

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
Tuesday, February 6, 2018  
TOWN HALL CHAMBERS  
6:30 p.m.**

**A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, February 6, 2018. Chair Thornton opened the meeting at 6:30 p.m.**

**The following were in attendance:**

**Chair Joseph Thornton  
Vice Chair Shawn O'Neill  
Councilor Kenneth Blow  
Councilor Jay Kelley  
Councilor Michael Tousignant  
Town Manager Larry Mead  
Assistant Town Manager V. Louise Reid**

**Absent:**

**EMERGENCY ITEM:**

**CHAIR: May I have a motion to add a Public Hearing – Business Licenses and Approval.**

**MOTION: Councilor Blow motioned and Vice Chair O'Neill seconded to add to Public Hearing – Business Licenses and Approval, per Section 404.1 of the Town Charter: Defined Lines, LLC dba/Defined Lines Barber Shop (205-3-4), 50 Old Orchard Street, #4, Barber Shop.**

**VOTE: Unanimous.**

**ACKNOWLEDGEMENTS:**

**COUNCILOR TOUSIGNANT: Congratulations to OOB365 for another outstanding Community Dinner held at the American Legion Hall in January. This is always an outstanding event with a good attendance and a chance for residents to meet old and new friends alike.**

**GOOD AND WELFARE:**

**ACCEPTANCE OF MINUTES:**

**Accept the Town Council Meeting Minutes of January 16, 2018.**

**MOTION: Vice Chair O'Neill motioned and Councilor Blow seconded to Accept the Minutes as read.**

**VOTE: Unanimous.**

**PUBLIC HEARING:**

Shall We Amend the Town of Old Orchard Beach Code of Ordinances, Section 54-114 (Milliken Street parking lot); 54-115 (Memorial Park parking lot); and 54-187 Town Hall, adding paid parking for the Town Hall lots, and clarifying parking permits for the Milliken Street and Memorial Park parking lots?

Chair: I open this Public Hearing at 6:36 p.m.

**BACKGROUND: 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 February 6<sup>th</sup>, 2018 at 6:30 p.m. to consider the following:

Shall the Town Council of the Town of Old Orchard Beach amend the Code of Ordinances, Chapter 54, Traffic and Vehicles, amending Section 54-114, Milliken Street parking lot; 54-115, Memorial Park parking lot; and 54-187, Town Hall, by deleting the strikethrough language and adopted the underscored language, as follows:

Sec. 54-114. - Milliken Street parking lot

(a)

No vehicle shall park in the Milliken Street parking lot without first obtaining a valid parking slip from a pay station or by obtaining a resident or non-resident parking permit from the town clerk. The parking slip shall be displayed on the dashboard of the vehicle for the allotted time that was paid for, and the valid parking slip obtained at the pay station in the Milliken Street parking lot shall be valid only for the Milliken Street parking lot. This section will be enforced between the Friday before Memorial Day and Labor Day.

(b)

No parking shall be allowed in this lot between the hours of 2:00 a.m. and 6:00 a.m. unless authorized by Town of OOB Police Department.

(c)

Any vehicle in violation of subsection (a) of this section, the owner or operator shall be subject to a fine of \$25.00, as described in Section 54-37, Penalty.

(d)

Any vehicle in violation of subsection (b) of this section, the owner or operator shall be subject to a fine of \$30.00, as described in Section 54-37, Penalty.

(e)

Parking fee to be determined by the chief of police or his/her authorized representative at not more than \$20.00 per day or an hourly rate of \$2.00 per hour.

(Ord. of 4-7-2009(2); Ord. of 6-22-2011(2); Ord. of 6-18-2013(1); [Ord. of 5-19-2015\(2\)](#).)

Sec. 54-115. - Memorial Park parking lot.

(a)

No vehicle shall park in the Memorial Park parking lot without first obtaining a valid parking slip from a pay station or by obtaining a resident or nonresident parking permit

from the town clerk. The parking slip shall be displayed on the dashboard of the vehicle for the allotted time that was paid for, and the valid parking slip obtained at the pay station in the Memorial Park parking lot shall be valid only for the Memorial Park parking lot. This ordinance will be enforced between the Friday before Memorial Day and Labor Day.

(b)

Memorial Park parking lot will have two designated handicap spaces.

(c)

Memorial Park parking lot will have five free one-hour parking spaces for use of visitors to Memorial Park and the Dog park only.

(d)

No parking shall be allowed between the hours of 2:00 a.m. and 6:00 a.m. unless authorized by Town of OOB Police Department.

(e)

Any vehicle in violation of subsection (a) of this section, the owner or operator shall be subject to a ~~fine of \$25.00, as described in Section 54-37, Penalty.~~

(f)

Any vehicle in violation of subsection (d) of this section, the owner or operator shall be subject to a fine ~~of \$30.00, as described in Section 54-37, Penalty.~~

(g)

Any vehicle in violation of subsection (c) of this section, the owner or operator shall be subject to a fine ~~of \$25.00, as described in Section 54-37, Penalty.~~

(h)

Parking fee to be determined by the chief of police or his/her authorized representative at not more than \$20.00 per day or an hourly rate of \$2.00 per hour.

#### Sec. 54-187-Restrictions and Prohibitions.

*Town hall.* Upper lot and lower lot parking areas shall be limited to town hall business, Monday, Wednesday, Thursday and Friday from 8:00 a.m. to 4:00 p.m. and Tuesdays until 6:00 p.m. After town hall business hours, the lower lot parking area, the adjacent town-owned parking lot located at Veteran's Square (19 Imperial St. MBL: 205-3-3) and the upper lot parking area shall be limited to town hall business only, **paid parking** or by town-issued permit. The police chief or his designee has the right to reserve spaces for meetings being held at town hall. Parking restrictions during town hall business hours are in effect year round. Parking restrictions after town hall business hours are in effect the Friday before Memorial Day until Labor Day.

Chief Kelley gave an update on the reasoning for this Public Hearing. The Town Manager indicated that when it is voted on at the next meeting it will include the addition of approval of Veterans Street parking areas as well. There were no other comments.

