

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
Tuesday, January 2, 2018  
TOWN HALL CHAMBERS  
6:30 p.m.**

**A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, January 2, 2017. Chair Thornton opened the meeting at 6:32 p.m.**

**The following were in attendance:**

**Chair Joseph Thornton  
Councilor Kenneth Blow- arrived at 7:00 p.m.  
Councilor Jay Kelley  
Councilor Michael Tousignant  
Town Manager Larry Mead  
Assistant Town Manager V. Louise Reid**

**Absent: Vice Chair Shawn O'Neill**

**EMERGENCY ITEM:**

**CHAIR: I would ask for a motion to add an Emergency Item to the Agenda:**

**Discussion with Action: Amend the Special Event Permit for the Special Olympics Lobster Dip, approved December 5<sup>th</sup>, 2017, moving the date from January 1<sup>st</sup>, 2018 to January 13<sup>th</sup>, 2018 or January 20, 2018, weather dependent. Participants must be off the beach by 12:30 p.m., as there is another event approved for that day. Updated insurance certificate to be provided to the Town Clerk's Office by January 5<sup>th</sup>, 2018.**

**MOTION: Councilor Tousignant motioned and Councilor Kelley seconded to add to the agenda, Agenda Item Number 7090 following Agenda Item Number 7089 - Amend the Special Event Permit for the Special Olympics Lobster Dip, approved December 5<sup>th</sup>, 2017, moving the date from January 1<sup>st</sup>, 2018 to January 13<sup>th</sup>, 2018 or January 20, 2018, weather dependent. Participants must be off the beach by 12:30 p.m., as there is another event approved for that day. Updated insurance certificate to be provided to the Town Clerk's Office by January 5<sup>th</sup>, 2018.**

**VOTE: Unanimous.**

**CHAIR: I would request a motion to move Agenda Item # 7081 to the end of the meeting so that Council Blow will be here for that discussion.**

**MOTION: Councilor Tousignant motioned and Councilor Kelley seconded to Move Agenda Item # 7081 to the end of the meeting.**

**VOTE: Unanimous.**

**ACKNOWLEDGEMENT:**

**COUNCILOR KELLEY:** We welcome all a happy and healthy New Year and also express thanks to OOB365 for the cold but exciting LAST BLAST on the beach with a well appreciated bonfire. We continue to encourage each other to check on our neighbors, particularly those who live alone. The cold weather and winter conditions always pose some issues. We also remind pet owners that animals should not be left out in the cold as well. There were some concerned calls to the Town Manager's office about this happening. Again, we wish everyone a Happy New Year.

**ACCEPTANCE OF MINUTES:**

Accept the Town Council Meeting Minutes of December 19, 2017.

**MOTION:** Councilor Tousignant motioned and Councilor Kelley seconded to Accept the Minutes as read.

**VOTE:** Unanimous.

**PRESENTATION:**

**Presentation by Wright-Pierce on  
Town-wide Drainage Study.**

The purpose of the presentation on the Old Orchard Beach Comprehensive Drainage Study is data collection and methodology; overview of the result including culvert crossing; collection systems; and Ocean Outfalls in the Downtown area; and project outcomes.

Why complete the Drainage Study? It was stated to understand the complexities of our infrastructure; aid in capital improvement planning; operation and maintenance focus; identifying key projects which can be used in assessing grant and funding opportunities; support planning board reviews; identify potential ordinance updates; and support the important MS4 program.

Methodology – the key steps include data compilation and verification; review of the OOB Geographic Information System (GIS) information (provided to us by Tom Burns); field data collection; analysis of existing information; hydrologic and hydraulic modeling; evaluation and prioritization; and discussion and review with the Town administration.

Modeling – Hydrologic Modeling including Watershed Characteristics (8 major watersheds; 120 sub-watersheds analyzed; delineated using topographic information and LIDAR; soil survey and land use information from GIS); and Rainfall Data (NRCC and NRCS data); Hydraulic Modeling which includes culverts and collection system.

Culvert Crossing – High priority includes Portland Avenue (3); Temple Avenue (3); Cascade Road (2); Free Street (2); Old Orchard Avenue (1); and Saco Avenue (1). Major crossings – 15 inches evaluation; Ranking System to prioritize based on physical condition; hydraulic capacity; hazard potential; resource value; Crossings with ranking score of 45 or higher considered high priority.

**Culvert Crossing Analysis Results – Culverts prioritized for upgrade/replacement – DPW has list for capital improvements; can review potential infrastructure improvements in combination with other work/paving; planning can understand downstream constructions during review process; and provides backup information when looking for grant opportunities.**

**Collection Systems – Community has three outlets for stormwater runoff: Outfalls to the Ocean at Atlantic Avenue, Brown Street, Fourth Avenue, Mullen Avenue. Also Little River/Scarborough Marsh (controlled by Dam); and Goosefare Brook (Tide Gate.)**

**Ocean Outfalls/Downtown Area: Atlantic Outfall (18-inch SD) – 0.13 square mile watershed, 6,400 linear feet storm drain; Brown Street Outfall (12-inch SD) – 0.2 square mile watershed, 3,800 linear feet storm drain; Fourth Avenue Outfall (42-inchSD) - 0.24 square mile watershed, 10,250 linear feet of storm drains; and East Grand/Mullen Avenue Outfall (12-inch) – 0.07 square mile watershed, 16,300 linear feet of storm drain.**

**Collection System Results – Ocean Outfalls/Downtown Area – in general, watershed areas were highly developed; limitation noted in the one year, 24-hour storm event; models showed flooding to grade; hydraulic grade line is limiting factor, limited by sea level/backwater/ surcharging.**

**Goosefare Brook Watershed – Park Avenue/Wild Acres Campground; Old Orchard Road, Saco Avenue (Harmon Avenue to Old Orchard Road\*; Saco Avenue (Pinebrook Terrace to Summer Winds\*; and Smithwheel Road. \*Denotes system modeled as being undersized for the 10 year-24 hour storm event.**

