

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, January 19, 2016
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, January 19, 2016. Chair O'Neill opened the meeting at 7:15 p.m.

The following were in attendance:

**Vice Chair Joseph Thornton
Councilor Kenneth Blow
Councilor Jay Kelley
Councilor Michael Tousignant
Town Manager Larry Mead
Assistant Town Manager V. Louise Reid
Public Works Director Marc Guimont**

Absent: Chair Shawn O'Neill

**Pledge to the Flag
Roll Call**

**PRESENTATION: Scout Troop 310 and Scout Noah Doucette
Wooden Library Box Project to provide free reading materials**

CHAIR: Our presentation this evening is by Scout Noah Doucette, a member of Scout Troop 310 who is working toward his Eagle Badge. It is Noah's desire with the assistance of the Edith Belle Memorial Library and the Rotary Club of Saco Bay Sunset to build and install six wooden book boxes to hold used donated books from the Library for the general public to take free. We welcome members of Scout Troop 310, the leader is Dwight Anderson, and also the chair of the Edith Belle Memorial Library Board of Directors Mary Ann Kotros and also a board member, Israel Collins. We also welcome Dennis Robillard from the Rotary Club. Our presentation this evening is by Scout Noah Doucette, members of Scout Troop 310 who is working toward his Eagle Badge. It is Noah's desire with the assistance of the Edith Belle Memorial Library and the Rotary Club of Saco Bay Sunset to build and install six wooden book boxes to hold used donated books from the Library for the general public to take free. The boxes, with the permission of the owner, will be installed in six various locations around Old Orchard Beach such as Memorial Park, Landry's Grocery store, the Pier, The Brunswick, Ocean Park, and Jimmy the Greek's. The Rotary Club will handle acquiring permission to install the book boxes on these properties. A consent form will be signed by each of the locations being asked to have one of the book boxes. Libby Library will fill the boxes every one or two weeks. There will be signage stating that the books are free and that they belong to the Libby Library. Noah's project will include a book drive with the assistance of his family and the friends of Troop 310, Pack 311, and Pack 350 for the initial stocking of the boxes. The Libby Library and Rotary Club will be responsible for the ongoing monitoring and supplying of the books. The project is to be started in mid-February and completed sometime in March.

Noah is here this evening to introduce to the Town Council the project that has been developed and urging them to support the endeavor. An example of what the boxes will look like has been provided to the Town Council. The estimated cost is approximately \$520 and those funds will be raised by a bottle drive and the Rotary Club will be donating \$200. The project will be done in phases which includes getting a fundraising permit from the Pine Tree Council; recruiting volunteers for the bottle drive; conducting the bottle drive; buying materials; setting a date with the volunteers to build, paint and stain the boxes; conduct a book drive with Troop 310 and Pack 311; install the boxes at the locations; and filling the boxes with books. Noah has come forward to the Council this evening to present his plan and to ask for their affirmation of support.

ACKNOWLEDGEMENTS:

COUNCILOR KELLEY: Our sincere appreciation to the City of Biddeford for their donation of \$100 towards the purchase of a second Beach Wheel chair. We have expressed our thanks to Curt Koehler, the Finance Director, and asked that he share those thanks with the Biddeford City Council.

VICE CHAIR THORNTON: We would like to express our appreciation and that of the Community Animal Watch to Kris Fish for his generous donation of free collars for any animal CAW rescues and doesn't have one in an effort to help identify these pets and return them to their families. In addition, he is donating all of his on-hand collars and leashes to CAW and for the month of February will donate 20% of all pet item sales to CAW as well. As Kris has said – "Let's work together to help identify our furry loved ones and return the lost to their homes as quickly as possible." Thanks Kris for your great kindness.

ACCEPTANCE OF MINUTES: Town Council Minutes of January 5, 2016.

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

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR: I open this meeting at 7:27 p.m.

Judith & Gregory Moore (103-1-14), 2 Cardinal Lane, one year round rental; Frank R. Gazarian & Karen Lento Gazarian (210-2-53-18), 16 Smithwheel Road, Unit #18, one year round rental; and Peter Flood (311-8-1), 11 Sixteenth Street, two year round rentals.

CHAIR: I close this Public Hearing at 7:28 p.m.

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

VOTE: Unanimous.

TABLED ITEM:

AGENDA # 6552

AGENDA ITEM: Discussion with Action: Re-appoint the following Committee members; Kim Schwickrath, Donald Comoletti and Mark Lindquist, Design Review Committee, terms to expire 12/31/17; Kimbark Smith, Conservation Commission, term to expire 12/31/18; Michael Fortunato, Planning Board, term to expire 12/31/17; Jayne Flaherty, Registration Appeals Board, term to expire 12/31/2019; Owen Stoddard, Zoning Board of Appeals, term to expire 12/31/18; Robin Dube, Board of Assessment Review, term to expire 12/31/18; Michelle Geyer, Denise Zahares and Carol Twomey, Community Animal Watch Committee, terms to expire 12/31/17; Winthrop Winch, John Bird, Lou Valentine and Jason Webber, Comprehensive Plan Committee, terms to expire 12/31/17; Robert Rings and W. Victor Gould, Ballpark Commission, terms to expire 12/31/18.

