

TOWN OF OLD ORCHARD BEACH, MAINE

**ADMINISTRATIVE REVIEW BOARD MEETING
Wednesday, September 23, 2015**

A meeting of the Administrative Review Board was held on Wednesday, September 23, 2015 in the Town Council Chambers at 3:00 p.m. The meeting was being held at the request of the Administrative Review Board members as a follow up to their meeting on September 10, 2015 when they discussed their mission statement and issues relative to how meetings are conducted. Today they were to look at possible ordinance change and also at several needed business licenses to be addressed in the future.

Attending: Marc Bourassa
Larry Mead – Town Manager
V. Louise Reid – Assistant Town Manager
Tina Kelly
Jeffrey Hinderliter – Planner
Dan Feeney – Code Enforcement
Police Chief Dana Kelley
Fire Chief Ricky Plummer
Kathy Smith – Licensing Administrator

Absent: Ken Lafayette
Gary Curtis

A follow up meeting to the September 10th Administrative Review Meeting was held on Wednesday, September 23, 2015. The Town Manager indicated that we would be focusing on two particular areas today; the possible Ordinance Change; and upcoming business licenses that might need meetings with the Board.

Below are the suggested changes to the Administrative Review Board policies and procedures:

Suggested changes in ARB policies and procedures:

1. Ordinance modification: Add to 18-35 (b) the Administrative Review Board as a source of information to be used by Council in considering license issuance.

In our former discussions the Board felt it was important for the Council and the Board to be in agreement with how meetings are conducted; how businesses are brought before the Board and then, if needed, before the Council.

1 – Administrative Review Board Meeting Minutes of September 23, 2015 with attachment of the unofficial Minutes of Meeting of September 10, 2015.

2. Develop standards to assess compliance with ordinance: Public health, safety and welfare problems (18-35 (b).4) {Model after neighborhood compatibility standards}

The ability to have a set of standards was an important discussion piece. There was the perception that in the past with the same businesses appearing and reappearing before the Board, that if there was a more definitive list of standard by which the Board and the Council would interact, this would be a more functional and successful manner to bring businesses into positive reactions to the issues they are dealing with and has brought them before the Board.

3. Require problem licensees to develop management plans for review by ARB. Incorporate into consent agreement. {Staffing issue? Who will be able to work with the licensee to develop management plan}

It was determined that many of the businesses brought before the Board are the same businesses each year and that they indicate they have done everything possible but the same problems exist year after year. A Consent Agreement in these cases needs to be drawn up and agreed to by the Board and the business owner; signed and brought to the Council. It was agreed that the Board essential is the fact finder who brings forth as a result of those facts a Consent Agreement and recommends to the Council a decision making determination of suspension, revocation or other means of correcting the situations. Consensus was that we bring people back before the Board too many times for the same things when they should have to agree to a Consent Agreement which is brought before the Council. It was also recommended that a temple be developed to assist in providing correctly worded and action-oriented wording to effect positive change.

4. Schedule quarterly meetings. Can be cancelled if no business is at hand.

There had been previous discussions as to how many meetings are needed and it was felt that the Board should meet at least quarterly, and if necessary other meetings could be set. The suggestion was perhaps October, January, April, and July.

5. If there are possible violations to review ARB will first meet in a workshop (without the licensee) to review with staff licensees with complaints or possible or documented violations in preparation for a hearing. The hearing would then follow if the ARB finds it is needed.

In the past the Board met with the business owner on the day of the review and often the material had been given to the Board only a couple of days before with little time to discuss. It was felt that if the Board met separately and reviewed the material before the business owner is brought before the Board, that the results could be more successful.

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6. Add another member.

The Board at the present time consists of two members representing the business and the citizens and an alternate for each. The alternate member would not have a vote unless the member he or she was absent. Also part of the Board is the Chief of Police, the Fire Chief, the Code Enforcement Officer, the Town Manager who chairs the meetings and the Planner, for a total of nine. It was suggested that adding two more alternates to the Board is something that should be considered.