**Ocean Outfalls – long term operation and maintenance is the key to functioning systems – critical to keep these systems functioning and operating; Recent meeting with Ted Berry company – 2006 location, inspection and cleaning program attempt to restore Hydraulic Capacity; 2007 risers installed and maintenance cleaning; 2010 maintenance cleaning; and discussed development of a long term operation and maintenance plan.**

**Little River Watershed – Cascade Road (Hilltop Drive to Miles Avenue); Cascade Road at Hid'n Pines/Foote Street\* (\*Denotes system modeled as being undersized for the 10 year-24-hour storm event.)**

**Milliken Mills Pond Watershed – General fragmented closed drainage systems or recently constructed; Includes residential Homewood Park Development (small lots, on-site septic, elevated groundwater table).**

**Mill Brook Watershed – General fragments closed drainage systems or recently constructed.**

**Outcomes – Town of Old Orchard Beach systems are complex. Collection System evaluated under various design storms (1- year; 10 year; 25 year; 24-hour.) This provides an overall understanding of the collection systems. Modeling notes capacity limitations in Downtown area. Limited value to upsize outfalls – Hydraulic Grade Lines; Study identified segments of the collection system where upgrades may be required; and Modeling is available to use when assessing Town projects or development proposals.**

**Next Steps: Capital Improvement Planning; Assess upgrades ahead of Maine DOT work; Long Term Maintenance; Ordinance Considerations; Other Potential considerations; Additional Upstream Storage; Tide gate adjustments/modifications; reduction in peak and volume for new and redevelopment projects.**

**There was a good dialogue between the Town Council members and Wright Pierce on updates to the last report; possible solutions to issues which appear to already be in the forefront; and many points of information provided by Steve Guerrette and Stephanie Hubbard of Wright Pierce.**

#### **BUSINESS LICENSES AND APPROVAL:**

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

**Daniel & Cindy Vilette (318-8-6-70), 146 West Grand Avenue, #70, one year round rental.**

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

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

**VOTE: Unanimous.**

#### **TOWN MANAGER'S REPORT:**

**The Town Manager reminded residents that with the winter season upon us the Town will institute parking bans as needed during winter storms. Residents should make a point of looking for announcements of parking bans. Parking bans are publicized on all of the major local television outlets, some radio stations, and on the Town and Police Department's web site. In addition anyone can sign up to receive an e-mail notification from the Town of parking bans. Simply go to the Town's website home page and click on the "Subscribe to News" button to register for these alerts. Off street parking is available during parking bans at the Memorial Park and Milliken Street Parking lots and at the Ocean Park Square. The Town Manager also encouraged residents to help in keeping our neighborhoods safe during the winter by adopting a fire hydrant and making a point of clearing snow away three feet on all sides of the hydrant after each storm. That is the most efficient way to get hydrants clear as soon as possible following a snow storm. On his street he indicated there are three hydrants and each of them has been informally adopted by a resident. No forms needed to be filled out so there is no waiting and no red tape involved to adopt your very own hydrant. During the cold snap if residents find themselves without heat and in need of a place to get warm please be sure to contact either the Fire Department or the Police Department for assistance. The Town Manager provided an updated to the Museum in the Streets program. This was spearheaded by the Associate Planner, Megan McLaughlin. MITS is an initiative that will feature a self-guided history tour of Old Orchard Beach with an emphasis on our rich legacy as a summer resort that has attracted visitors from across the country and Canada for well over 100 years. The MITS Committee has been working hard this year to raise funds and funds have been raised sufficient to feature 25 panels (at about \$1,000 per panel) in the downtown area, including historic buildings and attractions such as hotels from the past. The goal is to finalize work on the panel content, including content and photographs with the hope of having the panels in place this summer. There will also be panels in Ocean Park that**

includes a focus on three historic pillars of Ocean Park – Recreation – Education- and Culture and the Arts, with panels that showcase associated historical landmarks in Ocean Park. Stay tuned for more information through the spring. Kudos to the Committee members who have worked so hard and to Megan for her leadership in this initiative.

**CHAIR:** I request a motion to again consider Agenda Item 7081 now instead of at the end of the meeting.

**MOTION:** Councilor Kelley motioned and Councilor Tousignant seconded to address Agenda Item # 7081 now.

**VOTE:** Unanimous.

**# 7081** Discussion with Action: Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 18, Businesses, by adding Article XII, Sections 18-604 to 18-608, Ordinance prohibiting Retail Marijuana Establishments.

**BACKGROUND:**

The proposed ordinance would prohibit retail marijuana stores, retail marijuana products manufacturing facilities, retail marijuana testing facilities and retail marijuana social clubs. Maine voters legalized marijuana use in the November 2016 election, however the State has not established regulations for its sale. Currently personal marijuana use is legal for those 21 years and older but the sale of non-medical marijuana and recreational marijuana commercial establishments will not be legal until the State establishes regulations, which according to legislation must happen by October 2018. Without such rules in place municipalities do not know how retail establishments are going to operate or what authority local governments will have with respect to such operations. The Town Manager is asking the Council to take a proactive approach by either adopting a prohibition ordinance or a moratorium and the Town's legal counsel agrees with this advice. A moratorium on retail marijuana would have to be extended every 60 days and the intent of the moratorium would be to give time to allow the Town to work on an ordinance to govern marijuana retail establishments. The Town Manager felt that it didn't really make sense for the Council to do that work until the State has done its work in terms of establishing what those rules and regulations are going to be and how municipalities will be able to regulate these establishments. Therefore the Town Manager recommended that the Town Council pass a prohibition ordinance instead of a moratorium. Should the Town decide to pass the ordinance prohibiting retail marijuana establishments in Town, it would stay in place unless repealed at some future date by the Town Council. This would allow the Town to decide, after the State has enacted rules on retail recreational marijuana whether or not it wanted to allow any retail recreational marijuana operations, in which case a new ordinance would be drafted. Previously a sunset provision had been noted but that would mean that the ordinance would expire at a certain date and no longer be in effect. In essence the Council would need to revisit the issue of marijuana retail sales again at a future date. If this amendment is debated by Council (or any other amendment), I believe that the Council would then need to allow public comment on the proposed amendment.

