

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, MAY 18, 2010
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, May 18, 2010. Chair MacDonald opened the meeting at 7:00 p.m.

The following were in attendance:

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

**Pledge to the Flag
Roll Call**

EMERGENCY ITEM: Vice Chair Tousignant motioned and Councilor Dayton seconded to add an Emergency Item, Agenda Number 5492, Discussion with Action: Countersign Warrant for Regional School Unit #23 Referendum.

VOTE: Unanimous.

ACKNOWLEDGEMENTS:

VICE CHAIR TOUSIGNANT: We have a timely need for one new member to the Planning Board. The reason for this individual to come forward quickly is that always in the workings of the Planning Board there are times that members may have to recuse themselves because of conflicts and having a full board helps us through those times. Should you have an interest please see the Town Clerk in her office or call her for an application at 934-5714, extension 224.

CHAIR MACDONALD: I would like to thank all the volunteers that have participated and worked so diligently and with such commitment at the Ballpark. It has been a wonderful week and we look forward to the coming week when the Brockton Rox versus the Capitales Quebec baseball teams.

ACCEPTANCE OF MINUTES: Town Council Workshop Minutes of May 3, 2010; Town Council Minutes of May 4, 2010; and Special Town Council Minutes of May 11, 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 7:15 p.m.

Discussion with Action: Set a Public Hearing for May 18, 2010 to Amend Chapter 26, Environment, Article I, in General, Article III Noise, Sections 26-56, Section 26- 58 through and including 26-59, Sections 26-62 through and including Sections 26 – 66, and Delete Article II, Litter.

GEORGE KERR:

The following is a summary of the revisions that the Ordinance Committee has recommended and the Chairman Kerr gave a brief description of the changes that were begins suggested to be made.

- **Article II Litter – The Police recommended removing this language as they never would use this Ordinance. If there were a littering issue they would issue a summons based on the State Statute. If there is a trash problem on private property, the Town’s adopted Property Maintenance Code would be used. The Committee agreed that this Ordinance duplicated other laws and ordinances and was no longer necessary.**
- **The New Article II Sound – In 2001, the Police Department issued summons to court to the Salvation Army for Unnecessary Noise, under the current Noise Ordinance. This case was lost because there were not clear procedures set forth in the Ordinance. Since 2001, the Police have been mediating noise complaints but have been unable to enforce the Ordinance.**

Revision Process: Since 2005, Planning Staff, an ad hoc Noise Committee, the Police Department and professional noise consultants have worked to amend the existing ordinance in order to alleviate the problems surrounding noise control. The intention of this revision is to develop an enforceable noise ordinance that can be used effectively to settle noise disputes in town. The Ordinance Committee began to review the current ordinance and the former ad hoc committee’s work.

Noise Consultants: This revision process had been led by professional noise consultants, Steve Ambrose of SE Ambrose & Associates and Rob Rand of Rand Acoustics. These consultants were hired in August of 2005 to assist staff and the committee in amending the existing ordinance.

After meeting with members of the ad hoc Noise Committee, Police Department staff and the Ordinance committee the following amendments are presented for Council review:

Sec. 26-56

The Ordinance Definition area revised to reflect new terms in the body of the Ordinance Draft.

Sec. 26-58

This section clarifies that if more stringent Zoning regs exist, that would preempt this section.

Sec. 26-59

This section changes the existing Exemption for the former “license performing arts facility” and renames it “The Ballpark”.

Sec. 26-62

This section clarifies what “loud and unnecessary noise” is and potentially fixes some enforcement problems. In the past, when noise enforcement was attempted, alleged violators have performed their own ambient noise tests. In the summer, the noise level of normal ambient sound in many districts is often times higher than the levels in Table 26-63. This fact compromises successful prosecution of violation. If adopted, subsection “d” recognizes that if the average ambient noise level is greater than the levels specified in Section 26-63, the sound level emanating from the alleged violator’s property line shall be measured. If the sound level emanating from the alleged violator’s property is greater than 10 dB (A) above the average ambient noise level it shall be deemed to be loud and unnecessary noise and in violation of this Ordinance.

If adopted, this would allow the Police to enforce the Ordinance under circumstances where they could not in the past.

Sec. 26-63

It is important to note that there are no proposed changes to the noise levels allowed in the present ordinance.

Sub section 2 which allowed 15 minutes of excessive noise per day was eliminated as it complicated enforcement and the Police have discretion in these matters.

Sec. 26-64

Sub Section 8 was modified to allow construction, all year, starting at 7am Monday thru Saturday and 9am on Sundays. Previously construction is not supposed to start before 9 am in the summer.

New proposed exclusion 11 exempts primary uses on properties like Palace Playland from noise limitations. Those uses are:

- (1) Primary uses. Primary uses are as follows:
 - a. Mechanical and nonmechanical amusement rides, go-cart tracks, water slides, miniature golf courses, bumper boats, aquariums and similar activities.

- b. Virtual reality amusements.
- c. Amusement arcades.
- d. Games of skill.
- e. Services such as manicurists, face painting, and similar activities.
- f. Public performances, whether by live actors or mechanical/video means.
- g. Recreational equipment rentals.
- h. Temporary structures including booths and tents erected to accommodate uses described in this section.
- i. Boardwalks, observation decks, landscaped park areas, and similar structures or facilities established to provide public seating and afford public views of the ocean or beach, and that are not associated with a complementary use.

This proposal does not exempt the complimentary uses:

(2) Complementary uses. Complementary uses are as follows:

- a. Drinking establishments.
- b. Tattoo parlors.
- c. Restaurants.
- d. Food stands with a minimum of a ten-foot setback from the front property line.
- e. Retail.

New proposed exclusion 12 exempts noise generated within a mixed use structure such as the Brunswick or Grand Victorian that effect the units within the building only. Properties like these would still have to comply outside of the building.

New proposed exclusion 13 allows the Salvation Army to have sound levels like the GB-1 Zone during daytime hours in the summer. If adopted, this would allow them to operate as they have been for the last several years.

Sec. 26-65

New Sub Section 4 gives the police another way to eliminate disturbances during the nighttime hours.

Sec. 26-66

This section was completely redrafted at the recommendation of the noise consultants to create a procedure that, if followed, would make the ordinance enforceable.

Chapter 26 ENVIRONMENT*

***Cross references: Economic development committee, § 2-261 et seq.; department of planning and development, § 2-472; animals, ch. 14; parks and recreation, ch. 42; solid waste, ch. 46; streets, sidewalks and other public places, ch. 50; utilities, ch. 58; buildings and building regulations, ch. 66; floods, ch. 70; subdivisions, ch. 74; zoning, ch. 78; erosion and sedimentation control, § 78-1856 et seq.; manufactured housing, § 78-2056 et seq.**

State law references: Nuisances, 17 M.R.S.A. § 2701 et seq.; abatement of nuisances, 30-A M.R.S.A. § 3104; disposition of abandoned property, 30-A M.R.S.A. § 3106.

Article I. In General

Secs. 26-1--26-~~25~~ 55. Reserved.

Article II. Litter

~~Sec. 26-26. Definitions.~~

~~Sec. 26-27. Maintenance of property.~~

~~Sec. 26-28. Receptacles.~~

~~Sec. 26-29. Disposal.~~

~~Secs. 26-30--26-55. Reserved.~~

Article III. ~~Noise~~ Sound

Sec. 26-56. Definitions.

Sec. 26-57. Findings.

Sec. 26-58. Effect of zoning.

Sec. 26-59. Exemptions for licensed performing arts facility.

Sec. 26-60. Enforcement.

Sec. 26-61. Penalties.

Sec. 26-62. Loud and unnecessary noise.

Sec. 26-63. Noise level standards.

Sec. 26-64. Exclusions.

Sec. 26-65. Specific prohibitions.

Sec. 26-66. Measurement procedures.

Sec. 26-67. Inspections.

ARTICLE I. IN GENERAL

Secs. 26-1--26-~~25~~ 55. Reserved.

