

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 118

H. P. 368

House of Representatives, Jan. 27, 1937.

Referred to Committee on Legal Affairs and 500 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Young of Old Orchard Beach.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

**AN ACT to Provide a Town Council and Manager Form of Government
for the Town of Old Orchard Beach.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Annual town meetings to be held. Annual town meetings shall be held in the town of Old Orchard Beach, in the county of York on the 1st Monday of March in each year, and the voters shall then choose by ballot, as now provided, a moderator.

Sec. 2. Officers; how chosen. At such meetings, the voters shall choose by ballot, a member or members of the council, as hereinafter provided, who shall be inhabitants of the town, a town clerk and an auditor of accounts, each for a term of office of 1 year, and a member of the superintending school committee to serve for 3 years. The members of the superintending school committee serving on the effective date of this act shall serve until the expiration of their present terms; and during the balance of their respective terms of office, together with the new member or members chosen in accordance with the provisions of this act, shall constitute the superintending school committee of said town until all members of said committee shall have been chosen hereunder.

At the 1st meeting held under the provisions of this act, 5 councillors shall be chosen for 1 year and each year thereafter councillors shall be elected and serve likewise.

The town shall be divided into councillor districts each of which shall be entitled to 1 councillor who must reside in the district from which he is elected.

The councillor districts in said town shall be those parts of the town within the boundaries designated and numbered as follows:

District No. 1, shall consist of all that part of the town easterly of a line based on the center of Old Orchard street, lengthwise, as said line extends to low water mark of the Atlantic ocean and to the boundary line of the city of Saco in a straight line to the ends of said line;

District No. 2, shall consist of all that part of the town bounded as follows; westerly of the line mentioned in District No. 1 to a line based on the center of Union avenue, lengthwise, as said line extends to low water mark of the Atlantic ocean and to the boundary line of the city of Saco, in a straight line to the ends of said line;

District No. 3, shall consist of all that part of the town westerly of the line mentioned in District No. 2 to the boundary line of the city of Saco, northerly by the Boston & Maine railroad right of way and southeasterly by the Atlantic ocean;

District No. 4, shall consist of all that part of the town westerly of the line mentioned in District No. 2 to the center line, lengthwise, of May street, southerly by the Boston & Maine railroad right of way and northwesterly by the center line, lengthwise of Saco avenue;

District No. 5, shall consist of all that part of the town not bounded in Districts No. 1, 2, 3 and 4.

Sec. 3. Duties of councillors. In case of a vacancy in the office of councillors due to death, resignation or other cause, it shall be filled for the period from the date of such vacancy to the date of the next annual town meeting by vote of the councillors remaining in office.

The council shall select annually a town treasurer, tax collector, fire chief, police chief, and once in 3 years 1 health officer, subject to the approval of the director of health as now provided by general laws regarding health officers; and when a vacancy exists, shall select a town manager with the duties hereinafter defined, for a term not to exceed 3 years.

Except as hereinafter provided all other necessary town officers provided by this act or now or hereafter provided under any statute or by-laws shall be appointed by the town manager subject to the approval of a majority of the council.

No person shall hold more than 1 elective office or appointment in the town at the same time except the offices of tax collector and constable, and except that at any regular meeting the council may vote to combine the offices of collector of taxes and town manager.

The councillors provided for in this act shall serve instead of selectmen, overseers of the poor and assessors of taxes, provided for by general statutes, and shall have the same powers and be subject to the same duties, but no councillor or officer of the town whether elected or appointed shall act on any matter or thing relating to town affairs when he is either directly or indirectly pecuniarily interested, nor shall he vote in his official capacity when taxes are assessed on his own property.

No bail commissioner who is a resident of the town shall act as such in any matter before any municipal court or trial justice in the town, while holding any municipal office to which he has been elected, appointed or employed by such town.

No person shall hold office by election, appointment or as an employee of the town who has been convicted of a felony and not pardoned, convicted of operating a motor vehicle while under the influence of intoxicating liquor or drugs, or who notoriously wastes his means of sustenance so he becomes a public charge, unless said person has been relieved of such conviction or charge in the manner provided by law and continues to refrain from further offense.

