

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)

Plaintiff,)

v.)

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation,)

Defendant.)

Case No. 2023 CH 5147

Judge Quish

Calendar 14

VILLAGE OF MOUNT PROSPECT, an Illinois)
municipal corporation,)

Defendant/Counter-Plaintiff.)

v.)

PRESTIGE FEED PRODUCTS, LLC, an Illinois)
limited liability company,)

Plaintiff/Counter-Defendant,)

(CITY OF DES PLAINES an Illinois)
municipal corporation))

(Intervening Petitioner)

PETITION TO INTERVENE

Petitioner City of Des Plaines (“*City*” or “*Petitioner*”) by and through its attorneys, Elrod Friedman LLP, pursuant to 735 ILCS 5/2-408, moves this Court for Leave to Intervene in the present action, and in support, states as follows:

Background and Procedural History

1. On May 2023, Prestige Feed Products, LLC (“***Prestige***”) filed a Complaint for Injunction, For Declaratory Judgment and For Damages (“***Complaint***”) against the Village of Mount Prospect (“***Village***”).

2. Prestige is in the business of drying soy and milk-based cheese and then selling it as an additive to livestock feed.

3. In June 2019, Prestige began operations at a factory in the Village located at 431 Lakeview Court, Mount Prospect, Illinois 60056 (“***Facility***”).

4. The Facility is within one-half mile of the City’s border.

5. Prestige’s operations cause a source of worsening discomfort and nuisance among the neighboring residential and business communities, both in the Village where the Facility is located, and also within the boundaries of the City.

6. Specifically, the neighboring communities detect a persistent burnt, sometimes rancid, cheese odor originating from Prestige’s operations.

7. The Village filed a Counterclaim against Prestige, most recently the Third Amended Verified Counterclaim filed on July 19, 2024, alleging violations of various provisions of the Village Code and common law nuisance caused by the odor emitting from the Facility (“***Counterclaim***”).

8. The odor originating from Prestige’s operations extends and is also present in the City and impacts residents and business owners within the City.

9. The odor from Prestige’s operations exists on City owned rights-of-way.

10. The City has an interest in eliminating the nuisance because of its proximity to and existence on and in the vicinity of City property to the detriment of City residents and businesses.

11. Prestige is also in violation of the City of Des Plaines Municipal Code (“*City Code*”), specifically Sections 12-12-6 and 12-12-7, relating to the release of odorous matter that permeates to residences and businesses in the City.

Intervention is Appropriate

12. The relief sought in the Complaint and Counterclaim directly implicates the Petitioner’s right to enforce its ordinances and abate nuisances existing within its jurisdiction and its authority to protect the health and safety of its residents and businesses.

13. Petitioner has a substantial interest in the action because the City, its residents and businesses are being directly and negatively impacted by Prestige operations.

14. Specifically, Petitioner has a right to enforce its City Code provisions relating to nuisances and noxious odors emanating from the Facility and to protect the health and safety of its residents and businesses.

15. The Village and the City have substantial interrelated interests in the proceeding including, without limitation, compelling Prestige to operate its Facility in a manner than complies with all applicable legal regulations, abating nuisances within their respective jurisdictions, and protecting the health and safety of residents and businesses.

16. Any order entered by this Court relating to Prestige operations will have a direct impact on the City and its residents and businesses.

17. Further, if the City filed a separate action against Prestige, as it has the right to do, a different court could potentially enter a conflicting order and open the door to ambiguity and uncertainty regarding Prestige’s operations.

18. Petitioner also has interests in this lawsuit separate and distinct from the Village as Prestige has violated the City’s ordinances and impacted residents and businesses within the City’s

jurisdiction, which necessitates intervention by Petitioner to ensure its adequate representation and defense in this matter.

19. Petitioner should have the opportunity to review all of the records in this matter and act as a full party in the proceedings, including presenting relevant testimony and cross-examining witnesses as appropriate.

20. Section 5/2-408(a)(2) of the Illinois Code of Civil Procedure, permits a petitioner, upon timely application, to intervene in a matter “when the representation of the applicant’s interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action.” 735 ILCS 5/2-408(a)(2).

21. “A basic tenet of the intervention statute is that it is remedial and should be liberally construed.” *Board of Trustees, Barrington Police Pension Fund v. Department of Insurance*, 211 Ill. App. 3d 698, 711 (1st Dist. 1991). “Intervention statutes are remedial in nature and should be construed liberally to allow a person to protect an interest jeopardized by pending litigation to which he is not a party or to avoid relitigation in another suit of issues which are being litigated in a pending suit.” *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 143 (1st Dist. 1984) (internal citations omitted).

22. Section 5/2-408(e) states that “[a] person desiring to intervene shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file.”