**CHAIR:** I close this Public Hearing at 6:38 p.m.

**PUBLIC HEARING:**

**BUSINESS LICENSES AND APPROVAL:**

**CHAIR:** I open this Public Hearing at 6:38 p.m.

Henrike Huntress & John C. Weilandt (318-8-6-510, 146 West Grand Avenue, #51, one seasonal rental; and Defined Lines, LLC dba/Defined Lines Barber Shop (205-3-4), 50 Old Orchard Street, #4, Barber Shop.

**CHAIR:** I close this Public Hearing at 6:38 p.m.

**MOTION:** Councilor Tousignant motioned and Councilor Kelley seconded to Approve the Business Licenses as read.

**VOTE:** Unanimous.

**TOWN MANAGER'S REPORT:**

The Town Manager received notice from the State DECD that Old Orchard Beach has been invited to apply for Community Development Block Grant funding to be used for utility infrastructure improvements in the Washington Avenue area. The Town will be seeking one million dollars in grant funds that would be matched by \$500,000 of Town funding. The project would replace sewer, water and storm water lines on Fern Avenue and West Old Orchard Street between Washington Avenue and First Street, as well as a portion of Washington Avenue between West Old Orchard and Union Avenue. In addition the project will involve sidewalk and curbing improvements to these streets as well as road improvements. The Water district would fund the cost of water line improvements. Much of the infrastructure in this area is over 100 years old. This is a competitive process so there is no guarantee of funding. We will schedule a Public Hearing at the March 6, 2018 Town Council meeting and we hope that residents will turn out to express their support for this application, because participation by the public in the process is one of the factors that determines award of funds by the State. Beginning Monday, March 5, 2018 the Code Enforcement Office will initiate designated office hours for our Code Enforcement Staff. There will be designated office hours posted during which Code Enforcement Officer will be available to the public on a drop-in, unscheduled basis. As an alternative residents and customers can also choose to schedule an appointment to meet with a Code Enforcement Officer at a specific time and date. The purpose of this new schedule is to allow time for our CEO's to do follow-up work with inspections and enforcement. The Finance Committee will begin its review of the proposed FY19 Capital Improvement Program budget tomorrow night and will be meeting for the next several weeks in anticipation of submitting its recommendations to the Town Council at the end of March. The Design Review Committee will at its March meeting consider a proposed plan for a new commercial building structure to be located at the corner of Heath Street and Saco Avenue. The applicant intends to open a Dollar General Store. The existing building's structure was declared an unsafe structure by the Town over a year ago so this project would significantly improve this downtown location. Given the winter storm warning for tomorrow I would remind residents to be alert to Parking Ban announcements during the winter months. Off street parking is available at Memorial Park, Milliken Street Parking lot and in Ocean Park in the Square.

**# 7100 Discussion with Action: Amend the Town of Old Orchard Beach Code of Ordinances, Food Business Amendments to Chapter 78 (Zoning): 78-1 (Definitions); 78-717 (Downtown District 1, Permitted Uses, Primary Uses); 78-747 (Downtown District 2, Permitted Uses); 78-748 (Downtown District 2, Prohibited Uses); 78-1083 (Amusement Overlay District, Complimentary Uses); 78-1223 (Campground Overlay District, Accessory Uses); and 78-1382 (Buildings and Structures, Temporary Structures, Exemption).**

**MOTION: Councilor Kelley motioned and Councilor Blow seconded to Amend the Town of Old Orchard Beach Code of Ordinances, Food Business Amendments to Chapter 78 (Zoning): 78-1 (Definitions); 78-717 (Downtown District 1, Permitted Uses, Primary Uses); 78-747 (Downtown District 2, Permitted Uses); 78-748 (Downtown District 2, Prohibited Uses); 78-1083 (Amusement Overlay District, Complimentary Uses); 78-1223 (Campground Overlay District, Accessory Uses); and 78-1382 (Buildings and Structures, Temporary Structures, Exemption).**

**VOTE: Unanimous.**

**TO: Old Orchard Beach Town Council  
Larry Mead, Town Manager  
Louise Reid, Assistant Town Manager**  
**FROM: Planning Staff**  
**SUBJECT: Food Business Ordinance Amendments Summary**  
**DATE: 20 December 2017**

On 2 August 2017, the Council enacted a moratorium on mobile food businesses. The moratorium was enacted in response to concerns associated with food trucks and how mobile food businesses are regulated. As part of the moratorium, the Council determined the Town's existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development and expressed the intent to limit licensing of food trucks and other mobile food businesses. The Council requested the PB study the appropriate amending of land use ordinances regarding the regulation of mobile food businesses and develop land use regulations concerning food trucks and other mobile food businesses.

In response to the moratorium, planning staff drafted ordinance amendments for PB's consideration. Staff's initial approach was to create more comprehensive changes but we were reminded our scope has limits due to the moratorium language (e.g., limit licensing). So, the proposed ordinance amendments follow the guidance provided in the moratorium.

The first draft, presented at the October PB meeting, included the following amendments: Food Stands are now defined as Mobile Food Businesses (MFB); MFB's are no longer permissible in the DD1; MFB's are now permissible in the Campground Overlay; MFB's are only permissible in the Amusement and Campground Overlay Districts; and, MFB's are permissible anywhere as long as they're associated with events sponsored or authorized by the Town Council.

After review of draft 1, the PB recommended changes to the MFB definition- a breakdown of the specific types of mobile food businesses. Staff reconsidered draft 1 language and developed draft 2 which includes a breakdown of the MFB definition (into food cart, food truck, food stand) and a few other adjustment including a new term, take-out food business, to address businesses that provide take-out service with no on-site seating (e.g., Lisa's Pizza, Bill's, D&D). On 14 December the PB held a public hearing and voted in

favor of a recommendation that the Council support the proposed amendments as presented in draft 2. Draft 2 is now presented to Council (Titled: "Council 1/2/2018").