No convicted felon shall vote in any matter relating to town affairs or for the election of town officers unless pardoned.

No alien shall vote or hold office or receive employment in said town as relates to public affairs of the town, but may be employed in the discretion of the council in said town after they have exhausted the number of available resident citizens desiring employment by the town.

Sec. 3-A. Town reports before election or town meeting. The council and persons charged with the expenditure of the town money shall before February 1st of each year, make a full, detailed, printed report of all their financial transactions in behalf of the town, and a consolidated statement shall be printed in each town report showing the exact fiscal condition of the town, during the municipal year immediately preceding, with a full account of receipts and disbursements during that period and to whom and for what purpose and for whom each item of the same was paid, with a statement in detail of the indebtedness and resources of the town for the municipal year immediately preceding; and nothing therein shall be shown except for that year, including a list of all unpaid taxes which have been committed to the tax collector for collection, or the treasurer, giving the

names of delinquent taxpayers and the amount due from each and giving the names and amount of taxes each taxpayer has paid during the municipal year. Such reports shall be distributed and available for the personal use of each voter of the town by February 1st of each year, before the annual town meeting and before the election of any town officers. Originals of such reports shall be kept in the town clerk's office, with proper vouchers for the disbursements reported, where such originals and vouchers and all books and papers and records belonging to the town shall be open during the usual hours of business for the inspection of any voter; and any town officer refusing or neglecting to perform such requirement of this section or refusing any voter the right during such hours to examine said original reports, vouchers, town books or papers or to answer the lawful questions pertaining to the same or the management or conduct of the business of the town in that official's control shall be punished by a fine of \$100 for each refusal or neglect and on conviction shall be removed from office. The municipal year required to be reported in this section is declared to be from January 1 to December 31 of each year. The names of all persons receiving relief from the town, except those who the law forbids to be named or classified as paupers or having relief, shall be printed in the annual town report, and the amounts expended for their relief and for whom expended.

Sec. 4. Officers; records. The council elected, as herein provided, shall meet within 24 hours after its election and by written ballot choose one of its members to be chairman, and another as secretary; and an affidavit of such choice of chairman and secretary, signed by a majority of the council, shall be recorded by the town clerk in the records of said town and thereafter records shall be kept of all the doings of said council and be public records open at all times to the inspection of any voter of the town during reasonable business hours.

Sec. 5. Council to act as road commissioners; powers of superintending school committee; meetings of council. The council, elected as herein provided, shall serve instead of a board of road commissioners or road commissioner as provided for by general statutes and shall have the same powers in relation to repairs of bridges, roads and sidewalks of said town, as boards of road commissioners or road commissioner and municipal officers have under general statutes and be subject to the same duties in relation thereto. The superintending school committee, constituted or elected as herein provided, shall have the same powers in relation to the schools of said town as now provided by statute and shall be subject to the same duties in relation thereto.

The council shall meet once each week for transaction of public matters of the town and 3 members of the council shall constitute a quorum for the transaction of business. Special meetings of the council may be called by the chairman or by a majority of the members of the council. Notice of a special meeting shall be mailed to, served upon or left at the usual dwelling place of each councillor and town manager at least 24 hours before such meeting.

All council meetings shall be open to the public where complaints and petitions shall be acted upon in relation to town affairs.

Sec. 6. Compensation of councillors; bonds to be required. Each councillor shall receive \$3 per diem when actually engaged in the performance of his duty as councillor, and actual and necessary expenses incurred in the performance of his duties outside of such meetings, to be paid by the town treasurer.

The council shall require a bond with sufficient sureties satisfactory to the council from all persons trusted with the collection, custody or disbursement of any of the money of the town and may require such bond from such officials as they may deem advisable.

Sec. 7. Terms of appointive officers and boards. All appointed officers and boards and employees of the town shall hold office at the pleasure of the council, except town manager and health officer, who can be removed only upon written charges and a public hearing before the council upon the question; but previous to the date of removal and pending such hearing the council may suspend them from office and such hearing shall be held within 1 week of the filing of written charges.