7. Council member as liaison?

There had also been a discussion about adding a possible Council member but the majority felt that the Council members already have an enormous load on their schedule.

Discussion continued on the Neighborhood Compatibility Standards. Each item was discussed separately bringing forward that these standards of addressing issues will make a positive approached to addressing the ordinance revisions that were being suggested.

**Administrative Review Board
Neighborhood Compatibility Standards**

Licensed Old Orchard Beach business and property owners will be held to a standard of responsibility to effectively manage their business or properties to be a positive presence in their neighborhood and to contribute to an environment that is safe, secure and enjoyable to residents and visitors. This expectation is consistent with the Old Orchard Beach ordinance, Chapter 18-35, that authorizes the Town Council to deny a license application in those circumstances where the applicant does not satisfactorily resolve problems related to the public health, safety or welfare.

Licensed properties that exhibit or demonstrate the following types of conduct or management do not meet the standard of effective management and may be subject to denial or revocation of a license to operate:

1. A pattern of consistent and ongoing disrespectful behavior, disturbances and disruption of the neighborhood that have been reported to the Police, including parties, loud music, inappropriate behavior, abusive language, etc.
2. A pattern of consistent and ongoing use of excessive alcohol, drugs and traffic, and other conduct which is disruptive to the tranquility of the neighborhood and quality of life which have been duly reported to the Police.
3. A pattern of consistent and ongoing Police calls that vary in nature but consume Police resources, time and energy, that can be well documented by type and

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severity, measured and quantified, demonstrating that the property has met the criteria to require further investigation and is therefore in non-compliance with Neighborhood Compatibility Standards.

4. A pattern of consistent and ongoing avoidance to cooperate with neighbors, to respect their right to quiet enjoyment of their property, and to bring the problem situation under control in a timely manner.
5. A pattern of consistent and ongoing lack of control and response to resolve the problem by working with the Police Department and/or work in cooperative manner with others.

Licensees that are found by the ARB to not meet the standards of responsible conduct and management will be given an opportunity to develop a satisfactory written management plan to the ARB. The management plan will detail all actions taken or to be taken to prevent further non-compliance with the ordinance. The management plan will be incorporated into a consent agreement outlining the expectations and responsibilities required of the licensee in order to retain a business license.

Noted was the need to measure in a pattern of consistent and ongoing calls which affect service being provided by the staff and also the Fire and Police Departments. They are cumbersome and also expensive to the budgets of the various departments.

It was agreed completely that their compatibility standards should be the source of resource for not only the Board but also the Council.

Sec. 18-35. - Denial; imposition of conditions for issuance.

- (a) Failure to provide any of the information required by [section 18-33](#) to the license administrator in a timely manner shall be cause for a denial of a license application.
- (b) The town council shall consider information provided by the applicant or received from [the Administrative Review Board](#), the building inspector, the electrical inspector, the town manager, the police chief, the fire chief or any other municipal employee or the general public in determining whether to issue, issue subject to conditions, or deny any license requested. The town council may deny a license application if it finds that:
 - (1) The applicant does not have the legal right to occupy the premises for which the license is sought;
 - (2) Required state or local permits have not been obtained or applied for;
 - (3) The business or activity is not or the premises are not in compliance with other local ordinances;
 - (4) Any public health, safety or welfare problems which occurred in the operation of the business or activity or a similar business or activity on the premises during the

immediately preceding year were not satisfactorily resolved and are likely to recur;

