

Odor Nuisance Control and Abatement Ordinance – DRAFT 12-4-18

Sec. 60-1038. - Odors.

(a) —For purposes of this section, the term "odor threshold" is defined as the minimum concentration in air of a gas, vapor, or particulate matter than can be detected by the abutters of the property in question.

(b) —No development in any zone may generate any odor that reaches the odor threshold, measured at the lot line of the enterprise generating the odor.

(Ord. of 9-21-2009, § 5.6E)

**(a) Nuisance Control and Abatement**

**Statutory authority; administration and enforcement; severability.**

1. Authorization. This article is adopted pursuant to 30-A M.R.S.A. § 3001 and the City's Home Rule Powers as provided for in Article VII-A of the Maine Constitution and Title 30-A M.R.S.A. §§ 2101 through 2109 and in accordance with the authority of the City to seek judicial remedies in order to protect the inhabitants of the City, the City as a municipal corporation, and individual residents of the City as provided for by the laws of the State of Maine, including, but not limited to 17 M.R.S.A. §§ 2702, 2705 and 2706; 30-A M.R.S.A. § 2002 and at common law.

2. Administration and enforcement. The Code Enforcement Officer of the City of Auburn shall administer and enforce this article.

3. Severability. If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

**(b) Purpose.**

The City finds that because most odorous pollutants have a complex chemical composition and may elicit a broad spectrum of responses by the receptors, special methods must be employed in their measurement and characterization. Although analytical data are more precise and may be useful in identifying a source, it is the human response or the sensory data that is most critical in determining the necessary degree of odor control. Analytical data may be used to specify permissible emission levels from a source, but sensory data must be employed to assess the impact in the surrounding community. The latter is the City's primary concern.

**(c) Objectionable odor determination.**

An odor will be deemed objectionable and is a public nuisance when any of the following occurs:

1. Creates a public nuisance at common law; or

2. The erection, continuance or use of any building or place for the exercise of trade, employment or manufacture which, by noxious exhalations or offensive smells, become injurious and dangerous to the health, comfort or property of

individuals or the public; or

3. All members of a panel consisting of a representative from the Economic and Community Development Department, Police Department and Fire Department shall investigate complaints to determine following concurrent, personal observation, that the odor at the property line of the source based on City Tax Maps or elsewhere in the City is objectionable, taking into account its nature, concentration, location, and duration and are able to identify the source.

**(d) Compliance required; applicability.**

No odor source, land use, facility, or activity shall be exempt from complying with the odor management standards contained in this article, Chapter 60-1038, Zoning, because of grandfathering or because of being an existing use, facility, or activity at the time the standards were enacted. The odor standards apply to all existing and future odor sources, land uses, facilities, and activities in the City, except as otherwise provided herein.

**(e) Observation procedures.**

Odor observation shall be undertaken to arrive at a determination that an objectionable odor exists, shall be at or beyond the property line or at or near places where people live or work.

**(f) Enforcement.**

In the event that the Economic and Community Development Department receives complaints that smells or odors are detectable beyond the property line, the following process shall be used to correct the odor problem:

1. Within seven days of receiving a complaint, the Economic and Community Development Department shall investigate the property to assess the situation and discuss odor compliance with the business operator, including but not limited to asking the business operator what is being done to mitigate odors. If the Economic and Community Development Department detects odor beyond the property lines and/or the operator indicates that odor management provisions described in its Operations Manual and Safety Plan described in Chapter XXX, Zoning are not being followed, the Economic and Community Development Department shall provide verbal notice of violation to the operator and instructions to comply with odor management provisions and require the operator to notify the Economic and Community Development of conformance within 10 days.

**Commented [EC1]:** I don't see this in the draft ordinance. We don't have an existing section that provides standards for this.

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2. If complaints persist and/or the Economic and Community Development Department continues to observe an odor issue, the Economic and Community Development Department shall assemble the panel authorized as described above to investigate the complaints. If the Economic and Community Development Department and the panel observe odor issues after the ten-day period as described above, the Economic and Community Development Department shall notify the operator of violation in writing and require notification of conformance within 10 days.

3. If complaints persist and/or the Economic and Community Development Department and the panel continue to observe odor issues after the ten-day period described above, the Code Enforcement Department shall provide a second written notice of violation, assess a fine for a first violation, as specified under Chapter 2. Administration Sec. 2-610. Penalties, and require the operator to prepare an Odor Control Plan that meets the requirements of § XXX of the Zoning Ordinance and submit a written report from a mechanical engineer or odor management specialist with recommendations for modification/ improvement of the ventilation system within 45 days and installation of recommendations and notice of compliance within 60 days. [The City may use contracted staff and peer review escrow fees to review an Odor Control Plan under § XXX of the Zoning Ordinance.
4. If the operator has not submitted the required report within 45 days, or if the operator has not submitted evidence of compliance within 60 days as described above, the Economic and Community Development Department shall provide a third written notice of violation and assess a fine for a second violation, as specified under Chapter 2. Administration Sec. 2-610. Penalties.
5. If the operator has not submitted the required report within 60 days as described above or if the operator has not submitted evidence of compliance within 75 days, the City Manager shall assess a fine for a third violation, as specified under the Chapter XXX, and temporarily suspend the business license.
6. If the operator has not submitted the required report within 75 days as described above or if the operator has not submitted evidence of compliance within 90 days, the City Manager shall ask the City Council to permanently revoke the business license.
7. Upon request of the City Manager, and as directed by Chapter 14, the City Council shall undertake the required process to consider revocation of the business license.

**Commented [EC2]:** Need Plan Parameters noted in comment above

**Commented [EC3]:** Is this 60 days from the notice or 60 days from the submittal of the recommendations; Could be as long as 105 days if the latter which I think is too long.

**Commented [EC4]:** Need Plan Parameters reference

**Commented [EC5]:** Shifts from ECD Department to City Manager. Is this intentional? Can the City Manager suspend a business license? What about businesses that are not required to have a license?

**Commented [EC6]:** If any?