Below is a summary of the amendments:

- Mobile food businesses are now defined more specifically as food cart, food truck, food stand and replace the food stand definition.
- Food cart, food trucks and food stands are proposed to be permissible in the Amusement Overlay (AO), Campground Overlay (CO), and for Council approved/sponsored events no matter where they are located.
- Food stands, as currently regulated, are permissible in the DD1, AO and (it appears) CO Districts. The proposed changes consolidate food stands into Food carts, trucks and stands. They will not be permissible in the DD1.
- Food cart, truck, stand definitions include language to ensure it's clear the uses are not permanent.
- Take-out food business is defined and a new land use. After removing the current food stand definition and use, we found businesses that primarily serve take-out from permanent structures without on-site seating (e.g., Lisa's Pizza, Bill's, D&D) lacked a definition and land use classification. It appears they are currently classified as food stands. Because the current food stand definition is proposed to change so that it regulates non-permanent structures and that these structures are proposed to be prohibited in the districts where Lisa's, etc. exist, it seemed appropriate that we develop a new land use. This new land use is identified as take-out food business.
- Take-out food businesses are proposed to be permissible uses in the DD1, DD2 and CO districts.

The ordinance amendments include 3 primary changes:

- Define and regulate food stands, food trucks and food carts as separate land uses to be allowed in the AO, CO and for Council approved/sponsored events no matter where they are located.
- Food stands, food trucks and food carts are not permissible in DD1. Current ordinances allow food stands in DD1.
- Take-out food businesses are defined and identified as a new uses allowed in the DD1, DD2 and AO.

One final note, if the amendments are approved, I expect the food carts and stands located by the Pier will be considered nonconforming uses no longer permissible in the DD1 and will be regulated as such. The ordinance amendments will not prevent them from continued operation- they have consistently operated over the years and will be allowed to continue. I'm not aware of other food carts, trucks or stands that have continuously operated.

**BELOW IS THE PLANNING STAFF MEMO  
TO THE PLANNING BOARD:**

**TO: Old Orchard Beach Planning Board**  
**FROM: Planning Staff**  
**SUBJECT: Mobile Food Business Ordinance Amendments Summary**  
**DATE: 9 November 2017**

On 2 August 2017, the Council enacted a moratorium on mobile food businesses. The moratorium was enacted in response to concerns associated with food trucks and how mobile

food businesses are regulated. As part of the moratorium, the Council determined the Town's existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development and expressed the intent to limit licensing of food trucks and other mobile food businesses. The Council requested the PB study the appropriate amending of land use ordinances regarding the regulation of mobile food businesses and develop land use regulations concerning food trucks and other mobile food businesses.

In response to the moratorium, staff drafted ordinance amendments for PB's consideration. Staff's initial approach was to create more comprehensive changes but we were reminded our scope has limits due to the moratorium language (e.g., limit licensing). So, the proposed ordinance amendments follow the guidance provided in the moratorium.

The first draft, presented at the October PB meeting, included the following amendments: Food Stands are now defined as Mobile Food Businesses (MFB); MFB's are no longer permissible in the DD1; MFB's are now permissible in the Campground Overlay; MFB's are only permissible in the Amusement and Campground Overlay Districts; and, MFB's are permissible anywhere as long as they're associated with events sponsored or authorized by the Town Council.

After review of the first draft, the PB recommended changes to the MFB definition- a breakdown of the specific types of mobile food businesses. Staff reconsidered draft 1 language and developed draft 2 which includes a breakdown of the MFB definition and a few other adjustments including a new term, take-out food business, to address businesses that provide take-out service with no on-site seating (e.g., Lisa's Pizza, Bill's, D&D). Below is a summary of the changes in draft 2:

- MFB is no longer defined. Mobile food businesses are now defined more specifically (food cart, food truck, food stand) and replace the MFB definition.
- Food cart, food trucks and food stands are permissible in the same locations as the formerly proposed MFB's were allowed (Amusement Overlay, Campground Overlay, Council approved/sponsored events).
- Food cart, truck, stand definitions include language to ensure it's clear the uses are not permanent.
- We currently define and regulate food stands. Draft 2 changes the definition (primarily by adding "non-permanent structures") and where they are and are not allowed.
- Take-out food business is defined and a new land use. After removing the current food stand definition and use and the proposed MFB definitions, we found businesses that primarily serve take-out from permanent structures without on-site seating (e.g., Lisa's Pizza, Bill's, and D&D) lacked a definition and land use classification. It appears they are currently classified as food stands. Because the current food stand definition is proposed to change so that it regulates non-permanent structures and that these structures are proposed to be prohibited in the districts where Lisa's, etc. exist, it seemed appropriate that we develop a new land use. This new land use is identified as take-out food business.
- Take-out food businesses are proposed to be allowed uses in the DD1 and DD2 districts.

A few thoughts/comments:

- Is the PB ok with the revised definitions?
- Does the PB agree the "take-out food business" approach is an acceptable way to deal with businesses such as Lisa's, Bill's, D&D, etc.?
- If the amendments are approved, I expect the food carts and stands located by the Pier will be considered nonconforming uses no longer permissible in the DD1 and will be

regulated as such. They have continued to operate over the years. I'm not aware of other food carts, trucks or stands that have continuously operated.

- Difficult to find the proper place in the ordinance to ensure MFB's can operate anywhere as long as they're associated with events sponsored or authorized by the Council. The seventh amendment attempts to do this. I found this was difficult because Ch. 78 regulates zoning and does not have a place that can conveniently fit standards that deal with Council approval of events.

Next steps. We are working under a moratorium which means our consideration has time limits. Moratorium expiration can be extended but we should ensure our work is complete within a reasonable amount of time. Proposed schedule:

- November: PB review second draft, schedule a public hearing (14 December).
- December: PB holds a public hearing and provide recommendations to Council.
- December/January: Council begin their review.

## **BACKGROUND**

Below are comments concerning moratorium key points, current language, and current language interpretation. Remember, we are currently under a moratorium which means that although current ordinance language allows food stands, food stands and other mobile food businesses are not permissible anywhere in town until the Council provides a final ruling on the moratorium.

