

**RECORD OF EMERGENCY MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 24, 2014

TIME: 8:00 AM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, PERKINS AND PHILLIPS.**

CITY COUNCIL ABSENT: MOORE

**KEY SPEAKERS PRESENT: CITY MANAGER MICHELLE BEAL, TAMMY
MOTE, CHRISTOPHER COLEMAN, HAROLD PAGE, MICKI SUMPTER,
MICHAEL HANGGE AND KEVIN DEPRENGER.**

Call to Order.

Chairman Crosthwaite called the emergency meeting of the Ellsworth City Council to order at 8:00 AM.

Council Order #121402, Discussion and action on the effective date of enforcement for the City of Ellsworth Code of Ordinances, Chapter 59, Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance.

Michelle Beal, City Manager stated on December 15, 2014 the Council passed amendments to the Fireworks Ordinance. As part of those changes the residents owning property within the Urban Compact Area were no longer allowed to set off fireworks on their property. When the Ordinance was passed there was a statement in the last paragraph that stated the amendments were effective immediately. A resident notified Beal on Thursday, December 23, 2014 to explain they had purchased a large quantity of fireworks a few months prior for a planned Holiday gathering. This resident owns 6 acres of land off from the Bayside Road; however, the property is still within the Urban Compact Area. The invitations for this event have already been extended to their friends and family. Beal stated the purpose of the meeting this morning is to discuss not enforcing the Ordinance for a period of time. Due to the Ordinance being passed containing language that states the amendments are effective immediately, any changes to that wording would require a two week public hearing notice before a meeting could be held. If the Council wanted to take action the only option they have is to direct the Police Department to not enforce the amendments for a period of time. Beal stated the residents hosting the Holiday gathering were present, in case the Council had questions or comments for them. Councilor Phillips stated as with most Ordinances amendments are made that seem to make sense and then some items get overlooked. Approximately 1% or 2 % of the Ellsworth population gave input on the approved amendments. Phillips did not object to adjusting the effective date of enforcement for a period of 30 or 45 days; allowing anyone within the City not just this resident to enjoy the ability they had prior to the amendments. Councilor Fortier stated the amendment process for this Ordinance took place for approximately three months. A public workshop was held in the Auditorium, a public hearing was held at the November Council Meeting where the item was tabled until more public input could be received, and approximately 30 days later the amendments were adopted at the December 15, 2014 Council meeting. Fortier felt more than enough time had

Call to Order.

Approved - Council Order #121402, Direct the Police Department to delay enforcement of the amendments (approved at the December 15, 2014 Council meeting) to the City of Ellsworth Code of Ordinances, Chapter 59, Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance until February 1, 2015.

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elapsed for members of the public to understand the amendments that were being proposed to the Fireworks Ordinance. He could not support asking any law enforcement officer to not enforce a dually processed and adopted Ordinance. Fortier felt this would be against everything the Chief and his officers have signed onto for the goals and core values. It is unfortunate one person or one family has been inconvenienced; however, more notification and public consumption has been provided than is required in regards to these amendments. Fortier was not in favor of changing anything on this Ordinance at this point. Councilor Blanchette looked at changing the date to accommodate a long standing gathering a citizen had planned as serving the public. This would be correcting an unintended consequence. He saw this as being no different than correcting something that the City may want to do and cannot because of requirements within a document, even if it is a single family. Blanchette was in agreement with Phillips in regards to extending the enforcement date. Councilor Beathem felt although the Council would like to believe all the residents were aware of the amendments there are probably a large majority of public that does not bother to read or listen to information about upcoming changes. Beathem asked to hear from the Police Chief in regards to his concerns. The Ordinance will be reviewed again shortly to consider options for residents who own large parcels of property to be allowed to display fireworks. Beathem felt regardless of whether the Council extends the enforcement date or not there will likely be residents who did not understand the amendments and therefore set off fireworks over the holidays. If there are complaints, Beathem would like to see warnings given out to let residents know there is a fireworks ordinance in place and they are in violation of the Ordinance. This still enforces the fact that the Ordinance exists; however, if fireworks are set off on the Bayside Road and there are no complaints than the Police Department will not be involved anyways. Beathem was not proposing this option for just one family; he felt there would be multiple violations over the holidays. Some of the violations will be caused by residents who are aware of the amendments and the other violations will be residents who were truly not aware of the changes. Councilor Perkins felt had this discussion been addressed at the December 15, 2014 Council meeting she would have been in favor of allowing an extension or allowing the new year to pass before having the amendments take effect. She felt just because the Council neglected to discuss the effective date, the residents should not be punished. It is ok for the Council to reconsider or admit an error was made in regards to when the amendments should become effective. Perkins was in favor of allowing an extension, and was also in favor of administering a warning. This would show a degree of enforcement while at the same time helping to get the word

