



# CRAG LAW CENTER

LEGAL AID FOR THE ENVIRONMENT SINCE 2001

Eric Wriston  
*Associate Attorney*  
eric@crag.org

June 24, 2024

Land Use Board of Appeals  
DSL Building  
775 Summer Street NE, Suite 330  
Salem, Oregon 97301

VIA U.S. FIRST CLASS MAIL

**Re: Petition for Review — 1000 Friends of Oregon v. City of Portland,  
LUBA No. 2023-088**

Dear LUBA,

Please find enclosed the original and one copy of the Petition for Review submitted on behalf of Petitioners in LUBA No. 2023-088.

Sincerely,

Eric Wriston

cc:  
City of Portland  
Lauren King, City Attorney  
Linly Rees, City Attorney  
Christen C. White, Attorney for Intervenor-Respondents

**BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON**

**1000 FRIENDS OF OREGON,  
NEIGHBORS FOR CLEAN AIR,  
and NORTHWEST  
ENVIRONMENTAL DEFENSE  
CENTER,**

*Petitioners,*

v.

**CITY OF PORTLAND,**

*Respondent,*

and

**FASTER PERMITS and  
PROLOGIS,**

*Intervenor-  
Respondent.*

**LUBA NO. 2023-088**

---

**PETITION FOR REVIEW**

---

*Counsel listed on next page.*

Eric Wriston, OSB #226130 (lead attorney)  
Meriel L. Darzen, OSB #113645  
Crag Law Center  
3141 E Burnside St.  
Portland, OR 97214  
(360) 773-7265

Mary Stites, OSB #225005  
Northwest Environmental Defense Center  
10101 S. Terwilliger Blvd.  
Portland, OR 97219

*Attorneys for Petitioners*

Robert L. Taylor  
Lauren King  
Linly Rees  
Rob Yamchika  
Portland City Attorney  
1221 SW 4<sup>th</sup> Ave. Suite 430  
Portland, OR 97204

*Attorneys for Respondent*

Christen C. White  
Radler White Parks & Alexander, LLP  
111 SW Columbia St., Suite 700  
Portland, OR 97201

*Attorney for Intervenor-Respondents*

PETITION FOR REVIEW

**TABLE OF CONTENTS**

I. PETITIONERS’ STANDING ..... 1

II. STATEMENT OF THE CASE ..... 1

    A. Nature of Decision and Relief Requested ..... 1

    B. Summary of Argument..... 1

    C. Summary of Material Facts..... 3

III. LUBA’S JURISDICTION ..... 6

IV. ARGUMENT ..... 6

    A. FIRST ASSIGNMENT OF ERROR: The City Misconstrued the Law In Deciding that the Proposed Freight Warehouse Complies with PCC 33.140.130 While Only Requiring Compliance with One of Four Accompanying Standards. 6

        i. Preservation of error: ..... 7

        ii. Standard of Review ..... 7

        iii. Argument ..... 7

            a. First Subassignment of Error: The City’s Interpretation of PCC 33.140.130 is Inconsistent with the Express Language of that Provision..... 9

            b. Second Subassignment of Error: The City’s Interpretation of PCC 33.140.130 is Inconsistent with the Underlying Policies and Purposes of the Off-Site Impact Standards..... 11

    B. SECOND ASSIGNMENT OF ERROR: Alternatively, the City’s Decision that the Proposed Freight Warehouse Complies with PCC 33.140.130 is Not Supported by Adequate Findings or Substantial Evidence..... 14

        i. Preservation of Error ..... 14

        ii. Standard of Review ..... 15

        iii. Argument ..... 15

a. First Subassignment of Error: The City’s Decision that the Proposed Freight Warehouse Complies with PCC 33.140.130 is not Supported by Adequate Findings. ....16

b. Second Subassignment of Error: The City’s Finding that the Project Complies with PCC 33.140.30 is Not Supported by Substantial Evidence..19

