

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. CB16-0257
COMMITTEE OF REFERENCE:
Safety & Well-being

A BILL

For an ordinance amending Article II of Chapter 4 of the Denver Revised Municipal Code relating to prevention and control of nuisance odors.

WHEREAS, nuisance odors can adversely affect health and comfort of Denver residents, workers and visitors; and

WHEREAS, greater prevention and control of nuisance odors will enhance the quality of life of Denver's residents, workers, and visitors;

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Chapter 4, Article II, Section 10, entitled Nuisance, of the Denver Revised Municipal Code shall be amended by deleting the language stricken and adding the language underlined as follows:

Sec. 4-10. - Nuisance.

~~(a) It shall be unlawful for any person to emit air contaminants that constitute a nuisance as defined in section 4-2.~~

~~(b)~~(a) ~~It shall be an unlawful nuisance for any person to cause or permit the emission of odorous air contaminants from any source so as to result in detectable odors that leave the premises upon which they originated and interfere with the reasonable and comfortable use and enjoyment of property. Upon either or both of the following occurrences, any odor will be deemed to interfere with reasonable and comfortable use and enjoyment of property. To prevent and control nuisance odors, an odor control plan shall be submitted to the Manager describing the odor(s), if any, originating or anticipated to originate at the premises and the control technologies to be used to prevent such odor(s) from leaving the premises if any of the following occur:~~

- 1) If odorous contaminants are detected when one (1) volume of the odorous air has been diluted with seven (7) more volumes of odor free air, as measured by any instrument, device, or method designated by the Colorado Air Pollution Control Division to be used in the determination of the intensity of an odor and in the enforcement of Colorado Air Quality Control Commission Regulation 2.
- 2) ~~When~~If the department receives five (5) or more complaints from individuals representing separate households or businesses within the city within a ~~12-hour~~30-day period relating to a single odor description, and the department verifies the

source of the odor. To be considered an odor complaint the department must have a record of it, which must include the:

- a. Name, address and phone number of complainant.
- b. Time and date of call.
- c. Description of odor nuisance, including estimated location or source of complaint, and if possible, prevailing wind or weather conditions observed.

3) ~~The department must use reasonable efforts to investigate all complaints to verify the source of the odor.~~ If any person engages in one or more of the following activities:

- a. Pet food manufacturing;
- b. Marijuana growing, processing, or manufacturing;
- c. Rendering and meat byproduct processing;
- d. Asphalt shingle and coating materials manufacturing;
- e. Petroleum refining;
- f. Sewage treatment;
- g. Wood preservation;
- h. Any other activity determined by the Board through a rulemaking to cause, or be likely to cause, nuisance odors.

4) The department shall use reasonable efforts to investigate all odor complaints and undertake enforcement and regulatory measures necessary to abate nuisance odors.

~~(c) (b) It is an affirmative defense to a violation of the odorous air contaminant standard that the violation was caused by an upset condition or breakdown of a device, facility, or process that: could not have been reasonably anticipated or prevented; the facility owner or operator took immediate action to eliminate the upset condition and, if necessary, repair all equipment and devices that caused or contributed to the upset condition or breakdown; the facility owner or operator notified the department about the upset condition or breakdown within eight (8) hours of its occurrence; and the facility owner or operator provided written detailed information describing the upset condition or breakdown and identifying the measures taken to correct it within three (3) working days of the occurrence.~~ Unlawful Acts.

1) It shall be unlawful for any person to emit air contaminants that constitute a nuisance as defined in section 4-2.

a. It shall be an affirmative defense to a violation of this section that a person is in compliance with a submitted odor control plan.

2) It shall be unlawful for any person to emit odorous air contaminants without submitting an odor control plan when one is required by this section, by rules promulgated by the Board, or by an order issued by the Manager, irrespective of whether odorous contaminants are detected when one (1) volume of the odorous air has been diluted with seven (7) more volumes of odor free air, as measured by any instrument, device, or method designated by the Colorado Air Pollution Control

Division to be used in the determination of the intensity of an odor and in the enforcement of Colorado Air Quality Control Commission Regulation 2.

3)
It shall be unlawful for any person to fail to adhere to a submitted odor control plan when one is required by this section, by rules promulgated by the Board, or by an order issued by the Manager, irrespective of whether odorous contaminants are detected when one (1) volume of the odorous air has been diluted with seven (7) more volumes of odor free air, as measured by any instrument, device, or method designated by the Colorado Air Pollution Control Division to be used in the determination of the intensity of an odor and in the enforcement of Colorado Air Quality Control Commission Regulation 2.

~~(d)~~(c) Temporary Rodeos, stock shows, tarring operations, and other similar temporary events are exempt from this section.

(d) Board to Promulgate Rules. The Board shall promulgate rules regarding the contents of odor control plans required by this section, which shall include but are not limited to: identification of odor sources; odor control technologies and practices; operation and maintenance plans; and timelines for implementation.

(e) Effective Date. Where applicable, the requirement to submit an odor control plan shall become effective ninety (90) days from adoption of rules pursuant to this section.

COMMITTEE APPROVAL DATE: April 12, 2016

MAYOR-COUNCIL DATE: April 19, 2016

PASSED BY THE COUNCIL: _____, 2016

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2016

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016; _____, 2016

PREPARED BY: Jessica R. Brody, Assistant City Attorney DATE: April 21, 2016

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

D. Scott Martinez, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____, 2016