

CHAPTER 5 - ODOR ORDINANCE

ARTICLE I - ODOR NUISANCE CONTROL AND ABATEMENT

Section 501 - Purpose

The purpose of this Ordinance is to assure the comfort, convenience, safety, health and welfare of the people of the Town of Thomaston, 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 Town of Thomaston finds and concludes that because most odorous pollutants have a complex chemical composition and may elicit a broad spectrum of response 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 Town's primary concern.

Section 502 - Authority and Administration

502.1 - Authority

This ordinance is adopted pursuant to Title 30-A, ss2101 through 2109 (Home Rule); Title 30-A, ss3001-3010 (Ordinance Authority and Limitations); Title 17 Sections 2702, 2705 and 2706 (Nuisances) and common law.

502.2 - Administration and Enforcement

The Code Enforcement Officer of the Town of Thomaston shall administer and enforce this Ordinance.

Section 503 - Prohibited Activities

503.1 - Cause or allow the emission of odorous air emissions from any source such as to result in objectional odors at the lot line of the source; or,

503.2 - 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 MRSA Section 2701; or

503.3 - 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.

Section 504 - Objectionable Odor Determination

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

504.1 - Creates a public nuisance at common law: or,

504.2 - 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 to the public, or

504.3 - All the members of a panel consisting of the Code Enforcement Officer and three residents of the Town of Thomaston appointed by the Manager to assist the Code Enforcement Officer to investigate complaints and who are not directly affected or interested by the source determine following concurrent, personal observation, that the odor at the property line of the source based on Town Tax Maps or elsewhere in the town is objectionable taking into account its nature, concentration, location, and duration and are able to identify the source; or,

504.4 - On or adjacent residential, recreational, institutional, retail sales, hotel or educational premises when odor 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.

504.5 - 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 olfactometry 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 (re-approved 1981) which is incorporated herein by reference.

Section 505 - Observation and Measurement Procedure

505.1 - 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.

505.2 - 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.

Section 506 - Abatement of Objectional Odors

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

506.1 - Any person who operates or uses any device, machine, equipment causing objectionable odors 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, eliminating the offensive odors.

506.2 - Any person incinerating or processing gas, vapor, or gas entrained effluents causing objectionable odors to provide, properly install, and maintain in good working order and in operation, devices to monitor temperature, pressure, or other operating conditions, eliminating the objectionable odors.

506.3 - 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.

506.4 - Materials producing objectionable odors to be stored, transported, and handled in such a manner that:

506.4.1 - 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, eliminating objectionable odors.

506.4.2 - 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, eliminating objectionable odors.

Section 507 - Trade Secrets and Proprietary Information

When determining compliance to any of the terms of this Ordinance, the town 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.

Section 508 - Violations, Enforcement and Fines

508.1 - 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, order 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 Officer, in the name of the Town of Thomaston and on behalf of, and as representative of and as a party with individual residents of the Town of Thomaston, who are aggrieved by the violations and to recover fines and costs for the Town of Thomaston.

508.2 - 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 \$1,000.00

nor more than \$2,500.00. Each day such violation continues shall constitute a separate violation. All fines shall be paid to the Town of Thomaston. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the Town of Thomaston.

Section 509 - Validity, Severability and Conflict with Other Ordinances

509.1 - Validity and Severability

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.

509.2 - 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 requirements shall apply.

Section 510 - 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.

This Ordinance becomes effective immediately upon enactment by the voters.