



Odor Code Update Project

Planning
Commission

August 27, 2024

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City Planner

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THE BUREAU OF
**PLANNING &
SUSTAINABILITY**

Agenda

Presentation

- Staff proposal
- Background
- Summary of Proposed Code Changes
- Outreach & Timeline

Public Testimony

Planning Commission Discussion



Staff Proposal

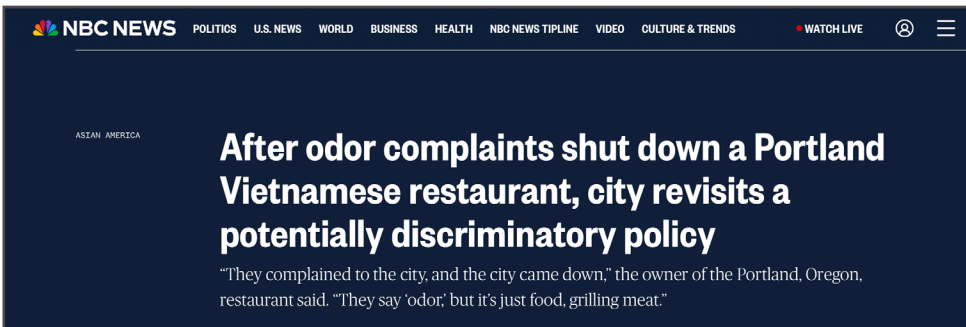
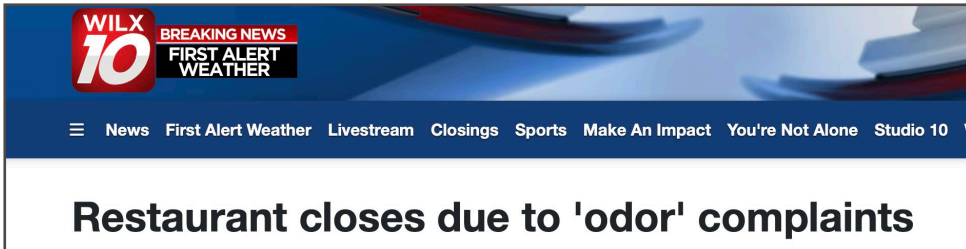
Staff proposes that the Planning Commission recommend that City Council (*Planning Commission purview*):

- **Adopt this report**
- **Amend Title 33, Planning and Zoning as shown in the Proposed Draft.** The amendments remove the odor regulations from the Zoning Code and delete requirements to document compliance with Chapter 33.262 Off-Site Impacts at the time of building permit review.

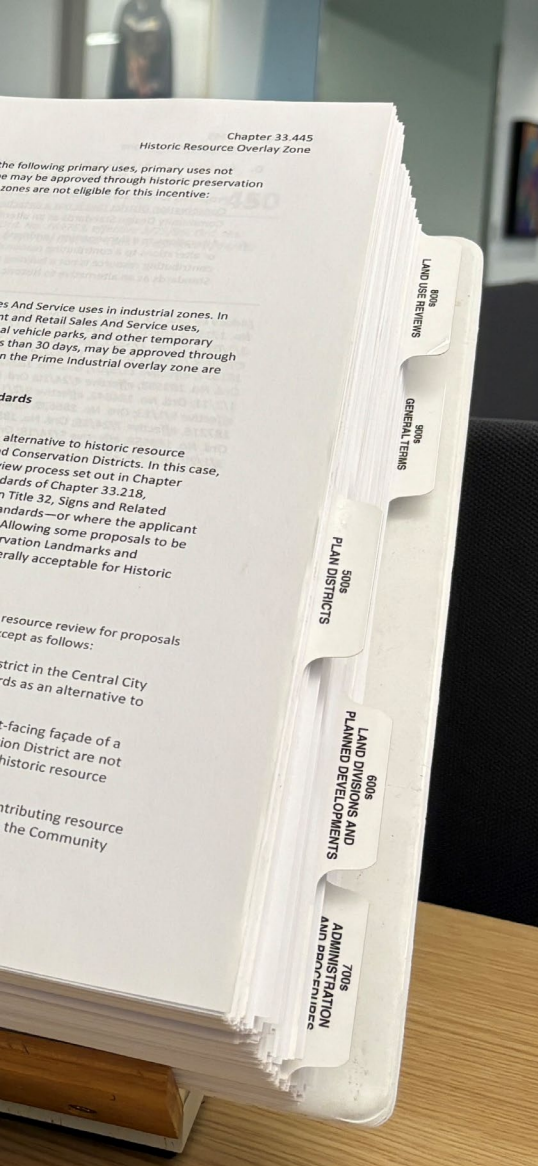
The proposal also recommends that City Council (*Outside of Planning Commission purview*):