~~ARTICLE II. LITTER*~~

~~*State law references: Litter control, 17 M.R.S.A. § 2261 et seq.~~

~~Sec. 26-26. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~Litter means and includes any manmade or man-used waste material which, if deposited within the town otherwise than in a litter receptacle or a state-licensed waste disposal facility, tends to create a danger to public health, safety or welfare or to impair the environment. Litter may include but is not limited to any garbage, trash, refuse, debris including demolition debris, newspaper, magazine, glass, metal, white goods, automobile parts, plastic or paper containers or other matter of any kind or object likely to injure any person or create a traffic hazard.~~

~~Litter receptacle means and includes any container which is designed to receive litter and to prevent the escape of litter deposited therein, which is of such size or sufficient capacity to hold all litter generated between collection periods.~~

~~Public place means and includes any highway, street, road, way, sidewalk, park, playground, beach or any land, building or other structure frequented by the general public, whether publicly or privately owned.~~

~~(Ord. of 6-18-1980, § 1; Ord. of 2-7-1989)~~

~~Cross references: Definitions generally, § 1-2.~~

~~Sec. 26-27. Maintenance of property.~~

~~(a) Every owner, occupant or lessee of a building, structure or parcel of land used for residential, business or commercial purposes shall ensure that all litter is properly containerized in litter receptacles and shall maintain litter collection and storage areas in a clean condition.~~

~~(b) All litter that is subject to movement by the elements shall be secured by the owner, occupant or lessee of the premises where it is found before the litter is allowed to be removed by the elements to adjoining premises.~~

~~(c) Every owner, occupant or lessee of any public place, including but not limited to hotels, motels, restaurants, fast food outlets, shops, stores, office buildings, apartment buildings and indoor or outdoor retail establishments, shall at all times keep the premises clean of all litter and shall take all necessary measures, including regular periodic cleanup of the premises, to prevent litter from being carried by the elements to adjoining premises or to accumulate upon the premises.~~

~~(d) All owners, occupants or lessees of premises shall keep the sidewalks and alleys adjacent thereto free of litter.~~

~~(Ord. of 6-18-1980, § 2)~~

~~Sec. 26-28. Receptacles.~~

~~(a) Every owner, occupant or lessee using or occupying any public place shall provide and maintain adequate litter receptacles of sizes, numbers and types as required to contain all litter generated by those persons frequenting that public place.~~

~~(b) Every owner, occupant or lessee of private premises shall provide and maintain litter receptacles for collection of litter as necessary and in such a manner that litter will be prevented from being carried by the elements to adjoining premises.~~

~~(c) Persons placing litter in litter receptacles shall do so in such a manner as to prevent litter from being carried from the receptacles by the elements.~~

~~(d) No person shall cause the removing, upsetting, mutilating, defacing or tampering with litter receptacles or cause the contents thereof to be spilled or to be strewn in or upon any public place or private premises.~~

~~(e) Litter receptacles shall not be placed in any location where they may obstruct vehicular traffic or unreasonably obstruct pedestrian traffic.~~

~~(Ord. of 6-18-1980, § 3)~~

~~Sec. 26-29. Disposal.~~

~~(a) No person shall throw, deposit, drop, discard or otherwise dispose of litter in or upon any public place, except:~~

~~(1) In an area designated by the state or the town for the disposal of garbage and refuse, if such person is authorized to use such property for such purpose; or~~

~~(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such public place.~~

~~(b) No person shall throw, drop, deposit, discard or otherwise dispose of litter while traveling in any vehicle or from any vehicle in or upon any public place, except into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements.~~

~~(Ord. of 2-7-1989, § 4)~~

ARTICLE ~~III~~ II ~~NOISE~~*SOUND *

*Cross references: Operation of noise-creating devices on public rights-of-way, § 50-271 et seq.

State law references: Disorderly conduct, 17 M.R.S.A. § 501; unnecessary automobile noise, 29-A M.R.S.A. § 2079.

Sec. 26-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient noise level means the all-encompassing noise level associated with the given environment, being a composite of sounds from many distant, individually indistinguishable sources, excluding the alleged offensive noise and excluding noise from isolated identifiable vehicles at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

Daytime hours means the hours between 7:00 a.m. and 10:00 p.m. Monday through Saturday, and the hours 9:00 a.m. through 10:00 p.m. on Sunday's.

dB(A) means the abbreviation designating both the unit of measure sound level, the decibel, and the mode of measurement that uses the A-weighting of a sound level meter.

Decibel (dB) means the practical unit of measurement for sound pressure level; the number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 micropascals); abbreviated "dB."

Domestic power equipment means but is not limited to power saws, drills, grinders, lawn and garden tools and other domestic power equipment intended for use in residential areas by a homeowner.

Effective Source Noise Level means the source noise level after an adjustment for the adverse character of noise (including tonal, impulsive, bass or rumble noise).

Lmax means Maximum Sound Level as defined herein.

Maximum Sound Level means the maximum sound pressure level measured in decibels with a sound level meter set for A-weighting, "Fast" meter response over a measurement period; expressed as Lmax in dBA.

Nighttime hours means the hours between 10:00 p.m. and 7:00 a.m. Sunday evening through Saturday morning, except that night means the hours between 10:00 p.m. Saturday and 9:00 a.m. Sunday.

Noise level means the sound pressure level as measured with a sound level meter using the A-weighting network. The level so read is designated "db(A)" or "dBA."

Property line means that real or imaginary line along the ground surface and its vertical extension which:

- (1) Separates real property owned or controlled by any person from contiguous real property owned or controlled by another person; and
- (2) Separates real property from the public right-of-way.

Source Noise Level means the equivalent sound level (or Leq) of the noise radiated from a source or group of sources and determined by subtracting (on an energy basis) the background sound level – with the source(s) off – from the total sound level – measured with the source(s) on.

Sound level or Leq means the energy-equivalent sound pressure level measured in decibels with a sound level meter set for A-weighting, “Fast” response over a measurement period; expressed as Leq in dBA.

Sound level meter means an instrument for the measurement of sound levels conforming to ANSI type I or type II standards.

Sound pressure level means the level of a sound measured in dB units with a sound level meter which has a uniform (flat) response over the band of frequencies measured.

The Ballpark means the municipal facility located on E. Emerson Cummings Boulevard, commonly known as the Ballpark, consisting of approximately 49 acres of land improved with a stadium, playing fields and parking areas, the exact boundaries of which may be established and modified by the Town Council from time to time.

(Ord. of 3-16-1983, § 8-309; Ord. of 3-15-1994)

Sec. 26-57. Findings.

It is found and declared that:

- (1) The making and creation of loud, unnecessary or unusual noises within the town limits is a condition which has existed for some time, and the extent and volume of such noises is increasing.
- (2) The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use effect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the town residents; and
- (3) The necessity in the public interest for the provisions and prohibitions contained and adopted in this article is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained and adopted in this article are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the town and its inhabitants.

(Ord. of 3-16-1983, § 8-301)

Sec. 26-58. Effect of zoning.

Any section of chapter 78 ~~pertaining to~~ of the Code (zZoning) which is more stringent than the standards set forth in this article shall ~~remain in force~~ prevail over the standards of this article.

(Ord. of 3-16-1983, § 8-311)

Sec. 26-59. Exemptions for ~~licensed performing arts facility.~~ The Ballpark.

This article shall not apply to ~~any performing arts facility~~ activities at The Ballpark holding a ~~license~~ Special Event Permit pursuant to article ~~VI IV~~ of chapter ~~18 42 Divisions 5~~ for licensing performing arts facilities during such time as such ~~license~~ permit remains in effect and has not been suspended or revoked, and the permittee is in compliance with all conditions placed on the Special Events Permit.

(Ord. of 2-10-1992, § 8-313)

Cross references: Special Events, § 42-231 et seq. ~~Performing arts facilities, § 18-286 et seq.~~

Sec. 26-60. Enforcement.

- (a) The police department is directed to enforce this article.
 - (b) No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this article while such person is engaged in the performance of his duty.
 - (c) Violations of this article shall be prosecuted in the same manner as other civil violations; provided, however, that for an initial violation of this article, with the exception of the violations specified in section 26-65(3), a written notice shall be given the alleged violator which specifies the time by which the condition shall be corrected. No complaint or further action shall be taken if the cause of the violation has been removed or the condition abated or fully corrected within the time period specified in the written notice.
 - (d) If the alleged violator cannot be located in order to serve the notice of intention to prosecute, the notice as required shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at his last known address or at the place where the violation occurred, in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice. Subsequent violations of the same offense shall result in the immediate filing of a civil complaint.
- (Ord. of 3-16-1983, § 8-308; Ord. of 3-15-1994; Ord. of 8-4-1998)

Sec. 26-61. Penalties.

