

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

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, October 2, 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:

CHAIR: We have a correction to the Business Licenses this evening. May I have a motion to correct DEC Investments LLC dba/Sea Suds Laundromat (308-3-11-B), 20 Washington Avenue, two year round rentals should be corrected to say Laundromat.

MOTION: Councilor Kelley motioned and Councilor Blow seconded to correct a Business license to read: DEC Investments LLC dba/Sea Suds Laundromat (308-3-11-B), 20 Washington Avenue, two year round rentals should be corrected to say Laundromat.

VOTE: Unanimous.

ACCEPTANCE OF MINUTES: Accept the Minutes of the September 18, 2018 Town Council Meeting.

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

VOTE: Unanimous.

GOOD AND WELFARE:

SHARRI MACDONALD: She spoke about the work of the OOB365 and the number of tremendously exciting events that will be coming up in the coming months and to which everyone is invited to participate. She particularly talked about Halloween Hunted Walk, the Community Dinner, the Savor the Flavor event which is always popular, and the Christmas at the Beach. She acknowledged the hard work of the many volunteers who make these events so successful.

PUBLIC HEARING: Property Tax Relief Ordinance

Shall We Amend the Town of Old Orchard Beach Code of Ordinances, Chapter 2, Administration, adding Article VII, Property Tax Relief Ordinance?

CHAIR: I open this Public Hearing at 6:35 p.m.

BACKGROUND:

The proposed new program for our older residents who have been living in Old Orchard Beach for at least 10 years is shown below. The Town Council approved \$35,000 in funding during the budget process last spring for this purpose. It is directed at people who have modest incomes and for that reason are burdened by the cost of property taxes on their homesteads. The program is only available to year round residents who have made OOB their primary residence for at least 10 years. The program as proposed piggy backs on the existing Maine state property tax refund program which is available to people who file Maine income tax returns. Bu using the State program as the basis for qualification, the Town does not have to collect and analyze data and can simplify the application to a one-page form. The target here is long-term residents of the Town. Property values in coastal communities often increase faster than they do in other parts of the State, yet incomes along the coast don't necessarily increase at this pace. Under the proposed ordinance the combined benefit from the State program and the proposed local program cannot exceed the resident's property tax. Under the proposal a participant's local rebate would equal their State rebate, if there is enough money in the Town's fund to cover every participant's rebate at this level. If there isn't enough money to cover every rebate at this level, participants will receive a rebate at a prorated amount. According to information from 2017 State tax forms, a single person claiming one exemption can make up to \$26,050 to qualify for the State program, while a single person claiming four exemptions can make up to \$30,551. Under the State program, a couple claiming one exemption can make up to \$46,100, while a couple claiming four tax exemptions can make up to \$50,100. In Old Orchard Beach there were 110 recipients in the State property tax fairness credit program in 2015; 123 recipients in 2016; and 128 recipients in 2017. The total amount of these rebates the State granted residents in Town over these three years ranged from \$33,000 to \$35,600 annually. The maximum amount the State would grant an individual this year under the Property Tax Fairness Program would be \$900, though this could increase to \$1,200 next year. Should the Town approve the Tax Relief Program, it would be implemented in 2019.

**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 October 2nd, 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 2, Administration, adding Article VII, Property Tax Assistance Ordinance, by adopting the underscored language as follows:

TOWN OF OLD ORCHARD BEACH
PROPERTY TAX ASSISTANCE ORDINANCE
Chapter 2, Article VII, Town of Old Orchard Beach Code of Ordinances

Section 2-480. Purpose

The purpose of this Ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to qualifying persons who reside in the Town of Old Orchard Beach. Under this program, the Town of Old Orchard Beach may provide tax rebate and rental rebate payments to those individuals who meet the criteria established by this Ordinance.

Section 2-481. Definitions

Homestead: For purposes of this Ordinance, “homestead” shall have the same meaning as defined in 36 M.R.S.A. § 5219-KK(1)(C). Generally, a homestead is a dwelling owned or rented by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be a permanent residence, occupied by that person and that person’s dependents as a home.

Homestead Exemption: The State of Maine property tax exemption for all individuals who have owned a permanent residence in Maine for twelve (12) months as of April 1. Established by the State of Maine pursuant to 36 M.R.S.A. §683, as may be amended from time to time.

Property Tax Assistance Program: The program established by the Town of Old Orchard Beach under this Ordinance. Also referred to as the “Program.”

Property Tax Assistance Program Fund: The special revenue fund established by the Town of Old Orchard Beach under this Ordinance. Also referred to as the “Program Fund.”

Property Tax Fairness Credit Program: The property tax credit established by the State of Maine pursuant to 36 M.R.S.A. §5219-KK, as may be amended from time to time.

Qualifying applicant: A qualifying applicant is a person who is determined, after review of a complete application under Section 4 of this Ordinance, to be eligible for a tax rebate or rental rebate payment under the terms of this Ordinance.

