



Odor Code Update Project

Recommended Draft

October 2024

www.portland.gov/bps/planning/odor-code



THE BUREAU OF
**PLANNING &
SUSTAINABILITY**

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How can I participate?

- 1. Watch the City Council hearing** (live stream and recorded) at portland.gov/council/agenda
- 2. Testify at the City Council hearing.** The hearing on October 30, 2024 at 3:30 pm will be a hybrid format with options to participate in-person or virtually using a computer, mobile device or telephone. The **hearing will be held at 1900 SW 4th Avenue, Room 2500**. Capacity is limited for in-person testimony and providing virtual testimony is recommended at this time. You **must** sign up to testify in advance. The Council Clerk will post the agenda with the public testimony registration links on Friday, October 25, 2024 at 9:00 am. To testify before City Council in person or virtually:
 - Visit the Council Agenda at portland.gov/council/agenda;
 - Visit the Auditor’s Office on the first floor of City Hall, Room 130; or
 - Call 311 to sign up over the phone.

Registration for **virtual** testimony closes one hour before the Council meeting. After registering for virtual testimony, a meeting invitation will be sent by email at least 30 minutes prior to the start of the meeting with information about providing virtual testimony. **In-person** testifiers must sign up before the agenda item is called. Visit portland.gov/council-clerk/engage-council for information on what to expect when attending a Council meeting. Email the Council Clerk at councilclerk@portlandoregon.gov with questions or text **CLERK** to 855-625-2050 with questions during the meeting.

- 3. Submit written testimony.** We strongly encourage electronic written testimony via the Map App. Written testimony must be received by the time of the hearing and must include your name. If you wish to receive mailed notice of later hearings on the matter, you must include your mailing address.

Use the Map App:	Use U.S. Mail:
portlandmaps.com/bps/mapapp Click on <i>Odor Code Update Project</i> then click the "Testify" button. Testifying in the Map App is as easy as sending an email.	Portland City Council Odor Code Update Project Testimony 1810 SW 5 th Ave, Suite 710 Portland, OR 97201

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September 24, 2024

Mayor Wheeler and City Commissioners

City Hall

1221 SW 4th Ave

Portland, OR 97204

Dear Mayor and City Commissioners,

The Planning Commission is pleased to offer its support for the Odor Code Update Project. On August 27, 2024, the Planning Commission held a hearing on the staff proposal and on September 10, 2024 we voted unanimously to recommend the staff proposal.

The Odor Code Update Project amends Portland's off-site odor regulations and proposes more workable and equitable rules. The amendments will ease the regulations for neighborhood businesses recognizing that, while odor standards are inherently subjective and challenging to enforce, they are still necessary for other uses that have the potential to produce noxious odors.

The City's current odor regulations are unmeasurable, and therefore introduce significant discretion when being enforced. These updates will exempt retail sales and services uses, which include businesses like restaurants or coffee shops, from the odor rules and will also change the parameters for how the rules are implemented for uses to which they will still apply.

While the regulations are being moved from Title 33 to Title 29, we are enthusiastic about removing regulations from the Zoning Code.



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Recommendation

The Planning Commission recommends that the City Council take the following actions:

1. Adopt the Parking Odor Code Update Project – Recommended Draft.
2. Amend Title 33, Planning and Zoning, as shown in the Recommended Draft.

In addition, we also support the changes to Title 29 that staff is recommending directly to City Council and are outside our purview:

3. Amend Title 29, Property Maintenance, as shown in the Recommended Draft.

Thank you for the opportunity to participate in the review of this project and for considering our recommendations.

Respectfully submitted,



Mary-Rain O'Meara, Chair



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Section I: Introduction

Staff Proposal

Bureau of Planning and Sustainability staff propose that City Council:

- 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 Title 29, Property Maintenance Regulations, of the Municipal Code of the City of Portland, as shown in Exhibit B, Housing Adjustment Compliance Project Recommended Draft, dated October 2024.

Project Summary

The Odor Code Update Project will amend Portland’s off-site odor regulations. The amendments recognize that odor standards are inherently subjective but are still necessary for some uses that have the potential to produce noxious odors.

These updates, discussed further below, propose to:

- Move the odor standard from Title 33 (Planning and Zoning) to Title 29 (Property 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.

Background

Recently, a spotlight was put on the City's odor complaint enforcement system following media coverage of a local restaurant that closed in response to a code compliance case. The case was the result of complaints the City received about odors emanating from an establishment that may have been in violation of odor regulations in the zoning code. The situation 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. In March 2024, Portland City Commissioner Carmen Rubio placed a pause on enforcement of odor complaints related to food establishments. Commissioner Rubio further directed the Bureau of Planning and Sustainability (BPS) to begin the process of updating regulations related to odor complaints.

"I am very concerned and am raising serious questions about the negative impacts of this policy," Commissioner Rubio said. "...the City's regulation and enforcement of odor issues is outdated and needs a more fair, practical, and equitable approach. My goal is to see the code changes happen as soon as possible."

Odor Regulations

Currently, the standard relating to odor is found in Chapter 33.262, Off-Site Impacts, of the Portland Zoning Code. The purpose of the off-site impact chapter is to protect uses in residential, commercial mixed use, campus institutional, and open space zones from objectionable off-site impacts associated with nonresidential uses. The chapter regulates the impacts from noise, glare, odor, and vibration. Section 33.262.070 states:

- 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.*

Section 33.262.100 further states that measurement for compliance with the standards are made from the property line.

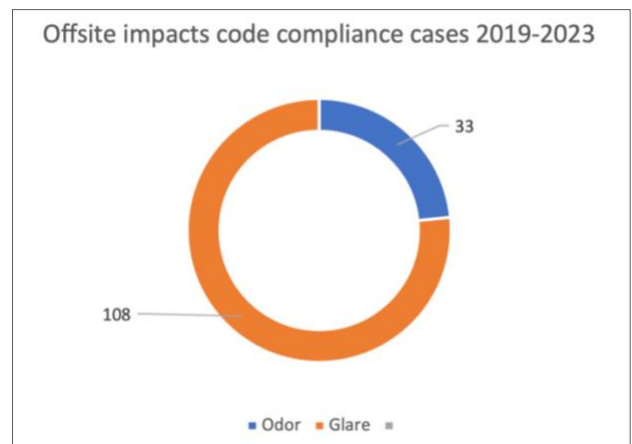
In addition to local regulations found in the zoning code, the Oregon Department of Environmental Quality (DEQ) has rules for off-site odors; however, these generally only apply to larger industrial uses that require a DEQ Air Quality Permit. DEQ only addresses nuisance odor complaints received on a permit holder and does not get involved in local odor complaints such as those about restaurant odors.

