

★ **Roll Call Number**

Agenda Item Number

44

Date May 18, 2020

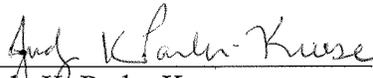
An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 42-301, 42-303, 42-305, 42-306, 42-307, 42-308, 42-309, 42-310, 42-311, 42-314, 42-317 and repealing Sections 42-313, 42-315 and 42-316, relating to odor control",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)


 Judy K. Parks-Kruse
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

 Mayor

 City Clerk

ORDINANCE NO. _____

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 42-301, 42-303, 42-305, 42-306, 42-307, 42-308, 42-309, 42-310, 42-311, 42-314, 42-317 and repealing Sections 42-313, 42-315 and 42-316, relating to odor control",

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 42-301, 42-303, 42-305, 42-306, 42-307, 42-308, 42-309, 42-310, 42-311, 42-314, 42-317 and repealing Sections 42-313, 42-315 and 42-316, relating to odor control, as follows:

Sec. 42-301. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Atmosphere means all space outside of buildings, stacks or exterior ducts.

Best available control technology (BACT) means the utilization of those technologies, processes, procedures, or operating methods or alterations by an industry or other source which results in the elimination or the maximum achievable reduction of odor pollution from an odor emission point source.

Compliance plan means an agreement between a significant odor generator and the city, which contains the following elements:

- (1) An inventory of potential or identified odor emission point sources associated with the industry or source.
- (2) An engineering quality plan detailing best available control technologies and appurtenances designed to eliminate or achieve the maximum reduction of odor pollution from an emission point source inclusive of but not necessarily limited to certain processes, procedures, or operating methods intended to mitigate or control odor pollution.
- (3) A detailed explanation of the specifications and operating parameters of the best available control technologies, monitoring instrumentation and equipment, and processes and procedures intended for the mitigation or control of odor pollution.
- (4) A specification of the documentation that will be made available for the city's review which will verify the data produced by the monitoring equipment, and which will verify that processes and procedures are conducted consistent with the specifications in the facility's odor control study and plan.
- (5) An approved schedule which states, in a time certain manner, the implementation and installation of the best available control technology, processes, procedures,

operating methods, and monitoring instrumentation designed to mitigate or control odors at the facility inclusive of an approved completion date.

- (6) An acknowledgment of the authority of the city and its agents to enter into the facility or its property in order to investigate complaints and to verify the facility's adherence to the compliance plan.

Emission means a release of air contaminants causing an odor into the outdoor atmosphere.

Enforcement official means the neighborhood inspection administrator ~~environmental health officer~~ for the city or his or her designee.

Nonsignificant odor generator means an industry or other source which has not been designated as a significant odor generator as defined in this section.

Odor means that which produces a response of the human sense of smell to an odorous substance.

Odor pollution means an odor emitted to the atmosphere by an industry or other source which is determined by the enforcement official to be the cause of an odor alert.

Person means an individual, partnership, co-partnership, cooperative, firm, company, public or private corporation, trust, estate, joint stock company, or any other legal entity or their legal representative, agent or assign.

Significant odor generator means an industry, facility or other source which has been identified by the neighborhood inspection administrator ~~environmental health officer~~ as the cause of three odor alerts in a 90-day period inclusive of industries, facilities or sources previously found to be in compliance which, through changes in processes, technologies, growth, or from other causes, has begun to generate odors which result in three odor alerts in a 90-day period.

Sec. 42-303. Odor hotline.

- (a) An odor hotline shall be established by the city to receive all complaints relating to odor pollution.
- (b) Records of such complaints shall be maintained. The records shall include names and addresses of callers, times and dates of calls and descriptions of odor nuisances.
- (c) Upon receipt of ten calls or more within a six-hour period relating to a single odor description, an alert condition shall be deemed to exist. The hotline operator shall immediately inform the enforcement official of all known details regarding the odor complained of.
- (d) The neighborhood inspection administrator ~~odor hotline~~ shall provide a monthly report of all data generated to the city manager for report to the city council.
- (e) ~~Information regarding the odor hotline number shall be mailed to all city residents in water bills once each calendar year during the month of March, April or May.~~

~~Cross reference(s) – Boards, commissions, committees and agencies, § 2-1046 et seq.~~

Sec. 42-305. Reports to city council.