23. If permitted to intervene, the Petitioners intend to file the Verified Complaint in **Exhibit A** attached to and made a part of this Petition.

24. The City is the only entity that can bring an action based on violations of Sections 12-12-6 and 12-12-7 of the City Code relating to the release of odorous matter that permeates to

residences and businesses in the City. The Village cannot bring or adjudicate an action based on violations of the City's Code. Accordingly, representation of the City's interest in Prestige compliance with the City's Code will be inadequate without intervention.

25. This Petition is timely because at this time there have been no substantial steps taken toward resolving the Complaint or Counterclaim and resolution of this matter is not imminent.

26. Allowing Petitioner to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties.

27. Based on the foregoing, intervention is appropriate pursuant to 735 ILCS 5/2-408(a)(2).

28. In the alternative, Section 5/2-408(b)(2) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-408(b)(2), states that "[u]pon timely application anyone may in the discretion of the court be permitted to intervene in an action: ... when an applicant's claim or defense and the main action have a question of law or fact in common."

29. Intervention is appropriate pursuant to Section 408(b)(2) as well because the Petitioner's claims have substantial common questions of fact and law as the Village's.

30. The Village has no objection to Petitioner's intervention in this matter.

31. Petitioner asks that this Court grant its Petition pursuant to 735 ILCS 5/2-408(a)(2). In the alternative, Petitioner asks that this Court exercise its discretion and grant the petition pursuant to 735 ILCS 5/2-408(b)(2).

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter an order for the following:

A. Granting the Petition for Intervention by Petitioner;

B. Granting the Petitioner leave to file the complaint attached in **Exhibit A**; and

C. Granting such other and further relief this Court deems just and appropriate.

Respectfully submitted,

CITY OF DES PLAINES

By: /s/ Peter M. Friedman
One of its Attorneys

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EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois)	)	
limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2023 CH 5147
	)	
VILLAGE OF MOUNT PROSPECT, an Illinois)	)	Judge Quish
municipal corporation,	)	
	)	Calendar 14
Defendant.	)	

	)
VILLAGE OF MOUNT PROSPECT, an Illinois)	)
municipal corporation,	)
	)
Defendant/Counter-Plaintiff.	)
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v.	)
	)
PRESTIGE FEED PRODUCTS, LLC, an Illinois)	)
limited liability company,	)
	)
Plaintiff/Counter-Defendant,	)
	)
(CITY OF DES PLAINES an Illinois)	)
municipal corporation)	)
(Intervening Petitioner)	)

VERIFIED COMPLAINT OF INTERVENOR CITY OF DES PLAINES

Intervening Plaintiff, City of Des Plaines (“*City*”), by and through its attorneys Elrod Friedman LLP, states for its Verified Complaint against Defendant Prestige Feed Products, LLC (“*Prestige*”) as follows:

The Parties, Jurisdiction, and Venue

1. The City is an Illinois home rule municipality located in Cook County, Illinois.

EXHIBIT A

2. Prestige is an Illinois limited liability company operating a manufacturing facility at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois (*“Facility”*).

3. Prestige is in the business of drying soy and milk-based cheese and then selling it as an additive to livestock feed.

4. The Village of Mount Prospect (*“Village”*) is an Illinois home rule municipality located in Cook County, Illinois.

5. The Village and the City are immediately contiguous to one another, sharing an extensive border at various points.

6. In June 2019, Prestige began operations at the Facility. The Prestige Facility is within the Village and is located less than one-half mile from the City’s border and a number of residences and businesses within the City.

7. This Court has jurisdiction over this matter pursuant to 735 ILCS 5/2-209(a)(3).

8. Venue is proper in this forum pursuant to 735 ILCS 5/2-101.

Operation of Prestige Facility

9. Prestige operations cause a source of discomfort and nuisance among neighboring residential and business communities, both in the Village where the Facility is located and also within the boundaries of the City.

10. Prestige’s feed production process involves dehydrating and drying raw cheese and soy materials to produce animal feed ingredients.

11. The process of manufacturing cheese-based animal feed is highly odiferous and known to produce offensive and objectionable odors, which are often described as burnt, rancid, putrid, or smelling of spoiled milk or vomit.

EXHIBIT A

12. Prestige business operations at the Facility produce highly odiferous and noxious odors which are released into the surrounding residential and business community.

13. The Prestige Facility is bordered by residential properties and businesses.

14. Specifically, the neighboring communities surrounding the Facility have consistently detected a persistent burnt, sometimes rancid, putrid cheese odor originating from Prestige's operations.

15. Due to Prestige's inadequate efforts to prevent their emissions from escaping into the adjacent areas, the malodor extends over City rights-of-way and City residents and businesses along with their properties.