- (5) The applicant for the license has, during the immediately preceding year, committed or permitted, in the course of conducting a business or activity subject to this article, an act or omission which constitutes a violation of this article as defined in [section 18-28](#) or [18-39](#);
 - (6) The applicant is delinquent in paying any personal property tax assessed by the town, unless there is pending at the time of application for the license a request for abatement of the tax or an appeal of the tax assessment;
 - (7) The licensed location has had three or more documented and relevant disturbances as verified by the police chief within the previous licensing period, which documentation shall be provided to the license administrator by the police department; or
 - (8) The applicant owes any fine, penalty or judgment to the town as a result of any violation of this article and the fine, penalty or judgment, with any accrued interest, has not been paid in full. Notwithstanding anything to the contrary in 1 M.R.S.A. § 18-3202, this subsection applies to actions and proceedings pending on the effective date of the Ordinance of April 15, 1997.
 - (9) The applicant owes any amount to the Town of Old Orchard Beach for services rendered by the town or by town employees to the applicant or the applicant's property, is in default on any performance guarantee or contractual obligation to the town, or is otherwise delinquent in any financial obligation to the town, including real property taxes.
- (c) The town council may also impose conditions on the operation of any licensed business or activity, such as restrictions on the hours of operation, a requirement of trash removal at specified intervals, or implementation of particular forms of crowd control, where the public interest so requires.
 - (d) When the town council denies a license, written notice of the decision shall be provided to the applicant within ten days thereof, which shall set forth the reasons for the denial. The licensee shall receive written notice in the same manner of any conditions imposed upon the license whenever conditions are imposed, and the license administrator shall note such conditions on the license records maintained by the license administrator.

(Ord. of 6-13-1961, § 4(C); Ord. of 2-16-1988; Ord. of 6-18-1991; Ord. of 11-8-1993; Ord. of 3-4-1997; Ord. of 4-15-1997; Ord. of 3-2-1999; Ord. of 4-20-1999; Ord. of 4-15-2008; Ord. of 5-4-10(1))

Changes to the ordinance included the addition of the words: *the Administrative Review Board, to item (b). Also the need to add the Planner to the official Board making it a Board of nine. Special attention was given to (b)(4) – Any public health, safety or welfare problem which occurred in the operation of the business or activity or a similar business or activity on the premises during the immediately preceding year were not satisfactorily resolved and are likely to recur.*

Conclusion:

5 – Administrative Review Board Meeting Minutes of September 23, 2015 with attachment of the unofficial Minutes of Meeting of September 10, 2015.

It was determined that the Board would meet on Thursday, October 15, 2015 at 3:30 in the Police Department Community Room.

The Administrative Review Board adjourned at 4:00 p.m.

Respectfully Submitted,

V. Louise Reid
Secretary to the Administrative Board

I, V. Louise Reid, Secretary to the Administrative Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of six (6) pages is a true copy of the original Minutes of the Administrative Hearings Wednesday, September 23, 2015.

BECAUSE THE SEPTEMBER 10, 2015 ADMINISTRATIVE REVIEW BOARD WAS NOT ADVERTISED CORRECTLY, THE MINUTES BELOW DO NOT HAVE TO BE APPROVED BUT ARE INCLUDED FOR INFORMATIONAL PURPOSES IN CONNECTION WITH THESE DISCUSSIONS.

Below is a section of the unofficial Board Minutes of the September 10, 2015 Board Minutes.

Some of the subjects that were requested by the Board to be discussed included:

Given the limit of our authority, are we effective as a Board?

Are we being consistent in the way we deal with similar issues?

What can we do with business owners that appear before our Board frequently?

Should we consider “three strikes and you are out” for those that continue to appear before the Board?

Is there, and do we need, a communication line to the Town Council?

6 – Administrative Review Board Meeting Minutes of September 23, 2015 with attachment of the unofficial Minutes of Meeting of September 10, 2015.

Would it be valuable to have a Town Councilor on the Board?

Do we need a change in the Ordinance or can the Committee come up with some “policy changes?”

Do we need a Charter change on the description of the powers of the Administrative Review Board?

Some other municipalities give the Administrative Review Board the power to deny, revoke, suspend or not renew a license.

Ask Town Council to give jurisdiction to the Administrative Review Committee to proceed with revoking/renewing licenses as the Council has a full plate.

Changing the Charter to have a formal written procedure for correction of the noted infraction(s) violations(s) that has a clear protocol for remediation.

Impose fines for delays and/or non-compliance within deadlines of the signed written procedure.