MOTION: Councilor Blow motioned and Councilor Kelley seconded to Re-Appoint Committee and Board members as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT:

The Town Manager reported that he had finalized tax foreclosures and was pleased that the number of properties was reduced to six thanks to staff's ongoing efforts using personal contacts and mailed reminders to property owners. Continued work with Departments on developing capital budgets for the FY17 budget year. Worked with Finance Director on development of an RFP for downtown trash and maintenance services. These will be sent out tomorrow with the goal of bringing a proposed contract award to Town Council on March 1st. Working with Chris White and Wright Pierce on the dewatering processing building project approved by the voters, as well as incorporating incremental odor reduction steps. The storage garage project is also moving forward which had been approved by the Planning Board. The Dunkin Donuts project continues with a public hearing last week and a workshop to be held on January 28th for the Board to discuss the project, in particular the traffic implications. The State MDOT has jurisdiction over proposed changes to traffic structures on Saco Avenue at this intersection. The budget for the library renovations was finished at 90% of funding. The Town Manager said he is working with the Library Board on a proposal to replace those windows in the front part of the building that were not included in the renovation project due to budget constraints. The windows are over sixty years old and should be replaced.

6554 Discussion: Presentation of the Fiscal Year 2015 Audit by RHR Smith & Company.

BACKGROUND: The Accounting Firm of RHR Smith & Company has audited the municipality over the past few months and will present their audit report to the Town Council this evening.

The audit report is on the Town's web site for review by anyone interested in the comments that were provided by the Auditor.

Presenting the report to the Council is Auditor – Gregg Chabot. RHR Smith & Company has been conducting the audit for the past three years and will present the 2015 Audit in this evening's Council meeting. The Town Manager acknowledges the excellent work of the Finance Director, Diana Asanza and her staff.

Auditor Gregg Chabot started out by defining the work of an auditor. Internal controls are a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations and policies. A broad concept, internal control involves everything that controls risks to an organization. It is a means by which a municipality's resources are directed, monitored and measured. There were some minor matters referred to as "management letter comments" that offered the opportunity for strengthening internal control and improving operating procedure of the Town of Old Orchard Beach. It was noted that general ledger reconciliations should be done on a monthly basis. He complimented the Finance Director and her staff for their continued adherence to financial policies and procedures and the Town Council expressed their appreciation as well.

6555 Discussion with Action: Amend the Town of Old Orchard Beach Code of Ordinances to allow Cafes as a Conditional Use within the General Business District 2 (GB2) as follows: Chapter 78-ZONING, Article VI – DISTRICTS, Division 9 – GENERAL BUSINSS DISTRICT 2 (gb-2), Section 78-833. CONDITIONAL USES, (6) Cafes.

BACKGROUND:

A Public Hearing was held on Tuesday, January 5th at which time no public comment was given.

MOTION: Councilor Blow motioned and Councilor Kelley seconded to Amend the Town of Old Orchard Beach Code of Ordinances to allow Cafes as a Conditional Use within the General Business District 2 (GB2) as follows: Chapter 78-ZONING, Article VI – DISTRICTS, Division 9 – GENERAL BUSINSS DISTRICT 2 (gb-2), Section 78-833. CONDITIONAL USES, (6) Cafes.

VOTE: Unanimous.

**TO: Old Orchard Beach Town Council
Larry Mead, Town Manager
Louise Reid, Assistant Town Manager**
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: Proposed Ordinance Amendment- Cafes
DATE: 9 December 2015

At the 15 December 2015 Council Meeting, the Council will begin consideration of adding the Café land use as a Conditional Use within the General Business 2 Zoning District. Background info is below.

This proposal is to amend Chapter 78 (Zoning) to allow Cafes as a Conditional Use within the General Business 2 (GB2) Zoning District. Cafes are defined as:

Cafe means a food service establishment providing foodstuffs and/or nonalcoholic beverages for consumption on or off the premises with a service counter not directly accessible to the public from outside of the building, and indoor seating for not less than eight persons. Cafes may offer sidewalk cafe service provided that the number of outdoor seats does not exceed the number of indoor seats provided.

After learning that the applicant (Toni Maestre) could not establish a food service-related business at her property on Saco Ave. (Curl-Up and Dye), she approached me to discuss how she could proceed with establishing a food service business at this location. She stated that it has been on the market for some time and most of those who have serious interest in the property want to use it as a restaurant or some type of business related to food service. At one time, a restaurant existed on the property (over 10 years ago) but it was replaced by a hairdresser.

When the proposal was brought to me, I found that the food service businesses similar to what the potential buyers wanted were not permissible in the GB2. This is not because they are specifically identified as ‘Not Permitted.’ It is because they are not identified as ‘Permitted’ or ‘Conditional Use’ when in other districts, food service-related businesses are identified as Permitted or Conditional.

During my review of this proposal to see if I could make a food service business fit within the GB2, I considered:

- Food service-related land uses currently identified in town ordinances.
- Food service-related land uses that may be appropriate and compatible for this property and surrounding area.
- Potential impacts (e.g., traffic, noise) the uses could introduce.
- Existing land uses.
- Guidance from the Comprehensive Plan.
- The ordinance standards that may apply, including if the current standards could properly regulate a food service-related land use in this area.
- Who should be responsible for municipal review (e.g., PB, planning staff, codes).

After my evaluation of the proposal, I determined that allowing Cafes as a Conditional Use within the GB2 was the best way to proceed. To do this requires a pretty simple ordinance amendment which identifies Cafes as a Conditional Use within the GB2. I discussed this with the applicant and she felt comfortable with my recommendation.

6556 Discussion with Action: Approve the Special Event Permit Application for Ralph Quaglietta and OOB365 to hold “Back to the Beach” Corvette Weekend, Saturday, June 11th, 2016, June 10th, 2017 and June 9th, 2018, to include closing Old Orchard Street from 10 a.m. to Noon, with a parade to follow. Insurance, listing the Town of Old Orchard Beach as additionally insured, to be provided to the Town Clerk’s Office one month before each event. Insurance for 2016 already provided.

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

VOTE: Unanimous.

