

**CITY OF ELLSWORTH, MAINE
ADMINISTRATIVE CONSENT AGREEMENT**

In re Matter of:

Maine Organics, LLC, 15 Industrial Road, Ellsworth, Maine

This **ADMINISTRATIVE CONSENT AGREEMENT** (the “Agreement”), is made and entered into this ____ day of _____, 202____, by and the **City of Ellsworth**, a municipal corporation located at One City Hall Plaza, Ellsworth, Hancock County, Maine (the “City”) and **Maine Organics, LLC**, Maine limited liability corporation with a place of business located at 15 Industrial Road, Ellsworth, Hancock County, Maine (“Maine Organics”).

WHEREAS, Maine Organics is the licensed and approved operator and party in possession of a compost facility located at 15 Industrial Road, Ellsworth, Maine (the “Property”) which diverts over 800 tons of seafood waste residuals and over 1300 tons of waste shavings from being landfilled annually; and

WHEREAS, the nature of the composting process involves odors, odorous waste residuals entering facility, potential odors from the mixing of waste residuals, potential odors from the decomposition of the organic matter and the flipping of compost piles; and

WHEREAS, the Property received site plan approval from the Ellsworth Planning Board to operate the compost facility on July 5, 2017; and

WHEREAS, the Ellsworth Unified Development Ordinance, Chapter 56, Article 8, §801.3(B) provides that “[n]o land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation”;

WHEREAS, there is no dispute that Maine Organics is subject to the Ellsworth Unified Development Ordinance, Chapter 56, Article 8, §801.3(B) ("UDO");

WHEREAS, the Ellsworth Code Enforcement Office has visited the Property on a weekly basis and has verified odors on fifteen (15) occasions since January 1, 2023;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the City and Maine Organics agree as follows:

1. Maine Organics admits to the presence of odors resulting from composting processes perceptible beyond its lot lines contrary to Ellsworth Unified Development Ordinance, Chapter 56, Article 8, §801.3(B) on certain occasions since January 1, 2023, and the date the date of this Agreement.

2. Maine Organics agrees to institute immediate changes to its operating procedures to ensure that its operations do not produce offensive or harmful odors perceptible beyond their lot lines, measured either at ground or habitable elevation.

3. Maine Organics agrees to pay to the City up to a total of \$3,000.00, to cover the City's legal fees incurred in drafting and negotiating the this Agreement and/or the City's costs in obtaining equipment necessary to measure odors and otherwise enforce this agreement. Said payment shall be made within thirty (30) days upon receipt of an invoice from the City.

4. Maine Organics shall provide its neighbors and the Code Enforcement Officer with contact information so that neighbors may directly report perceived unreasonable odor levels to Maine Organics. If reasonable efforts to address odors do not resolve the issue, a neighbor may file an odor complaint with the Code Enforcement Officer.

5. In the event the City receives a complaint about odors from Maine Organics in which the complainant claims they have personally detected the odor continuously for at least one hour, the Code Enforcement Officer may, as the Code Enforcement Officer's schedule permits, go to the complaining property to determine if there is an odor level that would, in the Code Enforcement Officer's opinion and sole discretion, unreasonably interfere with the use and enjoyment of the affected property.

6. If the Code Enforcement Officer determines that there is an unreasonable level of odor, the Code Enforcement Officer will go to Maine Organics to confirm that the odor detected on the property is the same odor being produced by Maine Organics.

7. If the Code Enforcement Officer determines the odors are the same, Maine Organics will have a reasonable period of time to take steps to abate the odor. If the Code Enforcement Officer determines the odor is controlled, then no further action will be taken at that time. If the odor is not controlled to the reasonable satisfaction of the Code Enforcement Officer, the odor will be measured at the complainant's property by the Code Enforcement Officer or designee using a 5-point odor intensity referencing scale which measures n-butanol concentrations. An odor will be determined to be an offensive/nuisance odor at an intensity of 4 or greater for more than a half hour. The odor will also be determined to be offensive/nuisance odor at a level of 2 or 3 in accordance to the Maine Solid Waste Management Rules, Chapter 410 Section 4E(2)(i). If the odor is determined to be an offensive/nuisance odor using the 5-point odor intensity referencing scale, Maine Organics will be in breach of this Agreement and § 801.3(B) of the UDO.

8. Upon agreement of the Code Enforcement Officer and Maine Organics, which shall be reduced to writing, an alternative odor measurement technology may be used based upon a successful demonstration that the alternative odor measurement technology will provide equal or superior performance to the n-butanol odor intensity referencing scale.

9. Maine Organics, at its sole expense, shall take reasonable steps, in consultation with the Code Enforcement Officer, to implement preventive measures to eliminate access by wildlife, vermin, and pest to materials being composted. This shall include, without limitation, reasonable measures to prevent or disperse large gatherings of fowl.

10. Provided Maine Organics complies with the terms of this Agreement and is not in breach, the City will refrain from filing a land use enforcement action regarding actions of Maine Organics that occurred between January 1, 2023, and the date of this Agreement, and will waive penalties that would normally be levied for such occasions during such time except as provided herein.

11. In the event that the Code Enforcement Officer determines Maine Organics to have breached the terms of this Agreement, Maine Organics shall be liable to the City for a fine in the amount of one thousand five hundred dollars (\$1,500). This fine is the sum total of penalties the City is entitled to for violations the City alleges occurred between January 1, 2023, and the date of this Agreement. Additionally, and notwithstanding the foregoing, if the Code Enforcement Officer determines Maine Organics to be in violation of this Agreement, the City may file a land use enforcement action seeking penalties pursuant to 30-A M.R.S.A. § 4452 for any violations occurring after the date of execution of this Agreement, attorney fees and costs incurred in enforcing this Agreement or a land use enforcement action, and an order to enjoin the facility from operating. Notwithstanding a determination of a breach by the Code Enforcement Officer or a decision to pursue said breach pursuant to 30-A M.R.S.A. § 4452, this Agreement shall remain in effect and binding on the parties.

12. Nothing herein shall be construed to:

A. limit the City's authority to enforce any other land use or permitting requirements related to Maine Organic's use and occupancy of the Property;

B. require the City to file a land use or other enforcement action (the City at all times retains its prosecutorial discretion); or

C. create a private cause of action.

13. This Agreement shall be interpreted in accordance with the laws of the State of Maine, with Jurisdiction placed at Hancock County. The parties shall first make a reasonable effort to informally mediate an alleged breach of this Agreement or alleged violation of § 801.3(B) of the UDO.

14. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral or written representations and statements between the parties. This Agreement is enforceable only by the City; it is not intended to create nor does it create a private right of action.

15. This Agreement may only be amended by mutual agreement of the parties, provided that said amendment or modification shall have been reduced to writing and signed by both parties.

16. Neither the failure by the parties to insist upon strict performance of any provision of this Agreement, nor to exercise a remedy consequent upon a breach thereof, nor the acceptance of full or partial performance during the continuance of any breach by the other, shall constitute a waiver of any such breach.

IN WITNESS WHEREOF, the City and Maine Organics have caused this Agreement to be executed as an Agreement under seal as of the day and year first above written.

**CITY OF ELLSWORTH, MAINE
MANAGEMENT**

MAINE ORGANICS, LLC

By: Matthew Williams
Its: Interim City Manager

By:
Its: