

SPECIAL MEETING NOTICE

A special meeting of the Ellsworth City Council will be held on Thursday, April 3, 2025, at 6:00 PM in the Ellsworth City Hall Council Chambers.

Meetings will be broadcast live on:

Facebook: <https://www.facebook.com/ellsworthme>

YouTube: <https://www.youtube.com/c/CityofEllsworthMaine>

Spectrum Channel 1303

AGENDA

1. Call to Order.
2. Council Order #040300 Public hearing and action on the request of the Public Works Director for the approval of purchasing necessary hardware associated with the MaineDOT High Street Project.

Mike Harris, Public Works Director – here tonight to request that they be able to expend funds to purchase manhole rims and covers and water boxes that are necessary for the High Street paving project that starts on Sunday (4/6). The funds come from bond money that was reallocated from the Water Street Pump Station project, that was approved a few months ago and set aside for this project. The funds include money for this purchase as well as money that we would end up reimbursing MaineDOT because they are raising and lowering all the manhole rims and covers and all the water boxes for the project.

Councilor O'Halloran – these funds are just for the labor not including the hardware?

PWD Harris – the funds were for both. What he is asking for now is to be able to expend some of that money to purchase the parts needed. The Council already approved the reallocation of money, he is just coming to them now to make sure that he is good to make the purchase.

Chair Beal – what we approved to reallocate included both bid and hardware and did we come in close to what was anticipated? PWD Harris responded to the question that yes both were included and we came in under because the manhole prices went down.

Councilor Stein – is this bid out or is this one manufacturer makes all of these? PWD Harris responded that he got prices from different places, EJ Prescott, Ti-Sales and American Concrete. He also checked with FW Webb and Fergusons for water box pricing. The one that he is recommending is the lowest priced ones.

Councilor O'Halloran – is a little confused about their original bid, he thought that we had to pay the contractor to do it all. PWD Harris said that DOT is paying the contractor and then we are reimbursing DOT but it is just for the labor and doesn't include the hardware. That is how it has been from the get-go, and it does state in the current awarded contract that we will be providing the hardware.

Chair Beal – we have always done it this way; we’ve always bought our materials. The DOT doesn’t want to be responsible for purchasing the materials because if something is missing or wrong they would be held to it. Plus, it is less expensive for us to do it this way because we wouldn’t have a markup.

Councilor Mote – where are we purchasing the three 12-inch insertion valves? PWD Harris answered with from EJ Prescott and there is only one price for that item because they are the only ones who do live main insertion valves.

Move to authorize the purchase of 55 manhole rims and covers from EJ Prescott in the amount of \$23,047.20; 40 water boxes from Ti-Sales in the amount of \$7,360.00 and three 12” insertion valves including installation in the amount of \$57,321.00, with funding to come from the reallocated 2023 General Obligation Bond funds designated for the High Street DOT project, T Mote, seconded by N Smith, passed 6-1 (S O’Halloran opposed)

3. Council Order #040301 Public Hearing and potential action on a proposed ordinance to more effectively control nuisance odors within the City of Ellsworth. This ordinance will outline how to determine an objectionable odor, compliance requirements, and enforcement procedures.

City Manager Pearce – we took the Council feedback from the last meeting and Robert, Code Enforcement Officer, Tim Pease from Rudman and Winchell and the team incorporated it into the new smell ordinance and he is very confident that we have this in line for what we need for the city.

Robert Grant, Code Enforcement Officer – in the packet is the odor ordinance that includes the amendments that were asked for at the last Council meeting. He had Tim work on the wording to make it more legally sound, and he or Tim are happy to answer any questions.

Tim Stone – looking over the new ordinance he isn’t sure it has the “teeth” that he was hoping it would have. He is hoping to get a better understanding to show that it does actually have “teeth” and isn’t just another way to “kick the can down the road again.” It doesn’t have anything about repeated offenses, it does have the same kind of language as before, that if they do something then they get some kind of violation but if they work on it that everything is ok. He is concerned about the language and doesn’t think it is enough, so he is hopeful that someone can help him understand.

CEO Grant – this isn’t an ordinance that is going against any particular business or entity. We had a test case and keeping that in mind they tried to do the best they could as far as making something they believed would be effective but not targeting or singling out any one business.

Manager Pearce – this is a new smell ordinance and the original one is extremely broad, which is why he believes the consent agreement was agreed to. Having reviewed other smell ordinances across the state and wanting to have a more defined process, adding the n-butanol kits that we are now certified for that, but also a reasonableness standard and giving the Code Office more discretion, it gives a clearly defined process to address it within the Code Office.