655 Discussion with Action: Approve the Special Event Permit application for the American Cancer Society to hold a Polar Dip and Bonfire on the beach in front of the Brunswick on Saturday, March 5th, 2016. Set-up from 10 a.m. to 11 a.m., event 11 a.m. to 2 p.m., take down from 2 p.m. to 3 p.m. One Old Orchard Beach Police Officer required. 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 Blow motioned and Councilor Tousignant seconded to Approve the Special Event Permit as read.

VOTE: Unanimous.

6558 Discussion with Action: Remove the “Outdoor Display” fee from the Schedule of License, Permit and Application fees.

BACKGROUND: On July 15th, 2014, several amendments were proposed to the Town Council. Vice Chair Quinn brought up the issue below (excerpt from the July 22nd minutes) regarding outdoor displays, and the agenda item was tabled until July 22nd, 2014, a Special Meeting. The meeting was not televised, and the minutes do not reflect a deletion of the Outdoor Display provision, but the Town Manager stated it was mentioned during the meeting to delete it. Since there isn’t a record of the deletion, this agenda item is to clear up the fact that Outdoor Displays are hereby eliminated from the Code of Ordinances, Schedule of Fees. The fee is currently \$100.

July 22nd, 2014 excerpt of the minutes:

“During the discussion, Vice Chair Quinn brought up the issue of outdoor displays. It had been discussed during the budget process and it was noted that there are three in town and it was felt by several on the Council that there are more than three and that a better understanding of the definition of outdoor displays is necessary. It was requested that the Planner find out the origin of the outdoor displays and get more information on specific standards related to them and get back to the Council on this. This had not been accomplished and Vice Chair Quinn asked that this be reconsidered until that information was provided. He also raised the rescue billing ambulance fees and reminded the Council that there was consensus to include increases or decreases each year to the rescue billing

fees based on Medicare increases and decreases. Again he requested that consideration be given to this. The Chair recommended that this agenda item be tabled and that it be considered at the next meeting although the Town Manager urged the Council to approve and make further changes later.

MOTION: Councilor Blow motioned and Councilor Tousignant seconded to Table the Code of Ordinances, Appendix A, Schedule of License, Permit and Application Fees, by amending the following sections: Ambulance Billing Fees, Building, Electrical Permits, License Ordinance Categories, miscellaneous (photocopying), Plumbing Permits, Sewers, and Zoning.

VOTE: Yea: Councilors Blow, Tousignant, Vice Chair Quinn, Chair O'Neill
Nea: Councilors Pastor and Thornton"

MOTION: Councilor Blow motioned and Councilor Kelley seconded to Remove the "Outdoor Display" fee from the Schedule of License, Permit and Application fees.

VOTE: Unanimous.

6559 Discussion with Action: Authorize the Town Manager to enter into an Agreement with Pro Talent Baseball, LLC to use The Ballpark for minor league professional baseball in 2016, with an option for 2017, for a user fee of no less than \$22,000.

BACKGROUND: The Town Manager has met with the owners of the Pro Talent Baseball LLC in their desire to use The Ballpark for minor league professional baseball in 2016 and possibly 2017.

MOTION: Councilor Blow motioned and Councilor Kelley seconded to Authorize the Town Manager to enter into an Agreement with Pro Talent Baseball, LLC to use The Ballpark for minor league professional baseball in 2016, with an option for 2017, for a user fee of no less than \$22,000.

VOTE: Unanimous.

**TOWN OF OLD ORCHARD BEACH
Memorandum**

January 14, 2016

TO: Members of the Town Council
FROM: Larry Mead, Town Manager

RE: ITEM #6659 AGREEMENT TO HOST MINOR LEAGUE BASEBALL AT THE BALLPARK IN 2016

This item would authorize me as Town Manager to enter into an agreement with Pro Talent Baseball, LLC, to play minor league baseball at The Ballpark in 2016, continuing with the name OOB Surge. Included in your package is a draft agreement for your review.

The Surge would be part of a four team Empire League. The three other teams will operate out of New York State, in Watertown, Rome and tentatively Albany. The proposal is to play 40 home games at The Ballpark. The quality of baseball would be very similar to that from the 2015 baseball season. The Watertown team is a carry over from 2015.

The individuals who are behind the proposal include Ed Gonzalez and Matt Snyder. Mr. Gonzalez was involved last year with the North Country Baseball League. Both Mr. Gonzalez and Mr. Snyder have been involved in professional baseball for many years. Alex Markakis will continue to act as general manager for the Surge as he did last year.

The user fee for 2016 would be a minimum of \$22,000. This is in line with the fee paid last year by the Surge and will be sufficient to cover the Ballpark's cost of operation per game. In addition, if the team is successful in achieving even a modest growth in attendance from 2015, the Town will earn revenue above cost from operating the food and beverage concessions, with a very conservative projection of \$5,000 in profit.

The agreement requires payment in advance for 60% of the user fee as well as an advance payment of a \$5,000 security deposit, with the balance of fees due by July 15.

The Ballpark Commission has voted to support this proposal.

The Town and the Surge can agree to extend the terms of the agreement for an additional year. However, the Town can, prior to November 1, decide not to continue for the 2017 season.

Agreement for use of The Ballpark with Pro Talent Baseball LLC, DBA "OOB Surge"

For good and valuable consideration, agreement made this ___ day of _____, 2016 between the **Pro Talent Baseball LLC**, DBA **OOB Surge** a private corporation formed and operating under the laws of the State of Florida with the corporate and mailing address of 306 15th Ave., Ruskin, FL 33570 ("OOB Surge") and the Town of Old Orchard Beach, a Maine Municipal Corporation with the mailing address of 1 Portland Avenue, Old Orchard Beach, Maine ("Town"), and with OOB Surge collectively ("Parties") for the purpose of establishing the terms of use of the Old Orchard Beach Ballpark by OOB Surge and authorizing certain related activities under the terms set forth herein (the "Agreement").