I have not received any additional public input about this topic since the last meeting. There is a legislative hearing scheduled in Augusta on January 5, 2018, for the purpose of trying to craft regulations and rules that could be approved by the Governor and the

Legislature, however there is no certainty on whether this effort will succeed or not, or if the Governor has any interest in having a bill pass during his time in office.

JIM KASS who runs a consulting firm spoke about their involvement in the issue of retail marijuana and looks forward to working with Old Orchard Beach in the coming months.

During the Council discussion there was consensus with the Council that waiting until the State develops the regulations that will be required and in place, would be the careful way to approach this issue. There was a feeling of open discussion once those rules are in place but for now the prohibition ordinance is the best way to address this issue and it is showing a meticulous process by the Council on an issue that will have many public opinions.

**MOTION:** Councilor Kelley motioned and Councilor Tousignant seconded to Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 18, Businesses, by adding Article XII, Sections 18-604 to 18-608, Ordinance prohibiting Retail Marijuana Establishments.

**VOTE:** Unanimous.

**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 December 19<sup>th</sup>, 2017, at 6:30 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 18, Businesses, Article XII and Article XIII, is hereby added as follows:

Amendment to Chapter 18 – BUSINESSES, Article XII – RESERVED, Sections 18-604 – 18-620 shall be amended by deleting the ~~striketrough~~ language as follows:

~~ARTICLE XII. – RESERVED~~

~~Secs. 18-604 – 18-620. – Reserved.~~

Amendment to Chapter 18 – BUSINESSES, Article XII – RETAIL MARIJUANA ESTABLISHMENTS, Sections 18-604 – 18-608 shall be amended by adding the underscore language as follows:

**ARTICLE XII – RETAIL MARIJUANA ESTABLISHMENTS**

**Sec. 18-604. Authority.**

**This ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.**

**Sec. 18-605. Definitions.**

**For purposes of this ordinance, retail marijuana establishments are defined as set forth in 7 M.R.S.A. § 2442, including; retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana testing facilities, and retail marijuana social clubs.**

**Sec. 18-606. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.**

**Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in this municipality.**

**No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.**

**Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.**

**Sec. 18-607. Effective date; duration.**

**This ordinance shall take effect immediately upon enactment by the Town of Old Orchard Beach Town Council unless otherwise provided and shall remain in effect until it is amended or repealed.**

**Sec. 18-608. Penalties.**

**This ordinance shall be enforced by the Chief of Police or his/her designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.**

Amendment to Chapter 18 – BUSINESSES, Article XIII – RESERVED, Sections 18-609 – 18-620 shall be amended by adding the underscore language as follows:

**ARTICLE XIII. – RESERVED**

**Secs. 18-609 – 18-620. Reserved.**

Per Order of the Municipal Officers this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

A True Copy

Attest:

s/Kim M. McLaughlin  
Kim M. McLaughlin, Town Clerk

**# 7082 Discussion with Action: Set the Public Hearing date of January 16<sup>th</sup>, 2018 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).**

#### **BACKGROUND:**

The Town Manager noted that there are two public hearings on changes to the zoning ordinance that are have been supported by the Planning Board. There is no Council discussion of these proposed changes at tonight's meeting. That will take place at the second meeting in January. The first proposed zoning change is to establish new rules for food trucks and food carts. As the Council will remember you enacted a moratorium on food trucks so that you could set rules regarding whether to allow food trucks in OOB. The changes supported by the Planning Board would allow food trucks only in the Amusement Overlay zone and the Campground Overlay zone. They would also be allowed in any special event approved and authorized by the Town Council. Your packet includes a memo written by Jeffrey Hinderliter that explains the Planning Board recommendation in more detail so please be sure to take a look at his memo.

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 develops 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 in 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 ordinances 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 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). 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, and 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 been 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 ~~strikethrough~~ 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 ~~strikethrough~~ 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.

**MOTION:** Councilor Kelley motioned and Councilor Blow seconded to Set the Public Hearing date of January 16<sup>th</sup>, 2018 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.

# 7083 Discussion with Action: Set the Public Hearing date of January 16<sup>th</sup>, 2018 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.

**MOTION:** Councilor Tousignant motioned and Councilor Kelley seconded to Set the Public Hearing date of January 16<sup>th</sup>, 2018 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:**

The Town Manager noted that this is the second zoning change is to re-zone two parcels owned by Neil Weinstein and located at 6-8 St. John Street and 10 St. John Street behind his law office building on Saco Ave. The proposed change would allow for greater density of development in these two locations. Again, please refer to your packets for a more detailed explanation of this change in Jeffrey Hinderliter's memo.

**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.

# 7084 Discussion with Action: Cancel the Regular Town Council Meeting of July 3, 2018; Cancel the November 5, 2018 Town Council Meeting as it falls on Election Day; authorize the closing Town Hall on Monday, December 24, 2018 with Town Hall employees taking either ½ vacation day or ½ floating holiday.

It was noted that the November 5<sup>th</sup> date should be November 6<sup>th</sup> and noted in the Minutes and the Motion.

MOTION: Councilor Tousignant motioned and seconded to Cancel the Regular Town Council Meeting of July 3, 2018; Cancel the November 6, 2018 Town Council Meeting as it falls on Election Day; authorize the closing Town Hall on Monday, December 24, 2018 with Town Hall employees taking either ½ vacation day or ½ floating holiday.

VOTE: Unanimous.

# 7085 Discussion with Action: Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 2, Division 2, Rules of Procedure, Section 2-56, Order of Business, moving item (10) Good and Welfare, to after item (3) Acknowledgements; and Amending Section 2-77, (1), by removing part of the last sentence, "...and any person desiring to address the Council on such item must wait to do so until all items on the Agenda have been completed".

MOTION: Councilor Kelley motioned and Councilor Blow seconded to Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 2, Division 2, Rules of Procedure, Section 2-56, Order of Business, moving item (10) Good and Welfare, to after item (3) Acknowledgements; and Amending Section 2-77, (1), by removing part of the last sentence, "...and any person desiring to address the Council on such item must wait to do so until all items on the Agenda have been completed".