- (a) The city manager shall provide a report to the city council containing all data generated through the odor hotline.
- (b) Reports on any enforcement action undertaken by the neighborhood inspection division ~~environmental health division~~ shall also be included.
- (c) Such report shall be made no later than the second council meeting of each month.

Sec. 42-306. Designation as significant odor generator.

- (a) Upon a determination that an industry, facility or other source is a significant odor generator, the neighborhood inspection administrator ~~environmental health officer~~ shall notify the industry, facility or source that it has been found to be a significant odor generator. Appeal regarding such notice may be made by the industry, source or facility as provided in section 42-314 of this article.
- (b) In preparation for the submission of a compliance plan, the neighborhood inspection administrator ~~environmental health officer~~ shall require that, within 30 days of such notification to an industry, facility or source, an evaluation and analysis is commenced, including pilot studies when deemed necessary by the neighborhood inspection administrator ~~environmental health officer~~, of all its processes and potential odor emission points to determine their degree of odor generation. The industry or source shall submit such documentation as may be required by the neighborhood inspection administrator ~~environmental health officer~~ to prove the commencement of the evaluation or analysis and shall provide periodic updates as may be required by the neighborhood inspection administrator ~~environmental health officer~~. In addition to an evaluation of the odor emission points, the final report shall provide, in engineering detail, a compliance plan utilizing the best available control technology for the mitigation and ongoing control of odor from the emission points designated and determined by the neighborhood inspection administrator ~~environmental health officer~~. The period of time permitted for this evaluation and analysis and the date for submission of a final report shall be determined by the neighborhood inspection administrator ~~environmental health officer~~.
- (c) Upon receipt of a final report from an evaluation or analysis, the neighborhood inspection administrator ~~environmental health officer~~ shall review the document for adequacy and use of the best available odor control technology in accordance with the following:
 - (1) If deemed necessary by the neighborhood inspection administrator ~~environmental health officer~~, the report may be submitted to a private consultant for review and recommendation to the neighborhood inspection administrator ~~environmental health officer~~; the cost of the consultant's review will be borne by the subject industry, facility or source.
 - (2) The final report shall also include such monitoring instrumentation and equipment as needed to ensure the maximum effective operation of best available control technology and compliance with this article. The final report also shall include procedures for recordkeeping of the following:
 - a. Operation and observation of the monitoring instrumentation and equipment.
 - b. Operation and maintenance of the technologies, processes, procedures or operating methods or alterations utilized in or by the best available control technology.
 - (3) The written confirmation and acceptance of the final report by the neighborhood inspection administrator ~~environmental health officer~~ shall constitute the compliance plan.
- (d) Compliance for a period of three years with the compliance plan submitted by an industry, facility or source found to be a significant odor generator shall remove such industry, facility or source from the classification as a significant odor generator.

Sec. 42-307. Notice by industry.

- (a) Violation of this article shall not be found if the person emitting the odor shall ~~notify~~notified the ~~enforcement official~~neighborhood inspection administrator that it is or will be involved in the startup, shutdown, cleaning, maintenance or testing of machinery or equipment:
 - (1) Causing the emission; or
 - (2) Designated to control, reduce or eliminate emissions.If feasible for the industry, ordinary maintenance procedures shall be scheduled at such times during the year when it will cause the least odor pollution.
- (b) The notice required in this section shall be given in writing, and if given by oral communication due to an emergency situation, confirmed in writing. The notice shall include the date, duration, and approximate time that the repair or maintenance shall be engaged in.
- (c) Except in emergencies, this notification shall be made no later than 24 hours nor earlier than seven days prior to the scheduled repair or maintenance.
- (d) The enforcement official may confirm such report by inspection of the premises.
- (e) If the time requested for such action is considered unreasonably prolonged, the ~~neighborhood inspection administrator~~ ~~enforcement official~~ may direct that the activity engaged in be conducted in a shorter period of time.
- (f) After receipt of such notice, the ~~neighborhood inspection administrator~~ ~~environmental health officer~~ may, if deemed necessary, issue public service advisories that odor conditions may exist.