Code Compliance

The current system for enforcement of the off-site impacts standards is complaint driven. Anyone can make a confidential odor complaint to Portland Permitting & Development (PP&D), formerly known as the Bureau of Development Services (BDS). PP&D is responsible for administering the zoning code. The current process for investigating an odor complaint is for a code compliance inspector to visit the property to see if they can detect an odor and, if so, determine how long the odor persists. If the odor is detected for more than 15 minutes, the City can start enforcement action against the property by issuing a notice of violation and granting a compliance period. Back-and-forth discussions often take place between the City's Property Compliance staff and the business

operator to resolve the issue. Eventually, the inspector can assess code enforcement fees if the odor violation is not resolved.

While the number of odor complaints filed against restaurants is quite small compared to the number of total code complaints received each year, the complaint driven system doesn't work well for odor impacts, and enforcement can be unfair due to the lack of measurable standards. In the last five years, PP&D Property Compliance Services received 4,703 complaints. Of those, 141 were directly related to the off-site impacts regulations in the zoning code, with 33 of those complaints about odor impacts. The remainder were complaints about glare from lights.



Measuring Odor

One of the main challenges with the odor standards is that, unlike the other off-site impact standards, the odor standard is subjective by nature. While the impacts from noise and light have standard measurements, there is not a standard instrument that can be used to measure odors. In the past, an instrument called a scentometer was used to measure odor intensity. It has fallen out of favor because readings taken outside of a controlled lab setting can vary so greatly due to meteorologic conditions that it renders the scentometer unreliable. Other odor measuring methods have been tried, including one that involves trained human sniffers using carbon-filter masks and neutral smelling gases such as methane, but are not in widespread use since they are still subjective tests. Further, while the intensity of an odor may technically be measurable, the nature of a smell is inherently subjective, meaning that what may be a pleasant odor to one person may be offensive to another.

Odor Code Update Proposal

Due to the difficulty of implementing a subjective standard that cannot be accurately measured, and the inequities inherent in such a standard, Commissioner Rubio directed BPS staff to develop a proposal for a fairer and easier-to-implement odor standard. The proposal recognizes the implementation challenges and disproportionate effects an odor standard can have on small local businesses, which tend to be along Portland's main streets and near residential neighborhoods. It also continues to allow for enforcement on non-retail businesses. The proposal accounts for the fact

that DEQ has jurisdiction over large industrial and commercial uses with greater impacts and identifies other possible avenues for redress that lay outside of code enforcement.

The amendments affect Title 33 and Title 29. The proposed amendments are:

- 1. Move the odor standard from Title 33, Planning and Zoning, to Title 29 Building Maintenance (Title 33 and Title 29).** One of the rationales for this proposal is that the bulk of the standards in Title 33 apply at the building permit stage, whereas Title 29 includes the rules for maintaining a building after it's built. The zoning code regulations that are most effectively implemented are those that can be verified on building plans (e.g., site plan, building elevations, landscape plans). Odor standards are not verifiable on building plans and oftentimes the proposed building is a shell and the tenants and uses are not known until after the building has been built. Regulating odor through the zoning code is an ill-fit.

Another reason for this proposal is that there is no objective way to measure odor. The zoning code stipulates that the review procedure for uses and development that are allowed by right is a non-discretionary, administrative procedure. This type of procedure does not allow discretion. Title 29 allows for some level discretion or subjectivity. Moving the odor standards to Title 29 brings us into statutory alignment with the zoning code.

- 2. Eliminate Title 33 requirements for documentation of compliance with Chapter 33.262, Off-Site Impacts, in advance (Title 33).** The current code includes a provision in Section 33.262.100 that empowers the BDS Director (now PP&D) to require documentation in advance – meaning, at the time the building permit is being reviewed – that a proposed use will conform with the off-site impact standards. There are other sections of the zoning code that specifically state that documentation of compliance with Chapter 33.262 is required in advance of issuing a building permit:

- 33.203.050.C Accessory Home Occupations
- 33.224.000 Drive-Through Facilities
- 33.254.060 Mining and Waste-Related Uses
- 33.258.050.B Nonconforming Situations
- 33.410.080 Buffer Zone

The documentation in advance requirements pose several challenges. First, the language in 33.262.100 does not list situations in which the PP&D Director is empowered to require documentation in advance. Second, it is difficult to document the impacts of a future use at the time of a building permit because uses are often not known at that point and operations change over time. Third, some impacts, such as odor and vibration are difficult or impossible to document. Finally, there are many other uses beyond those that currently require documentation in advance that have the potential to produce noise, odor, glare, or vibration.

As a result, for at least the past 25 years PP&D has generally not implemented the documentation in advance requirements. The bureau instead relies on complaint-driven enforcement of the standards in Chapter 33.262.

For these same reasons, all the documentation in advance requirements are proposed to be removed. Language is being added to 33.262.100 to clarify that the rules are performance standards that apply once the operation of a use commences, instead of standards that apply at the time of the administrative building permit review.

- 3. Exempt Retail Sales And Service uses from the odor standards (Title 29).** Moving the odor standard to Title 29 does not change its applicability to small businesses. The intent of this project is to craft a more equitable, fair, and enforceable odor standard.

This proposal exempts one commercial use category – Retail Sales And Services uses – from the odor regulations. It recognizes that some amount of odor is inherent with Retail Sales And Services uses and that many are local establishments that are woven into the fabric of Portland's neighborhoods and valued by residents. Restaurants, food carts, and nail salons are examples of these types of businesses.