- **Amend Title 29, Property Maintenance, as shown in the Proposed Draft.** The amendments add the odor regulations to Title 29 to be complied with once a building is occupied.

Why are we updating odor regulations?



- Media coverage of a local restaurant that closed
- Elevated concerns that the City's approach to regulating and enforcing odor issues is outdated and in need of a more enforceable and equitable approach
- Commissioner Rubio paused enforcement of odor complaints for food establishments



Context: Zoning Code Chapter 33.262 Off-Site Impacts

Sections

- 33.262.010 Purpose
- 33.262.020 Applying These Regulations
- 33.262.030 Exemptions
- 33.262.040 Relationship to Other Regulations
- 33.262.050 Noise
- 33.262.060 Vibration
- 33.262.070 Odor
- 33.262.080 Glare
- 33.262.090 Measurements
- 33.262.100 Documentation in Advance

33.262.020 Applying These Regulations

Nonresidential uses in all zones which cause off-site impacts on uses in the R, C, CI, IR, and OS zones are required to meet the standards of this chapter. Exempted equipment and facilities are stated in 33.262.030 below.

33.262.070 Odor

- A. **Odor standard.** Continuous, frequent, or repetitive odors may not be produced. The odor threshold is the point at which an odor may just be detected
- B. **Exception.** An odor detected for less than 15 minutes per day is exempt.



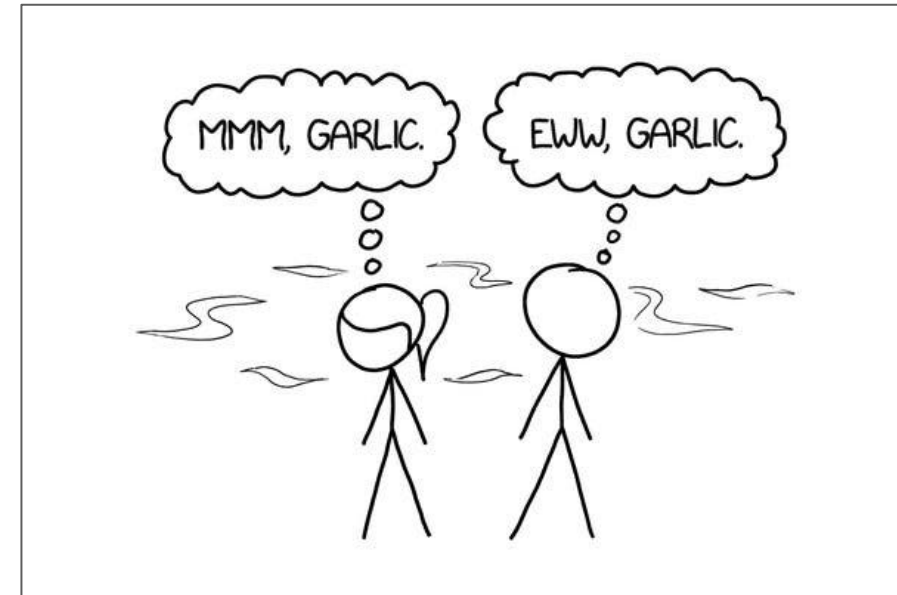
Context: Code Compliance

- Complaint driven enforcement
- PP&D Property Compliance inspection
- Enforcement action:
 - Notice of violation and compliance period
 - Code enforcement fees



