunteer Time and Activity Record Sheet" provided by MDIFW. The Coordinator is responsible for collecting all Volunteer Time and Activity Record Sheets at the end of the nesting season and delivering them to MDIFW or Maine Audubon. Neither the Coordinator nor the volunteer plover monitors will be involved in enforcement of regulations.

Volunteer Plover Monitors: Volunteer Plover Monitors must be available for training and should pledge to make at least a weekly commitment of time. Monitors may also be asked to attend a monthly meeting for program review and reinforcement of training. Monitors shall fill out a standard daily report (provided by MDIFW or Audubon) following their monitoring activities, and deliver it to the established collection point for pick up by the Coordinator. Monitors will report on the location of Piping Plover nests and on adherence to the provisions of this beach management plan. The Town will provide free parking, if necessary, for Monitors during the time of their monitoring activities.

I) Education and Outreach

Educational efforts will take many forms, and will rely heavily on local organizations to promote proper stewardship of the Piping Plover and other shorebirds on Old Orchard Beach. Local organizations should be encouraged to include educational materials in their newsletters, at meetings, on bulletin boards, and through other forms of communication.

The Plover Monitoring Coordinator and Volunteer Plover Monitors will utilize opportunities for face-to-face contact with adjacent property owners and beach users to educate them about Piping Plovers and the importance of respecting their habitat.

MDIFW or Maine Audubon will develop renter educational packets specifically designed to acquaint renters that use the beach with the guidelines affecting beach use. The Town will encourage landowners and local realtors who handle rental properties, to deliver the educational packets to renters. MDIFW, or Maine Audubon, will put information about regulations governing dogs on the beach in the renters' packet and in the newsletter mailed to landowners. Volunteer Plover Monitors will also distribute copies of the dog regulations on the beach.

J) Training

In support of the volunteer monitoring program, MDIFW, or Maine Audubon, will conduct annual training sessions for the Plover Monitoring Coordinator, Volunteer Plover Monitors, lifeguards, police and summer cadets, appropriate Department of Public Works employees, Emergency Responders, and other appropriate employees of the Town. These training sessions will be held in April and May, and will include information regarding Piping Plover biology, conservation/management, monitoring protocol, record keeping, and regulations, including dogs on the beach. When possible, MDIFW, or Maine Audubon, will include enforcement personnel of the USFWS and MDIFW for these training sessions to address issues of "take" under the federal ESA and Maine ESA. Maine Audubon has developed a Volunteer Monitoring Handbook for the Volunteer Plover Monitors, which contains background and training materials, regulations (including those pertaining to dogs on the beach), and daily monitoring check-off sheets.

When feasible and appropriate, MDIFW, and/or Maine Audubon, will train all Town personnel at the same time, unless it is not reasonable to do so.

K) Beach Restoration, Maintenance, Nourishment, and Dune Creation

Activities within the sand dune system at Old Orchard Beach occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system; however, all federal activities are subject to review by the USFWS under the Endangered Species Act. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated by the Town of Old Orchard Beach and reviewed by MDIFW, DEP,

USFWS, and the Corps to ensure that state and federal regulations are adhered to and that Piping Plovers are not adversely affected.

L) Permit Review Process

Landowners and the Town of Old Orchard Beach must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Cooperative Beach Management Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal law.

This Cooperative Beach Management Agreement can facilitate state and federal environmental review and permitting provided that such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS and MDIFW on any future project that could affect plovers or their habitat within the geographic area subject to this Agreement is contingent upon the successful implementation of all Piping Plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding “take” as defined under the federal Endangered Species Act (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federal Threatened Piping Plover (U.S. Fish and Wildlife Service 1973), or “take” as defined under the Maine Endangered Species Act (...the act or omission that results in the death of any endangered or threatened specie.) of the state Endangered Piping Plover (12 MRSA §12808), or “harass” as defined under 12 M.R.S. section 10001(29) as any “intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns.”