The proposal does not exempt all commercial uses because the off-site odor impacts of some commercial uses should be subject to regulation including Vehicle Repair and Quick Vehicle Servicing (e.g., a gas station). The proposal similarly does not exempt industrial uses, though most of those fall under the jurisdiction of DEQ. Residential uses are not subject to the off-site impacts standards, including the odor standard, and this project does not change that fact.

- 4. Set new parameters for enforcement (Title 29).** The two proposed changes below are intended to give code enforcement staff additional tools to evaluate odor complaints that are still regulated by City code.
 - **Increase 15-minute daily allowance to 30 minutes.** In drafting the code changes, BPS staff received feedback from PP&D Property Compliance staff who find the standard addressing the duration of an odor to be helpful when evaluating complaints. It is much easier to evaluate how long a smell is present than it is to gauge the intensity or offensiveness of a smell. In researching odor standards in other jurisdiction, BPS staff found a wide range of duration standards. The existing 15-minute standard was on the low end of the range. Extending it to 30 minutes allows more flexibility for business operations while also considering off-site impacts.
 - **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.** This change is consistent with the DEQ compliance regime as well as regulations in other jurisdictions. It restricts complaints to nearby residents and requires a critical mass of complaints to demonstrate the impacts are widespread. It also limits weaponization of the compliance system by one individual against a particular business.

Other avenues for redress of odor complaints

In researching other codes, staff found that there are jurisdictions that simply do not have nuisance regulations relating to odor. An example is New York City, where a former official told staff that smells from restaurants and small business are expected as part of urban life.

In the absence of city regulations, individual parties can still avail themselves of other tools:

- **Mediation services.** Under the current enforcement system, PP&D Property Compliance Services staff work with establishments for which complaints have been registered to try to find solutions. In the case of a restaurant, it may be a matter of getting them to install new air filters or do minor upgrades to the HVAC system. The proposed change to exempt Retail Sales And Service uses means that the City would no longer serve as an intermediary between those types of businesses and neighbors. However, Resolutions Northwest provides mediation services and could serve as an intermediary for odor complaints. Property Compliance Services staff could refer complaints against Retail Sales And Service uses to Resolution Northwest to help the parties work toward a solution.
- **Civil lawsuits.** While not desirable, a complainant that has an issue with a Retail Sales And Service use can still address their concerns in civilian court, which can impose fines or require action if harmful impacts are found.

Community Engagement

Due to the level of concern that this issue drew from the community and City Commissioners, staff prioritized developing a solution on a quick timeline. As a result, early community engagement has been limited. To date, BPS staff have coordinated with staff from PP&D Land Use Services and PP&D Property Compliance Division to draft proposals that are more equitable and easier to implement.

Notice of the proposed draft and the Planning Commission hearing was submitted online to the DLCDC 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 pm.

Project timeline

July 2024 – Proposed Draft released

August 2024 – Planning Commission hearing

October 2024 – City Council hearing

March 1, 2025 – Code amendments effective

Section II: Zoning Code Amendments

This section presents amendments to the Zoning Code. The section is formatted to facilitate readability by showing code amendments on the right-hand (odd) pages and related commentary on the facing left-hand (even) pages.

How to read these amendments:

- Language to be added is show in underline.
- Language to be deleted is show in ~~striketrough~~.

Commentary

33.100.120 Open Space Zones

Section 33.100.120, Nuisance Related Impacts, is proposed to be deleted, which would necessitate removing the section from the table of contents.

33.100.100.B.5.b Limited Uses - Small-Scale Energy Production

This reference to meet the requirements of Chapter 33.262 *Off-Site Impacts*, and some other similar references, are being deleted to reduce redundancy in the code. The language of Section 33.262.020 *Applying these Regulations* makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here.

33.100 Open Space Zone

100

Sections:

General

- 33.100.010 Purpose
- 33.100.020 Short Name
- 33.100.030 Where the Zone Is Applied
- 33.100.040 Other Zoning Regulations

Use Regulations

- 33.100.100 Primary Uses
- 33.100.110 Accessory Uses
- ~~33.100.120 Nuisance-Related Impacts~~

Development Standards

- 33.100.200 Development Standards
- 33.100.205 Fences
- 33.100.210 Demolitions
- 33.100.220 Nonconforming Development
- 33.100.225 Signs
- 33.100.230 Trees
- 33.100.240 Recycling Areas

33.100.100 Primary Uses

- A. [No change]
- B. **Limited uses.** Uses allowed that are subject to limitations are listed in Table 100-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 100-1.
 - 1-4. [No change]
 - 5. Basic Utilities. This regulation applies to all parts of Table 100-1 that have note [5].
 - a. [No change]
 - b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. ~~The requirements of Chapter 33.262, Off Site Impacts, must be met;~~
 - c. [No change]
 - 6-7. [No change]

- C-D. [No change]

Commentary

33.100.120 Nuisance Related Impacts

As in the amendment above, this section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262 or are subject to Title 29 Property Maintenance. These are redundant references that restate what is said elsewhere in City Code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~33.100.120 Nuisance-Related Impacts~~

- ~~A. **Off-site impacts.** All nonresidential primary and accessory uses must comply with the standards of Chapter 33.262, Off-Site Impacts.~~
- ~~B. **Other nuisances.** Other nuisances are regulated by Section 29.20.010 of Title 29, Property and Maintenance Regulations.~~

Commentary

33.110.100.B.4.b Limited Uses - Small-Scale Energy Production

This reference to the requirements of Chapter 33.262 Off-Site Impacts and some other similar references are being deleted to reduce redundancy in the code. The language of Section 33.262.020 Applying these Regulations makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here.

33.110 Single-Dwelling Zones

110

33.110.100 Primary Uses

- A. [No change]
- B. **Limited uses.** Uses allowed that are subject to limitations are listed in Table 110-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 110-1.
- 1-3. [No change]
4. Basic Utilities. This regulation applies to all parts of Table 110-1 that have note [4].
- a. [No change]
- b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. ~~The requirements of Chapter 33.262, Off Site Impacts, must be met;~~
- c. [No change]
- 5-11. [No change]
- C-D. [No change]

Commentary

33.120.100.B.8.b Limited Uses - Small-Scale Energy Production

This reference to the requirements of Chapter 33.262 Off-Site Impacts and some other similar references are being deleted to reduce redundancy in the code. The language of Section 33.262.020 Applying these Regulations makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here.