Program Administrator: The Town Manager or his/her designee.

Section 2-482. Funding of the Program Fund

A special revenue fund entitled the Property Tax Assistance Program Fund as defined under the terms of this Ordinance shall be created to fund the payments under this Program.

The Town Manager may propose to the Town Council as part of his/her annual budget recommendation an appropriation of monies to fund the Program. Contributions and

grants for the purpose of property tax and rent relief will be accepted and deposited into the Property Tax Assistance Program Fund.

Payments under this Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund for the fiscal year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants in full under this Ordinance, payments shall be limited to the amounts available in the Program Fund on a pro-rata basis to each eligible participant based on the amount of the participant's calculated rebate under the Program. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.

Section 2-483. Criteria for Participation

To qualify for participation in the Property Tax Assistance Program, an applicant must demonstrate all of the following:

1. That the applicant has a homestead in the Town of Old Orchard Beach at the time of application and for ten (10) continuous years prior to the date of application.
2. That the applicant has received a tax credit under the provisions of the State of Maine Residents Property Tax Fairness Credit Program.
3. That the applicant is age 70 years or older as of the application deadline of November 1st.

Additionally, if the applicant is a property owner:

4. That the applicant has applied for and received the Homestead Exemption for the year for which the rebate is requested.
5. That the applicant has paid property taxes in full through the date of application.

Section 2-484. Application procedures and determination of eligibility

Persons seeking to participate in the Property Tax Assistance Program shall submit a written request to the Program Administrator no later than November 1 of the year for which the rebate is sought. A new application shall be required for each year in which participation in the Program is sought. The Program Administrator shall provide an application form for the Program, which shall include, at a minimum, the applicant's name, homestead address and contact information.

The Program is based on the State Property Tax Fairness Credit and relates to property taxes and rent paid in the preceding calendar year. As part of the application to the Town, the applicant shall authorize the Town to seek documentation from Maine Revenue Services of proof and dollar amount of the State Property Tax Fairness Credit received by applicant.

The Program Administrator shall review and determine if the application is complete and accurate, and if the applicant is otherwise eligible to participate in the Program. The Program Administrator shall notify an applicant if an application is determined to be incomplete or inaccurate. Applications not deemed complete by November 1 shall not be considered. The Program Administrator's decision on eligibility to participate in the Program shall be final.

Section 2-485. Determination of rebate

If the Program Administrator determines that the applicant is eligible to participate in the Program, he/she shall determine the rebate. The rebate shall be the lesser of the following amounts, but in no case shall the Town's rebate exceed the property taxes or rent paid in the preceding calendar year, less the State Property Tax Fairness Credit:

- A. The amount of credit qualified for under the Property Tax Fairness Credit Program; or
- B. A pro rata share of available monies in the Program Fund based on the calculated amount of the rebate.

The Town Manager shall report to the Town Council each year the projected payments and number of eligible applicants requesting assistance from the Program fund.

Section 2-486. Timing of rebate payments

A person who qualifies for payment under the Program shall be mailed a check for the full rebate amount (or pro-rated amount of available funds) no later than December 31 of the year in which the application is submitted.

Section 2-487. Limitations upon payments

Only one qualifying applicant per homestead shall be entitled to payment under this Program each year. The right to file an application and to receive a rebate under this Ordinance is personal to the applicant and does not survive the applicant's death, but such rights may be exercised on behalf of the applicant by the applicant's legal guardian, attorney-in-fact or personal representative.

TOWN OF OLD ORCHARD BEACH
PROPERTY TAX ASSISTANCE PROGRAM

Application Deadline –

Name: _____

Home Street Address: _____

If different from home address, mailing address: _____

Home Phone Number: _____ Email address (optional): _____

Please answer the following questions:

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Has the applicant paid taxes, or rent, on a primary residence in the Town of Old Orchard Beach at the time of application and for ten (10) years prior to the date of application? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the applicant filed Form 1040ME and the Property Tax Fairness Credit (PTFC) for 20? If yes, the Town will seek documentation from Maine Revenue Services of proof and dollar amount of the PTFC received. | <input type="checkbox"/> | <input type="checkbox"/> |

Please provide the Town of Old Orchard Beach, on my behalf, confirmation of the amount of credit I received from the State of Maine 2018 Property Tax Fairness Credit.

Signature

Social Security #

- | | | |
|--|--------------------------|--------------------------|
| 3. Will the applicant be at least 70 years old as of November 1? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. If a property owner, has applicant applied for, and received, the Homestead Exemption as of April 1 st for the year for which the rebate is requested? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. If a property owner, has the applicant paid property taxes in full through November 1? | <input type="checkbox"/> | <input type="checkbox"/> |

I declare that I have examined this application and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Applicant

Date

If you need any assistance with the completion of this form please contact the Town Manager's office at (207) 937-5626.