JEROME BEGERT requested that this change in Procedure not deny anyone the opportunity to present their opinion. The Chair indicated that the change never would deny that privilege but professionally requesting it be in the time frame designated.



**VOTE: Unanimous.**

**BACKGROUND:**

The change to the Order of Business includes Good and Welfare and the timing of those remarks. It is expected that those wishing to address the Town Council on an item which appears on the agenda shall wait until the chairperson announces the consideration of such item, at which time they may address the council on that particular item. All remarks and questions shall be addressed to the council as a whole and not to any individual member thereof. No person other than members of the council and the person having the floor shall enter into a discussion either directly or through a member of the council without the permission of the chairperson. However, once the council has begun its deliberations on an item, no person shall be permitted to address the council on such item.

What is being changed is: ~~and any person desiring to further address the council on such item must wait to do so until all items on the agenda have been completed.~~

Council rules and procedures: This item would move Good and Welfare from the end of the meeting to the beginning of the meeting, after Acknowledgments. It would also remove existing language that allows for public comment at the end of the meeting on agenda items that the Council addressed that evening. Instead, people would be allowed to make their comments during Good and Welfare at the beginning of the next scheduled meeting.

**Sec. 2-56. - Order of business.**

All regular and special meetings of the town council shall proceed in the following order:

- (1) Pledge to flag.
- (2) Roll call.
- (3) Acknowledgements.
- (4) Good and Welfare
- (4) (5) Approval of minutes of previous meeting.
- ~~(5)~~ (6) Hearings.
- ~~(6)~~ (7) Reserved.
- ~~(7)~~ (8) Unfinished business.
- ~~(8)~~ (9) Consent agenda.
- ~~(9)~~ (10) New business.
- ~~(10)~~ ~~Good and welfare.~~
- (11) Executive sessions.
- (12) Adjournment.

- (1) Persons wishing to address the council on an item which appears on the agenda shall wait until the chairperson announces the consideration of such item, at which time they may address the council on that particular item. All remarks and

questions shall be addressed to the council as a whole and not to any individual member thereof. No person other than members of the council and the person having the floor shall enter into a discussion either directly or through a member of the council without the permission of the chairperson. However, once the council has begun its deliberations on an item, no person shall be permitted to address the council on such item, ~~and any person desiring to further address the council on such item must wait to do so until all items on the agenda have been completed.~~

**Discussion with Action:** Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 2, Division 2, Rules of Procedure, Section 2-56, Order of Business, moving item (10) Good and Welfare, to after item (3) Acknowledgements; and amending Section 2-77, (1), by removing part of the last sentence, "...and any person desiring to address the Council on such item must wait to do so until all items on the agenda have been completed", as outlined below:

## **DIVISION 2. - RULES OF PROCEDURE<sup>[3]</sup>**

### **Footnotes:**

--- (3) ---

Charter reference— Rules of procedure, § 406.

### **Sec. 2-51. - Regular meetings.**

The regular meetings of the town council shall be held at a location, time and on a day as determined by the council at its inaugural meeting, unless otherwise provided by Council Resolution. When any such day falls on a holiday or on Election Day, the regular meeting shall be held on the following day at the same time and place. The date, time and place of any regular meeting may be changed by an order or resolve passed the previous meeting upon the vote of a majority of the members of the council; provided, however, that such change is published in a newspaper having general circulation in the town at least 24 hours before the meeting.

(Policy of 1-6-1977, § 1; Policy of 1-15-1985; Policy of 12-2-2008; [Amd. of 5-3-2016](#))

Charter reference— Meetings, § 404.

### **Sec. 2-52. - Special meetings.**

The chairperson of the town council shall call special meetings of the council whenever, in his or her opinion, the public business may require it or, in the absence, disability or refusal, by a majority of the council. Whenever a special meeting shall be called, a 24-hour actual personal notice in writing, signed by the chairperson of the council or by a majority of the council, as the case may be, shall be served upon each member of the council, either in person or by notice left at the place of residence, stating the date and the purposes for which such meeting is called. No business shall be transacted at the special meeting except as is stated in the notice. In an emergency that requires immediate action, the 24-hour notice is waived, provided the same requirements for postponement of meetings in section 2-53 are met. An emergency agenda item may be added and acted upon at a special meeting pursuant to Charter section 1004.

(Policy of 1-6-1977, § 2; Policy of 12-5-1989; Policy of 1-2-1996; Policy of 12-2-2008)

**Sec. 2-53. - Postponement of meetings.**

The chairperson may postpone any scheduled meeting of the town council and in an emergency may change the hour, day or date of a scheduled meeting, provided all available members of the council are polled by telephone or otherwise and a majority is in agreement. At a subsequent meeting, an entry shall be made in the minutes indicating reasons for the postponement, those members contacted and the preference of each member, and if an effort was made to contact local news media.

(Policy of 1-6-1977, § 3; Policy of 1-15-1985; Policy of 1-2-1996; Policy of 12-2-2008)

**Sec. 2-54. - Filing of items for meetings.**

No ordinance, order, or resolve shall be in order for action at any meeting of the town council unless such ordinance, order or resolve shall be filed in the office of the town manager on or before 12:00 noon on the fourth working day prior to a regular meeting and before 12:00 noon of the secular day next prior to the day of any special meeting. Agenda items must state clearly the scope and intent of the action to be taken. All requests for the consideration of a subject shall be in writing, stating the purpose for the discussion, the parties to be present, and as much information as possible to permit council review in advance of the meeting. All such requests other than those submitted by council members must be approved by the chairperson of the town council for inclusion on the agenda of a council meeting.

(Policy of 1-6-1977, § 4; Policy of 1-15-1985; Policy of 12-5-1989; Policy of 12-2-2008; Policy of 11-16-2010)

**Sec. 2-55. - Quorum; adjourned meetings; absences.**

- (a) A majority of the members of the town council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time.
- (b) Any session of the council may be continued or adjourned from day to day or for more than one day, but no adjournment shall be for a longer period than until the next regular meeting. At least 24 hours' notice of the date, time and place of holding such adjourned meeting shall be provided to all members who were not present at the meeting at which the adjournment occurred.
- (c) If any member of council is going to be absent from a scheduled meeting, the council member must call or e-mail the chairperson of the council no later than one hour before the meeting.