Situations, activities, or projects may arise that are not addressed in this Agreement that affect the Piping Plovers on Old Orchard Beach. Successful resolution of such eventualities requires communication and coordination--landowners and the Town of Old Orchard Beach are encouraged to seek early and frequent consultation with MDIFW and the USFWS prior to initiating activities or projects that may affect Piping Plovers.

V) Time Frame of Agreement

Recognizing that habitat and other management issues may arise that could require modified management, the Town, Maine Audubon, USFWS, and MDIFW will meet annually in the winter to review this agreement. This Agreement will commence _____ 2010 and terminate on October 1, 2012.

VI) Amendments

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall not be effective unless documented in writing, dated, signed by all parties, and attached to the agreement. Amendments will be considered annually at the winter meeting.

Discussion with Council, Staff and Public: If the beach management agreement were approved it would be signed by the Town, the U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife and the Maine Audubon Society. Piping plovers are small sandy-colored shorebirds that nest on beaches and are on the Maine

Endangered Species list and on the Federal threatened species list. This proposed agreement would have given the Town some protection from liability should an accidental plover death occur and would be in effect from April 15-August 31, during times when there are birds on the beach nesting. If birds are not nesting on the beach, the proposed agreement would not be in effect. The proposed agreement would require dogs to be leashed during nesting times and would also require owners keep dogs 100 feet away from fenced-off plover nesting areas. The Town would need a trained spotter when using beach cleaning machinery while the plovers are nesting. The agreement also included a plover monitoring system and educational outreach. Anything they perceive as a threat, including dogs or kites causes them stress and they will stop feeding, according to the Department of Inland Fisheries and Wildlife. It was suggested by the Planner that the leash rule would be better to enforce if it were throughout the whole time period which is April 15th through August 31, not just when the plovers were nesting. The Planner indicated that this would require an ordinance change. If the Town chose it could relax the hours during which it prohibits dogs on the beach during the summer. Councilor Robin Dayton said the Town could take many different steps to let people know when there is a nesting pair of plovers on the beach. She suggested that this causes a lot of excitement when an endangered species is procreating and the Town could work hard to make people aware of the plovers and could be educational and teach people about conservation. Chief Dana Kelley was asked if he thought there would be trouble enforcing the leash law to which he indicated he did not see any major issue if there proper signs posted and people were notified. Last year it was indicated there were approximately 27 pairs of plovers in the State, none of which were in Old Orchard Beach. Tina Morrison spoke and indicated that she didn't think restricting a hug number of dog owners from the freedom to roam on the beach would be difficult. She said she owns summer cottages and some her tenants come to Old Orchard just for the ability to have their dogs on the beach. A leash law during April to August would be a really big handicap. For the second time the Planner indicated to the Chair that he would be happy to have the Maine Department of Inland Fishers to attend the next meeting but again she said she would poll the Council.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Remove Without Prejudice the Piping Plover Beach Management Agreement as proposed by Maine Department of Inland Fish and Wildlife.

VOTE: Yea: Councilors Bolduc, O'Neill, Vice Chair Tousignant, Chair MacDonald
Nea: Councilor Dayton

5463 Discussion with Action: Authorize the Town Manager to negotiate an Agreement for the Ballpark with Bottling Group, LLC dba/The Pepsi Bottling Group.

COUNCILOR O'NEILL: He indicated that the wording in the Discussion with Action is incorrect because we are not asking the Town Manager to negotiate the agreement which is now presented for approval.

SECRETARY: At the time of the initial Agenda Item in your Packets, the Manager was negotiating the agreement. I apologize for the error.

TOWN MANAGER: He explained that he only received information on this agreement on Friday thus the delay in getting information to the Council.

MOTION: Councilor _____ motioned and Councilor _____ seconded to Remove without Prejudice to Authorize the Town Manager to negotiate an Agreement for the Ballpark with Bottling Group, LLC dba/The Pepsi Bottling Group.

VOTE: Unanimous.

GOOD AND WELFARE:

SETH DAVIS: I am an Ocean Park resident and I am enormously disturbed that this Council would consider putting the safety and well being of its citizen in jeopardy by cutting the amount of money designated to be given to the Police recruits. I want the Council to know that this action is considered unthinkable by my family and many others.