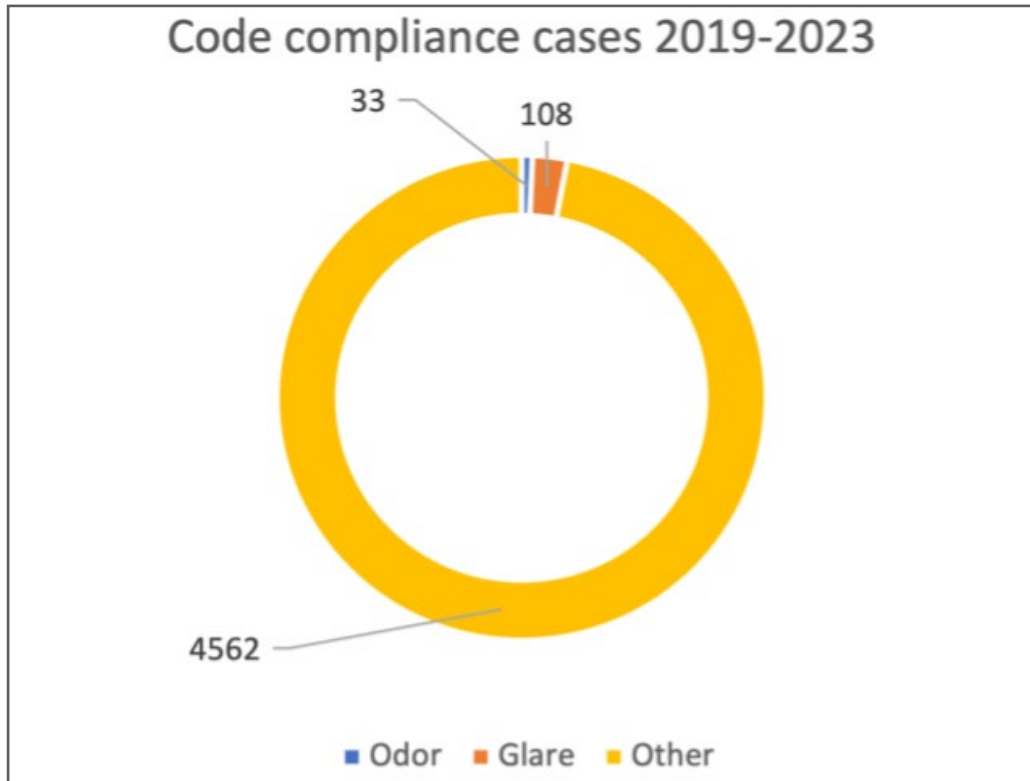
Context: Regulatory Challenges

- Odors are subjective by nature
- No standard instrument that can be used to measure odors