Sec. 42-308. Limitations.

- (a) Nothing contained in this article shall be deemed to grant to the ~~neighborhood inspection administrator~~ ~~enforcement official~~ any authority or jurisdiction with respect to odorous air contaminants existing solely within residences or solely within commercial and industrial plants, works, or shops or to affect the relations between employers and employees with respect to or arising out of any condition of air pollution, provided that such odors do not penetrate the atmosphere so as to become a public nuisance.
- (b) Information received by the ~~neighborhood inspection administrator~~ ~~enforcement official~~ or other city employees and agents through filed reports, inspections, or as otherwise authorized in this article that are denoted as confidential records under I.C. § 22.7(3) and (6) shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of this article. Nothing in this subsection shall be construed to prevent the ~~neighborhood inspection administrator~~ ~~enforcement official~~ from compiling or publishing analyses or summaries relating to the general condition of the atmosphere, provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

Sec. 42-309. Enforcement.

- (a) The odor pollution control program established by this article shall be implemented, administered, and enforced by the neighborhood inspection administrator~~environmental health division~~ of the community development department.
- (b) The sections of this article which prohibit the causing or continuing of odor pollution shall be enforced only upon the finding that a source is a significant odor generator as defined in section 42-301 of this article. Notification by the hotline operator as provided in section 42-303 of this article shall be sufficient to establish the fact of an odor alert condition regarding an odor nuisance.
- (c) In addition to further implement and enforce this article, the neighborhood inspection administrator~~environmental health officer~~ may:
 - (1) Conduct research, monitoring, and other studies related to odor pollution.
 - (2) Review public and private projects, including those subject to mandatory review or approval by other departments, for compliance with this article, if these projects are likely to cause odor pollution in violation of this article.
 - (3) At the time of application for a building permit for construction or expansion of an industry, facility or other source which has been determined to be a potential odor generator by the neighborhood inspection administrator~~environmental health officer~~, that industry, facility or source may be required to commence an evaluation and analysis of all its processes and potential odor emission points to determine their degree of potential odor generation. In addition to an evaluation of the odor emission points, a final report shall provide, in engineering detail, an odor control plan utilizing the best available control technology for the mitigation and ongoing control of odor from the emission points designated and determined as a result of their study or analysis. No building permit will be issued until such time as final report and control strategy has been submitted to, reviewed, and approved by ~~the~~the neighborhood inspection administrator~~environmental health officer~~. Upon receipt of a final report from an evaluation or analysis, the neighborhood inspection administrator~~environmental health officer~~ shall:
 - a. Review the document for adequacy and use of the best available odor control technology.
 - b. If deemed necessary by the neighborhood inspection administrator~~environmental health officer~~, the report may be submitted to a private consultant for his or her review and recommendation to the neighborhood inspection administrator~~environmental health officer~~; the cost of the consultant's review will be borne by the subject industry, facility or source.
 - c. The final report shall include such monitoring instrumentation and equipment as needed to ensure the maximum effective operation of best available control technology and compliance with this article. The final report also shall include procedures for recordkeeping of the following:
 1. Operation and observation of the monitoring instrumentation and equipment.
 2. Operation and maintenance of the technologies, processes, procedures or operating methods or alterations utilized in or by the best available control technology.

- d. The written confirmation and acceptance of the final report by the neighborhood inspection administrator ~~environmental health officer~~ shall constitute the control plan which may be modified at any time should actual operation of the industry show that the method used is insufficient or incorrect in controlling odor pollution.
- (4) Upon presentation of proper credentials, enter, inspect and test any property or place regarding which complaints have been filed or which has been designated as a significant odor generator or to otherwise enforce and implement this article and inspect any reports, records, or equipment deemed necessary at any time. An administrative search warrant may be obtained as provided in section 1-19 of this Code upon failure of the owner or his or her authorized representative to permit such inspection upon request.
 - (d) Nonsignificant odor generator. For an industry or a source not designated as a significant odor generator, the following enforcement procedures shall apply:
 - (1) Upon notification of an odor alert condition by the odor hotline operator, the neighborhood inspection administrator ~~environmental health officer~~ shall:
 - a. Determine the location of the complaints which result in the establishment of the odor alert condition.
 - b. Prepare a summary of the odor descriptions contained in the establishment of the odor alert condition.
 - c. Determine the prevailing weather condition at the time of the alert indicating wind direction, temperature, wind velocity, humidity, and general weather conditions.
 - d. Visit the general area from which the majority of complaints were generated in order to characterize the nature of the complaint.
 - (2) Based on the parameters in subsection (d)(1) of this section, the neighborhood inspection administrator ~~environmental health officer~~ shall attempt to make a determination as to the industry or source of origin of the odor alert.
 - (3) If the determination is made as to the origin of the odor, the neighborhood inspection administrator ~~environmental health officer~~ shall notify the owner, operator, or manager of the facility or other responsible party that the facility has been designated as the point source or origin of the odor alert.
 - (4) Such notification shall contain the following:
 - a. The date, times, and locations of the occurrence of the odor nuisances.
 - b. The potential for the industry or source to be designated as a significant odor generator, and the potential for enforcement action.
 - (e) Significant odor generators. For an industry or a source designated as a significant odor generator, as defined in section 42-301 of this article, the following enforcement procedures shall apply:
 - (1) Upon notification of an odor alert condition by the odor hotline operator, the neighborhood inspection administrator ~~environmental health officer~~ shall:
 - a. Determine the number series of the complaints which resulted in the establishment of the odor alert condition.
 - b. Prepare a summary of the odor descriptions contained in the complaints, the average duration the odor was noticed and the time of day the first complaint of the alert was filed with the odor hotline.

- c. Determine the prevailing weather conditions at the time of the alert including wind direction, temperature, wind velocity, humidity, and general weather conditions.
 - d. Visit the general area from which the majority of complaints were generated in order to characterize the nature of the complaint.
- (2) Based on the parameters in subsection (e)(1) of this section, the neighborhood inspection administrator ~~environmental health officer~~ shall attempt to make a determination as to the industry or source of origin of the odor alert.
 - (3) If a determination is made as to the origin of the odor alert, the neighborhood inspection administrator ~~environmental health officer~~ shall notify the owner, operator, or manager of the facility or other responsible party that the facility has been designated as the point of origin of the odor alert and is in potential violation of this article.
 - (4) The neighborhood inspection administrator ~~environmental health officer~~ shall inspect the facility's operating log books pertaining to odor control, the instrumentation monitoring the odor control and process equipment, any processes and equipment that may relate to odor generation and control, and any other equipment and processes that are determined necessary by the neighborhood inspection administrator ~~environmental health officer~~.
 - (5) The neighborhood inspection administrator ~~environmental health officer~~ shall make a determination as to whether the facility is in compliance with this article and as to whether the facility is operating within the parameters set forth in its odor abatement compliance plan.
 - (6) If the neighborhood inspection administrator ~~environmental health officer~~ determines that a violation of this article exists or that an industry or facility is not operating within the parameters of its odor abatement compliance plan, he or she shall notify the facility's owner, operator, manager, or other responsible party. Negotiations shall then be entered into between the responsible party and the neighborhood inspection administrator ~~environmental health officer~~ regarding the necessary corrective action and the timeframe in which such action shall be taken, but in no way shall the industry source or facility be allowed to frustrate or delay enforcement action. If the facility fails to comply with the notice and the action agreed upon or if no agreement is reached, the neighborhood inspection administrator ~~environmental health officer~~ may commence legal action as prescribed in this article.

