

MEMORANDUM

TO: ELLSWORTH CITY COUNCIL
FROM: RUDMAN WINCHELL (SWW)
DATE: MARCH 15, 2024
RE: MAINE ORGANICS, LLC CONSENT AGREEMENT
C/M: 46914/84232

On January 8, 2024, I appeared before you to present a draft Consent Agreement with Maine Organics, LLC. The intent of the Consent Agreement was to clarify a mutually agreed upon approach for measuring odors emanating from Maine Organics and determining when those odors constitute unreasonable odors in violation of Chapter 56, Article 8, § 801.3(B) of the Ellsworth Unified Development Ordinance. The version of the Agreement you reviewed on this date is enclosed as Exhibit A ("January Draft").

In reviewing the January Draft, you identified several areas you wished to see modified in light of certain concerns. Specifically, you requested the attorneys' fees provision be revised to \$3,000; that the Agreement identify a more quantitative measure of unreasonable odor, if doing so was financially feasible and enforceable; provisions to obligate more measures be taken to control vermin; and additional details concerning the process for determining a breach of the agreement.

Maine Organics, LLC since retained legal counsel, and I have worked with their legal counsel, in consultation with the Code Enforcement Officer, to arrive at mutually acceptable terms. Attached as Exhibit B is a final version of a Consent Agreement, which I understand Maine Organics, LLC, has consented to (subject perhaps to some very minor changes), that is satisfactory to the Code Enforcement Officer and is in my opinion an enforceable agreement that addresses the specific goals and concerns you identified. Included as Exhibit C for your reference is a version of the Consent Agreement with track changes to indicate the edits made to the January Draft.

At this point, the decision for the Council is to decide to either authorize the City Manager to execute this Consent Agreement, request further modifications, or decline to enter into the Consent Agreement. If the Council chooses to not enter into this Consent Agreement, we can, in executive session, advise the Council on the process for initiating an enforcement action under 30-A M.R.S. § 4452 and the likelihood of success.

I will be present at the Council's March 18, 2024, meeting to answer any questions. I suspect Maine Organics, LLC will be present as well.

END OF MEMO

cc: Jeff Russell, Esq.