The Town Manager outlined the program as it is being presented. During the period Several residents spoke about their support of this program including the encouragement of the Community Friendly Connection to provide this type of program for seniors. Jerome Plante, Todd Bassett, Robin Dayton, Helene Whittaker, and Pat Brown all spoke about their encouragement and support to this program and it was announced that there would be an opportunity in December for those to come and hear about the program and have questions answered and that the date would be provided very soon.

CHAIR: The Public Hearing closed at 6:45 p.m.

BUSINESS LICENSES AND APPROVAL:

CHAIR: I open this Public Hearing at 6:45 p.m.

Donald & Angela Cote (212-3-2), 8 Old Orchard Road, four year round rentals; Kim Rooney (303-1-5-1B), 105 East Grand Avenue, #1B, one year round rental; Mark E. Mooradian (305-4-1-308), 1 Cleaves Street, #308, one year round rental; DEC Investments LLC (308-3-11), 20 Washington Avenue, three year round rentals; DEC Investments, LLC dba/Sea Suds Laundromat (308-3-11-B), 20 Washington Avenue, Unit B, Laundromat; Steven & Renee Sandon (309-7-6), 11 Westland Avenue, one year round rental; Pamela Behzadipoor (314-11-6), 103 Ocean Avenue, one seasonal rental; Alfred Baraby & Eileen Fagone (315-17-2), 29 Union Avenue, one year round rental; and Diane Elvin & Joe Finn (318-8-6-67), 146 West Grand Avenue, #67, one seasonal rental.

CHAIR: I close this Public Hearing at 6:46 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 met with a number of York County Town Managers at the Southern Maine Regional Development Commission to discuss legislative priorities for the 2019 Maine Legislative session. We have in the past worked on common issues such as funding and investment for the York County Community College; advocating for full State funding for York County jail costs; and funding for the Sara Long Bridge between Kittery and Portsmouth. Looking ahead to the upcoming legislative session we agreed that a top priority should be giving residents of each Town or City the authority to adopt by referendum a local option sales tax on meals and lodging. Here in Old Orchard Beach adding 1% to meals and lodging sales would generate over \$800,000 in revenue each year that could be used for capital improvements to streets, sidewalks and wastewater infrastructure. As we all know by now the State currently receives 100% of the revenue from the meals and lodging tax and very little of it is redirected to Old Orchard Beach.

York County Emergency Management held an open house last week for municipal officials. The Town Manager attended the event along with Chair Thornton, Councilor Blow, Police Captain Hemingway and Deputy Fire Chief Kindelan. The Emergency Management facility is in the space that used to be the County Jail. County EMA Director, Art Cleaves, and his staff have done a superb job in the renovations to this space. The County now has a first class facility for assisting Old Orchard Beach and other York County municipalities in responding

to and managing storms, fires, and other natural disasters. Very impressive work. The Town's consultant, Ransom Engineering, is continuing its work on filing an appeal to FEMA's proposed new flood elevation maps. The deadline for the appeal is October 29, 2018. We hope to receive a draft of the appeal by the middle of the month. The appeal will cover most of the Town's affected properties. For any that are not covered FEMA's proposed flood elevations are acceptable in some locations and therefore would not be appealed. There may be some locations not included that could reasonably be appealed given additional time for an appeal. These areas could be for revisions through FEMA's local map revision process after the appeal period. The Town Manager received word this past week that the Town's application for a one million dollar community development block grant for street, sidewalk, water and sewer infrastructure improvements in the Washington Avenue area will be awarded funding by the State CDBG office in 2019 as long as the Federal government budget is approved. The amount of the award is not final yet but it will be slightly less than the requested amount. This work would be on West Old Orchard Street, Fern Avenue, and portions of Washington Avenue.

NEW BUSINESS:

7247 Discussion with Action: Reenact the Emergency Ordinance establishing a Moratorium on Registered Caregiver Retail Stores, first approved February 6th, 2018, and currently expiring October 7th, 2018; and extend for an additional sixty-one days to expire December 7th, 2018."

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 Kelley motioned and Councilor Blow seconded to Reenact the Emergency Ordinance establishing a Moratorium on Registered Caregiver Retail Stores, first approved February 6th, 2018, and currently expiring October 7th, 2018; and extend for an additional sixty-one days to expire December 7th, 2018."

VOTE: Unanimous.

**Emergency Ordinance Establishing a Moratorium on ~~Medical Marijuana Storefronts~~
Registered Caregiver Retail Stores 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 61st 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.

Adopted 2/6/18; expires 4/7/18

Re-adopted 4/3/18; expires 6/7/18

Re-adopted 6/5/18; expires 8/7/18

Re-adopted 8/7/18; expires 10/7/18

Changed "Medical Marijuana Storefronts" to "Registered Caregiver Retail Stores"

7248 Discussion with Action: Amend the Town of Old Orchard Beach Code of Ordinances as follows: Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 – Conditions, Section 18-1278 – Contractor Storage Yard 1.