Any person in violation of any of the sections of this article shall be deemed guilty of a civil infraction and, upon conviction, shall be fined as provided in section 1-14. Each day such violation continues after the time for correction of the violation has been given in an order shall constitute a continuing violation, and the amount of fine shall be doubled for each day the violation continues. The fine shall not exceed \$400.00 per day.

(Ord. of 3-16-1983, § 8-310; Ord. of 3-15-1994)

Sec. 26-62. Loud and unnecessary noise.

It shall be unlawful for any person to make, continue, or cause to be made or continued any loud or unnecessary noise within the town limits. For the purposes of this article, the term "loud and unnecessary noise" shall mean any sound which either:

- a) exceeds the limits of the table in section 26-63, or;
- b) is a permitted sound as defined in Section 26-64 but does not comply with restrictions for that permitted sound, or;
- c) fits the descriptions given in section 26-65 or;
- d) in the event that the average ambient noise level is greater than the levels specified in Section 26-63, the sound level emanating from the alleged violator's property line shall be measured as specified in sections 26-66 and 26-67. If the sound level emanating from the alleged violator's property is greater than 10 dB(A) above the average ambient noise level it shall be deemed to be loud and unnecessary noise and in violation of this Ordinance.

(Ord. of 3-16-1983, § 8-302; Ord. of 3-15-1994)

Sec. 26-63. Noise level standards.

Sound from any source controlled by this article shall not exceed the following limits at the lot line of the emitter:

**SOUND PRESSURE LEVEL LIMITS
MEASURED IN dB(A)**

TABLE INSET:

	Day	Night
Industrial district (ID) and planned mixed use development (PMUD)	70	60
General business district 1 (GB-1) and general business district 2 (GB-2)	70	60
Downtown district (DD-1)	80*	70*
Downtown district (DD-2)	70*	60*
Residential districts including R-1, R-2, R-3, R-4, R-5, RD, BRD	55	45

*Nighttime hours in the DD-1 and DD-2 zones shall commence at 12:00 midnight and shall end as specified in section 26-56.

(1) Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.

~~(2) The levels specified may be exceeded by ten dB(A) for a single period, not to exceed 15 minutes in any one day.~~

(Ord. of 3-16-1983, § 8-303; Ord. of 10-5-1983; Ord. of 3-15-1994; Ord. of 9-19-1995)

Sec. 26-64. Exclusions.

The noise levels in section 26-63 shall not apply to noise emitted by or related to:

- (1) Natural phenomena.
- (2) Any bell or chime from any building clock, school or church.
- (3) Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms not terminating within 30 minutes after being activated shall be unlawful.
- (4) Warning devices required by the Occupational Safety and Health Administration or other state or federal safety regulations.
- (5) Farming equipment or farming activity.
- (6) Noise from domestic power equipment, such as but not limited to power saws, sanders, grinders, lawn and garden tools or similar devices operated during daytime hours.
- (7) Timber harvesting (felling trees and removing logs from the woods).
- (8) Noise generated by any construction or demolition equipment which is operated during daytime hours, provided that the operation of construction equipment during nighttime hours shall not exceed the maximum noise levels as specified in section 26-63. For purposes of this subsection, daytime hours and nighttime hours shall be as defined in section 26-56, ~~except that during the period from Memorial Day through Labor Day each year, daytime hours shall mean the hours between 9:00 a.m. and 4:00 p.m. daily, and nighttime hours shall mean the hours between 4:00 p.m. and 9:00 a.m. daily.~~ Emergency construction or repair work by public utilities shall also be exempted. The police department may allow construction during nighttime hours if it is demonstrated that the extenuating circumstances disallow construction during the daytime hours.
- (9) Noise created by refuse and solid waste collection.
- (10) Municipal or public works projects.
- (11) Noise generated by primary uses in the Amusement Overlay District as defined in Section 78-1083 (1) of the Zoning Ordinance; during daytime hours as outlined for the DD-1 zone in section 26-63 of this Chapter.

(12) Noise generated within a mixed use structure effecting only the uses or unit owners within the structure.

(13) From June 1st to October 1st of each year, Day Time Noise generated from Salvation Army Pavilion (Tax Map 311 Block 6 Lot 1) shall be allowed to comply with the noise level standards for the GB-1 Zoning District as show in Section 23-63 measured at the receiving station. Night time noise levels shall comply with the noise level standards for the R-2 Zoning District throughout the year.

(Ord. of 3-16-1983, § 8-304; Ord. of 9-10-1985; Ord. of 3-15-1994)

Sec. 26-65. Specific prohibitions.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive:

(1) Owning, possessing or harboring any animal or bird which, frequently or for continued duration, makes sounds which create a noise disturbance across a residential real property boundary. For the purpose of this article, a barking dog shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of ten minutes or barks intermittently for one-half hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private property; provided, however, that a dog shall not be deemed a "barking dog" for purposes of this article if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog.

(2) The using or operating or the permitting to be played, used or operated of any radio, receiver, electronically amplified musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of music or sound, which is cast upon the public street and which exceeds the level limits specified in section 26-63.

(3) The use of any automobile, motorcycle or other vehicle, nonessential to safe and reasonable operation, in one or more of the following ways:

- a. Revving of motor vehicle engines.
- b. The use of audio equipment clearly audible beyond the confines of a motor vehicle.

(4) The creation of a noise disturbance by or with any sound including the unamplified human voice by three or more people that congregate during nighttime hours. This prohibition shall not be applicable for alerting for personal danger or peril of life emergency.

(Ord. of 3-16-1983, § 8-305; Ord. of 7-6-1993; Ord. of 3-15-1994; Ord. of 8-4-1998)

Sec. 26-66. Measurement procedures.

For the purpose of determining sound levels set forth in this article, the following procedures shall be utilized.

(1) The sound measurements shall be made while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum, and fluctuating rates.

(2) No outdoor measurements shall be taken:

- a. During periods when wind speeds (including gusts) exceed 15 mph;

- b. Without an acoustically acceptable windscreen properly attached to the microphone;
- c. Under any condition that allows the measuring instrument to become wet (e.g., rain, snow, or condensation); or
- d. When the ambient temperature is out of the range of the tolerance of the measuring instrument.

(3) The Investigating Officer shall, to the extent practicable, identify all sources contributing to the noise at the point of measurement.

(4) Prior to taking noise measurements the Investigating Officer shall explore the vicinity of the source in question to identify other sound sources that could affect measurements, to establish the approximate location and character of the principal sound source, and to select suitable locations from which to measure the sound radiated from the source in question.

(5) When measuring sound, the sound level meter shall be set for A-weighting, "Fast" meter response, linear averaging, and the proper range (i.e., where the sound level registers in the upper measurement range without exceeding its limits). The sample duration shall be at least one minute or one cycle of equipment operation, whichever is longer. To ensure measurement repeatability, a second measure shall be taken that must agree with the first within 2 dBA for both measures to be acceptable. The final measurement is the average of two samples.

(6) The measuring instrument shall be placed at a minimum height of 3 ft above the ground and from any reflective surface. The microphone shall be held at arm's length and pointed at the source at the angle recommended by the measuring instrument's manufacturer.

(7) If temporary sound sources unrelated to the measurements are plainly audible, such as aircraft flyovers, barking dogs, or moving motorcycles, the measurements should be postponed until these extraneous sounds have negligible effect on the sound levels of interest.

(8) The observation session should last for a period of time sufficient to ensure that the sound levels measured are typical of the source in question.

(9) Instruments used to determine sound levels shall be ANSI Type 1 or 2 meters and shall be maintained with yearly calibration certificates traceable to NIST.

(10) The measurement period shall be for no less than one minute, (a 1-minute Leq) or for a greater time interval encompassing the variations in sound for the source being measured, as determined by the Investigating Officer.

(11) The measurement shall be taken at the source lot line, except as specified in Section 26.64.(13).

(12) To determine the Source Noise Level, the background level (Leq) shall be measured and subtracted from the measured total sound level (Leq). If the total sound level does not exceed the background sound level by 2 dB or more, the source level cannot be derived and a violation of the ordinance cannot be substantiated.

(13) A minimum of two Source Noise Level measurements shall be obtained. If the two measurements (Leq) differ by more than 2 dBA (3 dBA permitted for music), the investigating personnel shall measure again as needed until two measurements agree within 2 dBA (3 dBA for music), or discontinue measurements and a violation of the ordinance cannot be substantiated. The two measurements shall be averaged arithmetically and the result called the Averaged Source Noise Level.