33.120 Multi-Dwelling Zones

120

33.120.100 Primary Uses

- A. [No change]
- B. **Limited uses.** Uses allowed that are subject to limitations are listed in Table 120-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 120-1.
- 1-7. [No change]
8. Basic Utilities. This regulation applies to all parts of Table 120-1 that have note [8].
- a. [No change]
- b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net metered) or wholesale—are included. However, they are only considered accessory if they generate energy from biological materials or byproducts from the site itself, or conditions on the site itself; materials from other sites may not be used to generate energy. In the RX zone, up to 10 tons per week of biological materials or byproducts from other sites may be used to generate energy. ~~The requirements of Chapter 33.262, Off Site Impacts, must be met;~~
- c. [No change]
- 9-10. [No change]
- C-D. [No change]

Commentary

33.130 Commercial/Mixed Use Zones

Section 33.130.130, Nuisance-Related Impacts, is proposed to be deleted, which would necessitate removing the section from the table of contents.

33.130 Commercial/Mixed Use Zones

130

Sections:

General

- 33.130.010 Purpose
- 33.130.020 List of the Commercial/Mixed Use Zones
- 33.130.030 Characteristics of the Zones
- 33.130.040 Other Zoning Regulations
- 33.130.050 Neighborhood Contact

Use Regulations

- 33.130.100 Primary Uses
- 33.130.110 Accessory Uses
- ~~33.130.130 Nuisance-Related Impacts~~

Development Standards

- 33.130.200 Lot Size
- 33.130.205 Floor Area Ratio
- 33.130.207 Minimum Density
- 33.130.210 Height
- 33.130.212 Floor Area and Height Bonus Options
- 33.130.215 Setbacks
- 33.130.220 Building Coverage
- 33.130.222 Building Length and Façade Articulation
- 33.130.225 Landscaped Areas
- 33.130.227 Trees
- 33.130.228 Required Outdoor Areas
- 33.130.230 Windows
- 33.130.235 Screening
- 33.130.240 Pedestrian Standards
- 33.130.242 Transit Street Main Entrance
- 33.130.245 Exterior Display, Storage, and Work Activities
- 33.130.250 General Requirements for Small Housing Types
- 33.130.255 Trucks and Equipment
- 33.130.260 Drive-Through Facilities
- 33.130.265 Detached Accessory Structures
- 33.130.270 Fences
- 33.130.275 Demolitions
- 33.130.285 Nonconforming Development
- 33.130.290 Parking, Loading, and Transportation Demand Management
- 33.130.292 Street and Pedestrian Connections
- 33.130.295 Signs
- 33.130.305 Superblock Requirements
- 33.130.310 Recycling Areas

Commentary

33.130.130 Nuisance-Related Impacts

This section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262 or are subject to Title 29 Property Maintenance. These are redundant references that restate what is said elsewhere in City Code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

Supplemental Information

Map 130-1 Civic Corridors with Required Setbacks

Map 130-2 Pattern Areas

Map 130-3 Civic and Neighborhood Corridors

~~33.130.130 Nuisance-Related Impacts~~

- ~~A. Off-site impacts.~~** All nonresidential uses including their accessory uses must comply with the standards of Chapter 33.262, Off-Site Impacts.
- ~~B. Other nuisances.~~** Other nuisances are regulated by Title 29, Property and Maintenance Regulations.

Commentary

33.140 Employment and Industrial Zones

Section 33.140.130, Nuisance-Related Impacts, is proposed to be deleted, which would necessitate removing the section from the table of contents.

33.140 Employment and Industrial Zones

140

Sections:

General

- 33.140.010 General Purpose of the Zones
- 33.140.020 List of the Employment and Industrial Zones
- 33.140.030 Characteristics of the Zones
- 33.140.040 Other Zoning Regulations
- 33.140.050 Neighborhood Contact in EG and I Zones
- 33.140.055 Neighborhood Contact in EX Zone

Use Regulations

- 33.140.100 Primary Uses
- 33.140.110 Accessory Uses
- ~~33.140.130 Nuisance-Related Impacts~~
- 33.140.140 On-Site Waste Disposal

Site Development Standards

- 33.140.200 Lot Size
- 33.140.205 Floor Area Ratio
- 33.140.210 Height
- 33.140.215 Setbacks
- 33.140.220 Building Coverage
- 33.140.225 Landscaped Areas
- 33.140.227 Trees
- 33.140.230 Ground Floor Windows in the EX Zones
- 33.140.235 Screening
- 33.140.240 Pedestrian Standards
- 33.140.242 Transit Street Main Entrance
- 33.140.245 Exterior Display, Storage, and Work Activities
- 33.140.250 Trucks and Equipment
- 33.140.255 Drive-Through Facilities
- 33.140.265 Residential Development
- 33.140.270 Detached Accessory Structures
- 33.140.275 Fences
- 33.140.280 Demolitions
- 33.140.290 Nonconforming Development
- 33.140.295 Parking, Loading, and Transportation and Parking Demand Management
- 33.140.300 Signs
- 33.140.310 Superblock Requirements
- 33.140.315 Recycling Areas
- 33.140.320 Inclusionary Housing

Commentary

33.140.130 Nuisance-Related Impacts

This section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262 or are subject to Title 29 Property Maintenance. These are redundant references that restate what is said elsewhere in City Code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

~~33.140.130 Nuisance-Related Impacts~~

- ~~A. **Off-site impacts.** All nonresidential uses including their accessory uses must comply with the standards of Chapter 33.262, Off-Site Impacts.~~
- ~~B. **Other nuisances.** Other nuisances are regulated by Title 29, Property and Maintenance Regulations.~~

Commentary

33.150 Campus Institutional Zones

Section 33.150.120, Nuisance-Related Impacts is proposed to be deleted, which would necessitate removing the section from the table of contents.