There were approximately fifty individuals in the audience who appeared to come for discussion of this item. At the beginning of the discussion the Town Manager indicated that this item had been previously discussed at a Public Hearing. He gave an overview of the issues raised in public comment and written submissions. Ten people spoke at the last Public Hearing and five residents submitted written remarks. Eleven people opposed the ordinance change and three supported it. The Minutes of last week's hearing include both the testimony at the Hearing and the written submissions and one is included in tonight's Minutes. He briefly reviewed the common themes and concerns expressed at the Public Hearing regarding the proposed ordinance. In general the objectives and concerns voiced with the ordinance at the Public Hearing were that the proposed changes would bring about an expansion of commercial operations to an area that is predominantly residential. Additional commercial businesses would be accompanied by unwanted noise, smells, truck traffic and heavy equipment, and that these by-products will negatively affect quality of life and the rural residential character of the neighborhood, and also lower property values of existing homes. Three people described the proposed Contractor Storage

Yard 1 use as industrial. Two people said that the ordinance is inconsistent with the Comprehensive Plan. Two said that they were concerned that the Town had not enforced the current plan. Two said that they were concerned that the Town had not enforced the current ordinance and similarly might not enforce the requirements of the proposed ordinance. Three people believe the proposed ordinance opens up too much land area for potential use as a CSY1, and one also objected to including the Town owned land that is now used for recreational trails and open space. The three people speaking in favor of the ordinance said that this part of Portland Avenue had long been used for various commercial uses involving rucks and heavy equipment and as such the proposed ordinance was consistent with both past and existing businesses.

Jeffrey Hinderliter, the Planner, presented the following information and comments:

Ordinance Amendment Summary

1. Contractor Storage Yard 1 (CSY1) allowed as a conditional use in a specifically designated area of the Rural District.
2. The specifically designated area includes lots of 1 acre or more with road frontage along Portland Ave between the Ross Rd/Portland Ave intersection and OOB/Scarborough town line (see map).
3. Review falls under Planning Board jurisdiction.
4. "Minimum Required Submission" info for CSY1 proposals include:
 - Scaled site plan showing location and details of buffering, lighting, storage areas, parking, structures/buildings, vehicle circulation, etc.
 - Description of all vehicles and equipment used by business
 - Description and quantity of materials stored on-site
5. "Minimum Development Requirements" for CSY1 proposals include:
 - Owner occupied residence must be on same lot as CSY1.
 - Setbacks for outdoor storage and vehicle parking
 - Buffer and screening standards
 - Storage area location limited to rear yard
 - Must comply with other town ordinances such as sound, lighting, signage, erosion control
6. "Other Review Criteria" apply to CSY1 proposals. This includes:
 - Limits to the size/scale of operation
 - Set hours of on-site activity

- Size and number of vehicles and equipment
 - Limits to traffic generation
 - Type, quantity, containment, location of materials stored on-site
7. As a conditional use, CSY1 must meet the conditional use ordinance standards including:

- Not result in significant hazards to pedestrians and vehicles
- Not create or increase any fire hazard
- Adequate off-street parking and loading areas
- Not cause water pollution, erosion, sedimentation, contamination of water supply
- Not create unhealthful conditions because of smoke, dust or other airborne contaminants
- Not create nuisances to neighboring properties
- Adequate waste disposal
- Compatible with existing uses in neighborhood regarding noise and hours of operation
- Buffering or screening to visually obstruct subject property from abutting uses
- Provide adequate drainage
- Applicant must have adequate financial and technical capacity

Additional Info

The following is from a Fact Sheet prepared to assist with understanding the proposed ordinance amendments:

1. If the Ordinance Amendments are adopted where will Contractor Storage Yard 1 be allowed?

- Lots with road frontage along Portland Ave., between the Ross Rd./Portland Ave. intersection and the OOB/Scarborough town line, that have an owner occupied residence and 1 acre or more in lot area

2. Which local ordinances will a Contractor Storage Yard 1 need to meet?

- Contractor Storage Yard 1 Conditional Use standards (these are the proposed ordinance amendments)
- Conditional Uses Ordinance
- Rural District performance standards
- Parking, Driveway, Off-Street Loading performance standards
- Sign performance standards
- Landscaping and buffering performance standards
- Erosion and Sedimentation Control performance standards
- Noise Ordinance

3. What are some of the requirements a Contractor Storage Yard 1 (CSY1) must meet?

- An owner occupied residence must be maintained on the same lot as the CSY1
- CSY1 lot must be a minimum of 1 acre
- CSY1 driveway entrances must be a minimum of 50' from adjacent property boundaries
- Outdoor storage and parking of vehicles and equipment must be set back 50' from front property line and 25' from side and rear property lines