CHIEF DANA KELLEY: I would ask the Council to reconsider their decision to cut the Police Recruits budget as I will not be able to maintain the level of security that we need with the summer activities. It will affect service to residents and tourists alike. I need the money to be restored now as it is now that I must attempt to staff us for the summer and as I explained our recruits often leave during the summer months and go back to school so this will greatly impact our service to the community.

MIKE TOUSIGNANT: He asked the Chief what it was that he didn't understand? He explained as he had often that the expenses of the Town are unsustainable and that there is a need for reductions in Police Recruits and for the \$40,000 cut in the Police Budget. He again reiterated the Union Contracts which have required additional funding and those contracts in the future need to be reviewed as the expenditures of the Town are unsustainable.

COUNCILOR DAYTON: Expressed appreciation to the RSU for their fiduciary responsibility and for the projects coming in less than what was expected and the significant help this will be in our budget. She indicated she felt not enough acknowledgements have been given to the RSU for this reduction and for their prudent monitoring of expenses. She again encouraged the \$40,000 to be restored to the Police Recruits. It is imperative she said that it be done now so the Chief can hire the recruits for the coming summer months. We will be greatly hindered in security if this is not done.

CHERYL GENDALL: I am speaking this evening because I feel very passionate about the lack of contact with a good working Animal Shelter. You may feel that now Old Orchard Beach takes care of stray abandoned animals is a small or insignificant issues. Well, the last few days we have been knocking on doors with a petition to the Council asking for you to arrange for a contract with a Shelter. Nobody swore at us or turned us away and except for one individual in this room tonight, no one has refused to sign. Everyone said yes and signed the petition. The Pet industry in the United States is huge and animal lovers feel their animals are like part of their families. After all if your parents are ill you obviously want the best for them, correct? You would want them to get care in the best facility? Don't you want the best day care for your children In keeping with this philosophy I encourage this Council to

consider a contract with a reliable shelter and the opportunity for the Council to feel proud of themselves because they have done something good for this community.

JEROME BEGERT: I'll omit another long economics lecture comparing gout-investment in the Beach versus the Ballpark. But for those who would criticize Town Council for supporting our Ballpark, just think: have alleged fiscal conservatives or priority-competitors complained about massive beach (related) spending and whether we break even or (actually) lose money on that? The Beach-economics equation is riddled with entropy, but your Ballpark has more favorable math. Like the Beach, our Ballpark has a more favorable magnet for tourists and locals, but unlike beach economics, customer-spending at our ballpark will be point-blank, straight into a nonprofit government bank account; no waiting for months or a year for a minuscule percent of fluid free enterprise to trickle down and dribble in. Payback for any start up loan (that's what I call it_ to guarantee insurability (per building codes) to be ready for the baseball tournament doesn't even have to be called "Payback" because ballpark-income ultimately will be in that government account which Town Council and Town Manager control. It's not a one way outlay to be jealous over. The Ballpark will be the financial generator that can create and emergency reserve fund for the Town or can pay off the bond towards construction of the community center that so many of us envision. This is all positive. Think financial generator. Thin reserve account. Think community center. And those who would criticize Town Council for supporting our Ballpark will thank us.

JACK SARNO: He thanked the Council for the advertising that was done in connection with the May activities at the Ballpark and encouraged that to continue.

TOM LACHANCE: Tom thanked Ken Shupe, John and Joanne Lapointe, the American Legion, the Biddeford Saco Rotary, King Weinstein, Mike Brown, Carrie Seamons, Dale Shannon of Shannon Fence, Gerry Nason, Eastern Mechanical, and so many others for their donations and efforts on behalf of the Ballpark. He thanked the Council and the Town Manger for their support as well.

ADJOURNMENT

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to adjourn.

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 twenty-five (25) pages is a true copy of the original Minutes of the Town Council Meeting of April 20, 2010.

V. Louise Reid