



[Home](#) / [Council Clerk](#) / [Council Documents](#) / [Ordinance](#)

191961

Ordinance

Amend Planning and Zoning Code and Property Maintenance Regulations Code to amend and update off-site odor impacts regulations (amend Title 33 and Title 29)

Passed

The City of Portland ordains.

Section 1. The Council finds:

1. On March 6, 2024, Commissioner Rubio directed Portland Planning and Development (PP&D) to put into abeyance the code governing complaints about off-site odor impacts. This was in response to reports of a local restaurant choosing to close down rather than pay for upgrades necessary to come into compliance with the code regulating odor complaints found in the Zoning Code chapter 33.326, Off-Site Impacts. As a result, PP&D Compliance Service has paused enforcement on odor complaints received.
2. On March 27, 2024, Commissioner Rubio issued a directive to the Bureau of Planning and Sustainability (BPS) to propose revisions to the regulations for odor that consider the appropriate application to food establishments and consider the costs and impacts of compliance on business owners.
3. During April through June 2024, BPS staff reviewed the current zoning regulations to determine what regulations would need to be amended to limit the costs and impacts of the rules on business owners.
4. On July 23, 2024, notice of the Odor Code Update Project Proposed Draft and first evidentiary hearing was submitted to the Department of Land Conservation and Development (DLCD).
5. On July 23, 2024, the Odor Code Update Project Proposed Draft of amendments was released.
6. On July 23, 2024, notice of the Odor Code Update Project Proposed Draft and Planning Commission hearing was sent out to the Bureau of Planning and Sustainability's (BPS) legislative list.
7. On August 27, 2024, the Planning Commission held a public hearing on the Odor Code Update Project Proposed Draft. Three people testified in person and three pieces of written testimony were received via the Map App.

Introduced by

[Commissioner Carmen Rubio](#);
[Mayor Ted Wheeler](#)

City department

[Planning and Sustainability \(BPS\)](#)

Contact

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Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

November 13, 2024

Requested Start Time

10:15 am

Time Requested

10 minutes

Changes City Code

8. On September 10, 2024, the Planning Commission held a work session and voted to forward a recommendation on the Odor Code Update Project package.
9. On October 11, 2024, the Odor Code Update Project Recommended Draft was released for public review.
10. On October 11, 2024, notice of the October 30, 2024, City Council hearing on the Odor Code Update Project Recommended Draft was sent to those who presented oral and written testimony at the Planning Commission public hearing.
11. On October 30, 2024, the City Council held a hearing on the Odor Code Update Project and invited public testimony.
12. The Findings of Fact Report, attached as Exhibit A, includes additional findings demonstrating consistency with the Statewide Planning Goals, Metro Urban Growth Management Functional Plan and the City of Portland 2035 Comprehensive Plan.

NOW, THEREFORE, the Council directs:

- A. Adopt Exhibit A, Findings of Fact Report, as additional findings.
- B. Adopt Exhibit B, Odor Code Update Project Recommended Draft, dated October 2024, including the commentary, as legislative intent and further findings.
- C. Amend Title 33, Planning and Zoning, and amend Title 29, Property Maintenance Regulations, of the Municipal Code of the City of Portland, as shown in Exhibit B, Odor Code Update Project Recommended Draft, dated October 2024.

Section 2. This ordinance shall be in full force and effect on March 1, 2025.

Section 3. If any section, subsection, sentence, clause, phrase, diagram, or drawing contained in this ordinance, or the map, report, inventory, analysis, or document it adopts or amends, is held to be deficient, invalid, or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the map, report, inventory, analysis, or document each section, subsection, sentence, clause, phrase, diagram, and drawing thereof, regardless of if any one or more sections, subsections, sentences, clauses, phrases, diagrams, or drawings contained in this Ordinance, may be found to be deficient, invalid, or unconstitutional.

Exhibits and Attachments

 [Exhibit A](#) 493.24 KB

 [Exhibit B](#) 1.08 MB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
November 13, 2024

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

The Odor Code Update Project updates the City Code for off-site odor impacts, providing flexibility for retail businesses to operate. The amendments recognize that odor standards are inherently subjective but are still necessary for some uses that have the potential to produce noxious odors. The project is a response to a directive from Commissioner Carmen Rubio to update the odor rules in Portland. This followed the highly publicized closure of a restaurant that was the subject of ongoing odor complaints.

The project proposed to amend Title 33, Planning and Zoning, and Title 29, Property Maintenance.