- CSY1 parking and storage areas must be visually blocked from the street and abutting properties
- CSY1 will not result in significant hazards to pedestrian and vehicular traffic
- CSY1 will not cause water pollution or contamination of any water supply
- CSY1 will not create unhealthful conditions or nuisances because of odors, vibrations, smoke, dust, glare, noise, hours of operation
- CSY1 will not adversely affect value of adjacent property
- A site plan must be prepared showing storage areas, parking, structures, loading and unloading areas, buffering, and exterior lighting plan

4. How does the proposed Contractor Storage Yard 1 “(C) Other Review Criteria” work?

- The Other Review Criteria language is proposed because fitting a CSY1 proposal in one common criteria set will not provide adequate regulation. The type of CSY1 may vary as well as its potential impacts abutting properties. The Other Review Criteria will allow the PB to customize their review to fit the proposal in a manner that the other standards may not allow. For example, the Planning Board could require a more extensive buffer than what is typically required “so as to prevent adverse impacts to adjacent property.”

5. Who would be responsible for local review of a Contractor Storage Yard 1 proposal?

- A CSY1 proposal will require a Conditional Use Permit which is reviewed by the Planning Board. This permitting process includes site walks and public hearings which provides an opportunity for abutting property owners to review and comment
- Permit review by Code Enforcement if any structures, plumbing or electrical work is proposed
- Business License review by Town Council

The Planning Board heard and received a number of comments associated with this proposal regarding spot zoning, ordinance consistency with the comprehensive plan, changing the district/area to commercial, and impacts to property values. A few comments on each:

First, regarding spot zoning, it has been stated the present proposals and existing uses would require an illegal spot zone. A case cited to support this opinion is *Vella v. Town of Camden*. Regarding the claim associated with spot zoning in this case, “the plaintiffs contend, as they did before the trial court, that certain amendments to the Town's zoning ordinance are invalid because (1) they are inconsistent with the Town's comprehensive plan and constitute illegal spot zoning.” The case was decided in favor of the Town of Camden- “The record does not support the assertion of the plaintiffs that the legislative body of the Town did not consider whether the amendments enacted by it were consistent with and in basic harmony with the Town's comprehensive plan.” It's important to note that spot zoning is a neutral term encompassing both legal and illegal land use controls. The fact that a zoning amendment benefits only a particular property or is adopted at the request of a particular property owner for that owner's benefit is not determinative of whether it is an illegal spot zoning. Note the statement “spot zoning is a neutral term.” This is important because it's not

derogatory or favorable- it's simply neutral. Also, the proposed ordinance amendments do not pertain to a single parcel of land or single individual.

Second, regarding the comp plan (which also relates to the question of spot zoning), it has been stated such uses and necessary amendments to allow those uses would be plainly inconsistent with the vision set forth for the Rural District in the Town's comprehensive plan. I agree that the Rural District's intent includes preserving the open, rural Character of Old Orchard Beach. Although, the PB should know the Rural District also states "certain commercial activities and mineral extraction may be developed if it's in a manner sensitive to the objectives of these areas." These objectives include:

- Preservation of aesthetic rural character
- Noise regulations for commercial and industrial uses
- New construction to follow "good neighbor" performance and design standards. "Good Neighbor" standards include: protection of adjacent residential neighborhoods, regulation of scale, type of use, impact on visual & natural environment, landscaping, fencing, buffering, screening of parking and dumpsters, access to site, hours of operation, waste disposal, nuisances of noise and outdoor lighting.

Again, I agree the intent of the Rural District includes preservation of rural character; although, it does appear the comp plan allows certain commercial activities as long as they are developed in a manner sensitive to the objectives of these area which includes preservation of the aesthetic rural character and new construction that follows "good neighbor" standards. The proposed ordinance amendments include "good neighbor" standards. Also, existing ordinances that would apply to a proposed CSY1 include "good neighbor" standards.

Third, regarding the proposed amendments are changing the district classification to commercial, it could be argued this has already been done. Current ordinances allow the following uses in the same area (since at least 2001): limited commercial freight businesses, auto service and repair facilities, mineral extraction operations, animal husbandry for commercial purposes, private schools, public and private utility facilities, veterinary hospitals, and contractor storage yard 2. All of these uses could be classified as commercial uses. If the district was strictly limited to residential uses, I would agree this area is changing to a commercial zone. But, commercial uses are already permissible. Also, the zoning district is still the Rural District. What is changing is allowing a new land use to be permitted as a Conditional Use in a portion of the Rural District. The Rural District will remain the Rural District.

Fourth, impacts to property values. This is a common question when proposing zoning changes and a tough one to provide a reliable answer. The reason is a definitive answer can only be found after the change takes place and sales data is collected for that specific area. A common way to make this determination is to compare the property value before the zoning change to the property value, based on a sale, after the change. And the sample needs to be larger than one property. Studies can be found that show positive and negative impacts but it's hard to apply these to this case considering things such as commercial uses are already permissible in this area. The zoning change itself should not impact current land and building values or taxes- it is tied more to the use after it comes into existence.