## **MORATORIUM KEY POINTS**

The moratorium (attached with this memo) includes the following key points and PB responsibilities:

- The moratorium originally took effect on 2 August. It was renewed on 1 Oct and we expect will be renewed on 21 Nov. The Council can extend, repeal or modify the expiration date.
- The Council have "acted to limit the licensing of food trucks and mobile food businesses and further expressed the intent to limit licensing of food trucks and other mobile food businesses."
- The "Town's existing ordinances do not adequately regulate food trucks or other mobile food businesses to prevent serious public harm from commercial development."
- A mobile food business is "any business not qualifying as a restaurant or convenience store and offering for sale foodstuffs to be consumed by the public off premises, as the term Food Stand is defined in Chapter 78 of the Code of Ordinances of the Town of Old Orchard Beach, and including, in addition to food stands, food trucks and food carts."
- The PB is responsible for "studying the appropriate amending of land use ordinances regarding the regulation of mobile food businesses" and "developing land use regulations concerning food trucks and other mobile food businesses."
- The PB's scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate food trucks or other mobile food businesses and task us with developing standards that limit licensing of food trucks and other mobile food businesses to prevent harm to commercial development.
- Mobile Food Business as defined in the moratorium is not currently defined in our ordinances. It includes language in the currently defined term "Food Stand" and adds "and including, in addition to food stands, food trucks and food carts."
- Ordinance changes will include amendments to Ch. 78; therefore, the PB will hold a public hearing and provide a recommendation to Council.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting



dates and actions required by ordinance (public hearings, etc.) I expect we'll need at least one 60 day extension.

## **CURRENT LANGUAGE**

Below is the current ordinance language that is most closely related to food trucks and mobile food businesses.

### Food Stand Definition

Food stand means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

### Food Stand Permissible Locations, Setbacks, Sales

Sec. 78-717. Permitted uses in the downtown district 1 (DD-1) shall be classified as follows:

- (1) Primary uses. Primary uses are as follows:
  - g. Food stands (located between First Street/Milliken Street and the beach) with a minimum ten-foot setback from the front property line.

Sec. 78-1083. Permitted uses in the amusement overlay district (AO) shall be classified as follows:

- (2) Complementary uses. Complementary uses are as follows:
  - d. Food stands with a minimum of a ten-foot setback from the front property line.

Sec. 50-246 (Streets, Sidewalks, and Other Public Places Ordinance). Outside Solicitation of Sales (Note: this may apply- see comments in Current Language Interpretation, below)

No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.

## **CURRENT LANGUAGE INTERPRETATION**

In an attempt to determine whether a food truck or mobile food businesses are a permitted use in the DD1 and AO Zoning Districts and because there is no definition for food truck or mobile food business in the town's ordinances, it appears the use classification that is the best fit is "Food Stand." Chapter 78 ordinance defines a Food Stand as:

Any business not qualifying as a restaurant or convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

The DD1 allows Food Stands in a specific area- between First Street and Milliken Street and the beach with a minimum 10 foot front property line setback (see attached map). The AO District allows Food Stands within the entirety of the district provided there is a 10 foot front property line setback (see attached map). Because the definition includes the language "any business not qualifying as a restaurant or convenience store" it has be interpreted by some that a food truck or mobile food business is permissible as a Food Stand as long as it's within the DD1 specific areas and AO, meets the 10' setback, and does not allow food to be consumed on premises which means food may be purchased on-site but it must be consumed off-site (per the definition of Food Stand).

Regarding Sec. 50-246, Outside Solicitation of Sales states: "No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a

building.” Food trucks and mobile food businesses are not buildings so sales will take place outside the enclosed portion of a building because a building does not exist. Also, a food truck and mobile food business engages in sales. The problem lies in is food considered “goods, wares or merchandise.” I believe the closest fit is “goods” but unfortunately, goods are not defined in the ordinance. When a term is not defined in an ordinance it is common to use a dictionary. I used two dictionaries, Webster’s New World and Black’s Law, to find a definition for goods:

(Webster’s New World) goods: 1. personal property 2. wares 3. Fabric

(Black’s Law) goods: 1. Tangible or movable personal property other than money; esp., articles of trade or items of merchandise <goods and services>. \*The sale of goods is governed by Article 2 of the UCC. 2. Things that have value whether tangible or not <the importance of social goods varies from society to society>.

Considering the above-mentioned definitions, I find the only way food may be defined as goods are in Black’s Law definition: “Things that have value whether tangible or not.” This standard may not apply but it has some relationship to our discussion.

### **Ch. 78, Food Business Amendments (Council 1/2/2018)**

1. Chapter 78 – Zoning, Article I – In General, Section 78-1 – Definitions, shall be amended by adding the underscore language and deleting the ~~striketrough~~ language as follows:

~~Food stand means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.~~

Food Cart means a non-permanent food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator. This definition shall also include food and beverage service establishments pulled by a motorized vehicle.

Food Stand means a non-permanent structure used to sell prepared and/or pre-packaged food and beverages.

Food Truck means a motorized vehicle that is completely mobile from which prepared and/or pre-packaged food and beverages are sold. The term “food truck” shall not include ice cream trucks.

Take-Out Food Business means a permanent structure whose primary use is to prepare and sell food and beverages to be consumed away from its place of sale. The term “take-out food business” shall not include restaurants, convenience stores, ice cream trucks, food trucks, food stands, and food carts.

2. Chapter 78 – Zoning, Article VI – Districts, Division 2 – Downtown Business Districts, Subdivision III – Downtown District I, Section 78-717 – Permitted Uses, (1) Primary Uses, shall be amended by adding the underscore language and deleting the ~~striketrough~~ language as follows:

g. Take-out food business

~~g. Food stands (located between First Street/Milliken Street and the beach) with a minimum ten-foot setback from the front property line.~~

3. Chapter 78 – Zoning, Article VI – Districts, Division 2 – Downtown Business Districts, Subdivision IV – Downtown District 2, Section 78-747 – Permitted Uses, shall be amended by adding the underscore language as follows:

s. Take-out food business

4. Chapter 78 – Zoning, Article VI – Districts, Division 2 – Downtown Business Districts, Subdivision IV – Downtown District 2, Section 78-748 – Prohibited Uses, shall be amended by adding the underscore language as follows:

(5) Food carts, food trucks, food stands, drinking establishments, and game arcades.

5. Chapter 78 – Zoning, Article VI – Districts, Division 15 – Amusement Overlay District, Section 78-1083 – Permitted Uses, (2) Complimentary Uses, shall be amended by adding the underscore language as follows:

d. Food carts, food trucks, and food stands with a minimum of a ten-foot setback from the front property line.

f. Take-out food business.