These updates, discussed further below, propose to:

- Move the odor standard from Title 33 (Planning and Zoning) to Title 29 (Building Maintenance).
- Eliminate requirements for documentation of compliance with Chapter 33.262, Off-Site Impacts, at the time of building permit and clarify that the standards apply once the operation of a use commences.
- 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:
 - Increase the 15-minute daily allowance for continuous odor emissions to 30 minutes.
 - Require five or more individual complaints from five or more people within 30 days before Property Compliance Services will open an odor investigation. The complainants must live within 150-feet of the property line of the site with the offending odor.

The primary impact of the code changes will be how the odor rules are enforced for retail sales and service businesses for which odor is an inherent part of their business model, such as restaurants, coffee shops, or bakeries. These businesses will no longer be subject to the odor code rules that are being moved from Title 33 to Title 29. The change will eliminate the threat to these businesses that one complaint about any sustained odor from their businesses could lead to enforcement actions that could include prohibitively expensive upgrades to their ventilation systems. A secondary impact is to residential neighbors to these businesses who will no longer be able to call in odor complaints against retail sales and service businesses to the Portland Planning and Development (PP&D) code enforcement group. Instead, they will have to rely on private mediation or the civil courts to address issues they have.

The change is supportive of multiple Comprehensive Plan goals and policies that encourage compact development in centers and along corridors, where residents live close to and intermingled with amenities and services, such as

restaurants. See Exhibit A, Findings of Fact Report, for a detailed discussion of how the Comprehensive Plan goals and policies will continue to be met.

Financial and Budgetary Impacts

There is little to no expected financial or budgetary impacts with this project. The only change to City operations will be that PP&D staff will no longer respond to odor code complaints, which in the last five years accounted for less than 10 code compliance cases out of a total of nearly 5,000 cases. This will have a negligible impact to staffing and workload. There are no budgetary impacts from the project, nor does it result in any changes to the City's financial agreements.

Economic and Real Estate Development Impacts

The only change the proposal is expected to have on businesses will be to provide more certainty for retail sales and services uses to operate in the commercial and mixed-use zones that are located near to and co-mingled with housing.

Community Impacts and Community Involvement

BPS staff coordinated with staff from PP&D Land Use Services and PP&D Property Compliance Division to scope the project, draft the proposed code changes. This was documented in a proposed draft and that was published and made available to the public in advance of a Planning Commission hearing that was held on August 27, 2024. Notice of the project was sent to BPS's legislative project list. The legislative list includes recognized organizations and neighborhood and business associations. The notice was also emailed to over 30 individuals who expressed an interest in the project. Following up on the Planning Commission recommendation, staff will be publishing the recommended draft in advance of the City Council hearing scheduled for October 30, 2024. Staff also reached out to each of the District Coalition offices and offered to meet with them or any or any of the neighborhood associations. Only Southeast Uplift took up the offer.

Three pieces of written testimony were submitted via the MapApp and three people testified at the Planning Commission hearing. Testimony was fairly evenly split between retail business owners speaking in favor of the proposed change that said the odor code had been weaponized against their operation by unreasonable neighbors and the neighbors who spoke in opposition to the proposal because the city will no longer enforce the odor code against retail sales and service uses.

Staff are sympathetic to the concerns of the neighbors and the businesses and sought to balance the needs and concerns of both groups. The difficulty with enforcement of the odor rules is that odors are inherently subjective and are unable to be measured, making objective enforcement of the rules impossible. The proposal means the City will no longer be in the role of mediator between retail sales and service business owners and neighbors who have issues with odors produced by them. Mitigation for that change is to highlight the availability of private mediation services such as Resolutions NW,

which specializes in working through community disputes. As a last resort, civil courts are also an option.

Notice of the proposed draft and the Planning Commission hearing was submitted online to the DLCD and was sent to the BPS's legislative project list. The legislative list includes recognized organizations and neighborhood and business associations. The notice was also emailed to over 30 individuals who expressed an interest in the project. The Planning Commission held a hearing, on August 27 at which three people testified in person in addition to the three pieces of written testimony received. The Planning Commission voted to recommend the code amendments as proposed by staff to City Council for approval.

The Proposed Draft was published on the project web site on October 11 and the City's testimony database (Map App) was made available for submitting public testimony. A public hearing before City Council is scheduled for October 30 at 4 p.m.

100% Renewable Goal

n/a

Document History

Item 948 Time Certain in [October 30-31, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/10/30)
(<https://www.portland.gov/council/agenda/2024/10/30>)

City Council

Passed to second reading

Oral and written record are closed.

Passed to second reading November 13, 2024 at 10:15 a.m. time certain

Item 961 Time Certain in [November 13, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/11/13)
(<https://www.portland.gov/council/agenda/2024/11/13>)

City Council

Passed

Aye (4): Carmen Rubio, Dan Ryan, Rene Gonzalez, Ted Wheeler

Absent (1): Mingus Mapps