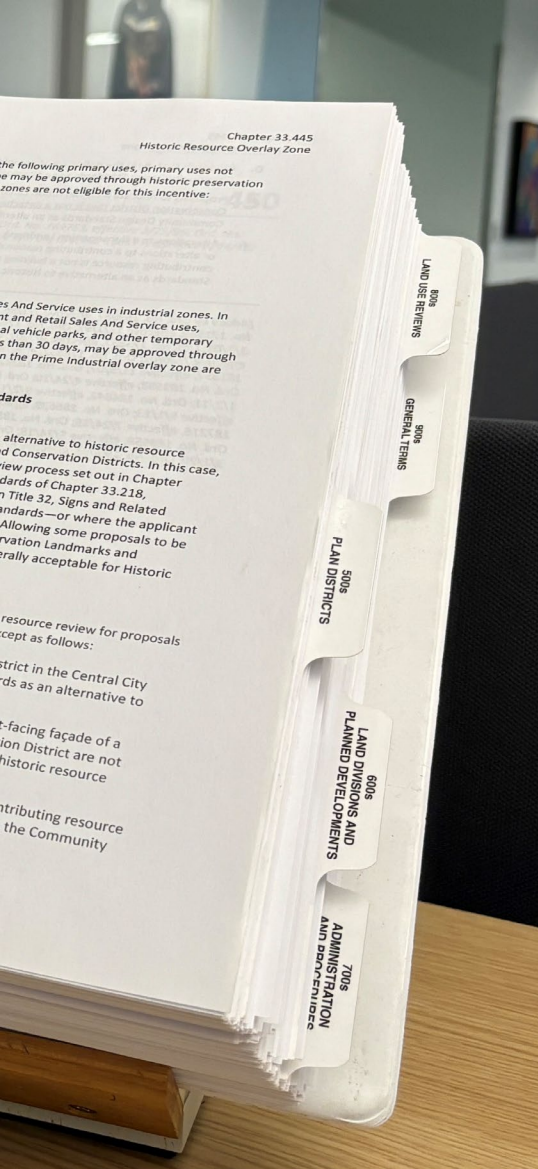
Context: Zoning Code Compliance Cases

Data 2019-23



- 33 odor cases
 - 8 restaurant/food cart odors
 - 2 restaurant garbage/compost
 - 23 others: Auto-related, marijuana, nail salon, motel dryer vent, et al





Context: Regulatory Framework

- Local: Zoning Code Chapter 33.262 Off-Site Impacts regulates nonresidential uses that cause odor impacts to residential properties
- State: Department of Environmental Quality odor nuisance regulates DEQ permitted operations, mostly industrial and some more impactful commercial uses (coffee roasters, large bakeries, vehicle paint shops)



Odor Code Update Project Proposed Changes



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Project goal & approach

The Odor Code Update Project will update Portland's off-site odor regulations with amendments to Title 33, Planning and Zoning, and Title 29, Building Maintenance. The amendments recognize that odor standards are inherently subjective and challenging to enforce but are still necessary for some uses that have the potential to produce noxious odors.

Changes to Title 33 (Planning Commission and City Council purview)

- **Move the odor standard** from Title 33 (Planning and Zoning) to Title 29 (Building Maintenance).
- **Eliminate requirements for documentation in advance** of compliance with Off-Site Impacts rules.

Changes to Title 29 (City Council purview)

- **Exempt Retail Sales and Service** uses from the odor regulations.
- **Set new parameters** for enforcement of the odor rules.

Remove odor regulations from Title 33

- Odor regulations are not a good fit for Zoning Code; better fit for Title 29
- Unable to review at time of building permit
- Odor regulations are inherently discretionary



Remove “documentation in advance” requirements

- Eliminate Chapter 33.262.100 requirement for documentation in advance of off-site impacts
- Add language to clarify that off-site impact standards are performance standards that apply to operations
- Removing because implementation is challenging:
 - Documentation is not always possible
 - Operations change over time
 - PP&D has implemented inconsistently