TOWN OF OLD ORCHARD BEACH

ADMINISTRATIVE REVIEW BOARD (A.R.B.) – OUTLINE OF DUTIES

Committee Introduction

- Larry S. Mead – Town Manager (Chair of the A.R.B.)
- V. Louise Reid – Assistant Town Manager serving as Secretary
- Dan Feeney – License Administrator
- Dana Kelley – Police Chief
- Ricky Plummer – Fire Chief or Designee
- Marc Bourassa – business member
- Tina Morrison – citizen member
- Gary Curtis – Alternate citizen member (participates with no vote)
- Ken Lafayette – Alternate business member (participates with no vote)
- Jeffrey Hinderliter – Planner
- Kathy Smith – License Administrator

Authority of the A.R.B.

7 – Administrative Review Board Meeting Minutes of September 23, 2015 with attachment of the unofficial Minutes of Meeting of September 10, 2015.

Purpose of the A.R.B.

1. FACT FINDING
2. prime GOAL = RESOLVE ISSUES

Process

- A.R.B. meeting is triggered by either:
 1. one written complaint to License Administrator
 - pertaining to Business License / Code / Ordinance violation
 2. three or more disturbances verified by Police Chief
- This does not imply that businesses appearing before A.R.B. are less than stellar
- Complaint goes to License Administrator, to Town Manager, to A.R.B. (to discuss complaint/disturbance with business)
- If unresolved: to Town Council

Tools

- A. Resolve Complaint or Issue through Common Sense and Mutual Cooperation
- B. Propose Consent Agreement with Applicant
- C. (if not resolved) Recommendation to Town Council of License Revocation/Denial

The Town Manager serves in his capacity of Chair of the Administrative Board. The authority of the Administrative Review Board comes from the Code of Ordinances: Business Section 18-38 and Section 18-39. This is a fact finding meeting with the prime goal of resolving issues. The ARB meeting is triggered by either one written complaint to the License Administrator pertaining to Business License/Code Ordinance violation or three or more disturbances verified by the Police Chief. This does not imply that the businesses appearing before the ARB are less than stellar and it is hoped that issues can be resolved so that it does not have to come to the Town Council.

Some of the discussion relative to the necessity and impact of the complaints included a reasonable assumption that they had to come to the Board. Chief Kelley gave examples of where complaints are made but the business owner has done everything humanly possible to address the issues; has arranged for adequate and necessary coverage as it relates to security; and the complaints are a result of the type of business operations as it regards in many instances the liquor business. To bring this type of business to the Town Council when the business owner has done everything humanly possible to address the situation would be a waste of time for the Board, the Council and the business owner.

Also of concern was that it is expected to get complaints particularly during the seasonal operation of businesses but they need to be addressed in a timely manner so that they are addressed when those business owners are in location here rather than in the winter months when they are not reachable.

It was determined that many of the businesses brought before the Board are the same businesses each year and that they indicate they have done everything possible but the same problems exist year after year. A Consent Agreement in these cases needs to be drawn up and agreed to by the Board and the business owner; signed and brought to the Council. Questions were also raised whether consideration would ever be given to the revocation of a license by the Board rather than having to go to the Council. This would definitely require an Ordinance change and the acceptance by the Council. Discussion involved is it “three strikes and you are out” or is that too many opportunities for continued unacceptable business practices? A good format for the development of the Consent Agreement is important as well.

Discussion continued on the need for, if not monthly meetings, perhaps quarterly, so that there would be a consistent and timely addressing of the issues being brought before the Board.

Some of the issues that need to be addressed with liquor establishments are the “over-serving factor” and the need for the business owners to see that their staff is training regularly in the operation of liquor establishments. The need for the right number of security manpower is another consideration as well.

Discussion also included whether a Town Councilor should be assigned to the Board and there were mixed feelings about this. It would give the Board the influence of having a Council member on the Board to see and hear the issues that are brought before them and have someone that can in more detail indicate to the Council some of the issues that are being addressed. The question was raised however, should that Council member vote or remove himself from voting when it goes to the Council. There was a general sense that a Councilor could be an advocate for the Board.

It was agreed that the Board essential is the fact finder who brings forth as a result of those facts a Consent Agreement and recommends to the Council a decision making determination of suspension, revocation or other means of correcting the situations.