33.150 Campus Institutional Zones

150

Sections:

General

- 33.150.010 Purpose
- 33.150.020 List of the Campus Institutional Zones
- 33.150.030 Characteristics of the Zones
- 33.150.040 Other Zoning Regulations
- 33.150.050 Where This Chapter Does Not Apply
- 33.150.060 Neighborhood Contact and Outreach

Use Regulations

- 33.150.100 Primary Uses
- 33.150.110 Accessory Uses
- ~~33.150.120 Nuisance-Related Impacts~~

Development Standards

- 33.150.200 Lot Size
- 33.150.205 Floor Area Ratio
- 33.150.210 Height
- 33.150.215 Setbacks
- 33.150.220 Building Coverage
- 33.150.235 Building Length in the CI1 Zone
- 33.150.240 Landscaped Areas
- 33.150.245 Trees
- 33.150.250 Ground Floor Windows in the CI2 Zone
- 33.150.255 Building Length and Facade Articulation in the CI2 Zone
- 33.150.260 Screening
- 33.150.265 Transit Street Main Entrance
- 33.150.267 Additional Development Standards for Institutional Campuses in the IR Zone
- 33.150.270 Exterior Display, and Storage
- 33.150.275 Trucks and Equipment
- 33.150.277 Drive-Through Facilities
- 33.150.280 Detached Accessory Structures
- 33.150.285 Fences
- 33.150.290 Demolitions
- 33.150.295 Nonconforming Development
- 33.150.300 Parking, Loading, and Transportation and Parking Demand Management
- 33.150.305 Signs
- 33.150.310 Superblock Requirements
- 33.150.315 Recycling Areas

Maps 150-1 through 150-5 Maximum Heights and Minimum Setbacks

Commentary

33.150.100.B.4.b Limited Uses - Small-Scale Energy Production

This reference to the requirements of Chapter 33.262 Off-Site Impacts, and some other similar references, are being deleted to reduce redundancy in the code. The language of Section 33.262.020 Applying these Regulations makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here.

33.150.100 Primary Uses

- A. [No change]
- B. **Limited uses.** Uses allowed that are subject to limitations are listed in Table 150-1 with an "L". These uses are allowed if they comply with the limitations listed below and the development standards and other regulations of this Title. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The paragraphs listed below contain the limitations and correspond with the footnote numbers from Table 150-1.
- 1-3. [No change]
4. Basic Utilities. This regulation applies to all parts of Table 150-1 that have note [3].
- a. [No change]
- b. Small Scale Energy Production that provides energy for on-site or off-site use are considered accessory to the primary use on the site. Installations that sell power they generate—at retail (net, metered) or wholesale—are included. However, they are only considered accessory if they generate energy primarily from biological materials or byproducts from the site itself, or conditions on the site itself. Not more than 10 tons per week of biological material or byproducts from other sites may be used to generate energy. Not more than 20 percent of the floor area on a site, exclusive of parking area may be devoted to small scale energy production. ~~The requirements of Chapter 33.262, Off Site Impacts must be met.~~
- c. [No change]
- 5-12. [No change]
- C-D. [No change]

Commentary

33.150.120 Nuisance-Related Impacts

This section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262 or are subject to Title 29 Property Maintenance. These are redundant references that restate what is said elsewhere in City Code.

Language to be **added** is underlined
Language to be **deleted** is shown in ~~strikethrough~~

33.150.120 Nuisance-Related Impacts

- A. ~~Off-site impacts.~~** All uses, including accessory uses, must comply with the standards of Chapter 33.262, Off-Site Impacts.
- B. ~~Other nuisances.~~** Other nuisances are regulated by Title 29, Property and Maintenance Regulations.

Commentary

33.203.050 Accessory Home Occupations - Impact-Related Standards

33.203.050. A - Nuisances. This section also restates the applicability of Chapter 33.262 for accessory home occupations, which are nonresidential accessory uses and therefore included in the list of uses where found in 33.262.020 stating where that chapter applies. However, this section further states that there is a different standard for noise impacts than what is found in 33.262.050 (and by reference Title 18), and for that reason, the entire reference is being retained for clarity.

33.203.050.C - Noise. This section states what the noise standard is for accessory home occupations. The noise standard itself is being retained. However, the subsection also contains a requirement that accessory uses proposing to use power tools must document at the time of building permit that the noise standard will be met. The documentation in advance requirement is being removed because it is not feasible for a PP&D planner to evaluate the noise level of power tools before the accessory home occupation has begun operation. Going forward, this noise standard will be implemented as an enforcement action when and if the city receives complaints about noise levels emanating from an accessory home occupation.

33.203 Accessory Home Occupations

203

33.203.050 Impact-Related Standards

- A. **Nuisances.** Accessory home occupations are regulated by the standards contained in Chapter 33.262, Off-Site Impacts, except noise, which is regulated by Subsection C. below.
- B. **Hazardous substances.** Hazardous substances are prohibited, except that consumer quantities are allowed. Consumer quantities of hazardous substances are packaged and distributed in a form intended or suitable for sale through retail sales outlets for consumption by individuals for purposes of personal care and household use.
- C. **Noise.** The maximum noise level for a home occupation is 50 dBA. Noise level measurements are taken at the property line. ~~Home occupations that propose to use power tools must document in advance that the home occupation will meet the 50 dBA standard.~~
- D. **Vehicles.** No more than one vehicle may be used in association with the home occupation. The maximum size of the vehicle used in association with the home occupation is a pickup truck in the medium truck category.
- E. **Deliveries.** Truck deliveries or pick-ups of supplies or products, associated with the home occupation, are allowed at the home only between 8 am and 5 pm. Vehicles used for delivery and pick-up may not include heavy trucks.

Commentary

33.224 Drive-Through Facilities

Section 33.224.060, Nuisance-Related Impacts is proposed to be deleted, which would necessitate removing the section from the table of contents.

33.224.060 Off-Site Impacts

This section is being removed. The first sentence is a redundant reference to the requirements of Section 33.262.020. The second two sentences require documentation in advance of potential noise impacts at the time of building permit; however, all requirements for documentation of off-site impacts in advance are being removed. The odor standard is being moved from Title 33 to Title 29 and there is no agreed upon method for documentation of compliance with the odor standard anyhow, therefore the requirement is meaningless. Further, all of the standards (odor, glare, noise, vibration) are performance standards that apply to operation of a use on the site after a building permit has been finalized. It is difficult, and in some cases not possible, to document what the impacts of the future use will be since operations can change over time. It is instead more appropriate to enforce these standards through the code compliance process.