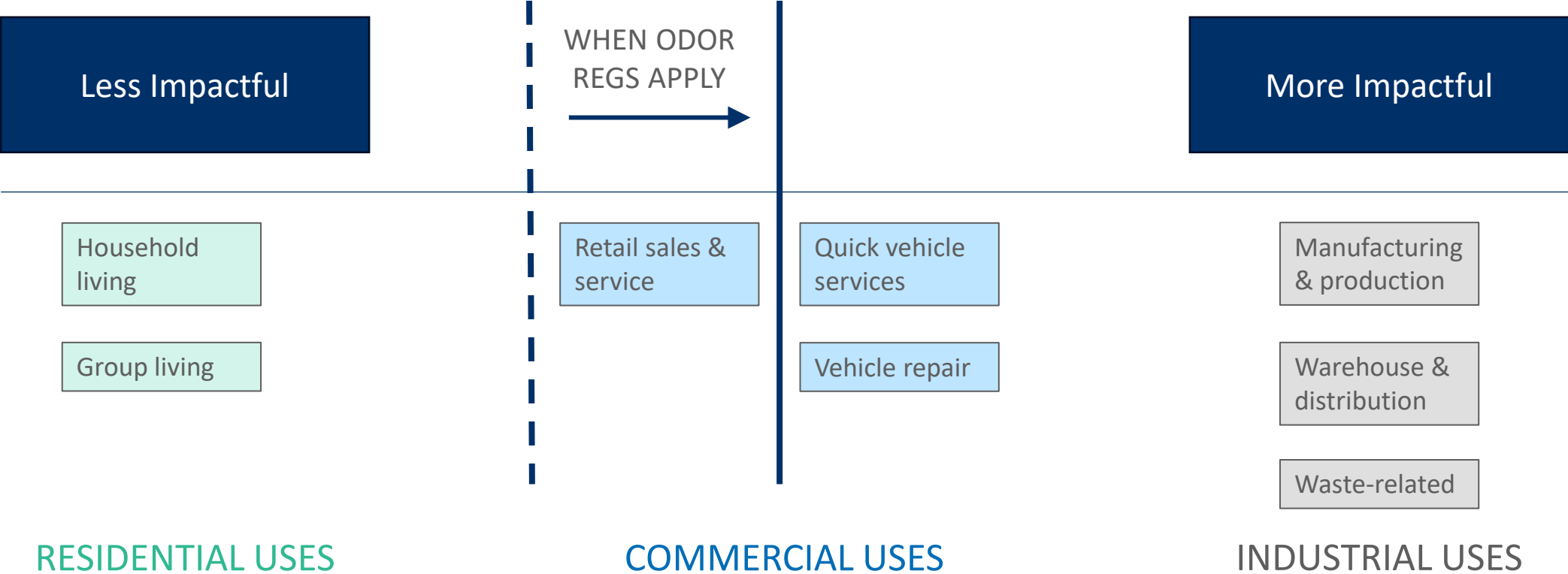


Exempt Retail Sales and Service Uses

- Recognize some odor is inherent with retail uses, such as restaurants, food carts, and nail salons and that there is no “perfect solution” to odor impacts in mixed-use neighborhoods
- Maintains odor regulations for other commercial uses such as gas stations and other vehicle-related uses
- Maintain odor regulations for larger commercial and industrial uses, including those regulated by DEQ



Spectrum of impacts & odor rule applicability



Other means to resolution



- **Mediation:** Services are available to work out solutions between businesses and neighbors when problems do arise
- **Civil lawsuit:** A last case scenario is to take the matter to court, which can be a way to help resolve more intractable civil property disputes.



Add parameters to odor regulations

- Create new tools for code enforcement staff to evaluate complaints:
 - Increase 15-minute daily allowance to 30 minutes
 - Require five complaints from five different people within 30 days from people who live within 150-feet of the property line of the site producing the offending odor.



Outreach and testimony

- Preliminary discussions with PP&D Code Compliance and Land Use Services staff
- Notice of Proposed Draft and hearing sent to
 - Legislative Mailing List
 - Project email notification list
- Project information provided in BPS E-News, BPS monthly project list, and newsletter
- Outreach to District Coalitions – presented to SEUL
- One comment received as of 8/27

Odor Code Update Project timeline

April-June 2024:

Project scoping

July 2024:

Proposed Draft released

→ August 27, 2024:

Planning Commission hearing

September 10, 2024:

Planning Commission work session

Fall 2024:

City Council hearing

Early 2025:

Amendment effective

Staff Proposal

Staff proposes that the Planning Commission recommend that City Council:

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The proposal also recommends that City Council:

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Summary of proposed changes

- **Move the odor standard** from Title 33 (Planning and Zoning) to Title 29 (Building Maintenance).
- **Eliminate requirements for documentation in advance**
- **Exempt Retail Sales and Service** uses from the odor rules in Title 29.
- **Set new parameters** for enforcement of the odor rules in Title 29