(Policy of 1-6-1977, § 5; Policy of 12-2-2008; Policy of 12-15-2009(1))

Charter reference— Quorum, § 406.

**Sec. 2-56. - Order of business.**

All regular and special meetings of the town council shall proceed in the following order:

- (1) Pledge to flag.
- (2) Roll call.
- (3) Acknowledgements.

**(4) Good and Welfare**

- (4) (5) Approval of minutes of previous meeting.**
- (5) (6) Hearings.**
- (6) (7) Reserved.**
- (7) (8) Unfinished business.**
- (8) (9) Consent agenda.**
- (9) (10) New business.**
- (10) ~~Good and welfare.~~**
- (11) Executive sessions.**
- (12) Adjournment.**

**(Policy of 1-6-1977, § 6; Policy of 12-5-1989; Policy of 1-5-1999; Policy of 8-3-1999; Policy of 1-15-2002; Policy of 11-20-2006; Policy of 12-2-008)**

**Sec. 2-57. - Priority of business.**

**All questions relating to the priority of business to be acted upon by the town council shall be decided without debate.**

**(Policy of 1-6-1977, § 7; Policy of 12-2-2008)**

**Sec. 2-58. - Chairperson and vice-chairperson; minutes of meetings.**

- (a) The town council shall elect from among its members a chairperson and a vice-chairperson, pursuant to Charter section 402, each of whom shall serve at the pleasure of the council.**
- (b) The chairperson shall preside at meetings of the council, shall be entitled to vote on all questions, and shall be recognized as head of the town government for all ceremonial purposes and by the governor for purposes of military law, but shall have no administrative duties. The vice-chairperson shall act as chairperson during the absence or disability of the chairperson.**
- (c) The chairperson shall take the chair at the time appointed for the council meeting, call the members to order, cause the roll to be called, and, a quorum being present, proceed to business.**
- (d) At each meeting, the minutes of the preceding meeting shall be read unless the reading is dispensed with by consent of majority of the members of the council present. If no objection is made to the minutes, a majority vote of the council shall declare them approved. Otherwise any amendments to the minutes as well as the amended minutes as a whole must be approved by a majority of the members present at the meeting to which the minutes pertain. The minutes of all meetings (regular, special, budget hearings, workshops) shall require approval of the council.**

**(Policy of 1-6-1977, § 8; Policy of 12-5-1989; Policy of 12-2-2008)**

**Sec. 2-59. - Duty of chairperson to preserve order, decide all questions of order.**

**The chairperson of the town council shall preserve decorum and order, may speak to points of order in preference to other members, and shall decide all questions of order**

subject to an appeal to the council by motion regularly seconded. No other business shall be in order until the question on appeal is decided.

(Policy of 1-6-1977, § 9; Policy of 12-2-2008)

**Sec. 2-60. - Right of appeal from rulings of chairperson.**

Any member of the town council may appeal to the council from a ruling of the chairperson. If the appeal is seconded, the member making the appeal may briefly state his reason for it, and the chairperson may briefly explain his or her ruling. There shall be no debate on the appeal, and no other shall participate in the discussion. The chairperson shall then submit the question, "Shall the decision of the chair be sustained?" If a majority of the members present vote "yea," the ruling of the chair is sustained; otherwise, it is overruled.

(Policy of 1-6-1977, § 10; Policy of 12-2-2008)

**Sec. 2-61. - Declaration of votes; return of votes.**

The chairperson of the town council shall declare all votes. However, if any member doubts a vote, he or she shall cause a return of the members voting in the affirmative and in the negative without debate.

(Policy of 1-6-1977, § 11; Policy of 12-2-2008)

**Sec. 2-62. - Emergency authority.**

Often, timely action is required on relatively routine matters which do not warrant convening the entire town council. Authority to take certain limited actions on behalf of the town may be delegated to the chairperson, by order of the town council adopted at a meeting duly called and held.

(Policy of 1-6-1977, § 12; Policy of 12-2-2008)

**Sec. 2-63. - Secretary.**

(a) The town council shall appoint a secretary to the council, who shall give notice of council meetings to its members and the public, keep accurate minutes of council meetings, and perform such other duties as are assigned to the secretary by the Charter or the council. The secretary shall furnish each council member with a copy of the minutes of the preceding meeting no less than two business days prior to a regular meeting.

(b) The town manager shall not serve as secretary to the town council.

(Policy of 1-6-1977, § 13; Policy of 1-15-1985; Policy of 12-5-1989; Policy of 12-2-2008)

**Sec. 2-64. - Temporary chairperson.**

In the absence of the chairperson and vice-chairperson of the town council, the secretary shall call the council to order and call the roll of the members. If a quorum is found to be present, the council shall proceed to elect, by a majority vote of those present, a chairperson pro tem of the meeting to act until the chairperson or vice-chairperson appears.

**(Policy of 1-6-1977, § 14; Policy of 1-15-1985; Policy of 12-2-2008)**

**Sec. 2-65. - Seating arrangement.**

Members of the town council shall occupy the respective seats at the council table assigned to them by the chairperson, but any two or more members may exchange seats by joining in a written notice to the chairperson to that effect.

**(Policy of 1-6-1977, § 15; Policy of 12-2-2008)**

**Sec. 2-66. - Rule of debate.**

(a) When a question is under debate by the town council, the chairperson shall receive no motion except as follows:

- (1) To adjourn;
- (2) For the previous question;
- (3) To lay on the table;
- (4) To postpone to a day certain;
- (5) To refer to a committee or some administrative official;
- (6) To amend; or
- (7) To remove without prejudice.

(b) The several motions in subsection (a) of this section shall have precedence in the order in which they are cited.

**(Policy of 1-6-1977, § 16; Policy of 12-2-2008; Policy of 11-19-2012)**

**Sec. 2-67. - Motions.**

When a motion is made and seconded at a meeting of the town council, it shall be read by the secretary before debate. A motion may not be withdrawn by the mover without the consent of the member seconding it.