Sec. 8. Granting of town licenses. All licenses in the town over which it has jurisdiction shall be granted or refused in the discretion of the town council after a fair and impartial hearing and if any person is aggrieved he may petition to 2 disinterested justices of the peace in said town who, if they find him justly entitled thereto, may direct such license to issue to him on payment to the town of the fees required for such license, but no license shall issue for any purpose for operation or carrying on any business, matter or thing which is in violation of the laws of the state or ordinances of the town.

Sec. 9. Qualified employees to do town business. The council shall at all times appoint, select and employ for carrying on the business of the town, 1st from local resident citizens, the best qualified person capable and trained or experienced for the duty or labor to be performed, before employing others.

Sec. 10. Powers and duties of town manager. The town manager shall be chosen by the council solely on the basis of his executive and administrative qualifications, his education and his technical knowledge of road construction; preference in making said appointment to be given to a duly qualified civil engineer when possible, and he shall be the administrative head of the town government and responsible to the council for the administration of all departments of the town, officers, and employees over which the council under this act and the general statutes have control, and his powers and duties, where not otherwise herein provided, shall be general as follows:

- (a) To see that the laws and ordinances are enforced.
- (b) To exercise control over all departments created herein, now existing, or that may hereafter be created, either by general law or ordinance.
- (c) To act as purchasing agent for all departments of the town, except the school department, and to submit to competitive bids any transaction involving more than \$100 if not authorized by the town.
- (d) To attend council meetings, except when his removal is considered, and recommend for adoption such measures he may deem expedient.
- (e) To keep the council fully advised as to the business, financial condition and future needs of the town.
- (f) To perform such other duties as may be prescribed by the council.

Sec. 11. Purchasing agent. As purchasing agent of said town, the town manager shall purchase all supplies and materials for the town for the several departments, with the exception of the school department, and see to the delivery of such to each department, take and file receipts thereof; and all accounts for the purchase of supplies and materials and work performed for the town, except accounts of the school department, shall bear the approval of the town manager when presented to the council for payment.

No money shall be expended from any town contingency fund in excess of \$100 for any purpose whatsoever without such expenditure being authorized by majority vote of the town at the annual or a special town meeting called for that purpose during the municipal year, or by authority of the majority of the town council if the voters so direct.

Sec. 12. Compensation of town manager. The town manager shall devote his entire time to the duties of his office and receive for his services such compensation to be fixed by the council, commensurate with the manager's services, and actual and necessary expenses incurred in the performance of his duties, to be paid by the town treasurer in monthly payments on the 1st of each month; but the town by majority vote in town

meeting may establish the compensation it shall pay the town manager, in which case the council shall not fix his compensation.

Sec. 13. Compensation of town officers, employees and agents. Unless the voters, by majority vote in annual or special town meeting, fix the compensation to be paid to any of its officers, appointees or employees, then the council shall fix the same commensurate with the services such officers, appointees, or employees render in the service of the town.

Sec. 14. Officers to be sworn. All town officers elected or appointed shall be sworn by the town clerk to the faithful performance of the duties of their respective offices.

Sec. 15. Town voters may remove town manager. The voters of the town, by a majority vote, may remove the town manager from office at any annual or special town meeting when they deem it desirable for the welfare of the town,—in which case their action shall be binding upon the town council.

Sec. 16. Payment of town money regulated; appropriations not to be exceeded. No money shall be paid out of the town treasury except by an order issued and signed by the councillors or their representatives authorized for the purpose and presented to the treasurer of said town at the time of payment.

No agent, officer or employee or department of the town whose duty it is to expend money under an appropriation or direction of the town to a certain amount or appropriation, shall contract any bill or incur any obligation on behalf of the town in excess of the appropriation or direction of the town of a certain amount, nor shall any money under an appropriation or direction of the town be used for any other purpose than that for which it was appropriated or directed by any means whatsoever.

Sec. 17. Compensation to person on relief. No person while receiving relief from the town shall be paid any salary or wages if employed by the town during said period of relief; but may be employed and by such employment reimburse the town for his relief equitably in proportion to his labor and employment.