The Council agenda was for the Town Council to vote on whether to change the Town ordinance to allow what the Town defines as a Contractor Storage Yard 1 as a conditional use in the rural district which includes parcels of one acre or more with road frontage along Portland Avenue between the intersection of Ross Road and Portland Avenue and the Scarborough Town line. The proposal for the planning amendment was spurred by the complaint of a neighbor of 169 Portland Avenue - MacDonald's Excavation, a business run in the Town's rural district. Currently Contractor Storage Yard 2 businesses are allowed in the rural district but Contractor Storage Yard 1 businesses are not. The major differences were outlined above between the two districts. It should be noted that Contractor Storage Yard 1 allows for fuel storage facilities up to 10,000 gallons, while Contractor Storage Yard 2 does not allow fueling storage facilities. Contractor Storage Yard 1 a business with employees while Contractor Yard 2 appears to allow a business conducted by a single person or "tradesman." Contractor Storage Yard 1 allows a display area which could be interpreted to allow for on-site customers while Contractor Storage Yard 2 does not allow for on-site display or resale to the general public. The Planning Board had previously recommended not passing this amendment.

Several residents who were there spoke including Attorney Keith Richard who presented a letter and also petition of signatures gathered from residents that opposed the Contractor Storage Yard 1 ordinance amendment. The letter of October 2, 2018 and attachments from Libby, O'Brien, Kingsey & Champion are attached to these Minutes. Below you will find the letter from them as well. Sharri MacDonald spoke for her family and asked that the item be removed from the Agenda in the benefit of community togetherness. Others individuals spoke including Robin Dayton, Robin Dube, John Paine, as well as comments from Council Michael Tousignant. Comments included the future issues relative to clusters of businesses, more rural housing is built as we speak the issue of pitting neighbor against neighbor if the situation isn't resolved. The questions were asked by the Town Council as to what other options could be looked at and suggestions were made such as revisions to the ordinance and bringing those to Council; increase in lot size; tighten up vehicles that are allowed; the number of vehicles; the types of vehicles; enforcement: yearly licensing and inspections prior to renewals; remove publicly owned properties; limit the storage of fuel; Consent Agreements; Contract Zone; or no action at all. Attorney Richards then requested that before a vote is taking a declaration of financial interest, monetary involvement needs to be noted by Councilors if this is the case. There were concerns that assumptions were being made that were not accurate. Council Tousignant indicated that as a business owner he has install new doors at the McDonald business and home but that this was done in line with his livelihood as a business owner. It should be noted that after the vote was taken there was a ten minutes break in the meeting which convened at 8:10 p.m.

MOTION: Vice Chair O'Neill motioned and Councilor Blow seconded to NOT AMEND the Town of Old Orchard Beach Code of Ordinances as follows: Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 – Conditions, Section 18-1278 – Contractor Storage Yard 1; AND that no present Town Councilor needed to remove themselves from participation in the vote as there was no conflict of interest.

VOTE: Unanimous.



KEITH P. RICHARD
krichard@lokllc.com
Admitted in Maine and Massachusetts

October 2, 2018

VIA HAND DELIVERY

Town Council
1 Portland Avenue
Old Orchard Beach, ME 04064

Re: Citizen Signatures Opposing Contractor Storage Yard Ordinance Amendment
Town Council Meeting October 2, 2018

Dear Town Council,

Our office represents Walter Murphy of 184 Portland Avenue. Enclosed, please find a petition of signatures gathered from residents that oppose the proposed Contractor Storage Yard 1 ordinance amendment.

Should you have any questions, do not hesitate to contact me.

Sincerely,

Keith P. Richard
Bar No. 5556

Enclosure

PETITION
RE-ZONING PORTLAND AVENUE

I am either an abutter of the MacDonald property(s) located on Portland Avenue, or live within a close proximity to the property.

The Town of Old Orchard Beach is proposing that the Zoning be changed from what is currently classified as a Contractor Storage Yard 2 (CSY2) to A Contractor Storage Yard 1 (CSY1). The specifically designated area includes lots of 1 acre or more with road frontage along Portland Ave. between the Ross Rd/Portland Ave. intersection and OOB/Scarborough town line as defined in the Ordinance Amendment Summary dated August 15, 2018.

This change will adversely affect all properties located in this area as follows:

1. Reduce the value of homes
2. Reduce the Quality of Life
3. Daily inconveniences and problems with the neighborhood
4. Increase traffic on Portland Avenue, causing damage to the road
5. Create loud noise from the excavation equipment
6. Allow for an undetermined number of construction equipment to be stored on the site
7. Allow for storage of construction materials and containers used in the heavy equipment business
8. Allow for a fueling storage facilities not exceeding 10,000 gallons
9. Potential for a pending application with the Maine Department of Environmental Protection to obtain a 21,000 gallon septic storage unit
10. Allow for potential 300+/- acres to be developed in the future
11. Would not be compatible with existing rural neighborhood setting as it exists today

The Town of Old Orchard Beach has the discretion as to whether it chooses to enforce its ordinances, therefore, the Town could choose to do nothing on the existing situation. Reference Jeffrey Hinderliter, Town Planner Memo dated July 11, 2018. Could this also be interrupted to apply, should Contractor Storage Yard 1 be passed, and the property owner is again allowed to grow beyond the guidelines as defined for CSY1, and the town has Not monitored the activity putting property owners right back to the position that we are in today!