33.224 Drive-Through Facilities

224

Sections:

- 33.224.010 Purpose
- 33.224.020 When These Regulations Apply
- 33.224.030 Setbacks and Landscaping
- 33.224.040 Vehicular Access
- 33.224.050 Stacking Lane Standards
- ~~33.224.060 Off-Site Impacts~~
- 33.224.070 Multi-Modal Access

~~33.224.060 Off-Site Impacts~~

~~Drive through facilities must meet the off-site impact standards of Chapter 33.262, Off-Site Impacts. When abutting R-zoned land, drive-through facilities with noise-generating equipment must document in advance that the facility will meet the off-site impact noise standards. Noise-generating equipment includes items such as speakers, mechanical car washes, vacuum cleaners, and exterior air compressors.~~

Commentary

33.254.060 Mining and Waste-Related Uses - Nuisance Mitigation Plan

This reference to Chapter 33.262 is being retained and is shown here for explanatory purposes. In most cases, references to the requirements of chapter 33.262 or to provide documentation in advance are being removed. This instance is being retained because it is part of the required Nuisance Mitigation Plan for a Mining or Waste-Related Use and it ties to the Mining and Waste-Related uses conditional use approval criteria.

33.254 Mining and Waste-Related Uses

254

33.254.060 Nuisance Mitigation Plan

The applicant must submit a mitigation plan that addresses potential nuisance impacts which might be created by the proposed use. The plan must include the following components:

- A. **Off-site impacts.** The plan must document that the use will comply with the off-site impact standards stated in Chapter 33.262;
- B. **Litter.** For Waste-Related uses, the plan must address litter generated on the site and litter along roadways leading to the use that is generated by vehicles coming to the site. The plan must also address illegally dumped waste products near the site. The plan must provide for regular litter removal. The plan must also include means to limit litter from vehicles coming to site; and
- C. **Dust, mud, and vector control.** The plan must provide mechanisms to limit impacts from dust, mud, and disease carrying organisms such as rats and mosquitoes.

Commentary

33.258.050 Nonconforming Uses – Changing of use in the same use category

This change removes a redundant reference to Chapter 33.262. and a requirement for documentation in advance. As noted previously in this report, the language of Section 33.262.020 Applying these Regulations makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here. All requirements for documentation of off-site impacts in advance are also being removed. The odor standard is being moved from Title 33 to Title 29 and there is no agreed upon method for documentation of compliance with the odor standard anyhow, therefore the requirement is meaningless. Further, all of the standards (odor, glare, noise, vibration) are performance standards that apply to operation of a use on the site after a building permit has been finalized. It is difficult, and in some cases not possible, to document what the impacts of the future use will be since operations can change over time. It is instead more appropriate to enforce these standards through the code compliance process.

33.258.080 Nonconforming Situation Review

There are several places in the code where the approval criteria for a land use review include odor as a factor to consider when evaluating impact mitigation measures as part of a list of “such as” examples that could be taken into account. These references are not being removed since they are part not standards but rather are factors that could be considered in a discretionary land use review. **This section is included in this report to clarify for reviewers why there are odor references in the code that will be retained.** Other instances of odor as a factor in approval criteria can be found in Chapter 33.815 Conditional Uses and Chapter 33.848 Impact Mitigation Plans.

33.258 Nonconforming Situations

258

33.258.050 Nonconforming Uses

- A. [No change]
- B. **Change of use in the same use category.** A change to a different use in the same use category, such as a change from one type of Community Services use to another type of Community Services use, is allowed by right, provided that the off-site impact standards of Chapter 33.262, Off-Site Impacts, are met. The applicant must document in advance that the nonconforming use will meet the off-site impact standards. For changes of use within the same use category which do not meet the off-site impact standards, the change may be allowed through a nonconforming situation review.
- C-E. [No change]

33.258.080 Nonconforming Situation Review

- A. [No change]
- B. **Approval criteria.** The request will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:
 - 1. With mitigation measures, there will be no net increase in overall detrimental impacts (over the impacts of the last legal use or development) on the surrounding area taking into account factors such as:
 - a. The hours of operation;
 - b. Vehicle trips to the site and impact on surrounding on-street parking;
 - c. Noise, vibration, dust, odor, fumes, glare, and smoke;
 - d. Potential for increased litter; and
 - e. The amount, location, and nature of any outside displays, storage, or activities; and
 - 2-3. [No change]

Commentary

33.262 Off-Site Impacts

Sections 33.262.070 Odor and 33.262.100 Documentation in Advance are proposed to be deleted, which would necessitate removing those sections from the table of contents.

33.262.020 Applying These Regulations

The requirement for documentation in advance for off-site impacts is being removed. As written, the regulations are vague as to when the requirement could or should be invoked. Language is being added to clarify that these are performance standards applicable to operations and are not reviewed at the building permit stage.

33.262.070 Odor

This odor nuisance standard is being removed from Title 33 and an updated odor standard is being added to Title 29, Property Maintenance. The odor standard as written is not clear and objective because the threshold of "may just be detected" is entirely subjective and varies from person to person based on sensitivity to smell. There is no recognized instrument that can be used to measure odors. While instruments have been used in the past, they have fallen out of favor because the measurements are inaccurate and are easily impacted by atmospheric and meteorological conditions. Therefore, it is not possible to set a measurable standard for odor intensity in the way a decibel standard can be used for noise, for example.

Odor regulations will remain in City Code and enforced upon; however, the regulations are being updated and moved to Title 29. See page 57 for additional commentary on moving the standard to Title 29.

33.262.100 Documentation in Advance

The requirements for documentation in advance for off-site impacts is being removed. As written, the regulations are vague as to when the requirement could or should be invoked. It is being removed rather than changed because PP&D has determined that it is generally not feasible to require documentation at the time of building permit demonstrating that future operations will meet the standards. In practice, this is rarely done. Implementation of Chapter 33.262 instead relies on the enforcement process after the development is complete and operations have begun. This change clarifies that off-site impact compliance will not be evaluated in advance at the time of building permit unless stated otherwise in the code for specific uses. The standards for glare, vibration, and noise (as a reference to Title 18) will remain so that they can continue to be enforced as they have been in the past.