C. THIRD ASSIGNMENT OF ERROR: The City Misconstrued the Law and Made Inadequate Findings that are Unsupported by Substantial Evidence in its Inconsistent Application of Chapter 33.262. ....20

i. Preservation of Error .....21

ii. Standard of Review .....21

iii. Argument .....22

a. First Subassignment of Error: The City’s Inconsistent Application of Chapter 33.262 Misconstrues the Law.....23

b. Second Subassignment of Error: In the Alternative, the City Misconstrued the Law in Determining it Was Not “Empowered” per 33.262.100.....25

c. Third Subassignment of Error: If the City Asserts that it Did Not Apply 33.262.100, This Decision is Not Supported by Adequate Findings or Substantial Evidence. ....26

**APPENDIX**

Commercial Building Permit  
No. 22-123645-000-00-CO.....App. 1

Portland 2035 Comprehensive Plan,  
Policies 4.33-4.40.....App. 3

PCC 33.140, Use Regulations.....App. 5

PCC 33.262, Off-Site Impacts.....App. 13

PETITION FOR REVIEW

## TABLE OF AUTHORITIES

### Cases

<i>1000 Friends of Oregon v. City of Portland</i> , LUBA No. 2023-088 (Order on Mot. to Dismiss, Apr. 8, 2024).....	6, 7, 9, 11, 14
<i>Anderson v. City of Medford</i> , 38 Or LUBA 792 (2000).....	12, 13
<i>Chilla v. City of North Bend</i> , 39 Or LUBA 121 (2000).....	10
<i>Chin v. City of Corvallis</i> , 46 Or LUBA 1 (2003).....	9, 11
<i>Citizens Against Irresponsible Growth v. Metro</i> , 179 Or App 12 (2002) ...	16, 17, 22
<i>Doughton v. Douglas County</i> , 15 Or LUBA 576 (1987) .....	27
<i>Dudek v. Umatilla County</i> , 40 Or LUBA 416 (2001) .....	10, 17, 25
<i>Foland v. Jackson County</i> , 18 Or LUBA 731 (1990) .....	20
<i>Gillette v. Lincoln County</i> , LUBA No. 2018-054 (Final Opinion and Order, June 21, 2019) .....	7, 15, 21
<i>Griffin v. Jackson County</i> , 41 Or LUBA 159 (2001) .....	28
<i>Jebousek v. City of Newport</i> , 51 Or LUBA 93 (2006) .....	17
<i>Matteo v. Polk County</i> , 14 Or LUBA 67 (1985) .....	27
<i>Moore v. Clackamas County</i> , 26 Or LUBA 40 (1993) .....	18
<i>Reed v. Jackson County</i> , LUBA No. 2018-105 (Final Opinion and Order, June 26, 2018) .....	19
<i>Space Age Fuel v. Umatilla County</i> , LUBA No. 2014-057 (Final Opinion and Order, Sep. 1, 2015).....	27
<i>Sullivan v. City of Ashland</i> , 27 Or LUBA 411 (1994) .....	27
<i>Vizina v. Douglas County</i> , 17 Or LUBA 829 (1989).....	17
<i>Wal-Mart Stores, Inc. v. City of Oregon City</i> , 50 Or LUBA 87 (2005).....	19

PETITION FOR REVIEW

<i>Wilson Park Neighborhood Association v. City of Portland</i> , 24 Or LUBA 98 (1992).....	14, 26
--	--------

### **Statutes**

ORS 197.015(10)(b)(B).....	6, 7
ORS 197.825(1).....	7
ORS 197.829(1)(a) .....	10
ORS 197.829(1)(a)-(c) .....	8, 22
ORS 197.830 .....	1
ORS 197.835(9)(a)(C).....	16, 22
ORS 197.835(9)(a)(D).....	8, 22

### **Other Authorities**

PCC 33.140.130 .....	2, 3, 4, 8, 9, 10, 14, 15, 16, 19, 20, 21, 23
PCC 33.262 .....	2, 3, 4, 7, 8, 9, 10, 22, 23, 24, 25
PCC 33.262.010 .....	9, 22, 24, 25
PCC 33.262.020 .....	23
PCC 33.262.040 .....	23
PCC 33.262.070 .....	7, 9
PCC 33.262.080 .....	4, 9
PCC 33.262.100 .....	3, 4, 23, 24, 26, 27, 28
Portland 2035 Comprehensive Plan, Policies 4.33-4.40 .....	12, 13, 21