16. The noxious odor and related conditions associated with Prestige operations are present on City rights-of-way. The odor is dispersed across public and private land in the area surrounding the Facility.

17. The City has an interest in not having the nuisance caused by Prestige operations within the City, on City rights-of-way, or on the properties of City residents and businesses. The noxious odor and related conditions caused by Prestige operations create unsafe and unhealthy conditions for the City and many City residents and businesses.

18. The nuisance associated with Prestige operations has been ongoing and worsening since the Facility began operations in 2019.

19. Affected residents and business owners have lodged numerous complaints across various agencies and governmental entities regarding the negative impact of Prestige operations.

20. The persistent odor emanating from the Prestige Facility has significantly and negatively impacted the quality of life of nearby City residents including Ed and Marta Kulaga and their young children. *Exhibit A* is the Affidavit of Ed and Marta Kulaga.

EXHIBIT A

21. Ed and Marta Kulaga's residence is less than one mile from the Prestige Facility.

(Ex. A at ¶ 1)

22. The Kulaga family has noticed the burnt cheese odor emitted by the Prestige Facility on a consistent and worsening basis since 2019 when the Facility began operating. (Ex. A at ¶ 2)

23. The odor from the Facility has negatively impacted the Kulaga family, their children, and other neighborhood children, preventing them from engaging in daily activities. (Ex. A at ¶ 20)

24. Both Mr. and Mrs. Kulaga work from their residence. During working hours, the odor from the facility significantly bothers and distracts the Kulaga family from attending to their daily tasks. (Ex. A at ¶ 9)

25. Mr. and Mrs. Kulaga have both been made sick by the odor, gagging and becoming nauseated from the smell on a regular basis. (Ex. A at ¶ 18)

26. As a result, the Kulaga family walks less around the neighborhood and is forced to drive even short distances within the neighborhood to avoid being exposed to the strong and noxious odor caused by the Prestige Facility. (Ex. A at ¶ 19)

27. Since 2019, the Kulaga family has been unable to utilize their backyard space for barbecues or sitting outside in nice weather because of the severity of the odor when the Prestige Facility is operating. (Ex. A at ¶ 6)

28. The Kulaga family is also unable to open the windows of their home as the smell becomes unbearable within the residence. (Ex. A at ¶ 5)

29. Mr. and Mrs. Kulaga's young children, ages 11 and five years, have both been harmed as a result of the odors emitted by the Facility. (Ex. A at ¶¶ 10-14)

EXHIBIT A

30. The Kulaga children refuse to play outdoors around their residence because of the persistent odor. Their daughter, an avid soccer player, refuses to practice in the yard due to the smell. (Ex. A at ¶¶ 11-12)

31. A school bus stop is located near the Kulaga residence. Previously, the Kulaga children took the bus to school, but the smell caused them to gag and pull their clothes over their noses and mouths while waiting for the bus. (Ex. A at ¶¶ 13-14)

32. Other neighborhood children who use the bus stop have also been observed gagging and covering their noses and mouths while waiting for the bus. The bus driver has also made comments about the unpleasant smell in the vicinity. (Ex. A at ¶¶ 15-16)

33. As a result, Mr. and Mrs. Kulaga decided not to sign their children up for the bus for the 2024-2025 school year and will be forced to drive the children to school, because they have concluded that it is inappropriate and unsafe for their children to wait for the bus outdoors with the persistent odor. (Ex. A at ¶ 17)

34. Mr. and Mrs. Kulaga have made several complaints to both the Illinois Environmental Protection Agency and the Village police regarding the Prestige Facility and its odor. (Ex. A at ¶ 3)

35. Mr. and Mrs. Kulaga are concerned that the odors from the Prestige Facility will negatively impact the property value of their residence and will impede their ability to ever sell their home in the future. (Ex. A at ¶ 21)

36. City resident Rebecca Pfisterer and her family have been negatively impacted by the Prestige Facility's odor. **Exhibit B** is the Affidavit of Rebecca Pfisterer.

37. Ms. Pfisterer's residence is located less than one mile from the Prestige Facility. (Ex. B at ¶ 1)

EXHIBIT A

38. Since June 2019, when Prestige operations began, Ms. Pfisterer began to notice an odor emanating from the Prestige Facility. (Ex. B at ¶¶ 2-3)

39. The odor has worsened and prevented Ms. Pfisterer from opening the windows of her home or using her backyard for any purpose. (Ex. B at ¶¶ 6-7)

40. Ms. Pfisterer works out of her home and has been negatively impacted during working hours by the noxious odor. (Ex. B at ¶ 8)

41. Ms. Pfisterer's two children, ages 10 and seven years, have also been negatively impacted by the odor from the Prestige Facility. (Ex. B at ¶¶ 9-13)