Sec. 42-310. Odor control permit.

- (a) A significant odor generator that has operated for a period of three years, the period commencing from the date of its successful implementation of the agreed upon compliance plan without an odor violation as defined in subsection 42-309(d) of this article, shall cease to be designated as a significant odor generator.
- (b) Immediately upon its change in status, an industry or source shall apply for an odor control permit which shall be issued by the neighborhood inspection administrator ~~environmental health officer~~ upon a finding that the industry or source is continuing to operate within the parameters of its compliance plan. In order to make this finding, the neighborhood

~~inspection administrator environmental health officer shall make an initial inspection to determine compliance and shall inspect at least semiannually thereafter.~~

- (c) Failure to operate within the parameters of the agreed upon compliance plan may result in suspension of the odor control permit. Continued operation of the industry or source while the odor control permit is suspended may result in its redesignation as a significant odor generator and/or the application of penalties as set forth in section 42-312 of this article.
- (d) The odor control permit shall be renewed at the end of each 12-month period commencing with the date of the initial issuance. The annual fee for the odor control permit shall be \$150.00. If an industry or source operates without a valid odor control permit, the application of penalties as set forth in section 42-312 of this article shall result. ~~The neighborhood inspection administrator environmental health officer shall exempt from the payment of fees all public schools, municipal corporations and federal/state facilities. This does not exempt such entities from obtaining an odor control permit or from complying with this article.~~

Sec. 42-311. Suspension and revocation of permit.

- (a) Any permit issued pursuant to this article may be revoked for violation of this article. No revocation shall issue except upon notice delivered to the permittee by mailing the notice in the regular mail addressed to the permittee at the address listed on the application a minimum of ten days prior to the date set for the hearing before the administrative hearing officer ~~city manager or his or her designee~~. Such notice shall inform the permittee of the time, date and place of the hearing; the purpose of the hearing; and shall set out the reasons therefor. If a violation of this article is of such nature that the violation is deemed to be an immediate hazard by the neighborhood inspection administrator ~~enforcement official~~ and such report is submitted to the city clerk in writing, the city clerk shall be authorized to temporarily suspend the permit until notice can be given and hearing held. The hearing will be held pursuant to Chapter 3 of this Code.
- (b) If, after such a hearing, administrative hearing officer ~~the city manager or his or her designee~~ makes a finding based on substantial evidence that a violation of this article did in fact occur as alleged, ~~the neighborhood inspection administrator city manager or his or her designee may continue suspension of or revoke the permit;~~ the determination of whether to revoke such permit shall be in the discretion of the city manager or his or her designee and shall be dependent upon the circumstances surrounding the violation and its severity.
- (c) ~~The decision of continued suspension or revocation made by the city manager or his or her designee may be appealed to the city council. In order to appeal such decision, written notice of appeal must be filed with the city clerk within three days after receipt of the decision. Failure to file such written notice of appeal shall constitute a waiver of the right to appeal the decision of continued suspension or revocation of the city manager or his or her designee.~~
- (d) ~~The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the city clerk. The hearing of such appeal shall be scheduled at the next regular council meeting, if such notice is received by 5:00 p.m. on the Wednesday before the next regular council meeting. If notice is not received by such time the hearing will be scheduled for the next following council meeting, if notice is~~

received within three days after receipt of the decision by the city manager or his or her designee. The hearing may be continued for good cause. The hearing shall be confined to the record made before the city manager or his or her designee and the arguments of the parties or their representatives, but no additional evidence shall be taken. After such hearing, the city council may affirm or reverse the order of the city manager or his or her designee. Such determination shall be contained in a written decision and shall be filed with the city clerk within three days after the hearing or any continued session thereof.