1       **I.       PETITIONERS’ STANDING**

2           Petitioners 1000 Friends of Oregon, Neighbors for Clean Air, and Northwest  
3 Environmental Defense Center (collectively, “Petitioners”) have standing to  
4 petition the Land Use Board of Appeals (“LUBA”) to hear this appeal under ORS  
5 197.830. There was no public hearing on the land use decision, but Petitioners are  
6 adversely affected by the decision. ORS 197.830(3). Notwithstanding the lack of  
7 notice, Petitioners filed a timely notice of intent to appeal, pursuant to ORS  
8 197.830(2), for the City of Portland’s land use decision “Commercial Building  
9 Permit #22-123645-000-00-CO” (“Permit”) on December 19, 2023.

10       **II.       STATEMENT OF THE CASE**

11           **A. Nature of Decision and Relief Requested**

12           Petitioners appeal the November 28, 2023 land use decision of the City of  
13 Portland (“Respondent” or “City”) entitled “Commercial Building Permit #22-123-  
14 645-000-00-CO.” Petitioners request that LUBA remand the City’s decision  
15 because it misconstrues the law and is not supported by adequate findings or  
16 substantial evidence. OAR 661-010-0071(2).

17           **B. Summary of Argument**

18           Petitioners challenge the City’s approval of the Permit for a freight  
19 warehouse because the decision does not comply with the Portland City Code  
20 (“PCC”) due to its incomplete application of PCC 33.140.130 and 33.262.

PETITION FOR REVIEW



1           First, the City misconstrued PCC 33.140.130 by only requiring compliance  
2 with one of four required standards. PCC 33.140.130 requires nonresidential uses  
3 in industrial zones, like the proposed freight warehouse, to comply with the four  
4 off-site impacts standards set out in PCC 33.262. The City marked that the project  
5 complied with PCC 33.140.130, but only actually required compliance with the  
6 glare standard. This decision was contrary to the plain text of PCC 33.140.130 and  
7 PCC 33.262, which do not discriminate between applications of the four standards.  
8 The decision was also contrary to the underlying policies of the off-site impacts  
9 standards in Portland’s 2035 Comprehensive Plan (“the Comprehensive Plan”),  
10 which demonstrate a policy of applying each of them prior to construction.

11           Second, in the alternative, if the City argues it did in fact apply each of the  
12 four off-site impact standards, its decision that the project complies with PCC  
13 33.140.130 is unsupported by adequate findings and substantial evidence. The only  
14 evidence in the Record regarding the three off-site impacts standards besides glare  
15 is public comments raising concerns about the risk of the projects’ off-site impacts  
16 on neighboring residential uses. Accordingly, the Record does not adequately  
17 demonstrate how the City applied PCC 33.140.130 nor does it provide sufficient  
18 evidence to determine compliance with PCC 33.140.130.

19           Third, the City’s application of Chapter 33.262 was both inconsistent with  
20 the law and unsupported by adequate findings or substantial evidence. The City

1 utilized the authority under PCC 33.262.100 to require documentation in advance  
2 for compliance with the glare standard. However, the City did not require  
3 documentation for the other four standards, which contradicts the policies and  
4 purposes of Chapter 33.262 as a whole. As such, the City’s inconsistent application  
5 of Chapter 33.262 misconstrues the law. Alternatively, if the City asserts they were  
6 not “empowered” to require documentation in advance per PCC 33.262.100, this  
7 conclusion is not supported by adequate findings or substantial evidence.

### 8 **C. Summary of Material Facts**

9 The appealed decision is a building permit issued to Prologis, Inc.  
10 (“Intervenor-Respondents”) by the City of Portland to build a freight warehouse in  
11 Portland on NE 122nd Avenue. The proposed freight warehouse neighbors a  
12 residential neighborhood and is located across the street from Parkrose High  
13 School and Middle School. Record, 183, 1628.

14 In its review of the application, the City determined that the project complies  
15 with PCC 33.140.130. Record, 1226. PCC 33.140.130 mandates that non-  
16 residential uses, like the planned freight warehouse, in the applicable EG2 zone  
17 comply with the off-site impact standards in PCC Chapter 33.262. PCC 33.262, in  
18 turn, lists a series of four standards for noise, vibration, odor, and glare, and  
19 provides that certain enumerated evidence of compliance is required from an

1 applicant where the City is “empowered” to require that documentation in advance.  
2 PCC 33.262.100.