1. The Facility. The Town owns and operates public facilities located at 7 Ballpark Way in the Town known as the Old Orchard Beach Ballpark ("The Ballpark"). The Ballpark consists of an outdoor stadium set up for baseball events with 5,000 seats, public address and press boxes with audio and scoreboard systems, 15 skyboxes, a baseball playing field with a diamond, bases, fencing, lighting and dugouts, associated parking areas, a clubhouse with offices and locker rooms, restroom facilities, concession and merchandise stands, ticket booth, plus other buildings. The Town holds certain events at the Ballpark and licenses the facility to various athletic and other groups for purposes of hosting athletic or other outdoor gatherings.

2. OOB Surge will participate as a team in the Empire Baseball League and use the Ballpark as its home facility for the 2016 Season and other summer seasons as set forth in this Agreement.

3. Term of the Agreement, Event Scheduling and Rights to Extend for a 2017 Season. The term of this Agreement is for the period commencing May 15, 2016

and ending August 31, 2016 with the renewal rights for the 2017 summer season for the Old Orchard Beach Surge team. This term has been set to accommodate an expected (40) regular home games in 2016 and up to (40) additional home games in 2017. The home game schedule for each separate summer season shall be set in collaboration with the Old Orchard Beach Ballpark Operations Manager and approved by the Ballpark Commission. The Parties may mutually agree in writing, prior to November 1, 2016, to extend the term of this Agreement for one additional season, ending August 31, 2017. Such extended term shall be set and operate under similar terms and conditions as set forth in this Agreement.

4. Non-exclusive Use and Scheduling of the Ballpark. The use of the Ballpark by OOB Surge shall not be exclusive. The Town reserves the right, and OOB Surge agrees that the Town has the right, to schedule other events at the Ballpark at any time when OOB Surge does not have a home game.

The Town pledges to cooperate with OOB Surge in scheduling events at the Ballpark and to attempt to reasonably accommodate the practice days, rain make up days and scheduling of any post season games of OOB Surge. The Town otherwise reserves its right, and OOB Surge acknowledges the Town's right, to schedule other events and users for the Ballpark.

The Surge shall work around Town events already scheduled prior to the final Empire League schedule. Once the Surge's schedule is set and submitted, the Town shall work around the Surge's schedule.

5. User Fee, Security Deposit, Ticket Sales, Payments to the Town.

A. User Fee. For the privilege of using the Ballpark for its home field, OOB Surge shall pay the Town a User Fee of \$22,000.00 (the "User Fee") for the 2016 Season. The User Fee shall be non-refundable. OOB Surge also shall pay the Town additional fees of either \$400.00 or \$550.00 for each game to be set according to the following:

- i. For each game played at the Ballpark over the (40) games allowed for each summer season, OOB Surge shall pay the \$150.00 for each day game or \$300.00 for each night game, and
- ii. \$100.00 for the use of public address system and box, press box, electronic scoreboard, parking lot, and the merchandise building, and
- iii. \$150.00, for the use of the restrooms, clubhouse, and skyboxes.
- iv. If Town and OOB Surge agree to continue this agreement beyond the 2016 season the user fee shall be modified by mutual agreement.

B. Security Deposit. OOB Surge shall pay the Town a \$5,000 Security Deposit. The security deposit will be used by the Town to pay the cost of repairs or for any replacements necessitated by damage to the Ballpark facility at the end of each respective summer season that are the result of OOB Surge's use of the Ballpark. The Security deposit may also be used by Town to cover any unpaid expenses incurred by the Town and directly attributed to the Surge use of The Ballpark but not otherwise covered by the user fee. OOB Surge shall be given by Town the opportunity to timely repair or replace, to the Town's satisfaction, items damaged during OOB Surge's use. Subject to all repairs and replacements having been completed to the Town's satisfaction, the Town will refund to OOB Surge any balance of the Security Deposit on or before September 15.

C. User Fee and Security Deposit Payment Dates. Payment in the amount of \$5000.00 of the User Fee is due and shall be paid to the Town on signing of agreement. The second payment of the

user fee in the amount of \$8000.00 is due and to be paid by the Surge to the Town by May 1. The balance User Fee of \$7000.00 will be paid to the Town by Surge by July 15. The Security Deposit will be paid to the town by May 1. The Town reserves the right to suspend use or cancel use of the Ballpark by OOB Surge if payment of user fee and security deposit is not received by due dates specified herein.

D. Ticket Sales, Payments and Parking Areas. The ticket sales booth shall be available and open to the Town for its use during Town sponsored events. OOB Surge shall be solely responsible for all ticket sales for OOB Surge games and events. At all times the Town shall hold the exclusive right to oversee, manage and supervise the use of the parking areas associated with the Ballpark. Neither the Town nor OOB Surge will collect revenues for use or parking in the parking areas.

6. Insurance. OOB Surge shall, prior to May 1, provide evidence that it has retained, and shall carry and at all times keep current during the term of the Agreement, at OOB Surge's sole expense, the following insurance policies with limits as set forth below

A Comprehensive General Liability Policy insuring liability and property damage against all claims and demands for any personal injury to or death of any person and damage to or destruction or loss of property which may have or be claimed to have occurred at the Ballpark in an amount not less than \$1,000,000, single limit, for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in any single accident, and for not less than \$300,000 for damage to or destruction or loss of property.

B. Automobile Liability Insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as amended from time to time, combined single limit, to protect OOB Surge, any subcontractor performing work covered by this Agreement, and Town from claims and damages that may arise from operations under this Agreement, whether such operations be by OOB Surge, or by anyone or any subcontractor directly or indirectly employed by OOB Surge.

