

**City of South St. Paul
Dakota County, Minnesota**

Ordinance No. 1317

**AN ORDINANCE AMENDING CHAPTER 110 ARTICLE VII
REGARDING ODOR POLLUTION**

WHEREAS, the City deems that the emission of offensive odors from properties within the boundaries of the City presents a threat to the health, safety and welfare of the residents and businesses of the City and have a detrimental impact on development; and

WHEREAS, the City desires to establish objective and measurable standards for designating significant odor generators; and

WHEREAS, the City has been using the Nasal Ranger® Field Olfactometer as its odor measuring device, which is the leading technology for odor measurement.

The City Council of the City of South St. Paul does ordain:

SECTION 1. AMENDMENT. South St. Paul City Code Chapter 110 Environment Article VII is hereby amended as follows:

Chapter 110

ENVIRONMENT

Article VII. Odor Pollution

Sec. 110-141. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Best Practicable Odor Control Technology means the utilization of those technologies, processes, procedures, or operating methods by an industry, facility, or source which results in the most cost-effective means of mitigation of odors from an odor emission point source.

City means the City of South St. Paul.

City Engineer means the South St. Paul City Engineer or his or her designee.

Initial Test or Initial Testing means an odor test or series of tests conducted in order to establish a baseline odor level.

Nasal Ranger® means the Nasal Ranger® Field Olfactometer, a portable odor detecting and measuring device developed by St. Croix Sensory or such comparable device or technology that is approved by the City Council.

Odor means that which produces a response of the human sense of smell to an odorous substance.

Odor Management Plan means a plan submitted by an industry, facility or source to the City Engineer.

Odor Complaint means a notification received by the City Engineer from a person who identifies his or her name and address and the location, description and duration of the odor. The release of such information regarding the identity of the complainant is governed by the Minn. Stat. Ch. 13, the Minnesota Government Data Practices Act.

Odor Emission means the release of offensive gases, fumes, and vapors into the atmosphere by an industry, facility or source which is determined by the City Engineer to cause unreasonable injury, nuisance or annoyance to the public.

Owner means the owner, operator, occupant, tenant or other person who is responsible for any operation, business or profession, or who exercises control over real property.

Property means any real property, premises, structure or location within the city.

Significant Odor Generator means an industry, facility or source that generates seven (7) verifiable odor complaints in a six (6) month period or that the City Engineer has determined the industry, facility or source is the cause of odor emissions resulting in significant odor complaints.

~~*Study* means the study entitled: “A Summary of Odor Monitoring, Modeling, and Complaints in South St. Paul” prepared by Trinity Consultants, dated July 2013, on file with the City.~~

Verified Odor Complaint means that the City Engineer has confirmed the industry, facility or source of the odor emission that precipitated the complaint, by using the Nasal Ranger® to detect and measure odor. A dilution-to-threshold ratio as measured by the Nasal Ranger® of 7 odor units or above (or such comparable measurements for a different device or technology that is approved by the City Council) is deemed to be a verified odor complaint.

Sec. 110-142. Prohibition.

It shall be unlawful for any owner of property located within the City to cause or allow odor emissions that:

- (1) Create odors or smells which are offensive or obnoxious to another person within the City; or
- (2) Create a detrimental effect on the property of another person in the City; or
- (3) Unreasonably interfere with the enjoyment of life, health, safety, peace, comfort or property of another person in the City.

Sec. 110-143. Odor Testing. Odor testing may be conducted by the City or its independent consultant on any property that may be a potential odor source. Testing may be conducted based on complaints or based on a planned odor monitoring study.