3 Beyond a checkmark that the project complies with PCC 33.140.130, there  
4 is no evidence in the record that the City considered the PCC 33.262 standards,  
5 except for the glare standard. For the glare standard, the City first flagged the issue  
6 on May 9th, 2022, citing PCC 33.262.080 to require the applicant “demonstrate  
7 [sic] that the lighting will not exceed 0.5 foot candles of light on the abutting  
8 properties.” Record, 362. After the requested additional documentation was given  
9 by the applicant, the City was still not satisfied and on August 3rd, 2022 told the  
10 applicant that “changes to the exterior lighting plan will be needed so that the 0.5  
11 foot candles is not exceeded as measured at the property line.” Record, 514.

12 The only evidence in the record relating to the other three off-site impact  
13 standards consists of several letters from community members and organizations to  
14 the City raising the applicability of these provisions and concerns that the proposed  
15 freight warehouse would lead to impermissible off-site impacts. Supplemental  
16 Record, S-1–S-18. For example, a letter to the City from petitioners Neighbors for  
17 Clean Air and Northwest Environmental Defense Center stated that “[g]iven the  
18 incredibly close proximity of this development to an already overburdened

PETITION FOR REVIEW

1 residential area, it is critical that the City use its authority to carefully evaluate the  
2 warehouse's potential impacts from noise, odors, vibrations, and glare.”  
3 Supplemental Record, S-14. Another letter to the City flagged that “[b]ecause  
4 ProLogis does not know who will rent the warehouse space, it is an open question  
5 if nuisance odors will be present” and that “due to the size of the proposed  
6 development it is certain vibrations, glare and noise will be present and felt/seen  
7 and heard beyond the property line to abutting apartment homes.” Supplemental  
8 Record, S-16.

9 On November 11, 2023, the City approved the permit. Petitioners timely  
10 filed a Notice of Intent to Appeal on December 19, 2023. After Respondents  
11 submitted the Record, Petitioners objected to the exclusion of multiple comments  
12 sent to the City by Petitioners and other community members and organizations  
13 concerning the permit. All parties later conceded to those materials being included  
14 in the Record and the City filed a supplemental record including them.

15 Intervenors moved to dismiss this appeal for lack of jurisdiction, arguing  
16 that the building permit was not a land use decision because it was subject to the  
17 building permit exception for permits made under “clear and objective land use  
18 standards.” ORS 197.015(10)(b)(B). LUBA disagreed, holding that the building

1 permit was a land use decision because the City “reviewed intervenors’ building  
2 permit application for compliance with . . . [PCC] 33.140.130 and PCC 33.262,”  
3 and the odor standard at PCC 33.262.070 is not “clear or objective.” *1000 Friends*  
4 *of Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on Mot. to  
5 Dismiss, Apr. 8, 2024)

### 6 **III. LUBA’S JURISDICTION**

7 LUBA has already decided that this appeal is subject to its jurisdiction. *1000*  
8 *Friends of Oregon v. City of Portland*, LUBA No. 2023-088 (Order on Mot. to  
9 Dismiss, Apr. 8, 2024). Under ORS 197.825(1), LUBA has exclusive jurisdiction  
10 to review land use decisions. Pursuant to the building permit exception of ORS  
11 197.015(10)(b)(B), building permits are not land use decisions when they are  
12 issued under “clear and objective” standards. Because LUBA held the City applied  
13 the PCC 33.262 standards and PCC 33.262.070 is not “clear or objective,” the  
14 permit was a land use decision and LUBA has jurisdiction. *1000 Friends of*  
15 *Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on Mot. to Dismiss,  
16 Apr. 8, 2024).

### 17 **IV. ARGUMENT**

#### 18 **A. FIRST ASSIGNMENT OF ERROR: The City Misconstrued the** 19 **Law In Deciding that the Proposed Freight Warehouse Complies**

1                    **with PCC 33.140.130 While Only Requiring Compliance with One**  
2                    **of Four Accompanying Standards**

3                    *i. Preservation of error:*

4                    Because the City offered no hearing or other public process, the “raise it or  
5 waive it” requirements do not apply. *Gillette v. Lincoln County*, LUBA No. 2018-  
6 054 at \*13-14 (Final Opinion and Order, June 21, 2019). Regardless, these issues  
7 were raised in multiple comment letters sent to the City during its review of the  
8 permit. Supplemental Record, S-1–S-18.