C. Workers' Compensation Insurance in amounts required by Maine law and Employer's Liability Insurance, as necessary, as required by Maine law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation Act, OOB Surge shall, at its own expense, provide for the protection of its employees not otherwise protected.

During each summer season and for all the times that OOB Surge has use of or access to the Ballpark, OOB Surge agrees that the Town shall be included and listed in the above required insurance policies as an additional co-insured. OOB Surge further agrees to require their insurers to provide to the Town with certification of each required policy that the Town is included and listed as co-insured with the exception of the required workers' compensation insurance. For the required worker's compensation insurance, OOB Surge and its subcontractors alternatively may provide

a written waiver of subrogation rights for claims against the Town. **Nothing, however in this paragraph shall be deemed to waive any immunity available to the Town under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq.**

7. Indemnification. Each party shall, to the fullest extent permitted by Maine law, indemnify, defend and hold harmless the other Party against all claims, losses, costs, expenses, damages, and liabilities arising from the negligence, willful misconduct or strict liability of such party, or its agents, employees, or contractors, or material breach by such party of any provision of this agreement. Neither Party shall be responsible or liable to the other for any claim, loss, cost, expense, damage or liability arising from any claim to the extent attributable to any acts or omissions of the other party. **Notwithstanding the provisions contained in the sentences immediately preceding, the Town shall have no obligation to indemnify OOB Surge for any damages or claims resulting from any act or omission for which the Town is immune under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq.**

8. Concessions, Merchandise, and Sponsorships

A. Concessions: The Town shall be solely responsible to oversee and operate all of the food and beverage concessions at the Ballpark and shall maintain the sole and exclusive rights of use for the food and beverage concessions. The Town retains the right but not the obligation to operate the food and beverage concession facility during scheduled OOB Surge games. The Town agrees to pay to OOB Surge 20% of the net profits from food and non –alcoholic beverage concessions sales during OOB Surge games; the net profits to be determined by deducting all of the Town’s overhead costs, costs associated with the goods sold, labor costs, etc. from sales revenue. The Town agrees to open the concession stand for public business minimum of 30 minutes prior to all scheduled games and remain open until the game completion.

B. Merchandise Sales: OOB Surge shall be solely responsible for any sales of OOB Surge merchandise and will retain 100% of all proceeds from OOB Surge merchandise sales. The Town at its discretion and based on availability and suitability, may provide at no additional expense to OOB Surge, additional space at the Ballpark.

C. Sponsorships: The responsibilities of the respective parties in securing and/or implementing sponsorships from businesses or other third party entities or individuals are set forth in **Appendix E** to this Agreement.

9. The Condition and Suitability of the Facility for the Purpose of OOB Surge. OOB Surge acknowledges and affirms that the condition of the Ballpark premises as of the date of execution of this Agreement is acceptable and fit for the intended purposes and uses of OOB Surge hereunder. OOB Surge affirms and acknowledges that the Ballpark, though currently in reasonable repair, is an older facility and that some of the facility's elements may require ongoing maintenance, require replacement or may fail during the Term of this Agreement or any extended term, such as, but not limited to, the Ballpark lighting system and certain stadium elements. OOB Surge also recognizes and agrees that the Town may, due to budgetary or other requirements, choose not to repair or replace the lighting or other elements that might become unserviceable during the Term of this Agreement.

The Ballpark, while currently operable, may therefore not remain at all times serviceable during the terms. In such event, OOB Surge agrees to re-schedule its games to best suit the circumstances and in connection therewith, releases and absolves the Town from any losses or disruption related thereto. In order to provide OOB Surge with adequate time to arrange for re-scheduling, any and all problems that come to the Town's attention that might affect OOB Surge ability to host any event, shall be immediately reported to OOB Surge immediately upon discovery. Before rescheduling its games and scheduled activities elsewhere, OOB Surge may, as circumstances warrant, proceed in exploring alternative options for hosting its scheduled events. As the Surge explores alternatives, it will provide the Town with a reasonable period of time to address and resolve problems with the Ballpark that restrict or limit OOB Surge's expected use of the Ballpark subject to the foregoing. The Town pledges and affirms that it will use reasonable efforts and attempt to maintain the Ballpark in a similar or like condition and suitable for OOB Surge's use and scheduled games. OOB Surge agrees and pledges not to engage in or promote any actions or activities that may cause or accelerate the degradation of the Ballpark or degrade the current conditions of the Ballpark, normal wear and tear excluded.

10. Use and Maintenance of the Ballpark Facilities.

A. Use of Designated Facilities. During OOB Surge uses as described in Section 3 of this Agreement, OOB Surge shall have access to and the use of the playing field, stadium, the five Ballpark offices, the training room and the two locker rooms and showers located in the clubhouse. OOB Surge will also have access to, use and control of skyboxes 1 through 9 located on the first base side of the playing field and of sky boxes 12 through 15 on the third base side of the playing field for all OOB Surge games. Skyboxes 10 and 11 on the third base side of the field will remain in control of the Town for such use as established by The Ballpark's Operations Manager or the Ballpark Commission. The confirmation of the assignment of all the clubhouse rooms will be scheduled and agreed to by the Parties in advance of the execution of this Agreement and no other Ballpark clubhouse rooms may be used or occupied without the written approval of the Ballpark Commission. **Appendix D** to this Agreement shall include the details of the space allocation and use of the Clubhouse, both exclusive and shared, between the Town and OOB Surge. At no time shall Surge associates be allowed to remain overnight in Clubhouse. At no time will any property of the Ballpark be altered or removed without Operation Managers permission.