~~(1) *Existing Properties.* The City Engineer shall engage an independent sampling and testing agency to conduct an initial test at all existing properties identified as potential odor sources in the study. All properties subject to the initial test shall fully cooperate with the City Engineer.~~

~~(3) *Additional Properties.* Any additional properties that are not identified in the study but that produce an odor emission and generate seven (7) verifiable odor complaints in a six (6) month period shall be required to submit to the initial test.~~

~~(5) *Initial Test Completion.* The initial test shall be completed no later than twelve (12) months after the City Engineer has determined that the property requires the initial test.~~

~~(7) *Follow up Testing.* Following the initial test, the City Engineer may conduct follow up testing at any time to determine if the results have improved since the initial test.~~

~~(8) *Alternative Testing.* Any property required to be tested may submit its own test results to the City Engineer in order to comply with the City Engineer's testing requirement above, however, such results are subject to the City Engineer's approval in his or her sole discretion.~~

Sec. 110-144. Designation as a Significant Odor Generator. After reviewing the results of odor testing, if the property produces odor emissions that generate seven (7) verifiable odor complaints in a six (6) month period, the City Engineer may determine that a property shall be designated as a significant odor generator and shall notify the property owner of the designation.

Sec. 110-145. Appeal. Any property that is designated as a significant odor generator may file an appeal in writing by following the process for contesting an administrative citation contained in

section 38-107. The hearing shall comply with section 38-108. The hearing officer's decision is final and may only be appealed to the Minnesota Court of Appeals.

Sec. 110-146. Odor Management Plan. If the property is designated as a significant odor generator, then within ninety (90) days of notice of designation by the City Engineer, the property owner shall work with the City Engineer to develop an odor management plan using the best practicable odor control technology in order to mitigate ~~and comply with the odor emissions on the property~~this ordinance. The City Engineer may grant an extension for up to an additional ninety (90) days to submit the odor management plan, upon sufficient evidence and cause for such extension. The odor management plan shall:

- (1) Identify and explain the odor source(s);
- (2) Describe the best practicable odor control technology to manage the odors generated;
- (3) Provide a detailed plan on any proposed operational changes to the existing odor control equipment in order to control and mitigate the odors being generated;
- (4) Establish a timeline for development and implementation of ~~engineering-an~~engineer-approved treatment technology, which includes monitoring instrumentation and equipment to ensure future compliance.
- (5) Be kept on file with the City Engineer.

Sec. 110-147. Compliance.

- (1) Compliance shall be achieved when the property owner has completed the installation, start-up and operation of the best practicable odor control technology in accordance with the odor management plan and follow-up testing has determined the results have significantly improved since the initial test.
- (2) At such time that the property has achieved compliance with the odor management plan and has received no verifiable odor complaints for a period of twelve (12) months, the property shall be removed from the significant odor generator classification.

Sec. 110-148. Non-Compliance. If the City Engineer determines after follow-up testing that the results at the property have not improved, or if odor complaints continue, the property owner shall be required to meet with the City Engineer on at least a quarterly basis to develop a new odor management plan. Such meetings and follow-up testing shall continue until the City Engineer determines that the results at the property have improved. If non-compliance continues for a period of twelve (12) months, the City may impose penalties pursuant to section 110-150.

Sec. 110-149. Re-Classification as a Significant Odor Generator. A property that was previously classified as a significant odor generator but was removed from the classification due to compliance may be re-classified as a significant odor generator if it generates three (3) verifiable odor complaints in a ninety (90) day period. It shall then be required to comply with section 110-146 establishing a new odor management plan and section 110-148 requiring quarterly meetings. A property re-classified as a significant odor generator will not be removed from the classification until it meets the compliance requirements in section 110-147.

Sec. 110-150. Penalty. Failure to comply with the requirements in Section 110-143, 110-146, 110-147, 110-148 or failure to meet the obligations contained in the odor management plan, unless the failures are determined by the City Engineer to be beyond the control of the significant odor generator or the result of an accident or unexpected and unforeseen events, shall result in an administrative citation pursuant to sections 38-102 - 38-110. In addition, any follow-up testing required due to compliance failure shall be paid for by the property owner.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance amendment establishes objective testing devices with measurable results that will be used to designate significant odor generators.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective following its enactment and publication according to law.

Approved: May 15, 2017

Published: May 21, 2017

Christy Wilcox, City Clerk