9                    *ii. Standard of Review*

10                    LUBA will reverse or remand a local government’s decision that  
11 misconstrues the applicable law. ORS 197.835(9)(a)(D). Local governments are  
12 entitled to deference in interpreting their own land use regulations, but LUBA must  
13 remand a local interpretation that is “inconsistent with the express language” of the  
14 regulation, “inconsistent with the purpose” for the regulation, or “inconsistent with  
15 the underlying policy” for the regulation. ORS 197.829(1)(a)-(c).

16                    *iii. Argument*

17                    The City erred by applying PCC 33.140.130 but only requiring compliance  
18 with one of four associated standards. PCC 33.140.130 requires that in industrial  
19 zones “all nonresidential uses including their accessory uses must comply with the

1 standards of Chapter 33.262, Off-Site Impacts.”<sup>1</sup> Chapter 33.262, in turn, sets out a  
2 list of standards for noise, vibration, odor, and glare. The stated purpose of the  
3 standards is to protect all uses in residential or mixed-use zones from “certain  
4 objectionable off-site impacts associated with nonresidential uses" by ensuring that  
5 “uses provide adequate control measures or locate in areas where the community is  
6 protected from health hazards and nuisances.” PCC 33.262.010. PCC 33.262.070,  
7 for example, states that “[c]ontinuous, frequent, or repetitive odors may not be  
8 produced.”

9       It is “undisputed that the city reviewed intervenor-respondent's building  
10 permit application for compliance with . . . [PCC] 33.140.130 and PCC 33.262.”  
11 *1000 Friends of Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on  
12 Mot. to Dismiss, Apr. 8, 2024) (citing Record 362, 1226-1227). In doing so, the  
13 City necessarily interpreted PCC 33.140.130 as an approval criterion. *See Chin v.*  
14 *City of Corvallis*, 46 Or LUBA 1, 15-18 (2003) (remanding decision that appeared  
15 to apply certain policies as approval criteria without applying them fully).  
16 However, the City only required the applicant comply with the glare standard,  
17 erroneously ignoring the other three off-site impact standards. Record, 362, 514  
18 (citing PCC 33.262.080 to require the applicant demonstrate compliance with the

---

<sup>1</sup> The property at issue here is in an industrial zone and the proposed use — a freight warehouse — is nonresidential.

1 standard and later requiring applicant to change lighting plan to ensure  
2 compliance). How the City arrived at an interpretation of PCC 33.140.130 that  
3 only requires compliance with the glare standard is not explained in the Record.  
4 But no matter how it was derived, the interpretation is inconsistent with the plain  
5 language of PCC 33.140.130 and contrary to the underlying policies behind the  
6 off-site impacts standards expressed the City's Comprehensive Plan.

7 **a. First Subassignment of Error: The City's**  
8 **Interpretation of PCC 33.140.130 is Inconsistent with**  
9 **the Express Language of that Provision.**

10 LUBA must remand a decision that is "inconsistent with the express  
11 language of the comprehensive plan or land use regulation." ORS 197.829(1)(a). It  
12 is contrary to the express language of a land use regulation to apply part of but fail  
13 to apply other parts of the same provision, triggered by the same language. *See*  
14 *Dudek v. Umatilla County*, 40 Or LUBA 416, 424-25 (2001) (remanding local  
15 decision that applied part of an ordinance provision, but failed to apply a relevant  
16 part of the same provision); *Chilla v. City of North Bend*, 39 Or LUBA 121, 132  
17 (2000) (remanding local decision that applied one subsection of a provision but  
18 failed to address additional subsection of the same provision). Here, the City erred  
19 by only requiring the applicant to comply with the glare standard, ignoring the



1 other three standards situated in the same section and triggered by the same  
2 language.