**(Policy of 1-6-1977, § 17; Policy of 12-2-2008)**

**Sec. 2-68. - Motion to adjourn; lay on table.**

The chairperson of the town council shall consider a motion to adjourn as always in order except on immediate repetition, and that motion and the motion to lay on the table or to take them from the table shall be decided without debate.

**(Policy of 1-6-1977, § 18; Policy of 12-2-2008)**

**Sec. 2-69. - Motion for previous question.**

Upon the motion for the previous question being made and seconded, the chairperson of the town council shall submit the question in the following form: "Shall the main question be put?" And all debate upon the main question shall be suspended until the motion for the previous question shall be decided. After the adoption of the motion for the previous question by a majority vote, the sense of the council shall be forthwith taken upon all pending amendments, and then upon the main question.

(Policy of 1-6-1977, § 19; Policy of 12-2-008)

**Sec. 2-70. - Debate or amendment of motion for previous question.**

No debate by the town council shall be allowed on a motion for the previous question; neither is it susceptible to amendment. All questions of order arising incidentally thereon must be decided without discussion, whether appeal is had from the chair or not.

(Policy of 1-6-1977, § 20; Policy of 12-2-2008)

**Sec. 2-71. - Motion for referral.**

At a meeting of the town council, a motion for referral to a committee or administrative official, until it is decided, shall preclude all amendments of the main question.

(Policy of 1-6-1977, § 21; Policy of 12-2-2008)

**Sec. 2-72. - Motion to table.**

The council may table an agenda item by any of the following three (3) motions:

- (1) *Motion to lay on the table.* This motion is not debatable and not subject to amendment. The effect of this motion is to continue the agenda item until the next meeting of the council. There is no limit on the number of times an agenda item may be continued by a motion to lay on the table.
- (2) *Motion to postpone to a day certain.* This motion may be amended as to the postponement date and debate is allowed.
- (3) *Motion to remove without prejudice.* This motion is not debatable and not subject to amendment. If passed, the effect of the motion is that the principal question is deemed lost. However, that does not preclude the reintroduction of the principal question as a new agenda item for a subsequent town council meeting.

(Policy of 1-6-1977, § 22; Policy of 12-2-2008; Policy of 3-15-2011; Policy of 11-19-2012)

**Sec. 2-73. - Reconsideration of vote.**

When a vote is passed by the town council, it shall be in order for any member who voted in the majority, or in the negative on a tie vote, to move a reconsideration thereof at the same meeting or the next stated meeting, but not afterwards; when a motion of reconsideration is decided, that vote shall not be reconsidered. No motion to reconsider a vote passed at a previous meeting shall be in order for consideration at the next meeting unless an item to that effect is contained on the agenda for such next meeting. A petition once presented to and finally acted upon by the town council shall not again be presented to the council in the same or substantially the same form for a period of one year next succeeding the council's final action on the original petition. A member of the town council, voting with the majority on the original petition, shall be privileged to reintroduce such a petition as an item on the agenda for a subsequent council meeting.

(Policy of 1-6-1977, § 23; Policy of 12-2-2008)

**Sec. 2-74. - Manner of speaking.**

When a council member desires to speak, he or she shall respectfully address the chairperson and confine him or herself to the question under debate.

(Policy of 1-6-1977, § 24; Policy of 12-2-2008)

**Sec. 2-75. - Interruption of members.**

No council member speaking shall be interrupted by another but by a call to order.

(Policy of 1-6-1977, § 25; Policy of 12-2-2008)

**Sec. 2-76. - Question of order.**

If a council member is called to order while he or she is speaking, he or she shall cease speaking immediately until the question of order is determined. If ruled to be in order, he or she shall be permitted to proceed. If ruled to be not in order, he or she shall remain silent or shall alter his or her remarks so as to comply with the action by the council.

(Policy of 1-6-1977, § 26; Policy of 12-2-2008)

**Sec. 2-77. - Procedure for addressing council.**

Any person wishing to address the town council will be given an opportunity to do so in accordance with the following procedures:

- (1) Persons wishing to address the council on an item which appears on the agenda shall wait until the chairperson announces the consideration of such item, at which time they may address the council on that particular item. All remarks and questions shall be addressed to the council as a whole and not to any individual member thereof. No person other than members of the council and the person having the floor shall enter into a discussion either directly or through a member of the council without the permission of the chairperson. However, once the council has begun its deliberations on an item, no person shall be permitted to address the council on such item, ~~and any person desiring to further address the council on such item must wait to do so until all items on the agenda have been completed.~~
- (2) Persons wishing to address the council on an item not appearing on the agenda shall do so only under the item appearing on the agenda entitled "good and welfare."
- (3) Any person wishing to address the council shall signify his desire by raising his or her hand. When recognized by the chairperson, such person shall thereupon request permission to address the council, giving his or her name and address and designating the subject matter on which he or she desires to address the council.
- (4) Persons present at council meetings are requested not to applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting.
- (5) A person addressing the council on an item prior to the start of deliberation on such item by the council shall be permitted to speak only once on an item and shall limit his or her remarks on each item to five minutes, unless permission to



Speak for a longer period is requested and granted by a majority vote of the council.

- (6) Persons attending council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the council. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while attending the council meeting shall be removed from the room if a police officer is so directed by the chairperson.

(Policy of 1-6-1977, § 27; Policy of 12-2-2008)

**Sec. 2-78. - Determination in absence of rule.**

In the absence of a rule to govern a point or procedure at a meeting of the town council, it shall be determined by a majority of the members of the council present.

(Policy of 1-6-1977, § 28; Policy of 12-2-2008)

**Sec. 2-79. - Suspension, amendment or repeal.**

The rules of the town council shall not be dispensed with or suspended unless a majority of the members of the council present consent thereto. No rule or order shall be amended or repealed unless in conformance with the rules and regulations pertaining to such revisions.