We also discussed some of the license issues that come before the Board and how to deal with them. Consensus was that we bring people back before the Board too many times for the same things when they should have to agree to a Consent Agreement which is brought before the Council.

Below you will find some of the documents that we discussed at the meeting.

It was determined that we would have another meeting on Wednesday, September 23 2015 at 3:00 in the Town Council Chamber.

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Administrative Board

[Printer-Friendly Version](#)

[Meeting Agendas](#)

[Meeting Minutes](#)

Sec. 18-38. Renewals.

(a) The license administrator is authorized to renew, without further action by the town council, the license of any person holding a license pursuant to this article, referred to as the "licensee," on April 30 of each year upon receipt of the required fee and of a written statement from the licensee that there has been no material change in the information provided in the licensee's previous application. The license administrator may not renew a license, but must refer the application to the town council, if:

(1) The license has been suspended or revoked by the town council during the preceding 12 months.

(2) The license administrator has received, during the past 12 months, any written complaint from any person charging that the licensee has violated the terms of this article or any other section of this Code or town ordinance.

(3) The applicant is delinquent in paying any personal property tax assessed by the town, unless there is pending at the time of application for the license a request for abatement of the tax or an appeal of the tax assessment. For purposes of this subsection, the word "applicant" means all of the following persons: (i) the owner of any personal property used in the conduct of the business or activity for which the license is sought, (ii) the owner of the business or activity for which the license is sought, and (ii) the person who conducts or operates the business or activity for which the license is sought. As used in this subsection, the term "any personal property tax" shall include all personal property taxes assessed against any person within the definition of applicant, whether or not the property so taxed is used in the conduct or operation of the business or activity for which the license is sought.

(4) The licensed location has had three or more documented disturbances as verified by the police chief within the previous licensing period, which documentation shall be presented to the license administrator in writing by the police department.

(b) In cases involving a complaint under subsection (a)(2) of this section or disturbances under subsection (a)(4) of this section, the license administrator shall bring the complaint or disturbance to the attention of the town manager before referring the application to the town council. The town manager will then convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, to discuss the complaint or

disturbance with the applicant. At this time, the town manager shall notify the town council chairperson, in writing, that this board is being convened. The purpose of the administrative board will be fact finding with the goal of resolving the issues raised by the complaint or disturbance. If the administrative board finds that the applicant has not successfully addressed the complaint or disturbance, the administrative board shall propose a consent agreement with the applicant to address the complaint or disturbance. If the applicant fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall refer the application to the town council with the recommendation that the license not be renewed.

(c) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings. (Ord. of 6-13-1961, § 1-A; Ord. of 2-16-1988; Ord. of 6-18-1991; Ord. of 11-8-1993; Ord. of 3-2-1999; Ord. of 4-20-1999; Ord. of 9-18-2001)

EXHIBIT
A

CONDUCT ON LICENSED PREMISES

Minneapolis Code of Ordinances 244.2020 - SUMMARY

It's the responsibility of the licensee (owner or authorized representative) to take appropriate action, with the assistance of the Crime Prevention Specialist and other units of the Minneapolis Police Department, when the **conduct of tenants and/or their guests on the licensed premises** is in violation of any of the following statutes or ordinances which:

- (1) **prohibit gambling** Minnesota Statutes, Sections 609.75 through 609.76
- (2) **prohibit prostitution and related acts** Minnesota Statutes, Section 609.321 through 609.324
- (3) **prohibit the unlawful sale or possession of controlled substances**
Sections 152.01 through 152.025, and Section 152.027, Subdivisions 1 and 2,
- (4) **prohibit the unlawful sale of alcoholic beverages** Minnesota Statutes, Section 340A.401
- (5) **prohibit noisy assemblies** Section 389.65 Mpls Code of Ordinances
- (6) **prohibit the unlawful possession, transportation, sale or use of a weapon** Minnesota Statutes, Sections 97B.021, 97B.045, 609.66 through 609.67 and 624.712 through 624.716, and section 393.40, 393.50, 393.70, 393.80, 393.90 and 393.150 Mpls Code of Ordinances
- (7) **prohibit disorderly conduct**, when the violation disturbs the peace and quiet of the occupants of at least two (2) units on the licensed premises or other premises, other than the unit occupied by the person(s) committing the violation.
Minnesota Statutes, Section 609.72 and Section 385.90 Mpls Code of Ordinances