3 PCC 33.140.130 requires that “all nonresidential uses must comply with the  
4 *standards* of Chapter 33.262, Off-Site Impacts.” PCC 33.140.130 (emphasis  
5 added). And there is no language in PCC 33.262 that discriminates between  
6 application of the four off-site impact standards. PCC 33.262. The City’s  
7 determination that the project complies with PCC 33.140.130 while only requiring  
8 compliance with one of the four standards thus cannot be reconciled with the text  
9 of that provision.

10 In *Chin v. City of Corvallis*, the City of Corvallis required the applicant  
11 make changes to their application seemingly to comply with specific Corvallis  
12 Comprehensive Plan policies not cited in the ultimate decision. *Chin*, 46 Or LUBA  
13 at 15-16. The petitioners alleged there were other provisions of those same policies  
14 the City did not require the applicant comply with. *Id.* Despite it not being clear  
15 whether the City of Corvallis had actually applied the relevant policies, LUBA  
16 remanded the decision for the apparent inconsistent interpretation of the policies.  
17 *Id.* at 16. The present case goes even further than *Chin* because it is both clear that  
18 the City applied PCC 33.140.130 — as LUBA has already acknowledged, *1000*  
19 *Friends of Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on Mot. to  
20 Dismiss, Apr. 8, 2024) — and clear that it did not apply them fully as the record

1 only contains mention of one of four standards. Accordingly, remand is necessary  
2 for the City to apply each of the four off-site impacts standards consistent with its  
3 application of the glare standard.

4 **b. Second Subassignment of Error: The City's**  
5 **Interpretation of PCC 33.140.130 is Inconsistent with**  
6 **the Underlying Policies and Purposes of the Off-Site**  
7 **Impact Standards.**

8 LUBA will also remand a decision based on an interpretation of a local  
9 government's regulation that is "inconsistent with the underlying policy" of that  
10 regulation. Comprehensive plan policies related to specific land use regulations are  
11 "underlying policies" for those regulations. *See Anderson v. City of Medford*, 38  
12 Or LUBA 792, 803-04 (2000). The off-site impacts policies in the City's  
13 Comprehensive Plan make clear that each off-site impact standard must be applied  
14 prospectively. Thus, the City's interpretation of PCC 33.140.130 to somehow only  
15 require advance compliance with the glare standard and not the noise, odor, or  
16 vibration standards plainly contradicts the Comprehensive Plan.

17 The Comprehensive Plan includes eight policies that "address the  
18 consideration and mitigation of off-site impacts from uses and development."  
19 Portland 2035 Comprehensive Plan, at GP4-9. These policies express a clear intent  
20 that each of the off-site impact standards be applied prior to a project's approval.

1 *Id.*, Policies 4.33-4.40. For example, Policy 4.35 for “noise impacts” states that it is  
2 the City’s policy to “encourage building and landscape design and land use  
3 patterns that limit and/or mitigate noise impacts to building users and residents,  
4 particularly in areas near freeways, regional truckways, major city traffic streets,  
5 and other sources of noise.” *Id.* at GP4-10, Policy 4.35. Policy 4.37 for “diesel  
6 emissions” also states it is the City’s policy to “encourage best practices to reduce  
7 diesel emissions and related impacts *when considering* land use and public  
8 facilities that will increase truck or train traffic.” *Id.*, Policy 4.37 (emphasis added).  
9 Under the City’s approach for this permit, where it failed to consider compliance  
10 with the noise, odor, or vibration standards, these policies are rendered  
11 meaningless. There is no opportunity to “encourage building and landscape  
12 design” that would comply with the standards or “encourage best practices to  
13 reduce diesel emissions and related impacts” while “considering” approval of this  
14 freight warehouse surrounded by residential uses.

15       Each of the off-site impact standards must be applied prior to construction in  
16 order for those policies to have any meaning. In *Anderson v. City of Medford*,  
17 LUBA remanded the City’s interpretation of a code provision because one of the  
18 underlying policies of that provision, as expressed in the City’s comprehensive  
19 plan, was to “require consideration of the traffic impacts caused by rezoning

1 property,” and the City’s interpretation of the relevant provision left no opportunity  
2 for “consideration of such impacts” in certain circumstances. *Anderson*, 38 Or  
3 LUBA at 804. Likewise, in this case, the City’s policies for the off-site impacts  
4 standards urge the City to “encourage building and landscape design” that  
5 complies with them. Portland 2035 Comprehensive Plan, at GP4-10, Policies 4.35-  
6 4.38 (included herewith in Appendix). Thus, it misconstrues the PCC and the  
7 Comprehensive Plan to conclude that some of the off-site impacts standards do not  
8 apply prior to construction here because it would leave no opportunity to  
9 “encourage building and landscape design” to reduce those impacts. *Id.*