(Policy of 1-6-1977, § 29; Policy of 12-2-2008)

**Sec. 2-80. - Executive sessions.**

The town council may recess into a closed or executive session, provided that such session may be called only by a public, recorded vote of 3/5 of the members present and voting and that a motion to go into executive session shall indicate the nature of the business of the executive session and that no other matter may be considered in that particular executive session. Executive sessions shall be conducted on those conditions specified in 1 M.R.S.A. § 404, as may be amended from time to time, and no others. No ordinances, rules, resolutions, regulations, contracts, appointments or other official action shall be finally approved at such executive session. All discussions in executive session are confidential. Members of the council shall not disclose or communicate the contents or nature of an executive session discussion to any person not present at the executive session.

(Policy of 1-6-1977, § 30; Policy of 1-15-1985; Policy of 12-2-2008; Policy of 12-15-2009(1); Policy of 1-15-2013)

**Sec. 2-81. - Hearings.**

Hearings of the town council shall be conducted in accordance with the procedures adopted by the town council governing hearings.

(Policy of 1-6-1977, § 31; Policy of 12-2-2008)

**Sec. 2-82. - Voting.**

Voting of the town council shall be by roll call according to the seating arrangement at the council table as provided in section 2-65, and the yeas and nays shall be recorded

in the official minutes of the meeting. The roll call vote may be alternated from the left to right and right to left, providing the chairperson votes last.

(Policy of 1-6-1977, § 32; Policy of 1-15-1985; Policy of 12-2-2008)

**Sec. 2-83. - Tie votes.**

If a tie in votes occurs on any proposal of the town council, the proposal shall be declared lost.

(Policy of 1-6-1977, § 33; Policy of 12-2-2008)

**Sec. 2-84. - Manner of voting.**

In all meetings of the town council, the vote on all matters passed upon shall be taken by "yeas" and "nays," and such individual "yea" and "nay" votes shall be entered upon the records of the meeting of the council, which records shall be open to the public.

(Policy of 1-6-1977, § 34; Policy of 12-2-2008)

**Sec. 2-85. - Form of enactments.**

The town council shall act only by ordinance, order, or resolve. All ordinances, orders, and resolves, except orders and resolves making an appropriation of money, shall be confined to one subject, which shall be clearly expressed in the title of the item cited on the agenda. An order or resolve involving an appropriation shall be confined to the subject of appropriations only.

(Policy of 1-6-1977, § 35; Policy of 12-2-2008)

**Sec. 2-86. - Division of question.**

Any member of the town council may require the division of a question when the sense will admit it.

(Policy of 1-6-1977, § 36; Policy of 12-2-2008)

**Sec. 2-87. - Ordinance style.**

In all votes of the town council on ordinances, the enacting form shall be: "Be it ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled that ..."

(Policy of 1-6-1977, § 37; Policy of 12-2-2008)

**Sec. 2-88. - Style of orders and resolves.**

(a) In all votes of command of the town council, the enacting form shall be: "Be it ordered that ..."

(b) In all votes of opinions, principles, facts, or purposes, the enacting form shall be: "Be it resolved that ..."

(Policy of 1-6-1977, § 38; Policy of 12-2-2008)

**Sec. 2-89. - First reading of ordinance, order or resolve.**

Every ordinance, order, or resolve of the town council shall have a first reading, unless the reading is dispensed with by the unanimous vote of those members of the council present, in which case the reading shall be by title only.

**(Policy of 1-6-1977, § 39; Policy of 12-2-2008)**

**Sec. 2-90. - Second reading of order or resolve.**

Any order or resolve of the town council may be passed after a first reading, which may be by title only if no member of the council present objects, unless on motion a majority of those members present vote in favor of a second reading at a subsequent meeting.

**(Policy of 1-6-1977, § 40; Policy of 12-2-2008)**

**Sec. 2-91. - Effective date of orders or resolves.**

All orders or resolves of the town council shall take effect immediately after passage.

**(Policy of 1-6-1977, § 41; Policy of 12-2-2008)**

**Sec. 2-92. - Effective date of ordinances.**

Ordinances of the town council shall take effect immediately and shall be in full force until amended or repealed, subject to their suspension upon petition pursuant to section 301 of the Charter.

**(Policy of 1-6-1977, § 42; Policy of 12-5-1989; Policy of 12-2-2008)**

**Sec. 2-93. - Town manager's attendance at meetings.**

The town manager shall attend all regular and special meetings of the town council, except when his or her removal is being considered, having the right to take part in discussions but not to vote.

**(Policy of 1-6-1977, § 43; Policy of 12-2-2008)**

**Charter reference— Town manager to attend meetings, § 502.5.**

**Sec. 2-94. - Town attorney's attendance at meetings.**

The town attorney shall, at the request of the chairperson or the town manager, attend specific regular and special meetings of the town council. The chairperson, other members of the council or the town manager may at any time call upon the town attorney for an oral or written opinion to decide any question of law. He or she may be asked to state his or her opinion upon any rule or parliamentary procedure, which opinion shall not be binding on the council.

**(Policy of 1-6-1977, § 44; Policy of 3-15-2005, § 3; Policy of 12-2-2008)**

**Sec. 2-95. - No-action letter.**

The town council will issue a "no-action" letter indicating that the town will take no enforcement action concerning an existing building located in violation of the setback

requirements of the Old Orchard Beach Zoning Ordinance, under the following conditions:

- (1) The no-action letter is requested by or on behalf of a property owner who is selling, financing or refinancing the subject property;
- (2) The setback violation has not been the subject of any prior notice of violation or other enforcement activity by the code enforcement officer;
- (3) The code enforcement officer agrees with the issuance of the no-action letter;
- (4) The building has existed in its current location for at least 20 years prior to the date of the no-action letter; and
- (5) No portion of the building extends into the right-of-way of a public road or onto abutting property.

(Policy of 1-6-2009)

**Sec. 2-96. - Cell phone use prohibited.**

There will be no use of cell phones either by voice or text messaging by any member of the council during any council meetings. This includes executive sessions, workshops and regularly scheduled council meetings.