Upon determination **THAT A VIOLATION HAS OCCURRED**; based upon substantial evidence supporting the violation; the Crime Prevention Specialist shall notify the owner or authorized representative by mail of the violation and direct them to take appropriate action to prevent further violations. The Crime Prevention Specialist can provide assistance in determining what remedial actions are appropriate.

If the violations involved conduct related to:

- o **prostitution and related acts**
- o **unlawful sale or possession of controlled substances**
- o **unlawful possession, transportation, sale or use of a weapon**

..... the owner or authorized representative shall **submit a satisfactory written management plan to the Crime Prevention Specialist within ten (10) days of receipt of the notice of the violation**. The written management plan must detail all actions taken and proposed to be taken by the owner or authorized representative to prevent further violations of the ordinance on the premises. Contact your Crime Prevention Specialist for assistance and resources in creating the management plan.

*** Failure to submit a written management plan may result in the city council taking action to deny, refuse to renew, revoke, or suspend the rental license.**

IF A SECOND VIOLATION OCCURS

..... ***within eighteen (18) months of the first violation, if the premises contains between one (1) and six (6) distinct and separate residential units, or within twelve (12) months of the first violation, if the premises contains more than six (6) distinct and separate residential units,*** the Crime Prevention Specialist shall notify the owner or authorized representative by mail, of the violation. The owner or authorized representative shall **submit a satisfactory written**

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Rental License & Neighborhood Compatibility Standards
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1. A pattern of consistent and ongoing disrespectful behavior, disturbances and disruption of the neighborhood, which have been reported to the Police, including Parties, Loud Music, Inappropriate Behavior, Abusive Language and More.
2. A pattern of consistent and ongoing use of excessive alcohol, drugs and traffic, "Boom Cars" and other conduct, which is disruptive to the Tranquility of the neighborhood and quality of life, which have been duly reported to the Police.
3. A pattern of consistent and ongoing Police Calls that vary in nature, but consume Police resources, time and energy that can be well documented by type and severity, measured and quantified, demonstrating that the Marginal Property has met the criteria to require further investigation and is therefore, in Non-Compliance with Neighborhood Compatibility Standards.
4. A pattern of consistent and ongoing avoidance to cooperate with Neighbors, to respect their right to Quiet Enjoyment of their property, and to bring the problem situation under control in a timely manner.
5. A pattern of consistent and ongoing lack of Control and Response, to resolve the problem, by working with Minneapolis Police Department and/or work in a cooperative manner with other Landlord Resources. Or to seek professional Property Management, or other remedies, as may be suggested by the Crime Prevention Specialist ("CPS").
6. Lack of Responsibility and Cooperation of the Owner to work with the CPS of the Minneapolis Police Department, to take corrective action, to resolve the ongoing problem in a timely manner, as requested by the CPS.
7. Therefore, the CPS shall recommend to the Department of Regulatory Services that the property be placed on Probation, so that corrective action can be taken in full cooperation with the Director and the CPS, to comply with Neighborhood Compatibility Standards in a timely manner.
8. Therefore, each Neighborhood shall also have the Authority to recommend to the Department of Regulatory Services, via a Resolution by that Neighborhood Board, that the property be placed on Probation, so that corrective action can be taken in full cooperation with the Director and the Neighborhood Board, to comply with Neighborhood Compatibility Standards in a timely manner.
9. Further non-Compliance shall result in Revocation of the Rental License.
10. If the Rental License is revoked for non-Compliance, all Tenants must vacate the premises, or otherwise be Evicted.
11. Further Disciplinary Action may be considered.

ADMINISTRATIVE REVIEW BOARD PROCEDURES

As a result of our meeting this morning, please find what we agreed to as far as procedures related to Administrative Review Board meetings:

Chief Dana Kelley and Dan Feeney will discuss when they feel Administrative Review meetings are necessary.