42. Ms. Pfisterer's children refuse to play outdoors, either around their home in the backyard, or at the nearby Craig Manor Park within the City, due to the Prestige smell. (Ex. B at ¶ 10)

43. The children also take the bus to school from a bus stop located near the Pfisterer residence. The smell has caused Ms. Pfisterer's children to gag, pull their clothes over their noses and mouths, and request to wear face masks while waiting for the bus. (Ex. B at ¶¶ 11-12)

44. Ms. Pfisterer is concerned that the odor emitted from the Prestige Facility will impact property values and make it difficult to sell her home in the future. (Ex. B at ¶ 15)

45. Ms. Pfisterer has lodged various complaints regarding the odor emitted from the Prestige Facility, starting at a Village Board of Trustees meeting in June 2019. Since 2019, Ms. Pfisterer has smelled the odor more often and at a stronger intensity than when it first began. (Ex. B at ¶¶ 4-5)

46. Local businesses within the City have also suffered as a result of the odors emitting from the Prestige Facility.

EXHIBIT A

47. Steven Stedman is a resident of the Village and is the owner of Steve's Automotive Repair Center ("**Steve's Auto**"), which is located in the City. **Exhibit C** is the Affidavit of Steven Stedman.

48. Steve's Auto is located less than one mile from the Prestige Facility. (Ex. C at ¶ 1)

49. The noxious odor from the Prestige Facility has been present at Steve's Auto since 2019 when Prestige began operations. (Ex. C at ¶ 3)

50. Beginning in 2019, Mr. Stedman began to smell the odor emitting from the Prestige Facility. The odor has made him nauseated on several occasions and impeded his ability to work. (Ex. C at ¶¶ 3-7)

51. Prior to commencement of Prestige operations at the Facility, Mr. Stedman would keep the garage doors open at Steve's Auto to allow for ventilation, which is necessary for safety and air circulation when performing certain vehicle repairs. However, the noxious odor from the Prestige Facility has forced Mr. Stedman to keep the garage doors closed at various times during operating hours, impeding Mr. Stedman's ability to perform certain work safely and efficiently. (Ex. C at ¶¶ 9-11)

52. Steve's Auto does not have air conditioning, meaning closing the garage doors in the summer causes the building to become extremely hot. Mr. Stedman has found the Prestige smell to be so unbearable that the heat and lack of ventilation caused by closing the garage doors is preferable to experiencing the odor. (Ex. C at ¶¶ 12-13)

53. Even with the garage doors closed, the smell is still noticeable inside the building. Customers have made comments regarding the unpleasant odor. (Ex. C at ¶¶ 14-15)

54. The Prestige Facility has emitted, and continues to emit, noxious odors that are detectable outside the bounds of its property.

EXHIBIT A

55. Prestige is required to control its noxious odor by, among other things, operating and maintaining the Facility in a manner that adequately captures, controls, and mitigates odor emissions so as to prevent them from escaping into the ambient air surrounding the Facility and implementing other reasonably available odor mitigation, elimination, and control systems at the Facility.

56. Prestige failed to install and maintain adequate technology to properly control their emissions of noxious odors and to otherwise prevent these emissions from the Facility from invading the homes and properties of City residents and business owners.

57. The invasion of City properties by the noxious odor has reduced the value and interfered with the use and enjoyment of such properties, resulting in damages.

58. The City is harmed by the noxious odors resulting from the Prestige Facility operations as the smell is present within the City's jurisdiction and rights-of-way.

59. The City has authority granted in Article VII, Section 6(a) of the Illinois Constitution, 65 ILCS 5/7-4-1, and the common law of the State of Illinois to protect its residents and businesses from the conduct of Prestige that subjects them to noxious odors that unreasonably interfere with both their use and enjoyment of their property and denies them their right to a healthy and safe environment.

60. The City has the right to enforce its Code provisions prohibiting nuisance activities or activities that create sources of discomfort to City residents and businesses.

61. The City will suffer irreparable harm if it cannot protect its citizens from the harm caused to them by Prestige's actions in operating the Facility in a manner that denies them both the use and enjoyment of their property and their right to a healthy and safe environment.

EXHIBIT A

62. The City has an interest in eliminating the nuisance because of its proximity to and existence on and in the vicinity of City property to the detriment of City residents and businesses.

63. Due to the irreparable harm to the City and neighboring residents, school children, and businesses caused by Prestige's operation of the Facility, the City has no adequate remedy at law.

COUNT I Common Law Public Nuisance

64. The City realleges and incorporates Paragraphs 1 through 63 of the General Allegations as Paragraph 64 of Count I.

65. The Illinois Constitution of 1970, Art. XI, § 2, provides that, "[e]ach person has the right to a healthy environment."