B. Party Responsibilities for Skybox Use. Each party is responsible for monitoring, cleaning or policing its own skyboxes. OOB Surge shall not be liable for damage to Town skyboxes or sponsor signage as a result of the normal risk associated with foul balls from baseball practices or games. If a condition occurs that the Town must use skyboxes for a non- OOB Surge sponsored event, the Town will be responsible for assuring that OOB Surge skyboxes are clean and ready for the next OOB Surge event including the making of necessary and reasonable repairs for any damage. OOB Surge sponsorship signage on the front of the OOB Surge skyboxes will remain in place and not be obstructed or covered during any Town or other party sponsored event.

C. Field and Game Preparation Maintenance. Town shall be responsible to maintain and upkeep the field, The Town shall be responsible for game preparation maintenance. The Surge shall assign one intern to

assist with field preparations of each game. The assigned intern shall be available beginning one hour prior to each game start until 30 minutes after each game ends. In the event No interns are available the Ballpark shall assign a Ballpark employee to assist in field preps at a rate of \$50.00 per game to be paid by the Surge. Standards and requirements for game preparation maintenance shall be according to Field Maintenance Checklist actions attached hereto as **Appendix B**.

D. Responsibility for Cleanliness of Facilities. The Town shall be responsible for the cleanliness of all facilities of the Ballpark immediately following each OOB Surge event as well as keeping OOB Surge's portion of the clubhouse bathrooms clean according to the maintenance standards set forth in **Appendix C** to this Agreement.

E. Responsibility for Clubhouse cleanliness. The OOB Surge shall maintain control of all Surge material, equipment, and uniforms. Material, equipment and uniforms shall at all times be stored in a neat and orderly manor as outlined in **Appendix C**.

The Town is responsible for providing and paying for all supplies used for maintenance of the areas of the Ballpark under OOB Surge's exclusive control and the Town is also responsible for providing and paying for all supplies used for maintenance of the areas of the Ballpark under the Town's exclusive control.

F. Off Season Security and Storage. For purposes of security and the need to administer the winterization of certain facilities at the Ballpark, OOB Surge agrees it will store possessions left in the clubhouse during the off season only in the two offices that do not have plumbing equipment (e.g., toilets, sinks, showers). If OOB Surge chooses not to store anything at the Ballpark, OOB Surge agrees to remove their equipment and materials from the Ballpark on or before September 15th of each summer season. OOB Surge may begin moving equipment and supplies out of storage and into the Clubhouse and merchandise areas on or after April 1st of each summer season. OOB Surge shall turn in all keys to the Town's Ballpark Operation's Manager no later than August 31st of each season.

11. Utilities and Other Expenses. The Town is solely responsible for the expenses of supplying gas, water, sewer, internet and electricity services as currently serve the Ballpark.

Surge Responsibility for Clubhouse Propane The exception is that OOB Surge is solely responsible for the supply and expenses of propane gas service to the clubhouse locker rooms and showers areas during each summer season.

12. Broadcast Rights, Surveys, and Community Involvement/Service

A. Broadcasting Rights. OOB Surge is solely responsible for any broadcasting of games and all expenses of the same. The Town will make its internet service at the Ballpark available to OOB Surge but shall not be responsible for any interruptions in internet service or the consequences of the same to the broadcast activities of OOB Surge. During each summer season, OOB Surge, at its sole cost, agrees to set up, maintain and update a publicly accessible website to provide information, schedule updates and to promote OOB Surge games and activities at the Ballpark.

B. Ballpark Surveys. For purposes of improving the experience and quality of activities at the Ballpark, the Town may conduct written surveys of the public, attendees and OOB Surge players to secure information about experiences and impressions of the Ballpark and related activities.

C. Community Involvement/Service. To promote the Ballpark and the OOB Surge games and team, OOB Surge management, coaches, and players shall participate in

at least three visible and publicized community service activities to take place within the Town, the City of Saco, Biddeford or the Town of Scarborough. Such activities may, for example, include assisting a children's reading program in the library, helping at the food pantries, providing visitation or similar service or presentation at nursing or assisted living facilities, attending service club events (Rotary, Lions), senior citizen events, or by participating in promotional activities in downtown Old Orchard Beach and in the Ocean Park neighborhood.

D. Youth Development Skills Clinics. OOB Surge shall organize, market and implement 1 or 2 baseball skills clinics for area youth which involve OOB Surge team coaches and players during each summer season

13. Early Termination

This Agreement may be terminated by either Party in the event of a material breach or other reason supporting early termination. Termination shall take place upon the receipt of notice of termination to the other Party. Such notice shall be sent by certified mail, return receipt requested to the other Party at the address set forth herein or as may otherwise be provided by the Parties.

Material breaches and reasons supporting early termination shall include, but are not limited to material circumstances such as acts of God which make the Ballpark unavailable for use, repeated failure by either Party to maintain the Ballpark facility in accordance with the terms set forth in **Appendices B and C**, condemnation or closure of the Ballpark by State or Federal Authorities, material or repeated improper accounting or cash management related to proceeds from concessions or ticket sales on the part of either Party, actions by either Party in blatant contravention of this Agreement, actions on the part of either Party making it significantly impracticable or impossible to hold OOB Surge home games at the Ballpark, insolvency on the part of either Party or material, illegal or criminal activities on the part of either Party.

In the event of an Early Termination, OOB Surge acknowledges and agrees that no direct, consequential, indirect or other damages or refunds shall be recoverable by OOB Surge from the Town and waives its rights to the same.

14. Amendment

This Agreement (including the Exhibits and Attachments attached hereto) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by the Parties.

15. Separability

If any provision of this Agreement is found by a competent court to be invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

16. No Transfer

The rights hereunder may not be transferred or assigned without the consent of both Parties.

17. Maine Law

This Agreement is governed by the laws of the State of Maine.