33.262 Off-Site Impacts

262

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. These standards apply to the operation of the use and are not reviewed for compliance at the time of building permit. Compliance with the standards is subject to enforcement once the operation of the use commences. 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.~~

~~33.262.100 Documentation in Advance~~

~~In situations where the Director of BDS is empowered to require documentation in advance that a proposed use will conform with these standards, all of the following additional information is required of the applicant prior to approving a building permit:~~

- ~~A. **Use description.** A description of the use or activity regarding processes, materials used, storage, waste disposal, types of machinery and other such items as it relates to off-site impacts. However, the applicant is not required to reveal any trade secrets which would cause any secret manufacturing procedure, compound or product to become public knowledge and available to competitors;~~
- ~~B. **Abatement devices.** An explanation of any mechanisms or techniques which are proposed to restrict any hazardous or nuisance effects, including the type and location of any abatement devices and/or recording instruments to measure conformance with the required standard; and~~
- ~~C. **Expert evaluation.** An evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed activity can achieve the off-site impact standard or standards in question.~~

Commentary

33.410 Buffer Zone

Section 33.410.080 Off-Site Impacts is proposed to be deleted, which would necessitate removing that section from the table of contents.

33.410.080 Off-Site Impacts

This section is being deleted for two reasons:

1. The reference to meet the requirements of Chapter 33.262 Off-Site Impacts, and some other similar references, are being deleted to reduce redundancy in the code. The language of Section 33.262.020 Applying these Regulations makes clear that nonresidential uses in all zones that create off-site impacts on uses in the R, C, CI, IR, and OS zones are subject to the requirements of Chapter 33.262, so there is no need to restate that here.

This does represent a minor policy change because the existing language in 33.410.080 does not exclude residential uses in the buffer zone, whereas Chapter 33.262 does not apply to residential uses. There is no reason that this requirement should only apply to residential uses if they are located in the Buffer Zone when the purpose of the zone is to buffer residential uses from nonresidential uses. If residential uses in the Buffer Zone were to continue to be subject to 33.262, this would be the only place in the code where that chapter applies to residential uses.

2. As discussed in the commentary for Section 33.262.100 in page 40, the requirements for documentation in advance of compliance with the off-site impacts standard generally infeasible for PP&D planners to do at the time of building permit. For this reason, this requirement is also being removed in the Buffer Zone.

33.410 Buffer Zone

410

Sections:

- 33.410.010 Purpose
- 33.410.020 Map Symbol
- 33.410.030 Applying the Buffer Zone
- 33.410.040 Development Standards
- ~~33.410.080 Off-Site Impacts~~

~~33.410.080 Off-Site Impacts~~

All development in the Buffer zone is subject to the regulations of Chapter 33.262, Off-site Impacts. If the Director of BDS determines that the proposed use or development may not meet the off-site impact standards, the Director of BDS may require the applicant to document that the standards will be met, as stated in 33.262.100, Documentation in Advance.

Commentary

33.510.115 - Central City Plan District - Additional Uses Allowed in the Open Space Zone

This section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262. The additional uses allowed in the OS zone included in this section are all nonresidential uses and subject to Chapter 33.262. This redundant reference repeats what is stated in Section 33.262.020.

33.510 Central City Plan District

510

33.510.115 Additional Uses Allowed in the Open Space Zone

A. [No change]

B. **Additional uses allowed.**

1-2. [No Change]

3. The uses listed in Subparagraph B.3.a. are allowed on sites that meet the requirements of Subparagraph B.3.b. Adjustments to this paragraph are prohibited.

a. Uses allowed:

- (1) Major Event Entertainment;
- (2) Commercial Outdoor Recreation; and
- (3) Up to 15,000 square feet of Office.

b. Requirements for sites where uses in Subparagraph B.3.a. are proposed:

- (1) The site must be at least 5 acres in area;
- (2) The site must be within 500 feet of a Transit Station;
- (3) The site is not within the River General (g*) overlay zone;
- ~~(4) The standards of Chapter 33.262, Off-Site Impacts, must be met;~~
- (5) The site must have an unexpired Good Neighbor Agreement that is approved by City Council as described in 33.510.115.C, below;
- (6) The site must have a Comprehensive Transportation Management Plan that is approved by City Council as described in 33.510.115.D, below; and
- (7) If the site is not managed by the owner, the site must have an Operating Agreement that is approved by City Council.

C-D. [No change]

Commentary

33.561 North Interstate Plan District

Section 33.561.260 Off-Site Impacts of Industrial Uses in the CM3 Zone is proposed to be deleted, which would necessitate removing that section from the table of contents.

33.561.260 - Off-Site Impacts of Industrial Uses in the CM3 Zone

This section is being removed because it restates the language of Section 33.262.020 that nonresidential uses are subject to the requirements of Chapter 33.262. Industrial uses in the CM3 zone are nonresidential uses and subject to Chapter 33.262 per Section 33.262.020.

33.561 North Interstate Plan District

561

Sections:

General

33.561.010 Purpose

33.561.020 Where These Regulations Apply

Development Standards

33.561.210 Maximum Building Height

33.561.220 Floor Area Ratios

33.561.230 Transition Between Zones

33.561.250 Exterior Display and Storage

~~33.561.260 Off-Site Impacts of Industrial Uses in the CM3 Zone~~

33.561.270 Required Building Lines

33.561.280 Active Building Use Areas

33.561.300 Motor Vehicle Access

33.561.310 Compatibility Standards in the RM1 Zone

Map 561-1 North Interstate Plan District

Map 561-2 North Interstate Plan District: Maximum Building Heights

Map 561-3 North Interstate Plan District: Floor Area Ratios

Map 561-4 North Interstate Plan District: Required Building Lines/Active Building Use Areas

~~33.561.260 Off-Site Impacts of Industrial Uses in the CM3 Zone~~

~~**A. Purpose.** Because there are residential and commercial uses in, and adjacent to, areas zoned CM3, and there may be additional residential and commercial uses in the future, the off-site impacts of industrial uses must be limited. These limitations protect the economic viability and residential livability of the area.~~

~~**B. Industrial uses in the CM3 zone.** Industrial uses must meet the standards of Chapter 33.262, Off-Site Impacts. These standards must be met at the property line of the site.~~

Commentary

33.815.315 - Utility Scale Energy Production in Specified C zones Approval Criteria

This section is being retained and is included for reference. Though most references to meeting the requirements of Section 33.262.020 are being removed to eliminate redundant code, this reference is part of the Conditional Use approval criteria for Utility Scale Energy Production in C Zones. Retaining the language allows PP&D to continue to make findings about off-site impacts in the CU review, which otherwise would not be analyzed at the CU stage.