66. Residents living in the vicinity of the Prestige Facility have the right to the use and enjoyment of their property.

67. Children have the right to be outdoors without becoming nauseous and ill from exposure to noxious odors.

68. Local businesses have the right to operate without noxious odors inhibiting their operations.

69. The City has the right to have its rights-of-way be free from noxious odors.

70. Public policy encourages these types of uninhibited uses.

71. The City has the authority to protect the health, safety, and welfare of the community.

EXHIBIT A

72. Since the start of operations at the Prestige Facility in 2019, hundreds of complaints about the effects of the noxious odor emissions from the Facility during its operations demonstrate that the Prestige Facility operations threaten the public health and safety.

73. Prestige operations that continually emit noxious odors beyond the Facility and the lot lines of its property infringe on the health, safety, and welfare of the City and its residents and businesses.

74. Prestige's continued operation violates the constitutionally guaranteed public right to a safe and healthy environment.

75. The interference caused by Prestige's operation is substantial and unreasonable.

76. Prior to Prestige initiating operations in 2019 at the Facility, the City received no complaints about noxious odors preventing residents and business owners located in close vicinity to the Facility from the quiet enjoyment of their property.

77. Prior to Prestige initiating operations at the Facility, the City received no complaints about noxious odors adversely affecting school-aged children.

78. Since 2019, the City has received and been made aware of many complaints about noxious odors emitted from the Facility during its operations that have adversely affected the rights of residents, including school children and local businesses.

WHEREFORE, the City of Des Plaines requests that this Court:

- A. Declare the operation of the Prestige Facility a public nuisance.
- B. Enjoin Prestige Feed Products LLC from operating unless and until it can operate the Facility so as not to create a nuisance.
- C. Any additional damages or remedy that is appropriate.

EXHIBIT A

COUNT II

Violation of City Code § 12-12-6

79. The City realleges and incorporates Paragraphs 1 through 63 of the General Allegations as Paragraph 79 of Count II.

80. Article VII, Section 6(a) of the Illinois Constitution provides that home rule municipalities like the City have the “power to regulate for the protection of the public health, safety, morals and welfare.”

81. The Illinois Municipal Code, 65 ILCS 5/7-4-1, provides that the “corporate authorities in all municipalities have jurisdiction in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations.”

82. It is “competent for the legislature to confer power to pass ordinances operative beyond the corporate boundaries for the purpose of suppressing and preventing nuisances, which affect the inhabitants of the corporation.” *Rockford v. Hey*, 366 Ill. 526, 533-34 (1937).

83. Pursuant to its home rule authority, common law authority, and Section 7-4-1 of the Illinois Municipal Code, the City adopted Section 12-12-6 of the City Code, which provides:

Emission of noxious, objectionable or annoying odor in such quantities as to be detectable at any point along a lot boundary is prohibited.

City Code § 12-12-6

84. The Prestige Facility is located within one-half mile of the City.

85. Prestige operation of the Facility releases noxious odors that permeates City rights-of-way and private property within the City.

86. Residents of the City, including children and business owners, living and working within one-half mile of the Prestige Facility have experienced detrimental impacts to their health and wellbeing as a result of the noxious odors emitting from the Prestige Facility.

EXHIBIT A

87. The odors invading City rights-of-way and the properties of City residents and business owners are indecent and offensive to the senses, and obstruct the free use of these properties so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property, including in but not limited to the following ways:

- a. Causing residents to remain inside their homes and forego use of their yards, porches, and other outdoor spaces and refrain from outdoor activities;
- b. Causing residents to keep doors and windows closed when weather conditions otherwise would not require them to do so;
- c. Depriving residents of the full value of their homes and properties; and
- d. Causing residents the embarrassment, inconvenience, and reluctance to engage in outdoor activities and invite guests to their homes.

88. Prestige's operation of the Facility violates Section 12-12-6 of the City Code.

89. The City has the authority to protect the health, safety, and welfare of the community.

90. The City has a clear and compelling interest in the enforcement of Section 12-12-6 of the City Code.

91. Violations of Section 12-12-6 of the City Code are punishable by fines ranging from \$75.00 to \$750.00 for each offense per Section 12-4-6 of the City Code. Under Section 1-4-3 of the City Code, each day upon which the offense continues shall be deemed a separate offense and constitute a separate and additional fine.

WHEREFORE, the City of Des Plaines requests this Court:

- A. Declare the operation of the Prestige Facility to be in violation of Section 12-12-6 of the City Code.

EXHIBIT A

- B. Enjoin Prestige Feed Products LLC from operating unless and until it can operate the Facility so as not to be in violation of Section 12-12-6 of the City Code.
- C. Impose a fine for each day that a violation of Section 12-12-6 of the City Code continues, pursuant to Section 1-4-3 of the City Code.
- D. Any additional damages or remedy that is appropriate.