(14) The report for each measurement session shall include but not be limited to:

- a. The date and times at which measurements are taken.
- b. The results of the calibration check.
- c. The weather conditions.
- d. The identification of all monitoring equipment.
- e. A description of the source(s) and its operating cycle.
- f. The total sound level (level with the sources in question operating, Leq and Lmax values).

g. The background sound level (level without the sources in question operating, L_{eq} and L_{max} values).

h. The averaged Source Noise Level (L_{eq}).

i. The Effective Source Noise Level ($L_{eq}(e)$).

(Ord. of 3-16-1983, § 8-306; Ord. of 3-15-1994)

Sec. 26-67. Inspections.

(a) For the purpose of determining compliance with this article, the police department is authorized to make inspections of all noise sources and to take measurements and make tests whenever necessary to determine the quantity and character of noise.

(b) No person shall hinder, obstruct, delay, resist, prevent in any way, interfere or attempt to interfere with any authorized person while in the performance of his duties under this article.

(Ord. of 3-16-1983, § 8-307; Ord. of 3-15-1994)

NANCY FRISCO: She asked for explanation on what the levels were and the Code Enforcement officer described the various setting of levels. She also asked in motor cycle vehicles and loud parties would still be able to be contained with these changes.

COUNCILOR DAYTON: She raised concerns on the subject of litter (not related to noise). She also was concerned with the time frame for construction work. She discussed the noise level range as well.

JEROME PLANTE: He gave an historical perspective of his association with The Salvation Army including his experience in the legislature, congressional aide, General Assistance Director, Town Manager and the fact that whenever needs arose that were in the prevue of The Salvation Army, they always responded and he encouraged the Council to do whatever was necessary to assure the carrying on of the programming and the services that have been the hallmark of the Army's service.

CHERYL POULOPOLUS: As the Director of the Pavilion she first thanked the Ordinance Review Committee for the excellent work that they have done and the professionalism that has been their hallmark in working in the ordinance changes. She indicated that they have tried hard at the Pavilion to have the meetings over by 9:00 so that everyone is out of the Pavilion by 10:00 p.m. at night. She also reminded the Council that their programs are geared to family-oriented events and that the support to the community and from the community has always been positive. She said the Pavilion from the beginning of its building project has sought to permit the High School to use it for the graduation and recently the Recreation Department has been using it as well. She assured the Council that the Army will work with the ordinance changes and continue to bring family programs to the community.

DAVID ORDWAY, ESQUIRE: As the Army's attorney, he was, however their pro-bono. He knows the history of the noise ordinance in the past and as it will be presented to the Council this evening. He understands the history because he was involved in the Sea Pack and also with Ball Park Productions. Again he indicated that he believed that the ordinance struck a nice balance between The Salvation Army and the neighborhood.

NEIL WEINSTEIN, ESQUIRE: He discussed the hours of operation and disagreed with those indicated in the new ordinance. He said families need to be able to enjoy their homes and hours of operation affect that. He indicated it was absurd to define daytime until 10:00 p.m. He indicated it was not a family friendly policy. He encouraged that the former restriction of 4:00 p.m. was too early but 10:00 p.m. was too late.

GEORGE KERR: When asked about the Ballpark he responded that they did not want to incorporate the Ballpark when you don't know what the use is going to be.

MIKE NUGENT: He said that the proposed ordinance would allow the Salvation Army, during the summer months, to have noise levels of 70 decibel units during the day, which is the year round standard for the general business zone. Night time noise levels would comply with noise level standards for residential districts – 45 decibel units – all year long.

BUD HARMON: As the Director of the Chamber of Commerce he reminded the council of the financial ramifications of making it impossible for the Army to exist unless the ordinance was as they have been discussed. He reminded them that over the period of the summer in the eight day period that the Camp Meetings are going on they rent 300 rooms, eat, go to amusement park, shop, and spend approximately two million dollars in the eight to ten day period. He said their community involvement and general assistance to those in need is well known and no one questions the value they are to our community. He encouraged the Council to move these changes along as the summer program will be in swing very soon. He reminded everyone that normal conversation level is 70 decibels and reiterated again that the Salvation Army programs have an enormous economic effect on the community.

VICE CHAIR TOUSIGNANT: He asked why the Salvation Army could not be exempt because of grandfathering privileges.

MIKE NUGENT: He explained that they are part of the community and the changes were made so that it would be inclusive. He also indicated that the proposed ordinance does not have any changes to the noise levels allowed in the present ordinance. The proposed ordinance he indicated clarifies what loud and unnecessary noise is and potentially fixes some enforcement problems.

COUNCILOR DAYTON: Raised the question of a definition of hours which she then noted was in the Ordinance changes. She had concern with the definition of daytime hours in the new ordinance. The suggested ordinance defines daytime hours in the new ordinance. The suggested ordinance defines day time hours as 7:00 a.m. to 10:00 a.m. She felt that being in a neighborhood where neighbors are literally three to five feet away from each other, it definitely is a concern.

CHIEF KELLEY: He acknowledged the work of the Army and that there are no complaints and when there have been the Army has been swift to correct the issue being raised.

JOHN BIRD: He raised issues on Section 6 and the use of power saws.

PAT BROWN: She mentioned that she was involved in the original noise ordinance establishment and spoke about the Grand Victorian and mixed use within a structure.

JEROME BEGART: He said that Condo's have rules and it is true they have Associations but the Associations are not a substitute for Police intervention.

COUNCILOR O'NEILL: He expressed his heart felt appreciation to the Army for the work they do and for what the Pavilion has brought to the community not only in excellent programming but in supporting community events. He also applauded the Ordinance Review Committee for their willingness to tackle this assignment.

CHAIR: I close this Public hearing at 8:20 p.m.

CHAIR: I open this Public Hearing at 8:21 p.m.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

Robyn Parlin & Patty Ferlano dba/Robyn's Ice Cream, Ice Cream Truck; David & Tanya Kolonoski (205-19-24-4), 2 Foote Street, Unit 4, one year round rental; Jeanne Peterson Kamfonik dba/Beggars' Ride (206-31-8), 39 Old Orchard Street, Retail; Town of Old Orchard Beach Ballpark (207-3-6X), 14 E. Emerson Cummings Blvd., Victualers with Preparation, with a request to waive the fee; John & Dan Donovan dba/The Friendship Motor Inn (302-6-6), 167 East Grand Avenue, 71 Seasonal Rentals, 2 Cottage Seasonal Rentals & 1 Vending Machine; Kanyalak Prapin & Thiraphan Mamanee dba/ High Thai'd (306-1-2-P & Q), 1 East Grand Avenue P & Q, Victualers with Preparation; Chris Small dba/Oasis Bar & Grille (306-5-3), 8 East Grand Avenue, Victualers with Preparation and Beer, Wine and/or Liquor on Premises; Marianne Barbano dba/Beach Brew (306-6-1-K5), 2 Old Orchard Street, Victualers with Preparation; Edward Marceau (307-1-7-25), 2 Fernald Street, Unit 25, one year round rental; Angelo's Restaurant dba/Fatt Patties (307-3-4), 2 West Grand Avenue, Victualers with Preparation, Beer, Wine or Liquor on premises; Letowt Associates dba/Washington Laundromat (308-3-11), 20 Washington Avenue, Laundromat; Richard Clark (311-13-4), 37 Evergreen Avenue, two year round rentals; Tracie L. Curtis dba/T.L.C Creations (312-17-1), 80 First Street, Retail; Jeffrey Carruthers & Patricia Driscoll (314-12-2), 8 Somerset Avenue, one year round rental; Karen Jackson (311-2-1), 128 Union Avenue, one year round rental; Kathleen Teague (317-8-5), 17 & 19 Woodland Avenue, three year round rentals; Anna Thomas (319-9-3), 7 Pavia Avenue, one seasonal rental; and Pouran Espahbodi (310-7-10-18), 190 East Grand Avenue, Unit 18, one year round rental.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to approve the Business Licenses as read.

VOTE: Unanimous.

CHAIR: I close this Public Hearing at 8:23 p.m.

CHAIR: I open this Public Hearing at 8:24 p.m.