10 In *Wilson Park*, LUBA treated the PCC 33.262 standards as “performance  
11 standards,” holding that demonstration of compliance with the standards in  
12 advance was only warranted in “special circumstances,” but that case does not  
13 control here for three reasons. *Wilson Park Neighborhood Association v. City of*  
14 *Portland*, 24 Or LUBA 98, 122-23 (1992). First, in the present case, the City in  
15 fact applied the off-site impact standards as approval criteria as demonstrated by  
16 the City marking that the project complies with PCC 33.140.130 and mandating  
17 that the proposal change in order to comply with the glare standard. *1000 Friends*  
18 *of Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on Mot. to

1 Dismiss, Apr. 8, 2024) (citing Record 362, 1226-1227). Second, PCC 33.140.130,  
 2 the provision the City marked for compliance, is a separate provision, limited to  
 3 certain applications like this permit, and it was not at issue in *Wilson Park*.<sup>2</sup>  
 4 Finally, the Comprehensive Plan policies discussed above for the off-site impacts  
 5 standards did not exist at the time of *Wilson Park*.

6 The City’s decision to only require pre-construction compliance with the  
 7 glare standard and not the other three off-site impact standards contradicts the  
 8 express language of the provision and its underlying policies expressed in the  
 9 Comprehensive Plan. Accordingly, the City misconstrued PCC 33.140.130 and  
 10 Petitioners respectfully request that LUBA remand the permit for the City to fully  
 11 apply each of the four off-site impact standards before the permit can be approved.

12 **B. SECOND ASSIGNMENT OF ERROR: Alternatively, the City’s**  
 13 **Decision that the Proposed Freight Warehouse Complies with**  
 14 **PCC 33.140.130 is Not Supported by Adequate Findings or**  
 15 **Substantial Evidence**

16 *i. Preservation of Error*

---

<sup>2</sup> The language of PCC 33.140.130 would be superfluous if it did not render the PCC 33.262 standards as approval criterion given that all uses covered by PCC 33.140.130 would already be subject to PCC 33.262. And LUBA “must read all components of an ordinance together in a manner which gives meaning to all of its parts.” *Fechtig v. City of Albany*, 31 Or LUBA 410, 414 (1996).

1           Because the City offered no hearing or other public process, the “raise it or  
2 waive it” requirements do not apply. *Gillette v. Lincoln County*, LUBA No. 2018-  
3 054 at \*13-14 (Final Opinion and Order, June 21, 2019). Regardless, these issues  
4 were raised in multiple comment letters sent to the decision makers during the  
5 local proceeding. Supplemental Record, S-1–S-18.

6                           ***ii. Standard of Review***

7           LUBA will reverse or remand a decision that lacks adequate findings or is  
8 not supported by substantial evidence. ORS 197.835(9)(a)(C). Because this  
9 building permit was not issued pursuant to a quasi-judicial hearing, petitioners  
10 concede that there is no overarching requirement that the decision include specific  
11 written findings on each applicable criterion. However, the record still must  
12 include “enough in the way of findings or accessible material in the record [] to  
13 show that applicable criteria were applied and that required considerations were  
14 indeed considered.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App  
15 12, 16 n 6 (2002).

16                           ***iii. Argument***

17           In the first assignment of error, Petitioners argue that the City misconstrued  
18 PCC 33.140.130 to only require compliance with one of the four off-site impact  
19 standards. However, if the City argues that by checking the box for compliance  
20 with PCC 33.140.130 it in fact applied each of the four off-site impact standards,  
PETITION FOR REVIEW

1 then that decision is unsupported by adequate findings and substantial evidence in  
 2 the record.

