

CHAPTER 10
Health

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CHAPTER 10
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ARTICLE I General Provisions

Sec. 10-101 State Law Incorporated

The statutes of the State of Maine relating to public health, sanitation, and the prevention of disease and the spreading thereof, and the rules and regulations of the Maine Department of Human Services, or any successor thereto established by law, and all amendments or additions thereto, are hereby expressly incorporated into and made a part of this Chapter, and no person shall violate any such law, rule or regulation.

Sec. 10-102 Health Officer Empowered To Establish Rules

The Health Officer is hereby authorized to prepare such rules and regulations respecting infectious diseases and health, not inconsistent with State law, the City Charter and any ordinance of the City, as he deems necessary for the protection of the public health, which rules after approval by the City Council shall be effective and kept on file in the office of the City Clerk available at all reasonable times for public inspection, and administered by the Health Officer under the direction of the City Manager. No person shall violate any such rule or regulation.

Sec. 10-103 Penalty

Every person who shall be guilty of a violation of any provision of this Chapter to which a particular penalty is not annexed, shall forfeit and pay a sum of not more than one hundred dollars (\$100), to be recovered to the use of the City on complaint or by other appropriate action before the Sixth District Court.

Sec. 10-104 Penalty - Further Violations

The imposition of a penalty for violation of this Chapter shall not excuse the violation or permit it to continue; such violation shall be remedied within a reasonable time, or within such time limit given by the appropriate City Official, and each day such nuisance continues to exist following the expiration of the time limit specified in any notice given to the owner of the premises by the appropriate City official for the abatement of such nuisance shall constitute a separate offense. The application of a penalty shall not be held to prevent the enforced removal of prohibited conditions, nor preclude the City Attorney from causing to be instituted an appropriate action to prevent, restrain, correct or abate a violation of this Chapter.

ARTICLE II Filth

Sec. 10-201 Removal of Private Nuisances

As provided by the Revised Statutes of Maine, when any source of filth weather or not the cause of sickness is found on private property and deemed to be potentially injurious to health, the owner or occupant thereof shall, within twenty-four (24) hours after notice from the Health Officer, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he forfeits not exceeding three hundred dollars (\$300); and the Health Officer shall cause the nuisance to be removed or discontinued; and all expenses thereof shall be repaid to the City by such owner or occupant, or by the person who caused or permitted it. Eff: 07/11/12

State Law Reference: 22 MRSA, §§ 454-A, 1561.

ARTICLE III Odor

Sec. 10-301 Odor Nuisance Control and Abatement

I. Purpose. The purpose of this Ordinance is to assure the comfort, convenience, safety, health and welfare of the people of the City of Rockland, to protect the environment, to promote the development of an economically sound and stable community, and to provide for the prevention control and abatement of public odor nuisance.

The City of Rockland finds and concludes 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.

II. Authority and Administration.

A. Authority. This Ordinance is adopted pursuant to 30-A M.R.S. § 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. §§ 2101-2109 and in accordance with the authority of the City of Rockland to seek judicial remedies in order to protect the inhabitants of the City of Rockland, 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. §§ 2702, 2705 and 2706; 30-A M.R.S. § 2002 and at common law.

B. Administration and Enforcement. The Code Enforcement Officer of the City of Rockland shall administer and enforce this Ordinance.

III. Prohibited Activities.

No person, wherever located, shall:

A. Cause or allow the emission of odorous air contaminants from any source such as to result in objectional odors at the lot line of the source; or

B. Cause the erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyance, become injurious and dangerous to the health, comfort or property of individuals, or of the public and creates a public nuisance as defined by 17 M.R.S. § 2701; or

C. Do any process, rendering, or operate or use any device, machine, equipment, or other contrivance for the rendering of animal or marine matter unless all gases, vapors and gas entrained effluents from these processes are controlled in such a manner as to effectively abate any objectionable odor by utilizing the best available control technology.