Sec. 18. Town agents may bind town. If the town at any annual or special town meeting votes to and appoints or elects citizens to serve the town as an agent or an officer or for any special purpose or as a committee to attend to specified affairs or business of the town, said agent or if a committee, a majority of said committee by its authorized acts shall bind the town and no municipal officer, agent or employee shall refuse to carry

out forthwith the matter or thing as directed or acted upon on behalf of the town by said agent or committee or refuse to pay the obligations entered into by said agent or committee authorized thereto under penalty of a fine of \$100, to be recovered in an action on the case by any voter of said town.

Sec. 19. Special limits in town abolished. All special limits heretofore existing in the town, as defined in its charter, or any amendment thereto in relation to its boundaries for purposes of taxation, are abolished and all property and persons heretofore not considered within the special limits of the town shall be subject to the same laws, taxation and rights and liabilities heretofore applicable to that portion of the town within the former special limits of the town.

Sec. 20. Fees of municipal court and trial justices abolished. No resident municipal court judge or trial justice exercising any jurisdiction in the town of Old Orchard Beach in criminal cases, shall hereafter receive any fees of any kind whatsoever in such cases, but shall hereafter receive in full compensation for his duties an annual salary of \$500. This section shall not affect civil matters of which any such resident municipal court judge or trial justice has jurisdiction. All costs and fees charged in criminal cases shall be turned over to the county commissioners and $\frac{1}{2}$ thereof returned annually to the town for its use in maintaining the expenses of the salary of any such resident municipal court judge or trial justice.

Sec. 21. No demand for release of detained person. No person shall demand from any person arrested or detained in custody in the town, any release of damages or claims for damages or injuries by such person or for the unlawful arrest of such person as a prerequisite to being released or discharged from custody or detention or after trial and acquittal of any offense with which such person was charged, detained or held in custody.

Sec. 22. Police fees in town, abolished. Town police officers, regular or special, shall not receive witness fees or other fees for performing any duties in said town as such officers, either as witnesses or for any other reason, in criminal matters, during the term of their employment; but the salary authorized by the town to be paid said officers for their services shall be in full for all duties and services rendered by them in all criminal matters, arrests, or duties, except when engaged as witnesses in criminal matters before a court, trial justice or board, outside of the town, when summoned to act therein as such witnesses, and except when said officers are

engaged in enforcing any civil process or where they are entitled to fees in civil cases.

Sec. 23. Penal clauses. Whenever any matter, thing, order, direction, ordinance, law or procedure is required to be performed or done under this act, or the general laws governing the same, by any town agent, officer, appointee or employee of the town, and compliance is wilfully refused while remaining in office, or any person's rights are denied, or unenforced or not carried out, then the aggrieved person shall have a right to a writ of mandamus from the superior court of the county to compel performance, or an injunction to restrain the injury as the case may be with costs to be paid by the defendant; and whenever the wilful misfeasance or malfeasance in the service of the town by any officer, agent, appointee or employee, whereby the laws or directions of the town, lawfully enacted, or the provisions of this act and the general laws governing their duties are disregarded or violated, such agent, officer, appointee or employee shall forfeit the sum of \$100 to the town, shall be removed from office by such conviction and shall be confined in the county jail for not more than 6 months in the discretion of the court. Such prosecution shall be by indictment.

Sec. 24. Repealing clause. All acts or parts of acts inconsistent herewith in so far as they relate to the town of Old Orchard Beach in the county of York are hereby repealed.

Sec. 25. By-laws continued. All the by-laws and ordinances of said town of Old Orchard Beach as now in effect shall continue to be the by-laws and ordinances of the town of Old Orchard Beach except such as are inconsistent with this act and the remainder until changed hereunder.

Sec. 26. Ratification. This act shall become operative when it is ratified by said town of Old Orchard Beach, at any special town meeting called by a warrant containing an article, for that purpose, and when so ratified shall take effect immediately, provided that if no special town meeting be called before the 1st Monday in March of 1938, to ratify this act then this act shall take effect on the 1st Monday in March, 1938.