PUBLIC HEARING LIQUOR LICENSES AND APPROVAL:

Patricia Brennon & Thomas Gilles dba/Fatt Patties (307-3-7), 2 West Grand Avenue, s-m-v in a Restaurant; and Christopher B. Small dba/Oasis Bar & Grille, Inc. (306-5-3), 8 East Grand Avenue, s-m-v in a Restaurant/Lounge.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to approve the Liquor Licenses as read.

VOTE: Unanimous.

CHAIR: I close this Public Hearing at 8:25 p.m.

CHAIR: I open this Public Hearing at 8:26 p.m.

PUBLIC HEARING SPECIAL AMUSEMENT PERMIT AND APPROVAL:

Brentland Beth Inc. dba/Bell Buoy Restaurant (205-4-5-B), 24 Old Orchard Street, Music Inside, 12:00 p.m. to 12:00 a.m.; Maria Spirounias dba/Chas' Sports Pub (208-3-3), 181 Saco Avenue, Music & Dancing Outside and Inside, live, acoustic, non-amplified music from 12:00 noon to 4:00 p.m., Friday & Saturday only; Inside – jukebox/radio, 12:00 noon to 12:00 a.m., Friday & Saturday; and 12:00 noon to 10:00 p.m., Sunday through Thursday; Jason G. Cutter dba/Barefoot Boy (305-4-5), 43 East Grand Avenue, Radio inside, 7:00 a.m. to 1:00 p.m. and 4:00 p.m. to 11:00 p.m.; Patricia Brennon & Thomas Gilles dba/Fatt Patties (307-3-7), 2 West Grand Avenue, Radio/Television Inside; 8:00 a.m. to 8:00 p.m.; and Christopher B. Small dba/Oasis Bar & Grille, Inc. (306-5-3), 8 East Grand Avenue, Live acoustic solo/duo amplified, inside; one acoustic guitar and amplification, not through a PA system.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Special Amusement Permits as read.

VOTE: Unanimous.

CHAIR: I close this Public Hearing at 8:27 p.m.

TOWN MANAGER'S REPORT:

Participated in Dunegrass Sewer Issue meeting.

Attended The Salvation Army Civic Breakfast along with the Mayors of Biddeford and Saco.

Attended the OOB 365 meeting.

Majority of week involved in details regarding the Baseball activities at the Ballpark.

Also participated in the first meeting of the Ballpark Commission.

Department Head meeting.

Town Council Meeting, Special Town Council Meeting and Budget Workshop.

Anemometer Completion

Participated in Junior Achievement Shadowing Day

Attended the Charter Review Commission meeting.

Attended a Health Insurance Seminar sponsored by Paquin & Carroll.

Attended a Police Station construction meeting in Westbrook at Benchmark Headquarters –

Ground breaking is tentatively scheduled for June 7, 2010 at 7:00

Worked on a different Union Grievance which has now reached the level of arbitration.

NEW BUSINESS:

5478 Discussion With Action: 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.

MOTION: Councilor _____ motioned and Councilor _____ seconded to Amend Ordinance Section 42-201 To Allow Vehicles on the Beach as part of a Town Council Approved Special Event Permit.

COUNCILOR DAYTON: She questioned with cuts in recruits is he going to be able to handle the additional work needed for these large events.

CHAIR KELLEY: He indicated that when necessary there will be complete control by the Police Department.

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

5479 Discussion with Action: Amend Section 54-187 of the Code of Ordinances, 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.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Amend Section 54-187 of the Code of Ordinances, 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.

MOTION: Vice Chair Tousignant motioned and Councilor Bolduc seconded to Amend Section 54-187 of the Code of Ordinances, 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.

5480 Discussion with Action: Approve Liquor License Renewals of Brentland Beth Inc. dba/Bell Buoy Restaurant (205-4-5-B), 24 Old Orchard Street, s-m-v in a Restaurant; Maria Spirounias dba/Chas' Sports Pub (208-3-3), 181 Saco Avenue, Malt in a Restaurant Lounge; and J. G. Cutter LLC, dba/Barefoot Boy (305-4-5), 43 East Grand Avenue, s-m-v in a Restaurant.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to approve the Liquor License Renewals as read.

VOTE: Unanimous.

5481 Discussion with Action: Approve the Special Event Permit application for the Barstow and Stanton families to hold a BBQ picnic marriage rehearsal dinner on the beach at the end of Weymouth Avenue on Friday, June 11, 2010, from 10 a.m. to 10 p.m.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Special Event Permit application for the Barstow and Stanton families to hold a BBQ picnic marriage rehearsal dinner on the beach at the end of Weymouth Avenue on Friday, June 11, 2010, from 10 a.m. to 10 p.m.

VOTE: Unanimous.

5482 Discussion with Action: Approve the Special Event Permit application for the Salvation Army to use the Ballpark for parking vehicles only on Saturday, July 24th, 2010 from 4:30 p.m. to 9:30 p.m.; and the following Sundays, August 8th, 15th and 22nd, 2010 from 5 p.m. to 9:30 p.m. Request to waive the fee.

MOTION: Vice Chair Tousignant motioned and Councilor O'Neill seconded to Approve the Special Event Permit application for the Salvation Army to use the Ballpark for parking vehicles only on Saturday, July 24th, 2010 from 4:30 p.m. to 9:30 p.m.; and the following Sundays, August 8th, 15th and 22nd, 2010 from 5 p.m. to 9:30 p.m. Request to waive the fee.

VOTE: Unanimous.

#5483 Discussion with Action: Remove the handicap parking spaces in front of 13 Washington Avenue and 61 Evergreen Avenue.

BACKGROUND: At the last Council Meeting Councilor O'Neill requested that the Police check the need for two parking spaces on the above addresses. It was determined that those handicap spaces are no longer needed because of the individuals needing them no longer being at those locations. He also asked about another address but that address is still valid and is not a space but rather a sign for a handicap person to cross.

MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Remove the handicap parking spaces in front of 13 Washington Avenue and 61 Evergreen Avenue.

VOTE: Unanimous.

5484 Discussion with Action: Approve the donation of the surplus 1979 "Mack" CFM Fire Engine to the 1907 Fire Society by the Town of Old Orchard Beach.

BACKGROUND: Recognizing the importance of memories of the past, it is the desire of the Town to donate the surplus 1979 "Mack" CFM Fire Engine to the 1907 Fire Society for historical reasons.

MOTION: Vice Chair Tousignant motioned and Councilor O'Neill seconded to Approve the donation of the surplus 1979 "Mack" CFM Fire Engine to the 1907 Fire Society by the Town of Old Orchard Beach.

VOTE: Unanimous.

5485 Discussion with Action: Approve the transfer of the Defendant in Rem, or any portion thereof, pursuant to 15 M.R.S.A., Section 5824(3) and Section 5826(6) and accept the seizure money should it be awarded by the Courts.

BACKGROUND: This is a housekeeping item in order to obtain the funds as indicated above.

MOTION: Councilor Dayton motioned and Councilor Tousignant seconded to Approve the transfer of the Defendant in Rem, or any portion thereof, pursuant to 15 M.R.S.A., Section 5824(3) and Section 5826(6) and accept the seizure money should it be awarded by the Courts.

VOTE: Unanimous.

5486 Discussion with Action: Accept, with regret, the Resignation of Suzanne Scalise from the Recycling Committee.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Accept, with regret, the Resignation of Suzanne Scalise from the Recycling Committee.

VOTE: Unanimous.

5487 Discussion with Action: Amend Schedule of License, Permit and Application Fees, by setting parking Rates at Memorial Park and Milliken Street Parking Lots.

BACKGROUND: It is the suggestion in discussions of fees that the fee of \$1.00 an hour for parking at the Milliken Street Parking Lot and the Memorial Parking Lot should be raised to \$2.00 an hour.

MOTION: Councilor Bolduc motioned and Vice Chair Tousignant seconded to Amend Schedule of License, Permit and Application Fees, by setting parking Rates at Memorial Park and Milliken Street Parking Lots and at the Town's Parking Meters at \$2.00 an hour.

VICE CHAIR TOUSIGNANT: Is there a cost to upgrading these machines? We have had difficulty for a number of years with the ticket machines at Memorial and Milliken Parking Lots.

CHIEF KELLEY: The meter company can send a technician at a cost of 4400 and he electronically changes the hourly rate. We also have the option of purchasing the software and doing it ourselves at around \$2,500.

CHAIR MACDONALD: This change will bring approximately \$68,000 of new revenue.

VOTE: Unanimous.