Pro Talent Baseball LLC

By: _____
_____ President

State of Maine

York County, ss

_____, 2016

Date: _____
(County)

Personally appeared before me the above named _____, in his capacity as the _____ and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of and binding on Pro Talent Baseball LLC in his said capacity.

Before me,

Notary Public/Attorney at Law
V. Louise Reid

The Town of Old Orchard Beach

By: _____

Larry Mead
Town Manager

State of Maine

York, ss

_____, 2016

Personally appeared before me the above named Larry Mead in his capacity as the Town Manager of the Town of Old Orchard Beach, Maine, and acknowledged the foregoing to be his free act and deed, duly authorized and binding on the Town of Old Orchard Beach in his said capacity.

Before me,

Notary Public/Attorney at Law
V. Louise Reid

SCHEDULE A

**LIST OF SCHEDULED USES OF THE BALLPARK
FOR OTHER EVENTS**

The Parties acknowledge that due to the pre-existing commitments below, the Ballpark will not be available on these dates for the exclusive use by OOB Surge.

The Parties further acknowledge that in the event OOB Surge is called upon to play in post-regular season playoff or championship games, there will be a need to identify times after August 15, for each day during which a single game can be played by OOB Surge.

The Town will provide to OOB Surge the dates for other events promoted or authorized by the Town to be held at the Ballpark during the Season. Otherwise, non- OOB Surge events must fit into open dates of OOB Surge. Also any non- OOB Surge events must be discussed with OOB Surge prior to planning the event with all due respect to proper field maintenance for baseball playing conditions.

APPENDIX B FIELD MAINTENANCE

The top priority for baseball players and coaches is the quality of the field on which they play. The annual and game time maintenance needs to keep the field in top playing and viewing conditions. The quality of our field is our top priority. The checklist on the next page applies to The Ballpark’s staff for its games or events.

Field Maintenance Checklist for OOB Surge Games/Events Game Specific Prep

Although this format is not required, the assumption is that these responsibilities might go beyond one person’s assignments. The format illustrates how the work might be spread over several individuals. The Town/OOB Surge assigns these responsibilities. Please note the next page.

Action Not necessarily in this order	Person Responsible	Action Not necessarily in this order	Person Responsible
1. If not done after previous game, dispose of trash found on field, dugouts, bullpens, and stadium	Town	11. Check the operation of the scoreboard	OOB Surge
2. Remove tarpaulins	Town	12. Prepare the press box and operation of public address system	Town
3. Place batting practice pitcher’s mat on the mound	OOB Surge	13. Touch up pitcher’s mound and home plate with surface and clay	Town
4. Place the safety screens; pitcher, first and second base	OOB Surge	14. Touch up base areas as needed	Town
5. Scarify the skinned areas with a spiker	Town	15. Place bases	Town
6. Drag the skinned areas smooth	Town	16. Drag field as needed	Town
7. Water the infield area	Town	17. After the game, turn field lights off except for two poles during post-game	Town

		maintenance or complete the maintenance the next morning to save electricity.	
8. Prepare the bullpens	Town	18. Drag infield after each game and drag warning track once a week	Town
9. Sweep and clean dugouts before and after game as needed.	Town	19. Touch up base areas, pitcher's mound and home plate as needed after the game or the next morning	Town
10. Paint or wash bases as needed, certainly keep bases, home plate and pitchers plate clean.	Town	20. Complete final prep including putting tarp on, picking up trash, and shutting down lights.	

APPENDIX C

SANITATION AND SAFETY PROTOCOLS

These requirements are meant to be basic respectful common sense care of the facilities for sanitary and safety reasons and a sense of environmental ambiance of a first class organization that will be remembered favorably by the ballplayers, coaches and any other stakeholders such as The Ballpark Commission, other Ballpark users, town citizens, or visitors (families) that might see the clubhouse. Cleanliness of The Ballpark facilities is a priority of all stakeholders. The following requirements also apply to The Ballpark's staff in relation to Ballpark games or events.

Responsibility of Town and OOB Surge for Surge Games and Events The Surge Is Responsible for Its Own Areas in Particular Field, Dugouts, Bullpens, Stadium, Concourse, and the Beer Tent and Grassy Area behind it.

1. All of these areas must be cleared of all debris. *The Surge shares this responsibility in minimizing the Town's effort in cleaning maintenance. The Surge coaches and players have responsibility for the dugout, bullpen, and stadium e.g. Surge interns took care of the extra trash left in the stadium last year by involving the patrons.*
2. In the event there is residue from someone becoming ill, then the cleaning process must assure that the area is sanitary. *The Surge addresses immediate clean up and advises the Town of the need for further sanitation of the area.*

All rooms with doors and locks must have the doors closed and locked and non-essential electrical apparatus turned off upon OOB Surge personnel leaving the premises.

Clubhouse

The clubhouse must be kept clean on a daily basis.

1. Clothes need to be hung up or placed neatly in their open air lockers – not thrown around. *This item is the responsibility of OOB Surge.*
2. There should be no trash, towels, and any used/unclean materials laying around. The Town shall empty all waste receptacles. *This item is the responsibility of OOB Surge.*

3. The floors must be kept clean by sweeping and vacuuming as needed.
4. Bathrooms and showers will be cleaned after each games or events by the Town. *The Surge shares responsibility in minimizing the Town's effort at routine cleaning.*
5. Toilets must be clean.
6. All rooms shall be kept clean and neat even when there is material stored in the room. *This item is the responsibility of OOB Surge.*
7. During the off season, stored materials and equipment need to be cleaned and put away in a few rooms in an organized manner. *This item is the responsibility of OOB Surge.*
8. *All non-essential electrical apparatus must be turned off when OOB Surge personnel leave the premises. All rooms with doors and locks shall be closed and locked. This includes all exterior doors to Club House.*

Restrooms

All restrooms will be kept clean and attended to after OOB Surge events:

1. Urinals, toilets, sinks, soap and paper towel dispensers attended to and clean.
2. Plenty of paper towels and soap in the dispensers.
3. Trash cans emptied when full.
4. Floors clean before and after games.
5. Lights checked before and after games.