IV. Exempt Activities.

A. The provisions of this Ordinance shall not apply to any device, machine, equipment, or other contrivance used exclusively for the processing of food for food service establishment, or is owned and operated by the City of Rockland.

B. When a source, other than those using rendering processes, is a manufacturing process or agricultural operation, provided that the best available control technology is utilized in order to control the emission of objectional odorous gases created by such a manufacturing process or agricultural operation.

C. No odor source, land use, activity, or person shall be exempt from this Ordinance because of grandfathering or because of being an existing use or activity at the time this Ordinance is enacted. This Ordinance applies to all existing and future odor sources, land use, activities and persons in the City of Rockland, except as otherwise provided herein.

D. The provisions of this Ordinance shall not apply to the activities of any person engaged in the business of processing fresh or frozen fish for human consumption. As used in this subsection, "processing" means the continuous operations carried on by such person, at a facility maintained by that person, where fish is unloaded, cleaned, prepared, packed, frozen or cooked, and the inedible portions of such fish are prepared for transport and disposal outside the City of Rockland, but excluding storage, handling, reduction, transportation or rendering of fish waste.

V. Objectional Odor Determination.

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

A. Creates a public nuisance at common law; or,

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

C. All the members of a panel consisting of the Code Enforcement Officer and three residents of the City of Rockland appointed by the Mayor to assist the Code Enforcement Officer to investigate complaints and who are not aggrieved by the source 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; or

D. On or adjacent to residential, recreational, institutional, retail sales, hotel or educational premises when odor is detectable after it is diluted with four volumes of odor-free air as measured by the use of dynamic olfactometry provided for in Franz, J.J. and Prokop, W.H. "Odor Measurement by Dynamic Olfactometry," Journal of the Air Pollution Control Association, Vol. 30, No. 12: 1228-1297, December 1980 which is incorporated herein by reference;

E. Samples for the source are taken and found to rate from a panel provided for in Section V(C) a response of over 2.0 in terms of butanol olfactometer scale steps as determined by the method developed by Sweeten et al ("A Butanol Olfactometer for Field Measurement of Ambient Odors," Sweeten, J.M., McFarland, A.R., Sorel, J.E., Gauntt, R.O., and Reddell, D.L., Journal Air Pollution Control Association, Vol. 34: 208-213, 1984) which is incorporated herein by reference and which is an adaption of ASTM E 544-75 (reapproved 1981) which is incorporated herein by reference.

VI. Observation and Measurement Procedures.

A. For the purpose of this Ordinance, two odor observations and/or measurements shall be made within a period of one hour, these measurements being separated by at least fifteen (15) minutes.

B. Odor observation and/or measurements shall be taken to arrive at a determination that an objectional odor exists shall be at or beyond the property line or at or near places where people live or work.

VII. Abatement of Objectionable Odors.

The Code Enforcement Officer, or any court may order the abatement of objectionable odors by ordering:

A. Any person who operates or uses any device, machine, equipment or other contrivance for the rendering of animal matter to provide that all gases, vapors, and gas entrained effluents from such facility are incinerated at a temperature of not less than 1200 degrees Fahrenheit for a period not less than 0.3 seconds, or processed by condensation or such manner which will provide the best available control technology.

B. Any person incinerating or processing gas, vapor, or gas entrained effluents to provide, properly install, and maintain in good working order and in operation, devices to monitor temperature, pressure, or other operating conditions.

C. Effective new or existing odor control devices, systems, or measures be installed and operated such that no vent, exhaust pipe, blowoff pipe, or opening of any kind shall discharge into the ambient air any odorous matter, vapor, gases, or dust, or any combination thereof, which create objectional odors.

D. Odor producing materials to be stored, transported, and handled in a manner that:

1. Odors produced from materials are confined, abated or treated using the best available control technology and that accumulation of such materials resulting from spillage or other escape is prevented.