5488 Discussion with Action: Authorize the extension of time for the Preparation and submission of preliminary and final reports of the Charter Commission for up to 24 months after the election of the Commission.

BACKGROUND: The Charter Commission which has been meeting every other week has requested of the Council approval for the extension of time for up to 24 months after the election of the Commission to finalize the Charter Review Commissions recommendations.

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to Authorize the extension of time for the Preparation and submission of preliminary and final reports of the Charter Commission for up to 24 months after the election of the Commission

VOTE: Unanimous.

5489 Discussion with Action: Authorize the Town Manager to Support the Town's Property Tax claims for the 2008 and 2009 tax years (2010 will be paid in full) respecting the Map, Block and Lot Number 206-27-10 by Agreeing to have the amounts due for those tax years paid on terms recommended by the Town's attorney (the full amount due, plus 8% interest, paid over a period of five (5) years), in order to address the U.S. Bankruptcy Court, District of Maine, Chapter 11 Reorganization, Case No. 09-21208.

MOTION: Vice Chair Tousignant motioned and Councilor Bolduc seconded to Authorize the Town Manager to Support the Town's Property Tax claims for the 2008 and 2009 tax years (2010 will be paid in full) respecting the Map, Block and Lot Number 206-27-10 by Agreeing to have the amounts due for those tax years paid on terms recommended by the Town's attorney (the full amount due, plus 8% interest, paid over a period of five (5) years), in order to address the U.S. Bankruptcy Court, District of Maine, Chapter 11 Reorganization, Case No. 09-21208.

VOTE: Unanimous.

5490 Discussion with Action: Set a \$40 per game fee for the first time use of the Ballpark field by Junior High and High School Teams.

BACKGROUND: To permit our Junior High and High School Teams to use the Ballpark fields, we are reducing the first time use to \$40.

The Council members each contributed to the expression that our own young people and students of RSU 23 should have the fee waived and it was determined to waive the fee for the first time use.

MOTION: Councilor Dayton motioned and Councilor O'Neill seconded to waive the game fee for the first time use of the Ballpark field by Junior High and High School teams related to the RSU 23. Other school teams would pay the \$40 per game fee for the first time use of the Ballpark Field and the second use, the regular fee.

VOTE: Unanimous

5491 Discussion with Action: Request to Waive a \$75 business license application fee for Nancy Frisco for property rental at 4 Graham Avenue (Map, Block and Lot Number 302-2-9.)

VICE CHAIR TOUSIGNANT: He asked if the legal paperwork was here to support that she still owned the property.

NANCY FRISCO: She indicated she had not had time to secure the paperwork.

VICE CHAIR TOUSIGNANT: He indicated in that regard the Council could not address the issue this evening.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Request Waive a \$75 business license application fee for Nancy Frisco for property rental at 4 Graham Avenue (Map, Block and Lot Number 302-2-9.)

VOTE: Unanimous

5492 Discussion with Action: Countersign Warrant for Regional School Unit 23 Referendum.

BACKGROUND: The RSU Board will sign today, Friday, May 14th and as such an agenda item is required to assure that this document is signed so that the June election can have this on the ballot. It was brought to us late in the day and since the next regularly scheduled Town of Old Orchard Beach Town Council meeting is not until June 1st, we felt the urgency to place it on this agenda.

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to countersign Warrant for regional School Unit 23 Referendum.

VOTE: Unanimous.

GOOD AND WELFARE:

JEROME BEGART: Traditionally, to imply the sustainable-value of an investment, we ask: Is it better to give fish to the hungry, or instead to giving fishing equipment so that the hungry can continually supply themselves with food? That reverberates when I hear people (who've decided for everyone else in Old Orchard) as they say that property-tax-increases are perfectly o.k., to afford inflationary government-spending on one-way outlays...that are not pay-as-you-go investments with returns. Fiduciary responsibility – conscientious councilors ask themselves: What is sustainable? Am I right? Over 200 years ago, when Adam Smith still had a pulse, inflation occurred in a finite localized space, specific to a product or service: supply and demand. Our national and global economics so overlap now, inflation is no long finite at local. Today, Wall Street/futures-traders of energy stocks propel exponential inflation: every (product and service) business raises prices to afford electricity, vehicle-fuel, heat-fuel, and then raises prices again, because businesses (buying from each other) are paying more for those first (energy-related) price-increases. That's exponential but it does not end there. The end users of all inflated products and services (beside you and me) are all levels of government. If government functionaries cannot find efficiencies or are too intimidated or are too lazy and frivolous to try, government just raises our taxes. So we get sandwiched between tax increases; and other tax-increases and the uppity cost of living. If government employees refuse to man-up and freeze salaries and benefits, councilors cannot easily escape Union propelled inflation. As councilors and taxpayers watch that on-coming wave we see the other wave: infrastructure. How will we pay to repair roads, sewers, sidewalks, buildings, streetlights, whatever...over the next five to ten years? Should we spend every cent of "Undesignated" emergency reserves for every budget increase requests (some inflationary, some discretionary), and not save any in-reserve for looming infrastructure,

costs? Then we'll have to borrow through bonds, exactly when interest rates reach the sky. Is it better to save and earn interest or borrow and pay interest? Should government be delusion imperial and just keep raising citizens' property taxes...as if we had not worked and saved a lifetime to be able to buy our home or our business – just to keep raising taxes until the working class and middle class and the elderly get economically-cleansed clean-out of Old orchard Beach? Transforming it into a morph between sleazy Las Vegas and a noise-polluting/air polluting Industrial zone? Leapfrogging beyond gentrification to Los Angelization? No. Deploy sustainability as the template for spending. It is only a budget-plodder's illusion that efficiency finding is exhausted: bomb fog illusion, inoculate yourselves against the infections-attitude that spending and tax increases are inevitability. They are not. When groups try to intimidate council about what they call a budget question...as their reflex is to trick you into throwing other people's tax dollars at their problem, often it is not really a budget-question...and not quite a problem. There are no problems. Only opportunities (as the saying goes) – that is the best/precise moment (opportunity) to look for the failure of imagination that led to a fallacious budget question. A budget question is a moment of effect. Backtrack to the cause of the effect, and change the cause. In the near future, if you want to see some feathers fly. I'll give example of changing causes versus spending tax dollars. Spending increases are not inevitability. If Council chambers keep filling up with passion-factor/prim Donna/drama queens, screaming "Show us the money."...other people's money, my family', your families, then go to the nuclear option: extract yourselves from the overly political process/chaos and order the Town Manager to deliver a flat budget. Emergency reserves stay in tact for infrastructure. There will be no tax increase and be done with it. Otherwise you'll need traffic – control outside, to accommodate all the taxpayers who come here to also tell you: Spending and tax increases are not inevitability.

JACQUI DEVENEAU: I am the Chair of the Old Orchard Beach Community Animal Watch Committee. I was told we had a contract with the Kennebunk Shelter about twelve years ago and so I set out to find out how we went from that to the situation we find ourselves in now. I went to the Town Hall and went through the records and found that on July 6, 1999 Old Orchard Beach signed a contract and found that on July 6, 1999 Old orchard Beach signed a contract of \$4,980.95 with the Kennebunk Shelter. In the Minutes of the Town Council Meeting of October 5, 1999, Item #256: Update on progress made re: The opening of the Animal Shelter (which some OOB citizens and Animal Control Officer wanted to do) it read: "Ms. Mary Dolan, Chairperson of the OO K9 Training Center stated her Committee was trying to make the emphasis on the area as a community area where people could bring their dogs for socializing and take advantage of some training and not as a shelter. At the same meeting Ms. Dolan had the shelter renamed "Town of OOB Canine Training Center and Park." So the very Committee who put forth to leave the contract with the Kennebunk Shelter to open what they originally was called a Shelter in OOB was now talking about just a lovely place for dogs land not lost or abandoned, but with their owners. And where in that was anything around caring for abandoned cats? I did not move to Old Orchard Beach until seven years ago but there is someone else here who has been in Old Orchard Beach longer, Arlene Dolgon who has been spending all of her time and money on a fixed income helping all the strays in OOB who can speak on this. I just want to close by saying that I find it quite concerning that a Town that by its very set up with camp grounds, trailer parks and motels, having the largest rate of abandoned animals is the only Town around without a contract shelter to take and turn abandoned animals to. As the Chair of the OOB Community Animal Watch Committee I took the position with the high hopes to be able to help all animals. But I find my hands tied as after two weeks at our holding facility we have no place to take our

animals; that we can't find homes for that is a place any of us would want our pets to go. It is my hope that after listening to myself and others the Council will find a way to contract with a shelter and let myself and those on the Committee help make OOB a Town that shows it cares for all of its animals. Thank you.