COUNT III Violation of City Code § 12-12-7

92. The City realleges and incorporates Paragraphs 1 through 63 of the General Allegations as Paragraph 92 of Count III.

93. Article VII, Section 6(a) of the Illinois Constitution provides that home rule municipalities like the City have the “power to regulate for the protection of the public health, safety, morals and welfare.”

94. The Illinois Municipal Code, 65 ILCS 5/7-4-1, provides that the “corporate authorities in all municipalities have jurisdiction in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations.”

95. It is “competent for the legislature to confer power to pass ordinances operative beyond the corporate boundaries for the purpose of suppressing and preventing nuisances, which affect the inhabitants of the corporation.” *Rockford v. Hey*, 366 Ill. 526, 533-34 (1937).

96. Pursuant to its home rule authority, common law authority, and Section 7-4-1 of the Illinois Municipal Code, the City adopted Section 12-12-7 of the City Code, which provides:

No use shall be operated or maintained which creates an environmental detriment or public nuisance, including, but not limited to, visual clutter created by excessive signage, lighting, or outdoor storage; noise or odors as defined herein; or other noise and odors such as those created by pets or garbage.

City Code § 12-12-7

EXHIBIT A

97. The Prestige Facility is located within one-half mile of the City.

98. Prestige operation of the Facility releases noxious odors that permeates City rights-of-way and residences and businesses in the City.

99. Residents of the City, including children and business owners, living and working within one-half mile of the Prestige Facility have experienced detrimental impacts to their health and wellbeing as a result of the noxious odors emitting from the Prestige Facility.

100. The odors invading City rights-of-way and the properties of City residents and business owners are indecent and offensive to the senses, and obstruct the free use of such properties so as to substantially and unreasonably interfere with the comfortable enjoyment of life and/or property, including in but not limited to the following ways:

- a. Causing residents to remain inside their homes and forego use of their yards, porches, and other outdoor spaces and refrain from outdoor activities;
- b. Causing residents to keep doors and windows closed when weather conditions otherwise would not require them to do so;
- c. Depriving residents of the full value of their homes and properties; and
- d. Causing residents the embarrassment, inconvenience, and reluctance to engage in outdoor activities and invite guests to their homes.

101. Prestige operation of the Facility violates Section 12-12-7 of the City Code.

102. The City has the authority to protect the health, safety, and welfare of the community.

103. The City has a clear and compelling interest in the enforcement of Section 12-12-7 of the City Code.

EXHIBIT A

104. Violations of Section 12-12-7 of the City Code are punishable by fines ranging from \$75.00 to \$750.00 for each offense per Section 12-4-6 of the City Code. Under Section 1-4-3 of the City Code, each day upon which the offense continues shall be deemed a separate offense and constitute a separate and additional fine.

WHEREFORE, the City of Des Plaines requests this Court:

- E. Declare the operation of the Prestige Facility to be in violation of Section 12-12-7 of the City Code.
- F. Enjoin Prestige Feed Products LLC from operating unless and until it can operate the Facility so as not to be in violation of Section 12-12-7 of the City Code.
- G. Impose a fine for each day that a violation of Section 12-12-7 of the City Code continues, pursuant to Section 1-4-3 of the City Code.
- H. Any additional damages or remedy that is appropriate.

DATED:

CITY OF DES PLAINES

By: _____
One of its attorneys

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EXHIBIT A

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the allegations other than those supported by Affidavit set forth in the foregoing City of Des Plaines' Complaint are true and correct.

Dated: _____

EXHIBIT A

EXHIBIT A

AFFIDAVIT OF ED AND MARTA KULAGA

FILED DATE: 8/19/2024 2:49 PM 2023CH05147

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
Plaintiff,	)	
v.	)	Case No. 2023 CH 5147
	)	
VILLAGE OF MOUNT PROSPECT, an Illinois	)	Judge Quish
municipal corporation,	)	Calendar 14
Defendant.	)	

VILLAGE OF MOUNT PROSPECT, an Illinois	)
municipal corporation,	)
Defendant/Counter-Plaintiff.	)
v.	)
PRESTIGE FEED PRODUCTS, LLC, an Illinois	)
limited liability company,	)
Plaintiff/Counter-Defendant,	)
	)
(CITY OF DES PLAINES an Illinois	)
municipal corporation)	)
(Intervening Petitioner)	)

Affidavit of Ed and Marta Kulaga

We, Ed and Marta Kulaga, being first duly sworn upon oath, depose and state as follows:

1. We live at 660 Dursey Ln, Des Plaines, Illinois 60016. Our residence less than one mile from the Prestige facility located at 431 Lakeview Court, Mount Prospect 60056.
2. We are familiar with the burnt cheese smell emitted by the Prestige facility as we have detected it when we are at our residence consistently since 2019, right after the Prestige facility began operating.
3. We have reached out via email and telephone to the Illinois Environmental Protection Agency and called the Mount Prospect police station regarding the Prestige facility and the odor.
4. It has been our experience that the smell has gotten worse since 2019, meaning that we can smell the odor more often and the odor has gotten stronger.
5. We cannot open the windows of our house as the smell will become unbearable within the residence.

