

ORDINANCE

AN ORDINANCE OF THE CITY OF CUMMING, GEORGIA TO CONTROL ODOR AND ODOR POLLUTION; PROVIDING FOR INSPECTIONS; IDENTIFYING EXCEPTIONS; ESTABLISHING THE STANDARD FOR MEASUREMENT AND OTHER STANDARDS; SETTING ENFORCEMENT MECHANISMS FOR VIOLATION; AND FOR OTHER PURPOSES

WHEREAS, the City has an interest in protecting, preserving, and promoting the health, safety and welfare of the citizens of the City of Cumming through the control of odor;

WHEREAS, the World Health Organization has determined that Odor annoyance affects the quality of life, therefore the social wellbeing dimension of health;

WHEREAS, Section 43 of the Charter of the City of Cumming provides that the City shall have the authority to regulate and/or abate nuisances;

WHEREAS, Title 41 of the Official Code of Georgia, Annotated, provides for the control and abatement of nuisances;

WHEREAS the City desires to regulate and prohibit odors within the City of Cumming which are disruptive or injurious to the public health and welfare;

AND WHEREAS the City has determined that it is in the best interests of the City, its citizens and the public in general to enact this ordinance for the regulation of odors within the City of Cumming;

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF CUMMING as follows:

SECTION ONE. *Enactment of a new Section 16-35: Odor Control.*

Sec. 16-35. – Odor Pollution.

- a) No person shall cause or permit the emission of any substance or combination of substances which creates or contributes to a nuisance odor in the ambient air, potentially injurious to health or offensive to the senses of a reasonable person.
 1. A nuisance odor is that which interferes with the comfortable enjoyment of life or the free use of property, considering the character and degree of injury to, or interference with, the health, general welfare, property, or use of property of the people affected, and the location of the odor source and character of the area or neighborhood affected. Whether the emissions source was present in the location prior to subsequent development shall not be a consideration.
 2. “Emission” or “emitting” shall mean any discharging, giving off, sending forth, placing, dispensing, scattering, issuing, circulating, releasing, or any other emanation of any air contaminant or contaminants into the atmosphere.

- b) Discharging of offensive matter. The placing, throwing or discharging from any residence, business, premises, or vehicle and flow from or out of any house or premises, of any filthy, foul or offensive matter or liquid of any kind, into any street, alley or public place or upon any adjacent lot or ground.
- c) The City shall use reasonable efforts to investigate all odor complaints and undertake enforcement and regulatory measures necessary to abate nuisance odors. In determining whether an odor constitutes a nuisance and the severity of the nuisance, information shall be gathered by the City, including but not limited to complaints from citizens of, or individuals who work in the City, and site inspections or surveys. The property from which a nuisance odor emanates shall be subject to administrative inspection by City personnel as follows:
 - 1. An administrative inspection is warranted if the department receives two (2) or more complaints from individuals representing separate households or businesses within the city limits, within a 30-day period relating to a single odor description, and the department takes steps to reasonably verify the source of the odor. To be considered an odor complaint the City must have a record of it, which must include the:
 - i. Name, address and phone number of person making the complaint.
 - ii. Time and date of call.
 - iii. Description of odor nuisance, including estimated location or source of complaint, and if possible, prevailing wind or weather conditions observed.
 - 2. For any administrative inspection conducted to address matters under this section, City personnel shall identify themselves clearly to the owner, manager, lessee, or employee on site when they arrive. The City personnel shall explain why they are present and shall request to perform an administrative inspection related to this section. The owner, manager, lessee or employee on site shall have the right to request that, prior to the administrative inspection taking place, the City submit the matter for review to the Municipal Court of the City of Cumming, the judge of which shall determine whether probable cause exists for the administrative inspection. If such a request is made, the City personnel shall submit their request for an administrative inspection to the said Court, and the Court shall issue a written determination as to whether the administrative inspection may go forward.
 - 3. Nothing contained in this section shall limit or prohibit law enforcement personnel from seeking and obtaining a search warrant or, in appropriate cases, conducting a warrantless search, for the purpose of enforcing this section or any other local, state or federal law.
- d) Regardless of whether any nuisance odor has been declared, any person, firm, or entity engaged within the City limits in one (1) or more of the following activities shall provide the City with an odor abatement plan.
 - 1. Pet food manufacturing;
 - 2. Rendering and meat byproduct processing;
 - 3. Asphalt shingle and coating materials manufacturing;
 - 4. Petroleum refining;
 - 5. Sewage treatment;
 - 6. Wood preservation;