33.815 Conditional Uses

815

33.815.315 Utility Scale Energy Production in Specified C zones.

These approval criteria provide for Utility Scale Energy Production in the commercial/mixed use zones. They allow energy-generating activities that have limited impact on the surrounding area, while supporting sustainability goals for energy. The approval criteria are:

- A. [No change]
- B. The off-site impact standards of Chapter 33.262 must be met;
- C. [No change]
- D. [No change]

Commentary

33.848.070 - Impact Mitigation Plan Requirements

This reference to odor is being retained because it is a tertiary approval criterion for an Impact Mitigation Plan. Section 33.848.070 requires an applicant to submit an Impact Mitigation Plan that will be evaluated against the approval criteria of Section 33.848.050. The required component of the plan in 33.848.070.I.1 requires the applicant to identify steps that will be taken to mitigate for off-site impacts and includes odor as one of those potential impacts as part of a list of "such as" examples that could be taken into account. The reference is not being removed since it is not a standard but rather a factor that could be considered in a discretionary land use review. This section is included in this report to clarify for reviewers why this odor reference will be retained.

33.848 Impact Mitigation Plans

848

33.848.070 Impact Mitigation Plan Requirements

The applicant must submit an impact mitigation plan which includes all the components listed in this Section. The review body may modify the proposal. While it is important to include adequate detail in the plan, the intent of this Chapter and the IR zone is to allow development of a document that guides the nature and timing of mitigation activity rather than one that specifies the nature, size, and location of all future development projects.

A-H. [No change]

I. Neighborhood livability. For each phase of campus development, the following must be addressed:

1. Steps that will be taken to mitigate adverse impacts on the livability of nearby residential neighborhoods and residential developments as well as non-institutionally owned properties within the institution campus boundary. Impacts include noise, odor, traffic, litter, parking, shading of adjacent areas, public safety, vibration and glare.

2-5. [No change]

J-K. [No change]

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Section III: Amendments to Title 29

This section presents amendments to Title 29. The section is formatted to facilitate readability by showing code amendments on the right-hand (odd) pages and related commentary on the facing left-hand (even) pages.

How to read these amendments:

- Language to be added is show in underline.
- Language to be deleted is show in ~~striketrough~~.

Commentary

Chapter 29.45 - Odor Off-Site Impact Standard

The odor nuisance standard is being removed from the Zoning Code (Title 33) and an updated odor standard is being added to Title 29, Property Maintenance Regulations. The odor standard is not clear and objective because the threshold of "may just be detected" is subjective and varies from person to person based on sensitivity to smell. Since Odor is inherently subjective and cannot be accurately measured, the Zoning Code is not the appropriate location for a subjective odor standard since permit reviews are ministerial and not intended to allow for discretion.

This project proposes to retain an odor standard but move it to Title 29, which does not have the same requirement for clear and objective regulations. The standard is being updated to exempt retail sales and service uses and to require a critical mass of local residential complaints to initiate enforcement action on a reported odor nuisance. This change was initiated by issues that have arisen from enforcement on small businesses for which odors are an inherent part of operations but serve an important public purpose, such as neighborhood restaurants.

BPS staff researched a number of different approaches to odor enforcement across Oregon and the U.S. Due to the subjective, difficult to measure impacts of odors, regulatory approaches vary widely across jurisdictions. In some cities, there is no odor standard or enforcement, with the rationale seeming to be that odors are an inherent part of urban living. Others only regulate industrial uses or exempt restaurants. The standard being proposed with this project tries to take into account that there are some small businesses woven into the fabric of Portland's neighborhoods that may create some odors, while also allowing for regulation of odors that may cause wider impacts.

This approach works in tandem with the Oregon Department of Environmental Quality's approach, which regulates odor in some situations. DEQ only has jurisdiction over uses that require a DEQ emissions permit - generally industrial and manufacturing uses or commercial uses that have strong odors associated with them, such as auto painting businesses. DEQ does not get involved in "local" disputes over odors complaints such as those associated with most commercial uses, such as a restaurant.

The proposed standard restricts off-site odors for nonresidential uses, with an exemption for retail sales and services uses such as restaurants and nail salons since many of these businesses are small and locally owned. It also recognizes that there may be equity implications to enforcing on these types of businesses, which are often owned by immigrant families and BIPOC Portlanders. While retail sales and service uses will no longer be enforced on, in situations where residents have complaints about this type of use, the City recommends mediations services through Resolutions Northwest. The new standard also sets a threshold for when an enforcement will be initiated. This requires a critical mass of complainants from residents that live within 150 feet of a use to show a demonstrated impact before the City takes enforcement action on those uses still regulated.

Chapter 29.45 Odor Off-Site Impact Standard

29.45.010 Generally.

No property shall produce odor as described in this chapter.

29.45.020 Exemptions.

A. Use Exemption. Retail Sales and Service Uses, as described in Chapter 33.920, are exempt from this standard.

B. Existing Operation Exemption. The odor standard does not apply to machinery, equipment, and facilities which were at the site and in compliance with existing regulations at the effective date of these regulations. Any new or additional machinery, equipment, and facilities must comply with the standards of this chapter. Documentation is the responsibility of the proprietor of the use if there is any question about when the equipment was brought to the site.

29.45.030 Odor Standard.

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 30 minutes per day is exempt.

29.45.040 Odor Investigation

An investigation into an alleged odor standard violation will be initiated when five or more individual complaints from 5 or more people are received within a 30-day period. The complainants must reside within 150 feet of a property line of the site with the offending odor.

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About City of Portland Bureau of Planning and Sustainability

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