AILEEN DOLGON: My name is Arlene Dolgon and I live on Ryefield Drive. I thank the Council for the opportunity to speak on the issue of why our Town should affiliate with a full service State sanctioned animal shelter. However, before I begin my remarks, I want the Council to know I am holding here a stack of over 30 petitions with over 600 signatures of Old Orchard Beach residents, all of whom support a desire for the Town to include a contract with either the Animal Welfare Society (AWS) in Kennebunk or the Animal Welfare League (AWL) in Westbrook – both of which are full service, State-sanctioned shelters. Both of these shelters offer 24/7 availability which means they provide both holding and veterinary service. A variety of veterinary services are crucial for a shelter – especially when lost or stray animals are brought in. These services include testing for diseases – many of which are communicable – as well as giving appropriate treatment (shots and/or medication). Where necessary, these shelters also provide spaying and neutering services. But these services are only the beginning. Full service shelters also provide a convenient procedure for surrendered animals. There are numerous situations where pet owners – because of old age, death or financial stress – cannot continue to care for their animals. In many cases, these situations produce lost or abandoned animals. However, since bona fide shelters have a humane surrender policy, animals in danger of losing their homes can be conveniently brought to a shelter before the situation deteriorates. Remember, shelters will only accept surrendered animals from people who live in Towns that are affiliated with the shelter. In fact, because Old Orchard is not affiliated with either AWS or AWL, that is a big reason why our Town ends up with so many strays. The services offered by AWS and AWL are far away superior from OOB's current policy – one where lost or found animals, after being held for 14 days in our Portland Avenue facility – are shipped to a so-called facility in Lisbon, Maine. The Lisbon facility is essentially a one-man operation that uses a large barn with some cages and a few horse stalls. No veterinary services; no adoption procedures that we know of and no accountability or record of what happens to the animals that are brought there. After an undetermined time period, the animals are released into the wild where they become easy prey for any fox, coyote or fisher in the woods. When the head of our Town's Community Animal Watch (CAW) visited the barn and spoke to the owner, she saw no animals at all in the barn. In fact, the owner informed Ms. Deveneau that he was going on a two month vacation during which time the facility would be closed. According to Ms. Deveneau, the owner actually recommended that OOB find another shelter, one closer to home. Currently when an animal is picked up in OOB, it is brought to our holding facility. Dogs are lucky; their rightful owners usually find where they are and retrieve them within a few days. But with cats, things are quite different, especially if they were abandoned by their owners. Abandoned cats are a common seasonal problem; dozens of cats are left here either accidentally or on purpose as they head back to their winter homes. That leaves a small group of volunteers the unenviable task of trying to find new home for them without knowing their physical or medical history. This situation is neither necessary or acceptable. Here's the irony: Even when we are lucky enough to find a willing adopter, he or she must put up the \$125 escrow fee with the Town as a warrant that the adopter will have the cat spayed or neutered by a vet, and only after showing our Animal Control Officer a spay certificate from the vet, is the adopter refunded the \$125. But even aside from the initial financial inconvenience, the adopter will still have to pay a vet for the spaying and for a variety of other services, such as testing, shots, etc., which can easily bring

the total cost of adopting a single cat to several hundred dollars. The comparable costs when performed by a bonafide shelter would easily be less than half that amount. I realize that our Town's finances are tight but I and many hundreds of OOB residents feel strongly that Lisbon is not an appropriate destination for animals. If anything, it's a relic from the failures of many past administrations and its time to change it. You the Council have the power to change the fate of our animals. We are asking you to seriously consider the sentiments of these 600 voters who have taken the time to read and sign the petitions asking for your consideration and who have placed with you the responsibility for making the decision for our animals. I will now present these petitions to the Secretary to be attached to the official minutes of the meeting. Thank you for your time and attention.

PATRICIA HOLLAND: I'm standing here before you tonight because I am angry, upset, disturbed and confused by the information being given out to the public and I felt I needed to come and let the public, the residents of Old Orchard Beach and you know the true facts as it related to our Holding Facility on Portland Avenue. Because of all the emotions I'm feeling, reading from this prepared statement will help me in presenting these facts to all of you. Facts are what are needed here...not the emotional mis-information being presented by some. Since I was one of the many volunteers involved in the renewal of the Holding Facility from it's beginning in 1999, I, personally, feel offended...not only for myself but also for the many others who volunteered their time and effort and dollars in order to provide a place in Town for holding our pets or other animals here in our Town. You may decide to go with a contract for a traditional shelter but, if so, please base your decisions on facts and research, not emotions and please don't close Old Orchard Beach's Holding Facility – it's needed and working fine, as many animals, if they could speak, would agree. And that is the main reason why I'm here tonight...to speak and advocate for the animals. On the Old Orchard Beach website, it states (and I'm not quoting word by word) that OOB extends a warm welcome to all whether they be a resident, a vacationer or visitor traveling through...that it is a community of 9,000 year-round residents, proud of its downtown as well as all the other amenities offered by a small beach Town with tremendous civic pride and caring residents. It goes on to say: "This is a special place and we know that you'll enjoy it here." On the Chamber of Commerce website, I noticed ALL of the 10 campsites listed allow pets. Of the many B&B's & Inns, motels and hotels, apartments/condos, cabins, cottages ad houses listed, 28 allow pets to vacation with their families. So...not only does our Town expand in the summer of up to 75,000 vacationers, but it also expands in the number of pets they bring with them. In the annual Town report for 2008-2009, our ACO noted that there were 984 dogs licenses to some of those 9,000 residents, of which I am one. Why was the holding facility built? Animal issues of OOB first came to a head in the Spring of 1999 because of dog attacks and clean up problems on the beach. It became clear that the major issues revolved around responsible pet ownership and enforcement of existing ordinances. After a great amount of dialogue w/community members, the Town Council agreed and voted unanimously to hire a full time ACO to enforce the existing ordinances. At the same time, several volunteers in Town decided to organize to address the issues of responsible pet ownership. One of their goals was to develop a facility to care for and house stray animals in our community locally, and return them as quickly as possible to their owners. Wit the support and help of the Council, Town Manager and the Police Chief, plans were made to renovate the existing animal shelter on Portland Avenue and bring it up to code. Plans were also made to take advantage of

the full seventeen acres to provide a training center and park. With these plans in place, the volunteer group began to fundraise and see support from the community in its efforts. Renovations began on the shelter, trees cleared, trails marked, heat and power turned on, scraping and paint and putting on new. At their February 1, 2000 meeting the Town Council at that time chaired by Shawn O'Neill unanimously agreed to allocate funds for the necessary renovations. The project received a tremendous amount of support from both the community and community leaders. Many volunteers donated their time on construction. On May 25, 2000, the Holding Facility received its State license to operate. On July 1, 2000, it had its open house. What is the purpose of the Holding Facility? The primary purposes of our facility are as a temporary holding facility for stray or lost animals to be found in Old Orchard Beach. A safe, local, quiet, homey place where the goal is to make it as stress-free as possible and get animals back to their owners as quickly as possible – not driving them some place 45 miles away where there's a lot of strange animals and noise which can be very traumatic for the animals. It does not have regular business hours, but hours that vary to meet the needs of the animals it houses and the convenience of their owners. It was not for the adoption out of animals. For this reason, it would not accept surrendered or unwanted animals. It is the owner's responsibility to place an unwanted pet and owners were given help and assistance to help them keep their pet in their home or help and assistance to re-home their pet if necessary. Pet responsibility means being responsible for this life of your pet or until you can place it in another home. It was noted in a Journal article dated April 20, 2010 re: the budget workshop held last April that a veterinarian at a local animal hospital noted, when asked, that she felt that when the Town takes strays and adopts them out with no history of disease or shots, there is an element of risk which is a reason for having a shelter that would check this out. Our Holding Facility was NOT to be a facility for adoption of animals...again I remind you that it was built with the purpose of being a temporary facility for the holding of strays, not for adoption purposes. It was also mentioned at this hearing by some one that visited the shelter that the Lisbon facility was not "adequate" for the needs of the animals. But I remind you that the State of Maine licensing bureau for shelters has been there as well and inspects it regularly and it is a license shelter. It's also mentioned from that budget hearing that "many people will not pay to have their cats spayed or neutered to get them their shots when they can get a cat for free off the side of the road." If these individuals won't pay for the spaying or neutering, what makes anyone think, they'll pay for surrendering their cat to a traditional shelter? What does the State look for when inspecting an animal shelter? What does the State look for when inspecting an animal shelter? When the State licenses a shelter it means that an inspector has gone onto the premises and inspected the premises for certain criteria such as: Records – are health, sales and mortality records in order. Primary Structure – is the structure in good repair and structurally sound? Is there available water, heat and electricity? Sanitation – is there equipment for proper storage and disposal of waste? Are cages/pens, food and water, dishes, etc. disinfected as needed? Are animals removed during cleaning and cages dry before animals are replaced? Food – are food supplies protected from contamination? Is sufficient fresh and clean water offered daily? Ventilation – is there enough movement of fresh air to prevent fumes, chemical odors, heat buildup, odors of excrement and urine from being detectable? Lighting – Do all animals have artificial or natural daylight a minimum of eight hours per day? Does the animal facility have proper written instructions as to the feeding, care, health information, and any special needs associated with the animal acquired? Disease