6. Chapter 78 – Zoning, Article VI – Districts, Division 18 – Campground Overlay District, Section 78-1223 – Accessory Uses, shall be amended by adding the underscore language as follows:

(12) Food carts, food trucks, and food stands serving only registered occupants, guests of registered occupants, and employees of the campground and not the general public.

7. Chapter 78 – Zoning, Article VIII – Performance Standards, Division 2 – Buildings and Structures, Section 78-1382 – Temporary structures, (b) Exemption, shall be amended by adding the underscore language and deleting the strikethrough language as follows:

(b) *Exemption.* Temporary construction trailers for approved construction projects, and temporary structures for events sponsored or otherwise authorized by the town council, ~~and these temporary structures which are otherwise permitted in the amusement overlay district (AO), and food carts, food trucks, and food stands which are permitted in the amusement overlay district, campground overlay district and for events sponsored or otherwise authorized~~ by the town council shall be exempt from subsection (a) of this section.

**# 7101      Discussion with Action: Amend the Zoning Map to change Zoning district from Residential 1 district to the Downtown District 2 for lots located at 6-8 St. John Street (MBL: 206-24-32); and 10 St. John Street (MBL: 206-24-31); Owner: Neal Weinstein.**

**MOTION: Councilor Blow motioned and Councilor Kelley seconded to Amend the Zoning Map to change Zoning district from Residential 1 district to the Downtown District 2 for lots located at 6-8 St. John Street (MBL: 206-24-32); and 10 St. John Street (MBL: 206-24-31); Owner: Neal Weinstein.**

**VOTE: Unanimous.**

**BACKGROUND:**

**TO:** Old Orchard Beach Town Council  
Larry Mead, Town Manager  
Louise Reid, Assistant Town Manager  
**FROM:** Planning Staff  
**DATE:** 20 December 2017

**SUBJECT:** Zoning Map Amendment: Change zoning district from the Residential 1 District to the Downtown District 2 for lots located at 6-8 St. John's St. (MBL: 206-24-32) and 10 St. John St. (MBL: 206-24-31). Lot Owner: Neal Weinstein

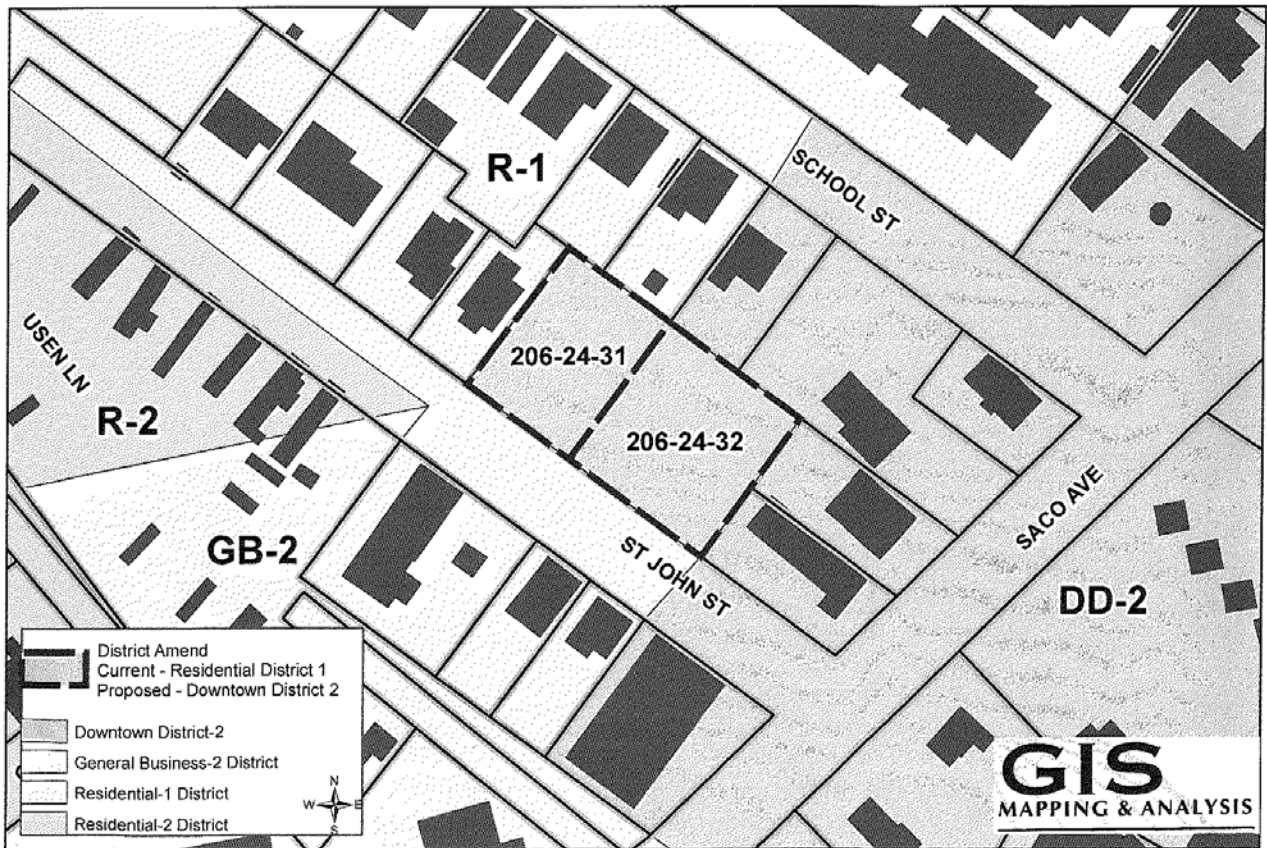
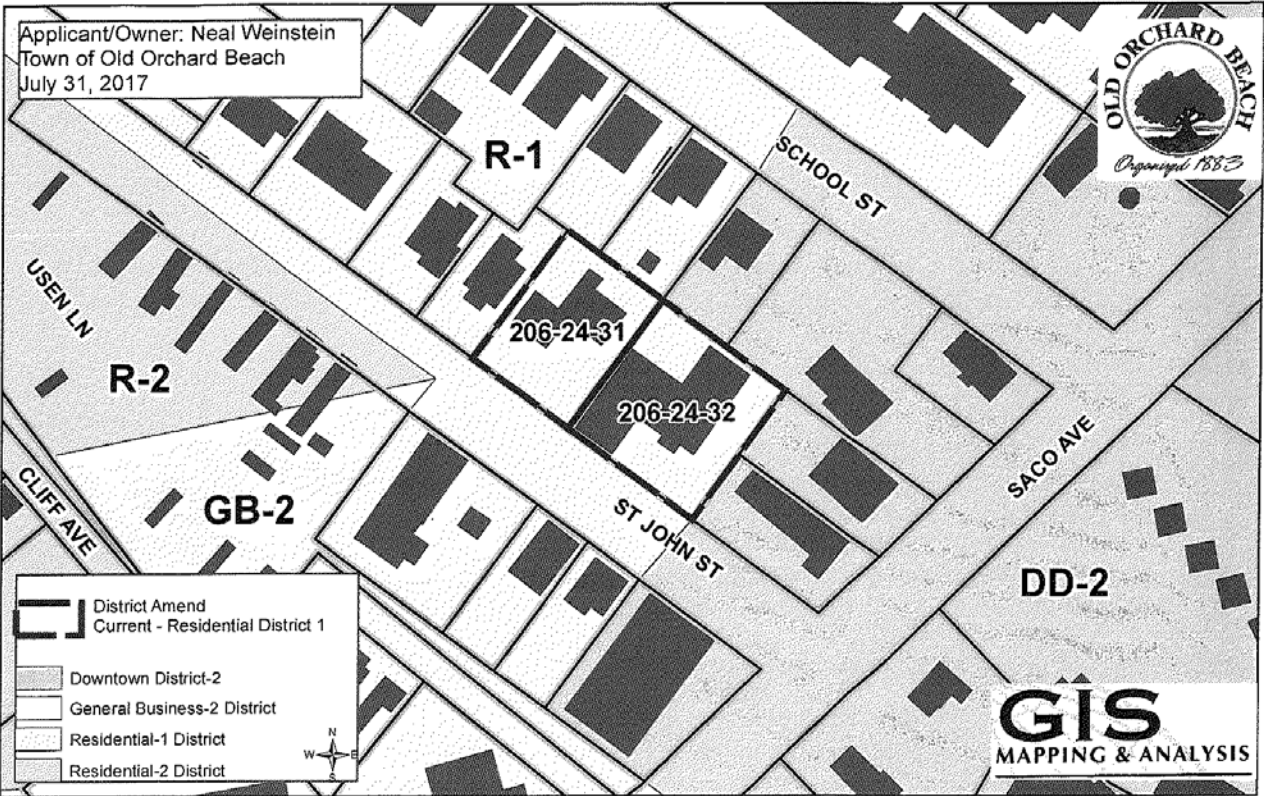
This purpose of this proposal is to amend the town zoning map by removing the Residential 1 District (R1) and replacing with the Downtown District 2 (DD2) for two lots located 6-8 and 10 St. John's Street. (see attachment). The reason behind this amendment is the owner would like the increased density DD2 allows compared to R1.