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out that there have been some important changes to the Ordinance. Chairman Crosthwaite stated it is not uncommon for a grace period to take place before amendments to an Ordinance take place especially when the amendments impact the public directly. Generally, amendments do not take effect immediately upon the passage; however if the effective date is not mentioned or stated directly than it is automatically upon passage. Crosthwaite was in favor of allowing an extension to a date certain. Blanchette was concerned with how the extension should be worded; he did not want to tell the Police how to do their job. He would rather see it worded that the Council is delaying the effective date rather than telling the Police Department to issue warnings or some other means of enforcement. That appeared to be beyond the Council's scope. Beal explained she did contact the City Attorney for guidance on this matter. The Council has the authority to tell the Police Department to enforce or not to enforce until a time certain on City Ordinances. The Council does not have the authority to tell them how to enforce it.

Keith Swett stated he has approximately 5 acres of land on the Bayside Road which surrounds his house; he is not located directly beside neighbors. He was not aware this topic had come before the Council, since he does not read the papers or have access to the City's face book page. His family purchased a large amount of fireworks for a Holiday gathering that they no longer can use at their residence. He did not feel this amendment would only impact his family. Swett stated if the extension is not granted this morning, he will not be setting the fireworks off because he does not want a ticket or warning.

Chris Coleman, Police Chief stated this is a complicated issue. If the Ordinance stands and this family has a fireworks display the Police Department will receive calls from the neighbors. Coleman asked for any guidance the Council offers to be concrete including a date. The important thing is to provide enough information so that the neighbors can fully understand the process when they call in complaints. Coleman has provided the Ordinance as it is currently written to the Officers. As with any new Ordinance a period of education needs to take place. Every case is different; Coleman does not want to lock the Officers into issuing only warnings or summons because it will depend on the circumstances and what the Officer is faced with when they respond to a complaint. An explanation was given on what Coleman would expect to happen in a few different situations. The goal of the Police Department is to educate the public and make sure the public understands the Ordinance so that they will comply with it willingly. This learning period could take months. The other concern Coleman has with the Ordinance is how it would

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be upheld by the new District Attorney. Once the new District Attorney is sworn into office, Coleman would like to discuss this Ordinance with him to see how violations would be handled within that office. Coleman is not opposed to the Council postponing the enforcement for 45 days, just as long as the Police Department can provide the reason for that extension to neighbors who call in complaints.

Kevin DePrenger, Deputy Fire Chief stated the Fire Department would comply with any guidance provided by the Council. The enforcement would be overseen by the Police Department and the Fire Department would only be concerned with the fire danger.

Crosthwaite noted he asked Beal to reconvene the Committee during the beginning of 2015 to look at large parcels of land within the Urban Compact Area. There was a request during the prior meeting to research and develop some type of permit process in those cases, if possible. Crosthwaite felt the action this morning should be to establish the effective date and the length of time the Council is willing to suspend the enforcement.

On a motion by Blanchette, seconded by , it was

RESOLVED to approve Council Order #121402, delay the beginning date of the Ordinance that was passed at the December 15, 2014 meeting on Chapter 59, Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance to February 1, 2015.