Control – is there an effective program for the control of disease, insects, external parasites and other pests? Overcrowding – do animals have sufficient space to lie down and exercise? Even after receiving its license, all shelters/facilities are also inspected on a regular basis. According to the Maine Animal Welfare Board, which is the licensing agent for shelters, the State of Maine does not have any such category of “state-sanctioned” facilities or “non-state-sanctioned” facilities – facilities that meet the State’s requirements for care and pass the State inspection by State animal welfare agents from the State of Maine get the license they need to operate. It was noted in the recent journal article of May 15, 2010, that a resident mentioned “there is no accountability for animals that are sent to Lisbon and are not adopted” – this is not true. There is accountability by the State of Maine as a requirement of the license. Another issue that might be of concern to a resident or vacationer is the cost of surrendering an animal. A Town contract with a shelter only means that the residents of that Town are able to go to that shelter to surrender their animal but it does not mean that a resident can simply “drop off” their animal at that Shelter. There’s a fee. The fee covers the cost of the care of that animal. In checked the AWS website, I found that the cost for surrendering a dog would be \$45 and the fee for a cat is \$17. At the shelter in Kennebunk, surrendered animals are only accepted between 11 a.m. to 4:30 p.m. each day. Again, if a person will not take responsibility for getting shots, etc., for their pet, they are NOT going to take the responsibility for traveling to a shelter out of town and paying a fee to that shelter in order to surrender their animal. BTW, there are several organizations that will indeed accept individual, owner surrendered animals as their space allows, without a town contract. Both AWS and ARL are only staffed during business hours: AWS is open Saturday to Tuesday – 11:00 to 4:30; Wednesday closed; open again Thursday & Friday, 11:00 a.m. to 7:00 p.m. (but no incoming animals are accepted after 4:30 p.m.) ARL is open Monday through Thursday, 11 a.m. to 5:00 p.m.; Friday 11:a.m. to 6:00 p.m.; Saturday 10:00 a.m. to 4 p.m.; and are closed Sundays and major holidays. You cannot claim your pet until they open again. Another reason for keeping our Holding Facility here in Old Orchard Beach is the length of time a pet may need to spend in a shelter before an owner can reclaim it. In the news article dated June, 2000 in the Press Herald, it was noted by our former ACO that on the day of that interview, he had picked up a Siberian Husky on Saco Avenue that was running loose. He didn’t have to travel all the way to Kennebunk with the animal, only a couple of miles to the Holding Facility here in Town. That husky was picked up within the hour by its owner. Both AWS and AFL have business hours when they are open to the public but when they’re closed, your pet cannot be claimed until it opens again. There is also the incident where people are vacationing from New Hampshire had their dog end up I the Holding Facility – a volunteer called their Town Hall from the Id on the pet, they knew the people and where they were staying up here and got word to them to go to the Police Department – that dog was back vacationing with its owner in an hour. I, myself, have heard from many residents where they had to also go to pick up their pet and were glad to be able to do so right in Town. Our local Holding Facility reunites pets very quickly and alleviates the stress on both the pet and the distraught owners. By the way, I’m a little confused. In the Journal article re: the April 2010 budget hearing, the Council was told that “the Town would still need the temporary Holding Facility if it contracted out to a shelter but in the CAW’s minutes from April 21st meeting at which I was not present, they were told by the ACO that if a shelter contract is approved the current OOB holding facility would likely be closed due to operating expense of \$3,500 to 4,000.” This is another reason why I am here tonight.

I'm very concerned. The purpose of the holding facility is and always has been from day one when it opened in July of 2008 to be a safe place to hold an animal until it could be reunited with its owner. Many animals when brought to a strange environment like a shelter find it very difficult so the quicker we're able to have that pet returned to its owner, the better for the animal as well as its owner. The first and only consideration for those who bring, work with, check on or care for the animal and the facility is the humane treatment of that animal. The word "humane" as defined by the dictionary means: "one who is marked by compassion, sympathy, or consideration for humans or animals." If you read the headline from the recent Journal news article of last week, "OOB urged to take human approach toward stray animals" or the contents of the letter on the Cow's website as well as printed in the Letters to the editor section, they seem to imply that animals cared for at our facility are not treated humanely. That is why I am angry. That is why I'm here this evening. I know that this is not true. I know of the time and commitment given by those individuals who have gone to the facility to be sure any animals kept there are well cared for and with kindness and respect. Which brings me to my next point? I was under the impression that one of the reasons for the forming of the Community Animal Watch committee was to help with the concerns of the Holding Facility. Volunteers would be handling any animals when the ACO or Police were unable to do and would also work to keep the facility in good operating condition inside and out. That is listed as one of their goals: #71 – to establish and maintain a group of volunteers to assist with the daily care of any animals in the Town holding facility. In checking the CAW minutes for March (which I attended) there was discussion re: the need for training of volunteers in order for them to be able to help at the Holding Facility where this could be done and when, in the minutes of the April Meeting (I as not present) it was questioned as to whether training made sense if the OOB holding facility was closed. Finally, I want to impress upon you all here. Council members of the audience and those watching on Channel 3, the Holding Facility has proven to be a success as envisioned in our stated goal from day one: helping the strayed/lost animals in OOB to be quickly claimed and returned to their families of residents and vacationers. All of this accomplished by the many hours of volunteer effort, donations and time as well as the support of the Council and the community. Just as Memorial Park, the Dog Park, the recent renewals of Main Street and the Ballpark, our Holding facility is an ASSET.

COUNCILOR O'NEILL: He indicated that the Chair needed to limit restatement of facts that we have already hear. He expressed his appreciation to the individuals collecting the 600 signatures and understands the passion in which they brought forward the petitions. However the Council will not make a decision this evening and does need to consider the future need for the strays in town.

CHAIR MACDONALD: She did not call a rule of order but rather indicated that it has been her policy to let people speak until they are through if it means staying till midnight.

LIZ DUNKERLEY: She indicated she was appalled and had no idea the shelter was a holding facility. She said she was concerned that animals are taking to the facility in Lisbon. "I'm just outraged that our tax money is being used in this ridiculous way. Stray cats are the problem in Old orchard and I highly recommend that the Council find the money to have a contract with a Shelter. I have personally

taken in seven cats and I am on a limited income but there is the need to be humane and to care. She indicated our animals need a voice. It would be a tremendous help to have a contract so that we have somewhere to go for help.

CLARENCE STEWARD: He spoke in favor of getting a shelter by contract for the Town of Old Orchard Beach, Maine.

NANCY TATE: She spoke of the critical need in our community for stray and abandoned cats. She indicated that dogs are easily found and reunited with their families but it is almost impossible to find the home for a cat unless someone comes forward. She indicated that volunteers with limited income are taking these strays so they do not have to go to Lisbon and funding them out of their own limited income. She urged the Council to help by having a contract with one of the two animal shelters.

COUNCILOR DAYTON: She indicated that it is not animals that were temporarily lost but those that are abandoned. She indicated she wanted to recognize the work of those who took the time, effort and commitment to get the 600 signatures being given to the Secretary to be included with the Minutes.

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-nine (29) pages is a true copy of the original Minutes of the Town Council Meeting of May 18, 2010.

V. Louise Reid