EXHIBIT A

6. When the Prestige facility is operating, we are unable to utilize the backyard for things such as barbeques or to sit outside when the weather is nice due to the persistent odor.

7. We cannot plan outside events at our home as it is impossible to predict exactly when the odor will be present each day.

8. When the Prestige facility is operating, we cannot walk around the neighborhood as the smell is so unpleasant.

9. We both work out of the home (Ed has full time employment and Marta as a full time caretaker for our children) so we are impacted by the odor both during working hours and when we are at home with our family.

10. We have two children, 11 years and five years, who live with us at our residence.

11. When the Prestige facility is operating our children will not play outdoors around our home due to the smell.

12. Our daughter is an avid soccer player but, when the Prestige facility is operating, refuses to practice in our yard due to the smell.

13. Our children previously took the bus to school and the bus stop is located near our residence.

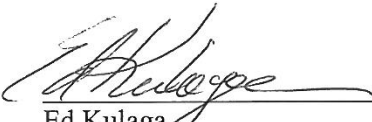
14. The smell has caused our children to gag and pull their clothes over their nose and mouths while they wait for the bus.

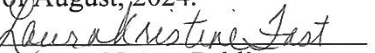
15. We have observed our children and other children gagging and covering their noses and mouths while waiting for the bus near our residence.

16. The bus driver has commented to us on the unpleasant smell.

EXHIBIT A

17. We did not sign our children up for the bus this year (2024/2025) and instead will have to drive them to school as we felt it was inappropriate and unsafe to force them to wait for the bus outdoors with the persistent odor.
18. The smell has caused us both to gag and become nauseated.
19. We walk less and are forced to drive even short distances around our neighborhood due to the unbearable smell.
20. We believe the odor emitting from the Prestige facility poses a threat to the health, wellbeing and quality of life of ourselves and our children.
21. We are concerned that the smell will impact property values and make it difficult to sell our home in the future.
22. It is clear based on our familiarity with the area, the time that the smell began and the direction that the smell is emanating from that its source is the Prestige facility.
23. We make these statements based upon our own personal knowledge, and we could testify competently thereof if called upon to do so.
24. Nothing further sayeth affiant.


Ed Kulaga

SUBSCRIBED and SWORN to
before me this 15th day
of August, 2024.

Notary Public




Marta Kulaga

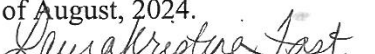
SUBSCRIBED and SWORN to
before me this 15th day
of August, 2024.

Notary Public



EXHIBIT A

EXHIBIT B

AFFIDAVIT OF REBECCA PFISTERER

FILED DATE: 8/19/2024 2:49 PM 2023CH05147

EXHIBIT A

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
Plaintiff,	)	
v.	)	Case No. 2023 CH 5147
	)	
VILLAGE OF MOUNT PROSPECT, an Illinois	)	Judge Quish
municipal corporation,	)	Calendar 14
Defendant.	)	

VILLAGE OF MOUNT PROSPECT, an Illinois	)	
municipal corporation,	)	
Defendant/Counter-Plaintiff.	)	
v.	)	
PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
Plaintiff/Counter-Defendant,	)	
	)	
(CITY OF DES PLAINES an Illinois	)	
municipal corporation)	)	
(Intervening Petitioner)	)	

Affidavit of Rebecca Pfisterer

I, Rebecca Pfisterer, being first duly sworn upon oath, depose and state as follows:

1. I live at 774 Mark Avenue, Des Plaines, Illinois 60016. My residence is within the Craig Manor subdivision and is less than one mile from the Prestige facility located at 431 Lakeview Court, Mount Prospect 60056.
2. I am familiar with the burnt cheese smell emitted by the Prestige facility as I have detected it when I am at my residence consistently since 2019.
3. I began noticing an odor emanating from the Prestige facility in June 2019, right after the Prestige facility began operating.
4. In June 2019, I attended a Village of Mount Prospect Board of Trustees meeting to express my concern with the Prestige facility and the odor it was producing.
5. It has been my experience that the smell has gotten worse since 2019, meaning that I can smell the odor more often and the odor has gotten stronger.

EXHIBIT A

6. I cannot open the windows of my house as the smell will become unbearable within the residence.

7. I am unable to utilize my backyard for things such as barbeques or to sit outside when the weather is nice due to the persistent odor.