- (e) — If the city council affirms the action of the city manager or his or her designee continuing the suspension or revocation, the city council shall so state and order in its written decision. A permittee whose permit has been revoked may be designated as a significant odor generator.

Sec. 42-313. Odor appeals board. Repealed by Ord. No. 15,----.

(a) — There is established a board known as the odor appeals board.

(b) — The membership of the odor appeals board for consideration of an appeal filed under this article shall consist of any five members of the citizen odor board established under section 42-304 of this article. The chair of the citizen odor board, if he or she is not a member of the appeal board for a given appeal, shall designate one of the five members to chair the meeting of the odor appeal board.

(c) — The board shall:

(1) — Hold hearings upon appeals filed with the environmental health officer under section 42-314 of this article.

(2) — Arbitrate disputes that may arise regarding notice given under subsection 42-306(1) of this article that an industry source or facility is a significant odor generator.

(3) — Provide for recording and transcription of the meeting through the environmental health officer.

Cross reference(s) — Boards, commissions, committees and agencies, § 2-1046 et seq.

Sec. 42-314. Appeals filed.

(a) An industry, facility or source aggrieved by the notice from the neighborhood inspection administrator environmental health officer under subsection 42-306(1) of this article that it is deemed a significant odor generator, may file an appeal, pursuant to Chapter 3 of this Code within 10 business days of the date of the decision either written or by other form of communication, with the environmental health officer, requesting a hearing before the odor appeals board.

(b) — An application for hearing before the odor appeals board shall be filed within five days of receipt of the notice given under subsection 42-306(1) of this article. A period of three days from the date of mailing shall be allowed for receipt of the notice.

(c) — All notices served under this article shall advise the persons served of their opportunity to be heard, the manner in which appeals under this section are to be filed, that they have the right to produce witnesses in their own behalf, and that they have the right to be represented by counsel.

Sec. 42-315 – 42.316. Procedure for processing appeals. Repeal by Ord. No. 15,---

~~(a) — After receiving notice of an appeal filed under section 42-314 of this article, the environmental health officer shall notify the chair of the citizen-odor board who shall designate five members of the board to serve on the appeals board for purposes of hearing the appeal as provided in subsection 42-313(b) of this article.~~

~~(b) — The environmental health officer shall set a time, place and date of hearing which shall not be later than ten days after receiving notice of the filing of the appeal.~~

~~(c) — The environmental health officer shall notify the appellant and members of the appeals board of the time, place and date of hearing not less than three days before such date.~~

Sec. 42-316. Hearing.

~~(a) — At the hearing of the appeal as provided in this article, the appellant shall be afforded a full opportunity to be heard and shall have the right to produce witnesses and to be represented by counsel. After hearing all relevant evidence, the odor appeals board shall make a recommendation to deny or grant the appeal and shall immediately cause the proceedings to be transcribed and forwarded to the city council. Such transcription shall be filed with the city clerk within three days after close of the hearing.~~

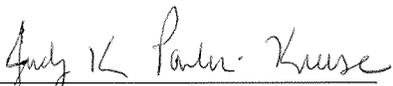
~~(b) — The recommendation of the appeals board may be appealed to the city council. Notice of appeal shall be filed with the city clerk no later than three days after the close of the hearing. The hearing before the city council shall be held at the council meeting following the Wednesday after the filing of the notice of appeal. The city council shall consider only such evidence as was produced at the hearing as shown by the transcript of record.~~

Sec. 42-317. Effect of filing of appeal.

~~After an appeal is filed under this article, the neighborhood inspection administrator environmental health officer shall stay all proceedings under this article regarding the appeal until the odor appeals board deems or grants the appeal or until the city council renders a decision if further appeal is taken.~~

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Judy K. Parks-Kruse
Assistant City Attorney