2. Whenever dust, fumes, gases, mist, odorous matter, vapors, or any contamination thereof escapes from a building used for rendering animal or marine matter in such a manner and amount as to cause an objectional odor, the Code Enforcement Officer or court may require that the building or buildings in which rendering, handling, and storage are done be tightly closed and ventilated in such a manner that all airborne effluent materials leaving the building be treated by an effective means using the best available control technology to treat odorous matter before release to the ambient air.

VIII. Trade Secrets and Proprietary Information.

When determining compliance to any of the terms of this Ordinance, the City may take whatever acts are necessary to protect trade secrets and/or proprietary information to the extent permitted by the laws of the State of Maine.

IX. Definitions.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Animal and Marine Matter": Any product or derivative of animal life.

"ASTM" is the American Society for Testing and Materials.

"Best Available Control Technology" (BACT) means an emission limitation process based on the maximum degree of reduction for each odor causing pollutant emitted from or which results from the source, which on a case-by-case basis, taking into account energy, environmental and economic impact, and other costs, determines is achievable for such source through application of production processes or available methods, systems, and techniques. In no event shall application of BACT result in emissions of any pollutant which would cause objectional odors by any applicable standards under this Ordinance. If the technological or economic limitations on the application of measurement methodology to a particular source would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standards or combination thereof may be prescribed instead to satisfy the requirements for the application of BACT. Such standards shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. This BACT standard includes emission limitation which we achieved in practice by that class or category of source nationally under air emission permits of any state and as required under the United States Clean Air Act, 42 U.S.C. § 1857, as amended, by the United States Environmental Protection Agency (EPA) and as may be documented in the BACT Clearinghouse published by the EPA for that class or category of source.

"Food Service Establishment": Any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, roadside stand, industrial feeding establishment, private, public, non-profit organization or institution routinely serving food, catering kitchen, commissary or similar place in which food is placed for sale or served on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public, with or without charge.

"Odor" shall mean that property of an emission which stimulates the sense of smell.

"Odor Concentration": The number of cubic feet that one cubic foot of sample will occupy when diluted to the odor threshold. It is a measure of the number of odor units in one cubic foot of the sample. It is expressed in odor units per cubic foot.

"Odor Units": One cubic foot of air at the odor threshold

"Person": Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust,

estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

"Process": Any action, operation, or treatment and the equipment used in connection therewith, and all methods or forms of manufacturing or processing that may emit smoke, particulate matter or gaseous matter.

"Rendering": Any heating process, including cooking, drying, dehydrating, digesting, evaporating and protein and/or oil concentrating of animal or marine matter.

X. Violations, Enforcement and Fines.

A. Violation and Enforcement. The Code Enforcement Officer, upon finding that any provision of this Ordinance is being violated, is authorized to issue notices of violations, orders to correct, schedules to correct, to enter into administrative consent decrees and agreements and to institute legal proceedings to enjoin and/or abate violations of this Ordinance in his capacity as the Code Enforcement Office, in the name of the City of Rockland and on the behalf of, and as representative of and as a party with individual residents of the City of Rockland, who are aggrieved by the violations and to recover fines and costs for the City of Rockland.

B. Fines. A person who violates the provisions of this Ordinance or the condition(s) of an order of the Code Enforcement Officer, shall be guilty of a civil violation and on conviction shall be fined not less than \$1,000 nor more than \$2,500. Each day such violation continues shall constitute a separate violation. All fines shall be paid to the City of Rockland. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the City of Rockland.

XI. Validity and Separability and Conflict With Other Ordinances.

A. Validity and Separability. Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

B. Conflict with Other Ordinances. Whenever the requirements of this Ordinance are inconsistent with the requirements of any other ordinance, code or statute, the more restrictive requirement shall apply.

XII. Appeals.

An appeal from a decision or order of the Code Enforcement Officer shall be taken to Superior Court pursuant to Rule 80B, Maine Rules of Civil Procedure. Eff: 6/9/88