There should be a two week delay in scheduling a meeting so that Suzanne and Kathy have time to assemble the materials necessary.

Once the date is determined by Code and Police, they will check with the Assistant Town Manager to see if the date is available for a meeting in the Chamber.

The Assistant Town Manager will check with the Administrative Board that the date and time are acceptable.

The Code Officer and Police Chief will have their staff start to prepare the material which needs to be sent at least two weeks before the date to those being brought before the Administrative Review.

Each business owner (and Board member) will receive the materials that has been put together from the Police and Code and given to the Code Department for distribution. It should be noted that Suzanne will make 12 copies of the Police Material and send to Kathy Smith; and Kathy will make 12 copies of material from that office to be combined in a packet.

Material will be sent to Business owners by registered mail; and the Assistant Town Manager will have the material hand delivered to the four members of the Administrative Review Board; and put in the department heads mail box as appropriate.

The Assistant Town Manager will see that Minutes are prepared following the meeting and presented to the Town Council at the next meeting.

PROVISIONAL BUSINESS LICENSE

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into on _____ by and among _____ (name of entity), a (_____ kind of entity)("Business Owner") and the CITY OF MENIFEE, a municipal corporation ("City") (collectively the "Parties") pursuant to the provisions of section 5.01.165 of the Menifee Municipal Code.

RECITALS

WHEREAS, Business Owner owns and operates a business (the "business") within the City that is currently out of compliance with City regulations and standards set forth in the City's Municipal Code and/or imposed as conditions of approval for operating the business and therefore ineligible for a business license; and

WHEREAS, the failure to comply with applicable regulations and standard began more than two years prior to incorporation of the City of Menifee in October of 2008; and

WHEREAS, there has been no prior enforcement action initiated by the County of Riverside under previously existing provisions of the Riverside County Code; and

WHEREAS, an enforcement action by the City has been initiated or is being prepared to compel Business Owner to cease operation and bring the business into compliance with all applicable laws and regulations of the City in order to obtain a business license; and

WHEREAS, City has enacted a program for issuance of provisional business licenses under circumstances set forth in Section 5.01.165 of the Menifee Municipal Code; and

WHEREAS, the Business Owner wishes to obtain a provisional business license permitting operation of the business until December 31, 2015 while he takes the steps necessary to bring the business into full compliance with all City requirements; and

WHEREAS, Business Owner is willing to comply with all requirements necessary to obtain a provisional business license entitling him to continue to operate his business until such time as he can obtain a business license or until December 31, 2015 whichever occurs first; and

WHEREAS, Business Owner is willing to commit to removal of all structures, equipment, inventory and other materials related to the non-compliant business use on or before December 31, 2015 in the event that he is unable to obtain necessary approvals on or before December 31, 2015.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. Obligations of Business Owner

1. Business Owner represents and warrants that the existing business operations pose no hazard or significant risk of harm to the applicant's customers or employees.
2. Business Owner admits and agrees that the business as currently operated is in violation of the requirements and standards set forth in Exhibit A to this Agreement which are incorporated herein by reference as though set forth in full and that without the issuance of a provisional business license, the City has authority to order shut down of the business.
3. Business Owner agrees to cure such violations within one year, subject to extension by written agreement of the Parties, but in any event prior to December 31, 2015; and
4. Business Owner agrees to be bound by the plan and schedule to bring the business into full compliance with all rules, standards and regulations of the City as set forth in Exhibit B to this Agreement which plan and schedule are incorporated herein by reference as though set forth in full.
5. Business Owner agrees to indemnify and hold the City of Menifee harmless from any liability or harm that may result from permitting the business to continue to operate pending correction of the identified code violations related to the business as set forth in Section 3 of this Agreement.
6. Business owner has provided security acceptable to the city in an amount equal to 150% of the estimated cost of correcting the identified code violations as set forth in Exhibit C.
7. Business Owner agrees to pay all required deposits and charges incurred to process any necessary applications for planning or engineering or other approvals or permits in good faith and without delay to assure that compliance is achieved no later than December 31, 2015.