BACKGROUND:

Contractor Storage Yard 1 vs Contractor Storage Yard 2

Zoning Ordinance Definitions:

Contractor storage yard 1 means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.

Contractor storage yard 2 means a yard, building, or combination thereof in which no more than two commercial vehicles, equipment, building supplies, and/or earth material are stored for use by a building or landscape contract tradesman solely for the conduct of the contract business and not for on-site display or resale to the general public.

Currently, the Rural District (RD) allows Contractor Storage Yard 2 as a conditional use. Contractor Storage Yard 1 is not allowed because it is omitted from the RD permitted and conditional use land use tables. Primary differences between Yard 1 & 2:

- Yard 1 allows for 3 or more construction/commercial vehicles. Yard 2 allows no more than 2.
- Yard 1 allows for fueling storage facilities up to 10,000 gallons. Yard 2 does not allow fueling storage facilities.
- Yard 1 appears to allow for a business with employees. Yard 2 appears to allow for a business to be conducted by a single person- “tradesman”
- Yard 1 allows a display area which could be interpreted to allow for on-site customers. Yard 2 does not allow on-site display or resale to general public.

CHAPTER 78 AMENDMENTS – CONTRACTOR STORAGE YARD 1

Ch. 78, Article VI, Districts and Article VII, Conditional Uses
(September 2018 Council)
(10 May 2018, PB Vote Version)

Amendment to Chapter 78, Article VI, Division 12 – Rural District, Section 78-963 – Conditional Uses (new language underlined):

(19) Contractor storage yard 1, only those parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

77

Amendment to Chapter 78, Article VII, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1 (new language underlined):

Sec. 78-1278 – Contractor storage yard 1

A contractor storage yard 1 may be permitted in the Rural District for parcels of land with road frontage on Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Line, provided the following conditions are met to the satisfaction of the planning board:

(A) Minimum Required Information

(1) A scaled site plan that show the following information:

- a. Storage areas for materials and equipment.**
- b. Parking and maintenance areas for business vehicles.**
- c. Location of buildings and structures on the site.**
- d. Vehicular circulation on the site, including points of access to the site from public roads, loading and unloading areas, employee and customer parking.**
- e. Landscaping and buffer areas.**
- f. Exterior lighting plan, including location, fixtures and specifications.**

(2) Description of all vehicles, trailers and equipment stored, maintained or used by the business on the property.

(3) Description and quantity of all fuel and chemicals stored on the property.

(4) Description and quantity of all materials stored on the property.

(5) Description how business complies with the “Contractor Storage Yard 1” definition (see Chapter 78, Article I.

(6) Any other information as might be reasonably required by the Planning Board to assist with making a thorough evaluation of the proposal.

(B) Minimum Development Requirements

(1) Driveway entrances from the street to parking and storage areas shall not be located within fifty (50) feet of any adjacent property boundary line. Driveways used exclusively for the residence shall be exempted from this standard.

(2) The outdoor storage and parking of vehicles and equipment shall be setback a minimum fifty (50) feet from the front property line and twenty-five (25) feet from the side and rear property lines. Vehicles used exclusively for residence parking shall be exempted from this standard.

(3) All parking and storage areas shall be visually blocked from both the street and abutting properties by a solid fence and either an earth barrier or vegetative plantings. Vehicles used exclusively for residence parking shall be exempted from this standard.

(4) The storage area and/or associated accessory structures must be located in the rear yard area of the residential unit.

(5) Each lot shall be a minimum of one (1) acre.

(6) An owner occupied residence must be maintained on the same lot as the contractor storage yard 1.

(7) Compliance with applicable Rural District Performance Standards, Sec. 78-965.

(8) Compliance with applicable sound standards in Chapter 26, Article II.

(9) Compliance with applicable Chapter 78, Article VII Performance Standards.

(C) Other Review Criteria

(1) Scale of operation. The Planning Board may limit the scale of proposed operations so as to prevent adverse impacts on adjacent property.

(2) Hours of operation. The Planning Board may limit and set hours of operation for on-site activities so as to prevent adverse impacts on adjacent property.

(3) Size and number of vehicles and equipment. The Planning Board may limit the size (gross weight, length, and wheelbase) and number of vehicles and equipment so as to prevent adverse impacts on adjacent property.

(4) Traffic on and off site. The Planning Board may limit the traffic generated by the contractor storage yard 1 so as to prevent adverse impacts on adjacent property.