8. I work out of my home so I am impacted by the odor both during working hours and when I am at home with my family.

9. I have two children, 10 years and seven years, who live with me at my residence.

10. My children will not play outdoors around our home, either in the backyard or at Craig Manor Park, due to the smell.

11. My children take the bus to school and the bus stop is located near my residence.

12. The smell has caused my children to gag, pull their clothes over their nose and mouths or request to wear their face masks while they wait for the bus.

13. I have observed my children and other children gagging and covering their noses and mouths while waiting for the bus near my residence.

14. I believe the odor emitting from the Prestige facility poses a threat to the health, wellbeing and quality of life of myself and my children.

15. I am concerned that the smell will impact property values and make it difficult to sell my home in the future.

16. It is clear based on my familiarity with the area, the time that the smell began and the direction that the smell is emanating from that its source is the Prestige facility.

17. I make these statements based upon my own personal knowledge, and I could testify competently thereof if called upon to do so.

18. Nothing further sayeth affiant.

EXHIBIT A

Rebecca Pfisterer
Rebecca Pfisterer

SUBSCRIBED and SWORN to
before me this 15th day
of August, 2024.

Laura Kristine Fast
Notary Public



EXHIBIT A

EXHIBIT C

AFFIDAVIT OF STEVEN STEDMAN

FILED DATE: 8/19/2024 2:49 PM 2023CH05147

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY COUNTY DEPARTMENT, CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 2023 CH 5147
	)	
VILLAGE OF MOUNT PROSPECT, an Illinois	)	Judge Quish
municipal corporation,	)	Calendar 14
	)	
Defendant.	)	

VILLAGE OF MOUNT PROSPECT, an Illinois	)	
municipal corporation,	)	
	)	
Defendant/Counter-Plaintiff.	)	
v.	)	
PRESTIGE FEED PRODUCTS, LLC, an Illinois	)	
limited liability company,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
(CITY OF DES PLAINES an Illinois	)	
municipal corporation)	)	
(Intervening Petitioner)	)	

Affidavit of Steven Stedman

I, Steven Stedman, being first duly sworn upon oath, depose and state as follows:

1. I am the owner of Steve's Automotive Repair Center ("*Steve's Auto*"), located at 720 E. Central Road Des Plaines, Illinois 60016. Steve's Auto is less than one mile from the Prestige facility located at 431 Lakeview Court, Mount Prospect 60056.

2. I have owned the property at 720 E. Central Road for approximately 46 years and operated a business at this location during that time. I have owned and operated Steve's Auto at this location for approximately 15 years.

3. I am familiar with the burnt cheese smell emitted by the Prestige facility as I have detected it from Steve's Auto consistently since 2019, right after the Prestige facility began operating.

4. I have spoken with other impacted residents and called the Mount Prospect police station regarding the Prestige facility and the odor.

EXHIBIT A

5. It has been my experience that the smell has gotten worse since 2019, meaning that I can smell the odor more often and the odor has gotten stronger.

6. There have been several occasions when the smell has caused me to become nauseated.

7. The smell has impacted my ability to work.

8. Steve's Auto has two garage bays where cars can enter and exit.

9. Normally, I keep the garage doors open to allow for ventilation which is necessary for safety and air circulation when performing certain vehicle repairs.

10. The smell from the Prestige facility has forced me to keep the garage doors closed at certain times during operating hours.

11. Closing the garage doors impacts my ability to perform certain work safely and efficiently.

12. Steve's Auto does not have air conditioning so closing the garage doors in the summer causes the building to become extremely hot.

13. The smell is so unbearable at times that the heat and lack of ventilation caused by closing the garage doors is preferable to the smell.

14. Even with the garage doors closed, the smell is still noticeable inside the building.

15. Customers have commented to me on the unpleasant odor.

16. I live in Mount Prospect so I can also smell the odor at my residence.

17. I can smell the odor from my vehicle as I drive between my residence and Steve's Auto.

18. I believe the odor emitted from the Prestige facility poses a threat to my health, wellbeing and quality of life.

EXHIBIT A

19. I am concerned that the smell will impact my business both by limiting my ability to work and driving away customers.

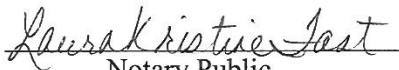
20. It is clear based on my familiarity with the area, the time that the smell began and the direction that the smell is emanating from that its source is the Prestige facility.

21. I make these statements based upon our own personal knowledge, and I could testify competently thereof if called upon to do so.

22. Nothing further sayeth affiant.


Steven Stedman

SUBSCRIBED and SWORN to
before me this 15th day
of August, 2024.


Notary Public