Merchandise Buildings and Ticket Booth

Merchandise building and ticket booth must be clean and neat before, during, and after the events. *This will be the sole responsibility of the OOB Surge*

Appendix D: Clubhouse Allocated Space

APPENDIX E: SECURING AND/OR IMPLEMENTING SPONSORSHIPS

OOB Surge agrees to adhere to the Town of Old Orchard Beach Ballpark Commission ("the Ballpark Commission") Sponsorship Policy & Procedures (the "Sponsorship P&P). On or before March 1, 2016 OOB Surge will provide to the Ballpark Commission the OOB Surge marketing and sponsorship plan. OOB Surge marketing plan must be consistent with the objectives and terms of the Ballpark Commission's Sponsorship P&P. At the time OOB Surge provides the Ballpark Commission the marketing plan, the Ballpark Commission shall provide OOB Surge with a copy of The Ballpark's marketing and sponsorship plan.

On or before **October 1st** of each year, OOB Surge and the Ballpark Commission shall meet to discuss and agree upon a combined master list of sponsors. This includes how each party will approach these sponsors on behalf of themselves or the other party (including each party's brochure) depending on the preference of the potential sponsor. It also includes how to best combine and package advertising and sponsorship benefits (signage, skyboxes, publication advertisements, etc.), the appropriate terms for the contracts with sponsors, and the allocation of ballpark space for each party's

banners, e.g., dugout roofs, outfield walls, concourse and outer fence locations, concession area, etc.

Not included in, and exempted from the signage areas that may be sold by OOB Surge are the signage areas associated with the Ballpark scoreboard that are reserved exclusively for the Town. Other signage currently located or to be located in the Ballpark which acknowledges contributions or contributing parties will also be operated and maintained by the Town. All signage in the Ballpark, whether the responsibility of OOB Surge or Town shall be maintained in good condition (no faded, ripped or torn signs) and/or replaced to insure the quality of the sponsorship's representation to the public and the aesthetic quality of the Ballpark. The Ballpark Commission retains and shall have final determination of the appropriateness of any sponsorship, the duration of the time period during which sponsorship signs may be displayed, the content of the message, visibility of the signage, and the location of the display of any sponsorship signage within the Ballpark.

The Ballpark Commission shall review each potential sign or banner before it is placed in the Ballpark. The Ballpark Commission will designate a person or persons with authority to make decisions as to appropriateness, duration, content and message of sponsorship signs, subject to review by the Ballpark Commission in the event of a dispute between the Parties. The initial review of a PDF version of the sign or banner that is delivered via email shall take place by the Ballpark Commission's representative(s) not later than three business days upon the receipt of the PDF version. Existing OOB Surge signs shall be pre-approved without the need to submit them for approval for 2016. Signs or banner shall remain in place through October 15 and shall be removed prior to winter by both OOB Surge and the Town. No OOB Surge banners or signs may be obstructed by the Town during non- OOB Surge events.

Proceeds from sales of sponsorships and marketing packages as accrue to OOB Surge efforts are intended for OOB Surge and, as are confirmed in the discussions between OOB Surge and the Ballpark Commission, shall be the sole property of OOB Surge. The Town gains proceeds intended for the Ballpark when potential sponsors approached by OOB Surge prefer to contribute to the Ballpark.

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On or before [October 1st](#) of each year, OOB Surge and the Ballpark Commission shall meet to discuss and agree upon a combined master list of

sponsors. This includes how each party will approach these sponsors on behalf of themselves or the other party (including each party's brochure) depending on the preference of the potential sponsor. It also includes how to best combine and package advertising and sponsorship benefits (signage, skyboxes, publication advertisements, etc.), the appropriate terms for the contracts with sponsors, and the allocation of ballpark space for each party's banners, e.g., dugout roofs, outfield walls, concourse and outer fence locations, concession area, etc.

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6600 Discussion with Action: Move John Gallo from an Alternate Member to a Regular Member of the Finance Committee, term to expire 12/31/2017.

MOTION: Councilor Kelley motioned and Councilor Blow seconded to Move John Gallo from an Alternate Member to a Regular Member of the Finance Committee, term to expire 12/31/2017.

VOTE: Unanimous.

GOOD AND WELFARE

AGENDA # 6601 Executive Session: Old Orchard Beach Waste Water Employee's Association Contract pursuant to 1 M.R.S.A., Section 405(6)(D). (Note: This item discusses labor negotiations, and the Council anticipates that the discussion portion will occur in Executive Session.

MOTION: Councilor Tousignant motioned and Councilor Blow seconded to Enter into Executive Session: Old Orchard Beach Waste Water Employee's Association Contract pursuant to 1 M.R.S.A., Section 405(6)(D). (Note: This item discusses labor negotiations, and the Council anticipates that the discussion portion will occur in Executive Session.

VOTE: Unanimous.

MOTION: Councilor Kelley motioned and Councilor Blow seconded to exit Executive Session: Old Orchard Beach Waste Water Employee's Association Contract pursuant to 1 M.R.S.A., Section 405(6)(D).

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Councilor Tousignant motioned and Councilor Kelley seconded to Adjourn the Town Council Meeting at 8:59 p.m.

VOTE: Unanimous.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty-one (21) pages is a copy of the original Minutes of the Town Council Meeting of January 19, 2016.

V. Louise Reid