

City of Newport, MN
Ordinance No. 2018-02

An Ordinance Amending Chapter 12 (Environment) of the Newport
Code Regarding Odor Pollution

Chapter 12- ENVIRONMENT

ARTICLE IV. – ODOR POLLUTION

Sec. 12-50. - Purpose; definitions.

- (a) *Purpose.* 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 has a detrimental impact on development. The purpose of this article is to regulate the emission of offensive odors from properties within the boundaries of the City in order to protect the health, safety, and welfare of the residents and businesses in the City.
- (b) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where 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 Newport.

City Administrator means the Newport City Administrator 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 measurement 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.

Odor complaint means a notification received by the city 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 Minnesota Statutes Chapter 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 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 has determined the industry, facility, or source is the cause of odor emissions resulting in significant odor complaints.

Verified Odor Complaint means that the City 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 seven (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. 12-51. - Prohibition.

- (a) ***Prohibition on some odor emissions.*** 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. 12-52. – 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.

Sec. 12-53. – Designation as a Significant Odor Generator.

- (a) After reviewing the results of odor testing, if a property produces odor emissions that generate seven (7) verifiable odor complaints in a six (6) month period, the city may determine that a property shall be designated as a significant odor generator and shall notify the property owner of the designation.
- (b) The City shall maintain a record of each verification test, which shall include the
- (1) Location of the test
 - (2) Time and date
 - (3) Weather conditions, including wind direction
 - (4) Persons present
 - (5) Detailed results from the Nasal Ranger[®] test

Sec. 12-54. – Appeal.

Any property that is designated as a significant odor generator may file an appeal of that designation in writing to the City Administrator. The Board of Appeals and Adjustments will hear the appeal. The Board's decision is final and may only be appealed to the Minnesota Court of Appeals.

Sec. 12-55. – Odor Management Plan.

- (a) *Requirements for an 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, the property owner shall work with the City Administrator or his or her designee to develop an odor management plan using the best practicable odor control technology in order to mitigate and comply with this ordinance. The city 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.
- (b) The odor management plan shall:
 - (1) Identify and explain the odor and 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 a city-approved treatment technology, which includes monitoring instrumentation and equipment to ensure future compliance.
 - (5) Be kept on file with the city.

Sec. 12-56. – Compliance.

- (a) *Compliance and Testing.*
 - (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. 12-57. Non-compliance.

If the city 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 on at least a quarterly basis to develop a new odor management plan. Such meetings and follow-up testing shall continue until the city 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 12-22 or Chapter 18, Section 18-4 of the City Code.

Sec. 12-58. 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 12-55 establishing a new odor management plan and Section 12-56 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 12-56

Sec. 12-59. - Penalty.

Failure to comply with the requirements of this section, or failure to meet the obligations contained in the odor management plan, unless failures are determined by the city to be beyond the control of the significant odor generator or the result of an accident or unexpected and unforeseen events, shall result in a citation pursuant to Chapter 18 of the Newport City Code. In addition, any follow-up testing required due to compliance failure shall be paid for by the property owner.

Adopted this 1st day of March 2018 by the Newport City Council.

Motion by: Johnson, Seconded by: Sumner

VOTE:

Lund	<u>AYC</u>
Sumner	<u>AYC</u>
Rahm	<u>AYC</u>
Chapdelaine	<u>AYC</u>
Johnson	<u>AYC</u>

Attest: Debra Hill
Deb Hill, City Administrator

Signed: Dan Lund
Dan Lund, Mayor