(5) Materials stored on site. The Planning Board may limit the type and quantity of materials stored on site so as to prevent adverse impacts on adjacent property. All materials likely to produce odors or dust shall be contained so as to prevent adverse impacts on adjacent property.

MOTION: _____ motioned and _____ seconded to Amend the Town of Old Orchard Beach Code of Ordinances as follows: Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 – Conditions, Section 18-1278 – Contractor Storage Yard 1.

VOTE: Unanimous.

To the Old Orchard Beach Town Council,



My name is William O'Donnell, I have resided at 145 Portland Ave. since 1988.

In regards to the zoning changes in question for Portland Ave.:

* In 30 years I have NOT been affected by heavy machinery traffic passing my house by any of the following businesses:

- 1 - MacDonalds Excavation/Quick Drain
- 2 - Brian Murphy's Stonehenge Landscape Co. / Auto Repair
- 3 - Mark Bureau's Appleridge Excavation & Development Co.
- 4 - Brian Robillard's Landscaping Co.

* As far as visual impact's from the street

3 and # 4 - can not be seen

2 - has a large impact with vehicles / heavy equipment / aggregates and trailers - all visible from the road.

1 - has minimal impact with most equipment and materials stored far off the road, and behind the barn.

I would hope that if the council establishes new zoning ordinances the enforcement would be "across the board" with all the above businesses.

Thank you in advance for your time.

A handwritten signature in black ink, appearing to read "William O'Donnell". The signature is fluid and cursive, written over the printed name.

Please feel free to contact me at:

Home 934-5299

Cell 423-5975

Bill O'Donnell

7249 Discussion with Action: Re-appoint David Huntington as Election Warden and Warren “Todd” Bassett and Martha Conlan as Deputy Election Wardens, terms to expire 10/02/2019.

MOTION: Councilor Kelley motioned and Vice Chair O’Neill seconded to Re-appoint David Huntington as Election Warden and Warren “Todd” Bassett and Martha Conlan as Deputy Election Wardens, terms to expire 10/02/2019.

VOTE: Unanimous.

7250 Discussion with Action: Approve the Pole Permit from Northern New England Telephone Operations LLC and Central Maine Power Company to install a pole on Date Street, 2½ [2H] Approximately 546 feet northeasterly of the intersection of center line of Cascade Road, one pole.

MOTION: Councilor Blow motioned and Councilor Tousignant seconded to Approve the Pole Permt from Northern New England Telephone Operations LLC and Central Maine Power Company to install a pole on Date Street, 2½ [2H] approximately 546 feet northeasterly of the intersection of center line of Cascade Road, one pole.

VOTE: Unanimous.

7251 Discussion with Action: Approve the Special Event Permit application for 5k Sports Race Management to hold a road race on Saturday, March 23rd, 2019, from 6 a.m. to Noon. Two Old Orchard Beach police officers are required, and must be booked at least two weeks prior to the event; any cancellation of the event must be at least one week prior to the event. Insurance, listing the Town of Old Orchard Beach as additionally insured, to be provided to the Town Clerk’s Office at least one month prior to the event.

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

VOTE: Unanimous.

7252 Discussion with Action: Approve the Special Event Permit application for the Town’s Museum in the Streets Committee to hold a Haunted Walk in the downtown area on Saturday, October 20th, 2018 from 4 p.m. to 8 p.m.

MOTION: Councilor Blow motioned and Councilor O’Neill seconded to Approve the Special Event Permit application for the Town’s Museum in the Streets Committee to hold a Haunted Walk in the downtown area on Saturday, October 20th, 2018 from 4 p.m. to 8 p.m.

VOTE: Unanimous.

7253 Discussion with Action: Cancel the Regular Town Council Meeting of Tuesday, January 1, 2019 as it falls on New Year’s Day.

MOTION: Councilor Kelley motioned and Councilor Blow seconded to Cancel the Regular Town Council Meeting of Tuesday, January 1, 2019 as it falls on New Year's Day.

VOTE: Unanimous.

7254 Discussion with Action: Authorize the Fire Chief to expend up to \$26,500 for the purchase of a vehicle to be used by the Fire Department from Account Number 52002-50897 – Fire Department CIP Vehicle Expense, with a balance of \$30,000.

BACKGROUND:

The request for the Fire Chief to expend up to \$26,500 for the purchase of a vehicle to be used for the Old Orchard Beach Fire Department.

MOTION: Councilor Blow motioned and Councilor Kelley seconded to Authorize the Fire Chief to expend up to \$26,500 for the purchase of a vehicle to be used by the Fire Department from Account Number 52002-50897 – Fire Department CIP Vehicle Expense, with a balance of \$30,000.

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Councilor Kelley motioned and Councilor Tousignant seconded to Adjourn the Meeting of the Town Council at 8:28 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-three (23) pages is a copy of the original Minutes of the Town Council Meeting of October 2, 2018.

V. Louise Reid