SECTION 2. OBLIGATIONS OF CITY

- A. The City agrees to process all required planning or engineering or other permits and approvals in an expedient manner and to provide information as to necessary steps to be taken to address all violations set forth in Exhibit.
- B. City agrees to use its best efforts to process any necessary approvals or permits necessary to obtain compliance within one year from the date of execution of this Agreement, subject to extension by Agreement of the Parties to December 31, 2015.

- C. City agrees to permit the business to continue to operate during the processing of all matters necessary to bring the business into compliance with all applicable standards, requirements and laws.
- D. City agrees that during the time period between execution of this Agreement and December 31, 2015, all fees normally charged for specific matters under the control of the City will be reduced by fifty percent (50%) as an incentive to obtain compliance.
- E. Notwithstanding Section 2(D) deposits and charges imposed to compensate the City for the administrative cost of processing approvals necessary to bring the business into compliance will not be reduced.
- F. In the event that, after good faith submission and processing of an application for discretionary approval that requires action by the Planning Commission or the City Council, such application is finally denied by the appropriate legislative body, the effective date of that denial shall be no earlier than December 31, 2015 .

SECTION 3. INDEMNIFICATION

- A. Business Owner hereby indemnifies, agrees to defend and hold harmless City and its elected and appointed officials, officers, employees, agents, contractors and consultants from and against any and all claims, actions, or suits for damages to persons or property, losses, costs, penalties, obligations, errors, or omissions that may be asserted or claimed by any person, firm, or entity and any other liabilities whether actual or threatened ("Claims and Liabilities") in connection with, or which may result, directly or indirectly, from the violations identified in Exhibit A. Business Owner waives his/her/its rights to make any of the above claims against the City. In addition, Business Owner assumes any and all risks of injury, death and property damage incurred in carrying out the improvements necessary to bring the property into compliance with the City Municipal Code and regulations.
- B. Business Owner shall defend, with legal counsel acceptable to City, any action or actions filed in connection with any of Claims or Liabilities and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith.
- C. Business Owner shall promptly pay any judgment rendered against the City for any such Claims or Liabilities; and Business Owner agrees to save and to hold the City Parties harmless therefrom.
- D. In the event that City parties are made a party to any actions or proceeding filed or prosecuted against Business Owner for damages or other claims, Business Owner agrees to pay to any and all reasonable costs and expenses incurred by City in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

SECTION 4. DEFAULT

- A. In the event that Business Owner does not bring the business into full compliance with all City standards, rules and regulations prior to December 31, 2015, Business Owner shall remove and relocate any structures, equipment, inventory or other materials associated with the non-compliant business within 15 calendar days.
- B. Failure to comply with the provisions of Section 4(A) shall permit the City to summarily remove such structures, equipment, inventory or other materials associated with the non-compliant business at its expense and to draw upon any security in place and/or lien the property and business for all costs incurred.

SECTION 5 GENERAL PROVISIONS

- A. Sole Agreement. This Agreement contains the entire understanding between the parties as to the specific subject matter hereof and supersedes any prior understanding and/or written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein.
- B. Severability. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement.
- C. Choice of Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California. Any legal action arising in any way in connection with this Agreement shall be filed in the County of Riverside, California.
- D. Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the terms of this Agreement, the prevailing party in such dispute shall be entitled to recover from the other all costs and expenses, including reasonable attorneys' fees and court costs incurred by the prevailing party in any such dispute (whether or not such dispute is prosecuted to a final judgment or other final determination), together with all costs of enforcement and/or collection of any judgment.
- E. Successors. This Agreement shall be binding on each party's successors and assigns. Business Owner may not assign this Agreement without the express written consent of the City.
- F. Authority. The parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Business Owner

By: _____

Title: _____

Date: _____

[NOTE: If a corporation is the Business Owner two officers' signatures and their titles. If a partnership we need a General Partner to sign.]

City

By: _____
Robert Johnson, City Manager

Date: _____

SAMPLE