7. Meat processing including but not limited to pork, poultry, and beef processing.
 8. Processes related to industrial wastewater pretreatment.
 9. On-site storage of offal or offal hauling.
 10. Any other activity determined by the City Council through a resolution to cause, or be likely to cause, nuisance odors.
- e) The odor abatement plan shall include at a minimum the following:
1. Identify the odors or sources of odors from the activity which requires the odor abatement plan;
 2. Shall provide the process or processes by which the odors from the activity requiring the odor abatement plan shall not exceed an odor detection threshold (D/T) of one (1) volume of the odorous air as diluted with seven (7) or more volumes of odor-free air;
 3. Provide a detailed plan on any proposed operational changes to the existing odor control equipment in order to control and mitigate the odor(s) being generated;
 4. Establish a timeline for development and implementation of a Professional Engineer-approved treatment technology, which may include monitoring instrumentation and equipment to ensure future compliance.
 5. Shall include the measurement schedule pursuant to which the submitting party will provide ambient air measurements at the property line using an olfactometer or similar instrument, device, or method designated by the City of Cumming to be used in the determination of the intensity of the odor(s);
 6. Shall provide for the plan itself and the measurements taken pursuant to the plan to be submitted to the City's Industrial Pretreatment Coordinator; and
 7. Shall provide for the City's Industrial Pretreatment Coordinator to be notified of any changes to the odor control system or plant processes that would result in a significant change in the production of odors or odor control processes.
- f) The odor abatement plan called for in this section shall be developed, provided and implemented within six (6) months of the passage of this ordinance with respect to any activity on a specific property in the City of Cumming which is ongoing at the time of the passage of the ordinance. All other odor abatement plans shall be developed, provided and implemented in conjunction with the development of the property and the activity that will create the odor to be controlled.
- g) *Penalties.*
1. Any person violating the provisions of this section shall be punished as provided by Section 1-11.
 2. In addition to the penalties provided for above, nothing shall prohibit the City or its counsel from filing an action to abate a nuisance under state law.
- h) *Exceptions:*
1. Pursuant to state law, no activity or odor shall be declared a nuisance which meets all of the exception requirements of O.C.G.A. § 41-1-7, as the same may be amended from time to time.
 2. No odor shall be declared a nuisance if that odor emanates from food preparation in residential areas, including outdoor cooking such as grilling.
- i) Nothing in this section is intended to conflict with or supersede the Federal Clean Air Act, 42 U.S.C. Section 7661, *et seq.*, or the Georgia Air Quality Act, O.C.G.A. § 12-9-1 *et seq.*

SECTION TWO. *Severability.* If any section, provision or clause of any part of this ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this ordinance would have been adopted had such invalid portion not been included herein.

SECTION THREE. *Repealer.* All laws and parts of laws in conflict with this enactment are hereby repealed.

SECTION FOUR. *Effective Date.* This ordinance shall be effective the day following its passage by the Council of the City of Cumming.

SO ADOPTED AND ORDAINED by the City Council of Cumming, Georgia, this 16th day of October, 2018.

[Executions on Following Page]

MAYOR AND CUMMING CITY COUNCIL

By: 3 Blh
Troy Brumbalow, Mayor

Lewis Ledbetter
Lewis Ledbetter, Council Member

Linda Ledbetter
Linda Ledbetter, Council Member

ATTESTED TO BY:

Jeff Honea
Jeff Honea, City Clerk



Christopher Light
Christopher Light, Council Member

Jason Evans
Jason Evans, Council Member

Chad Crane
Chad Crane, Council Member