One of the primary tests associated with zoning district changes is its conformance with the comprehensive plan. Staff reviewed the Future Land Use Plans from both the currently adopted and draft comp plans and concludes that this proposal is in conformance with both plans. The current comp plan shows the subject area as B-2, which is basically the same as DD2 (maybe the B-2 name was changed to DD2). B-2 allows for a variety of retail, business and residential uses, including higher density residential- similar to DD2. The draft plan shows the subject area as Downtown Residential which will allow higher density for residential uses compared to the current R1 zoning.

The subject area abuts the DD2 so this proposal will extend the DD2 district (no leapfrog of lots or districts). Single-family is the current land use for both properties. One of the subject lots was at one time used as a church. Uses surrounding the subject area vary- businesses, campground, multi-unit residential, single-family residential. Public utilities serve both properties.

Because the proposal is a zoning map amendment, it requires a public hearing to be held by the Planning Board (PB) as well as a PB recommendation to the Council. The PB held a public hearing on 12 October 2017 and at the same meeting unanimously recommended that the Council adopt the map amendment. Note that amendments can be formally adopted only after a favorable vote of a majority of Council members.

Vice Chair O'Neill did suggested strongly that there be one zone area for this issue and that should be considered in the near future.



AGENDA # 7102

**# 7102      Discussion with Action: Approve and Accept the application for the Firehouse Subs Public Safety Foundation Grant, in the amount of \$23,957.20, to purchase twenty (20) complete Protective Ballistic Vests, with no matching funds from the Town of Old Orchard Beach.**

**MOTION: Councilor Kelley motioned and Vice Chair O'Neill seconded to Approve and Accept the application for the Firehouse Subs Public Safety Foundation Grant, in the amount of \$23,957.20, to purchase twenty (20) complete Protective Ballistic Vests, with no matching funds from the Town of Old Orchard Beach.**

**VOTE: Unanimous.**



**Firehouse Subs Public Safety Foundation, Inc.**

12735 Gran Bay Pkwy., Suite 150, Jacksonville, Florida 32258

**MEMO OF UNDERSTANDING- FUNDING AGREEMENT**

**January 15, 2018**

**Firehouse Subs Public Safety Foundation Responsibilities**

- Firehouse Subs Public Safety Foundation will award a check to **Old Orchard Beach Fire Department** for **\$23,957.20** to be used toward the direct purchase of **body armor & accessories**.
- **All purchases must match the quantities and equipment approved in the original grant request. Failure to do so will put the grant in jeopardy.**