Beal stated the Council could not make the above motion because that would be changing the Ordinance. The Ordinance would need to remain the same. The effective date cannot be changed because the Ordinance states the effective date. Beal stated the motion would need to be: that the Council asks the Police Department not to enforce the new Fireworks Ordinance until February 1, 2015. The Council can tell the Police Department not to enforce; however, they cannot tell the Police Department how to enforce. Blanchette confirmed the City Charter allows for the Council to direct the Police Department not to enforce a City written Ordinance. Beal explained the Charter does allow for that because it is not changing an Ordinance. The City Charter does not allow the effective date to be changed because that date is stated within the Ordinance. Blanchette inquired from Coleman if his department was fine with the Council directing them not to enforce

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the amendments to the Ordinance. Coleman stated he would not like this request to be a routine course of action. He felt this particular Ordinance presented some very special circumstances. Coleman would like to speak to the new District Attorney to get his perspective on how things will be handled at his office when these violations are brought over to the Court House. Since that is a missing piece for Coleman he is comfortable with it in this particular Ordinance; however, does not want it to be common place.

The above motion died for the lack of a second and it was out of order. Beal explained this is not a State law, it is a City Ordinance. Therefore, the Council has the right to delay enforcement of an Ordinance. The Police Department would not normally give a resident a ticket to take to the District Attorney's Office because this is a Council approved Ordinance, and not State law. Normally, the Council would state an effective date at the time of passing the amendments. In some cases the amendments will take place with the effective date of the Ordinance but the Council may state do not enforce until a particular date; that is the right the Council has. The Council is given this right because it is the City's Ordinance and is not State law. The City Charter does not allow the Council to change an Ordinance without public participation, public hearing with a ten day notice. Beathem felt based on the uncertainty the Police Department has with how violations would be handled at the Court level, a delay in enforcement was in order, along with it being winter the probability of a fire is very low.

On a motion by Beathem, seconded by Phillips, it was

RESOLVED to approve Council Order #121402, Direct the Police Department to delay enforcement of the amendments (approved at the December 15, 2014 Council meeting) to the City of Ellsworth Code of Ordinances, Chapter 59, Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance until February 1, 2015.

Following a motion being made by Beathem the following amendments were made to the initial motion as well as accepted and seconded before a vote was taken on it. The wording "ask the Police Department" was changed to "direct the Police Department". Beathem informally asked the Council if the above motion was acceptable by all members of the Council. Beal asked the Council to amend the motion to include wording to specify the amendments to the Fireworks Ordinance; if that wording is not added than the entire Ordinance will be delayed until

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February 1, 2015. This clarification was accepted by Beathem and seconded by Phillips. Phillips stated if the Council had considered this topic on December 15, 2014; the outcome would have been the same as this morning. The majority would have carried the decision to delay the enforcement date. Beathem stated he probably would not be willing to support the motion if it were summer time, since it is winter with a low risk of an accident occurring he was able to support the motion. Blanchette agreed he would support the motion; however, he did not like the use of the wording to direct the Police Department.

A final vote was taken on the above motion with 5 members voting in favor (Beathem, Blanchette, Crosthwaite, Perkins, and Phillips) and 1 member opposing the motion (Fortier).

Council Order #121403, Appointment of the City Clerk as the Registrar of Voters, with a term to expire on 1/1/2017.

See attachment #1, for an explanation on this request. There was no discussion on this item prior to a motion being made.

On a motion by Beathem, seconded by Phillips, it was unanimously

RESOLVED to approve Council Order #121403, Appointment of the City Clerk as the Registrar of Voters, with a term to expire on 1/1/2017.

Adjournment.

On a motion by Blanchette, seconded by Beathem, it was unanimously

RESOLVED to approve adjournment at 8:32 AM.

A TRUE COPY

ATTEST: _____
HEIDI-NOËL GRINDLE

**Approved - Council
Order #121403,
Appointment of the
City Clerk as the
Registrar of Voters,
with a term to expire
on 1/1/2017.**

**Approved -
Adjournment at 8:32
AM.**