CEO Grant – an example would be if someone didn’t like the smell of a cheeseburger cooking, there would be a daily complaint and since it would also be a repeated complaint, he would be able to use his discretion and the flexibility of that being built into the ordinance of whether it

actually is an offensive odor or if someone is just trying to get their least favorite restaurant shut down.

Chair Beal – is concerned because there are a couple of businesses that do put off odors off their property lines and if someone isn't used to them, like all of us are, or is new next door that there could be complaints. She also asked if Tim would mind explaining where the changes are and the reason that they have more “teeth” in his opinion.

Tim Pease, Rudman and Winchell – he thinks it is interesting, from his perspective, as someone who's had to enforce ordinances in court for many years, he looks at the way this new ordinance is drafted and think it has more teeth than less teeth. One of the changes included was giving maximum flexibility to the Code Enforcement Officer when it comes to timing. It was originally worded with a 15-minute time frame, which isn't always feasible if they are unavailable or tied up with something. Another “tooth” added was tying the amount of fines and enforcement to the statute 30A M.R.S.A 4452, and there are minimum daily fines there as well a range, which can go up very high. In his experience, judges will take into account whether a violator has been willful and trying to flout the law and they do take this very seriously. He would compare this ordinance to the way the noise ordinance is drafted, which states that a fine is not less than \$50 but not more than \$250, so he thinks the ability under the odor ordinance to get someone's attention is much higher. So it is his opinion that this new ordinance provides maximum flexibility to the city which was his understanding of what we were looking for.

Councilor Smith – asked if Tim could speak a little more about section 7, there are three phases A, B and C and in C it says that the city may but is not required to file an enforcement action, and the reason and why we needed the flexibility. Tim responded with that he has always struggled with this and thinks lawyers generally do, if you had the requirement that the city shall file an enforcement action you only have one course of action and that's it. There may be other things that you could work out other than simply running to court. Court can take a long time and the outcome can be uncertain, so you so if you can find another path that is better for the situation to get it corrected, this gives that flexibility.

Councilor O'Halloran – would like to go on record saying that when he was elected the first time, the then city manager took him on a city tour and took him to the solar site near Maine Organics. He advised him that the city bent every rule possible to get Maine Organics to come to Ellsworth, and he didn't think much if it at the time. After he was elected, he started receiving many phone calls and conversations about the odor at Maine Organics, he does realize that this new ordinance is a general ordinance but wanted to bring it up, so he reviewed the minutes from two Planning Board meetings in 2017, and the previous CEO stood up and said that we do have an odor ordinance it is in 801.3b and it clearly states that no land use or establishment shall be permitted to produce offensive or harmful odors beyond their property lines. For whatever reason, nothing seems to have been done with that, and then we get to a consent agreement which he disagreed with. He is also against this new ordinance, because to him it is more “hullabaloo” about what is going on and he believes it is one more protection for the offender.

Councilor Lyons – stated that the city attorney said the opposite so he would like to note that for the record too.

Councilor Stein – stated that if this passes it would be nice to have an update in a number of months as it starts warming up and the weather getting hotter so the smells start coming out. CEO Grant replied that he would be happy to give a city-wide update.

WHEREAS, the City of Ellsworth recognizes the importance of maintaining a clean and healthy environment for its residents, businesses, and visitors; and

WHEREAS, excessive and persistent odors can negatively impact public health, quality of life, and economic development within the community; and

WHEREAS, it is in the best interest of the City to establish reasonable regulations to prevent and mitigate nuisance odors from industrial, commercial, and agricultural sources while balancing the rights and interests of property owners and businesses; and

WHEREAS, the City Council has reviewed the proposed amended Odor Ordinance, which establishes clear definitions, thresholds, enforcement mechanisms, and penalties for violations;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Ellsworth hereby adopts Chapter 66: Odor Ordinance for New and Existing Commercial and Industrial Uses, as presented, effective immediately upon passage and in accordance with applicable laws; and BE IT FURTHER RESOLVED that the City Manager and relevant departments shall take the necessary steps to implement and enforce this ordinance, including public outreach and education as appropriate., T Mote, seconded by N Smith, passed 6-1 (S O’Halloran opposed)

4. Adjournment.

Motion to adjourn, N Smith, seconded by T Mote, passed 7-0