**Old Orchard Beach Fire Department Responsibilities**

1. A check will be remitted to the organization name as stated in this memo of understanding and **must** match the EIN number submitted on the grant request. If there is a change in either information, you must submit a W-9
2. If the mailing address where the check needs to be sent differs from the address on the submitted grant application, please email the Foundation with the correct mailing address
3. Confirm check has been received by emailing Firehouse Subs Public Safety Foundation at [procurementfoundation@firehousesubs.com](mailto:procurementfoundation@firehousesubs.com)
4. Purchase the approved equipment
5. Verify purchase by providing Firehouse Subs Public Safety Foundation with one of the following:
  - o Copies of paid invoices, verifying your organization's name as the customer and matching the vendor quote(s)
  - o A copy of the cleared check(s), verifying the payee and payment amount matches the vendor quote(s)
6. Provide Firehouse Subs Public Safety Foundation with all SIGNED packing slips confirming receipt of equipment
7. In the event that the purchased equipment costs less than the dollar amount awarded, all excess funds must be returned to Firehouse Subs Public Safety Foundation
  - o Please email [procurementfoundation@firehousesubs.com](mailto:procurementfoundation@firehousesubs.com) with notification of excess funds within 30 days of purchase
  - o Excess funds will need to be returned to Firehouse Subs Public Safety Foundation within 90 days of purchase
8. If purchases exceed funding, **Old Orchard Beach Fire Department** is responsible for the additional amount

**VERY IMPORTANT:** Deadline for submitted documentation is September 1, 2018.

\_\_\_\_\_  
Firehouse Subs Public Safety Foundation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Old Orchard Beach Fire Department Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Old Orchard Beach Fire Department Representative Name (Print)

\_\_\_\_\_  
Date

**# 7103 Discussion with Action: Consider an Emergency Ordinance Establishing a Moratorium on Medical Marijuana Retail Storefronts, pursuant to Charter Section 410.1.**

**BACKGROUND:**

The Town Council recently passed an ordinance prohibiting retail sale of legalized adult-use marijuana in Old Orchard Beach in light of the continuing uncertainty created by the failure of the State Legislature to enact rules and regulations that would provide clarity to municipalities regarding regulation and enforcement. Subsequently there has been interest expressed here in Old Orchard Beach and in other Maine municipalities in establishing storefront retail business for medical marijuana. This type of activity is not directly addressed by State law and is not explicitly covered by the Town's medical marijuana ordinance.

In light of the continuing ambiguity in state law regarding medical marijuana storefronts and the Town Council's desire to curtail retail marijuana sales pending comprehensive state regulation and enforcement, the proposed moratorium on medical marijuana storefronts would allow the Town Council to consider appropriate local land use regulations pertaining to medical marijuana storefronts.

**MOTION: Councilor Blow motioned and Councilor Kelley seconded to Consider an Emergency Ordinance Establishing a Moratorium on Medical Marijuana Retail Storefronts, pursuant to Charter Section 410.1.**

**VOTE: Unanimous.**

It should be noted that there was some misunderstanding about the ability for the members of the public to speak on this so that Town Council Chair allowed this item to be brought up after the next item on the Agenda because of the misunderstanding. There was a lengthy conversation on this issue beginning with Tom Mourmouras who began with information relative to wishing to bring the medical marijuana issue to the Planning Board and concerned that the passing of this agenda item and the moratorium would mean that could not happen. Following his remarks Kelly Mourmouras, a social worker who deals with the medical marijuana clients, encouraged the Council to realize that by putting the moratorium on they are moving on an issue that is totally different that residential sales of marijuana. The Chair was deliberate that his vote would stand on the moratorium issue.

It was noted that there had been some interest from the business community in establishing medical marijuana storefront retail business in Old Orchard Beach as well as other municipalities in the State. As indicated several times this type of activity is not directly covered by State Law and is not explicitly covered by the Town's medical marijuana ordinance. As the Council Chair expressed – "We have a responsibility to protect the Town and to make sure we are taking steps to do it correctly." It should be noted that the Town Council felt that until there are specific rules and regulations set, the Moratorium was the best way to go on this issue for the benefit of safeguards to the Community. Some of the confusion in the discussion is that the question was the difference between medical marijuana sales and recreational sales. This moratorium is on medical marijuana sale issues. The concern by the Mourmouras' is that they can bring this issue to the Planning Board who has the ability to make ordinance changes which then would be brought before the Town Council. The general consensus of the Council



was that they wanted to have some protection moving forward. The concern that was expressed by Mrs. Mourmouras who works with clients requiring medical marijuana for qualifying medical conditions such as Cancer, PTSD or intractable pain. She was also concerned about invasion of privacy for the small caregiver growing in their home. The Council generally responded that the moratorium will give the Town officials time to evaluate regulations. Last month the Town approved a prohibition of retail commercial marijuana businesses. Though Maine voters approved the use of recreational marijuana in the November 2016 election, the State has not yet come up with rules regarding recreational marijuana businesses. The Council again stated that the Town Officials did not want to consider an ordinance allowing commercial marijuana businesses until the State came up with regulations. The moratorium expires after 60 days and can be renewed by the Town Council.

**Emergency Ordinance Establishing a Moratorium on Medical Marijuana Storefronts,  
Pursuant to Charter Section 410.1**

**WHEREAS, the Town's medical marijuana ordinance does not specifically address retail sales; and**

**WHEREAS, other Maine communities have experienced initiatives to establish retail sales of medical marijuana, including medical marijuana storefronts; and**

**WHEREAS, the Planning Department has received notice of interest in locating a medical marijuana storefront in Old Orchard Beach; and**

**WHEREAS, the Maine Legislature is currently considering modifications to State law regulating medical marijuana that would address ambiguities and unintended consequences within the existing statute; and**

**WHEREAS, it is in the best interest of the Town to consider the development of regulations pertaining to retail medical marijuana sales; and**

**WHEREAS, the unregulated development of the retail sale of medical marijuana raises a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on neighborhoods, and potential adverse effects on the Town's tourism industry; and**

**WHEREAS, the Town's existing ordinances are inadequate to prevent the potential for serious public harm from the establishment and operation of retail medical marijuana activities; and**

**WHEREAS, during the period of this moratorium the Town will work on developing appropriate land use regulations concerning retail medical marijuana activities; and**

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

**NOW THEREFORE, pursuant to the authority granted to it by 30-A M.R.S.A. § 4356, be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:**

**1. DEFINITIONS.**

As used in this Ordinance the following terms have the following meanings:

A “medical marijuana storefront” is defined as an establishment which resembles a retail storefront in terms of signage, hours of operation and accessibility to patrons, and which is operated by one or more Primary Caregivers as defined by 22 M.R.S.A. § 2422(8-A), Medical Marijuana Caregivers as defined in the Zoning Ordinance, or any other individuals or entities for the sale, distribution or administration of medical marijuana and medical marijuana products to Qualifying Patients as defined by 22 M.R.S.A. § 2422(9) or any other individuals.