(Policy of 12-15-2009(1))

**Sec. 2-97. - Revisions to rules.**

The rules of procedure set forth in this division 2 are a town council policy adopted in order to facilitate the conduct of the council's business. They are not an ordinance, and they may be revised by majority vote of the town council at any time, provided the proposed revision is filed in compliance with section 2-54 ("Filing of items for meetings").

(Policy of 3-15-2011)

**Secs. 2-98—2-125. - Reserved.**

### **Agenda Item # 7086**

The Town Manager indicated that are four separate agenda items that will waive foreclosure by the Town on properties that are past due in property tax payments. All four of these properties are mobile homes and the amount of taxes owed that would result in foreclosure is minimal, ranging from less than one hundred dollars up to six hundred dollars. His recommendation is to not foreclose on these four mobile homes at this time. This will allow the Town to work with the property owners in the next few months to settle their accounts and avoid the Town taking possession for a relatively small amount of taxes owed. The Town does not lose its right in the future to foreclose on these properties if taxes are not subsequently paid, and all tax liens remain in place so that the Town does remain whole going forward.

**# 7086 Discussion with Action: Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 15 Beachplum Drive, Assessor's Record T2030, Clavet, Michael, Owner.**

**MOTION: Councilor Blow motioned and Councilor Kelley seconded to Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 15 Beachplum Drive, Assessor's Record T2030, Clavet, Michael, Owner.**

**VOTE: Unanimous.**

**# 7087 Discussion with Action: Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 7 Freshwater Drive, Assessor's Record T1640, Roberts, Sharon A. Owner.**

**MOTION: Councilor Kelley motioned and Councilor Blow seconded to Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 7 Freshwater Drive, Assessor's Record T1640, Roberts, Sharon A. Owner.**

**VOTE: Unanimous.**

**# 7088 Discussion with Action: Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 87 Ryefield Drive, Assessor's Record T0040, Madore, Gale, Owner.**

**MOTION: Councilor Blow motioned and Councilor Kelley seconded to Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 87 Ryefield Drive, Assessor's Record T0040, Madore, Gale, Owner.**

**VOTE: Unanimous.**

**# 7089 Discussion with Action: Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 25 Mayflower Drive, Assessor's Record T1175, Wormwood, Robert L. Sr., Owner.**

**MOTION: Councilor Kelley motioned and Councilor Blow seconded to Authorize the Treasurer, per 36 M.R.S.A., Subsection 944, to record a waiver of foreclosure in the Registry of Deeds for the property at 25 Mayflower Drive, Assessor's Record T1175, Wormwood, Robert L. Sr., Owner.**

**VOTE: Unanimous.**

**# 7090 Discussion with Action: Amend the Special Event Permit for the Special Olympics Lobster Dip, approved December 5<sup>th</sup>, 2017, moving the date from January 1<sup>st</sup>, 2018 to January 13<sup>th</sup>, 2018 or January 20, 2018, weather dependent. Participants must be off the beach by 12:30 p.m., as there is another event approved for that day. Updated insurance certificate to be provided to the Town Clerk's Office by January 5<sup>th</sup>, 2018.**

**MOTION:** Councilor Tousignant motioned and Councilor Kelley seconded to add to the agenda, Agenda Item Number 7090 following Agenda Item Number 7089 - Amend the Special Event Permit for the Special Olympics Lobster Dip, approved December 5<sup>th</sup>, 2017, moving the date from January 1<sup>st</sup>, 2018 to January 13<sup>th</sup>, 2018 or January 20, 2018, weather dependent. Participants must be off the beach by 12:30 p.m., as there is another event approved for that day. Updated insurance certificate to be provided to the Town Clerk's Office by January 5<sup>th</sup>, 2018.

**VOTE:** Unanimous.

**GOOD AND WELFARE:**

**SHARRI MACDONALD:** She gave an update on the activities of OOB365 through the year and into the New Year and the purpose of the organization and the good will that it has brought to our community. Jerome Begart also spoke in support of the work of OOB365 as did Councilors who expressed their appreciation for the work and commitment to the community. Thanks also to the American Legion Post in our community who does so much to support OOB 365. She also expressed appreciation to the Town staff and particularly the Police and Fire Department for their services. Many activities in the New Year planned by OOB365 include a marvelous commitment to Foster Care Month as well as the Community Dinner again. OOB365 is working with this great lady named Alana Jones who helps find families for kids in Maine with A Family for ME. "A Family for ME" is the governing agency in Maine for this much needed service. It is overseen by Spurwink. As we researched this project, we found that not many people know what "A family for ME" is or how to access it. Our intent is to remedy that. We know that it is often hard to believe that people will do things for free, but we are making this our mission to help find even one kid, in need of a forever family, a home. With the opioid epidemic hitting hard in Maine, more and more babies need help and this event, though we will be sure to have a lot of fun, will help showcase the need. The project hopes to solve the problem of insufficient foster parenting and the problem associated with kids whose parents are abusing drugs. She explained that this is our game plan, we will be launching a campaign in January that will showcase the waiting children at local businesses. This is something that Alana is coordinating with us. We are starting by putting 21 posters of the waiting children at the Libby Memorial Library in Old Orchard Beach. We are also asking local businesses to help and put some of the waiting children posters in their businesses. This campaign will bring to the forefront the issue of these Maine kids. Over the next several months, we will plan and implement a "Fostering Family Fun Festival" that will take place on May 19<sup>th</sup> in Veteran's Memorial Park. The date is great because May is Foster Care Awareness Month!! This event will be totally free of admission and I have attached the poster for you to get the gist of what we are doing. The Rotary Club of Saco Bay Sunset has partnered with OOB365 to make this happen. We are going to invite current foster families, adoptive families and the general public to this event – we will be utilizing the network of foster and adoptive families to help spread the word as well as the respective social media pages. We are in high hopes that our community will jump on board with this event as well, as it really could make a difference in the lives of local kids. This event and its emphasis on giving some kids a forever home is something that is a win win for all involved.

**ADJOURNMENT**

**MOTION:** Councilor Tousignant motioned and Councilor Blow seconded to Adjourn the Town Council Meeting at 7:55 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 thirty (31) pages is a copy of the original Minutes of the Town Council Meeting of January 2, 2018.**

**V. Louise Reid**