2. **ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA STOREFRONTS PROHIBITED.**

During the time this Ordinance is in effect no person shall establish or operate a medical marijuana storefront.

3. **APPLICATIONS NOT TO BE ACCEPTED OR ACTED UPON.**

During the time this Ordinance is in effect, no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, or any other approval, relating to the establishment of a medical marijuana storefront.

4. **ENFORCEMENT, VIOLATION AND PENALTIES.**

This Ordinance shall be enforced by the Code Enforcement Officer of the Town of Old Orchard Beach. Any person who violates Section 2 of this ordinance shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452.

5. **EFFECTIVE DATE.**

This Ordinance takes effect immediately upon adoption and shall expire on the 61<sup>st</sup> day thereafter, unless earlier extended, repealed or modified by the Old Orchard Beach Town Council.

6. **APPLICABILITY.**

Notwithstanding anything to the contrary in 1 M.R.S.A. § 302 or any other law, this Ordinance shall apply to any proposal to establish or operate a medical marijuana storefront, whether or not an application or proceeding to establish said use would be deemed a pending proceeding under 1 M.R.S.A. § 302 prior to the enactment of this Ordinance.

7. **SEVERABILITY.**

Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

# 7104 Discussion with Action: Accept, with regret, the resignation of Ryan Kelly from the Planning Board; move Robin Dube from Alternate to Regular Member of the

Planning Board, term to expire 12/31/2019; appoint Marc Guimont as a Regular Member of the Planning Board, term to expire 12/31/2018; appoint Gary Gannon as a Regular Member of the Planning Board, term to expire 12/31/2019; and appoint David Walker as an Alternate to the Planning Board, term to expire 12/31/2019; Re-appoint Andrew Pouloupoulos as a Regular Member of the Board of Assessment Review, term to expire 12/31/19; Accept, with regret, the resignation of Assistant Town Manager, V. Louise Reid, from the Biddeford Saco Old Orchard Beach Transit Committee; Appoint Craig A. Pendleton to the Biddeford Saco Old Orchard Beach Transit Committee; and Appoint Rick Haskell as Deputy Local Plumbing Inspector, term to expire 07/01/2018.

**MOTION:** Councilor Kelley motioned and Councilor Blow seconded to Accept the resignations and approve the appointments as read.

**VOTE:** Unanimous.

**# 7105 Discussion with Action:** Grant the authority to the Finance Director/Treasurer to disburse payroll checks with only one Town Councilor's signature in accordance with M.R.S.A., Title 30A, Section 5603(2)(A)(1).

**MOTION:** Vice Chair O'Neill motioned and Councilor Tousignant seconded to Grant the authority to the Finance Director/Treasurer to disburse payroll checks with only one Town Councilor's signature in accordance with M.R.S.A., Title 30A, Section 5603(2)(A)(1).

**VOTE:** Unanimous.

**BACKGROUND:**



## TOWN OF OLD ORCHARD BEACH

### POLICY ON TREASURER'S DISBURSEMENT WARRANTS FOR EMPLOYEE WAGES AND BENEFITS

**Purpose.** This policy allows designated municipal officers (selectmen or councilors), acting on behalf of the full board of municipal officers, to review, approve, and sign municipal treasurer's disbursement warrants, for wages and benefits only.

Policy is additional to, not in lieu of, majority power. Nothing in this policy is intended to replace the authority of the full board of municipal officers, acting by majority vote, to act on any treasurer's warrant, including warrants for wages and benefits.

**Delegation of authority.** Pursuant to 30-A, M.R.S.A., Section 5603(2)(A)(1), the following authority is granted with respect to treasurer's disbursement warrants for municipal employee wages and benefits only:

Current municipal officers. The municipal officers in office at the time of execution of this policy are: Chair Joseph Thornton, Vice-Chair Shawn O'Neill, Councilor Kenneth Blow, Councilor Jay Kelley, and Councilor Michael Tousignant.

Any one of the municipal officers named above, acting alone, may review, approve, and sign such warrants.

**Effective date.** This policy becomes effective on the date indicated below.

**Copies.** The Chair of the municipal officers will furnish copies of this policy to the municipal clerk and to the municipal treasurer. If the clerk and the treasurer are the same person, a copy shall nonetheless be provided to that person in each capacity.

**Lapse.** This policy lapses one year after its effective date, if not sooner amended or canceled.

**Renewal.** This policy may be renewed at any time before its lapse. Thereafter, it may be readopted at any time. Any renewal is valid for one year from its effective date, unless a sooner date of expiration is specified.

**Reminder.** If the municipal treasurer is an appointed official, the treasurer shall remind the municipal officers to consider renewing this policy annually before it lapses. If the municipal treasurer is an elected official, the treasurer is requested to provide such an annual reminder.

**Original.** The Chair of the municipal officers will maintain the original of this policy on file unless the municipal clerk is an appointed official, in which case the clerk shall maintain it on file, if requested to do so by the Chair.

**# 7106** Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the annual Memorial Day Parade on Monday, May 28<sup>th</sup>, 2018 from 8 a.m. (set up in Memorial Park) to 4 p.m. (takedown); line-up on E. Emerson Cummings Blvd at Noon, parade to begin at 1:00 p.m.; ceremony in Memorial Park; allow horses in the parade to walk on the beach, with bags, from Ocean Park to Union Avenue, to the starting point of the parade, and back to Ocean Park following the parade.

**MOTION:** Councilor Blow motioned and Councilor Kelley seconded to Approve the Special Event Permit as read.

**VOTE:** Unanimous.

**ADJOURNMENT:**

**MOTION** Councilor Tousignant motioned and Councilor Blow seconded to Adjourn the Town Council Meeting at 7:25 p.m.

**VOTE:** Unanimous.

**Respectfully Submitted,**

**V. Louise Reid  
Town Council Secretary**

**I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty-one (21) pages is a copy of the original Minutes of the Town Council Meeting of February 6, 2018.**

**V. Louise Reid**