3 **a. First Subassignment of Error: The City’s Decision**  
 4 **that the Proposed Freight Warehouse Complies with**  
 5 **PCC 33.140.130 is not Supported by Adequate**  
 6 **Findings.**

7 Because the building permit at issue was likely not a statutory permit,<sup>3</sup> there  
 8 is no umbrella requirement that it include specific findings on each applicable  
 9 criterion. However, the City was obligated to include “enough in the way of  
 10 findings or accessible material in the record [] to show that applicable criteria were  
 11 applied and that required considerations were indeed considered.” *Citizens Against*  
 12 *Irresponsible Growth*, 179 Or App at 16. “Findings which merely state the  
 13 conclusion that a standard is met, and do not explain how the facts lead to that  
 14 conclusion, are inadequate.” *Vizina v. Douglas County*, 17 Or LUBA 829, 835  
 15 (1989). This rule is amplified when a decision inconsistently applied standards  
 16 located in the same provision without explanation. *See Dudek*, 40 Or LUBA at

---

<sup>3</sup> “The cases where this Board or the Court of Appeals has determined that approval or denial of a building permit involves the kind of discretion that renders it a ‘permit’ as defined in ORS 227.160 or 215.402 have tended to involve circumstances where there is some question as to the nature of the proposed use or whether the use is permitted at all in the zone.” *Tirumali v. City of Portland*, 41 Or LUBA 231, 240 (2002).

1 424-25; *Jebousek v. City of Newport*, 51 Or LUBA 93, 103-04 (2006) (holding  
2 findings for non-statutory building permit inadequate where they only dealt with  
3 three of four relevant subsections of applied provision).

4       There is not “enough in the way of findings or accessible material in the  
5 record” to show that the City correctly applied the off-site impacts standards.  
6 *Citizens Against Irresponsible Growth*, 179 Or App at 16. Indeed, there is nothing  
7 in the record that demonstrates the other three off-site impact standards were  
8 analyzed at all, despite the City having received multiple public comments raising  
9 concerns regarding noise, odor, and vibrations. *See e.g.*, Supplemental Record, S-  
10 16 (“Past studies of the presence of freight warehouses in residential areas has [sic]  
11 shown off-site impacts of vibration, noise, glare and odor.”). The sparse material  
12 that is in the Record — namely, the checkbox that the project complies with PCC  
13 33.140.130, Record, 362, and the City requiring the applicant change their plan to  
14 comply with the glare standard, Record, 514 — is contradictory since, as discussed  
15 above, there is no justification for the City only analyzing one of the four  
16 standards. This lack of explanation for how the project complies with a standard  
17 that the City deemed the project to be in compliance with requires remand. *Moore*  
18 *v. Clackamas County*, 26 Or LUBA 40, 47-48 (1993) (remanding decision that  
19 only applied some design review standards and failed to explain why other  
20 apparently applicable review standards, namely noise impacts, were not analyzed).

PETITION FOR REVIEW



1           The City’s failure to explain how it applied PCC 33.140.130 is exacerbated  
2 by the contradictory way it applied the standards. In *Reed v. Jackson County*,  
3 LUBA remanded a permit like the one at issue — a land use decision that did not  
4 require a quasi-judicial hearing — because the County’s decision found the permit  
5 complied with the Jackson County Land Development Ordinance 9.4 but only  
6 applied some subsections of that provision, failing to discuss others. *Reed v.*  
7 *Jackson County*, LUBA No. 2018-105 at \*11-13 (Final Opinion and Order, June  
8 26, 2018). The City’s actions in the present case parallel the County’s in *Reed*. The  
9 City decided the project complied with PCC 33.140.130, Record, 1226, and  
10 required the applicant to change their lighting plan to comply with one of the  
11 standards,<sup>4</sup> Record, 514, but did not give any explanation for how the proposed  
12 project complies with the other three standards.

13           The City impermissibly determined the project complied with PCC  
14 33.140.130 without any explanation of how the project will comply with three of  
15 the four off-site impacts standards. Petitioners thus respectfully request a remand  
16 for the City to give full consideration to each of the off-site impact standards.

---

<sup>4</sup> As discussed above, these facts make clear that the City interpreted at least the glare standard as an approval criterion.

1                                   **b. Second Subassignment of Error: The City’s Finding**  
2                                   **that the Project Complies with PCC 33.140.30 is Not**  
3                                   **Supported by Substantial Evidence.**

4           A finding is not supported by substantial evidence where no facts support  
5 the finding and it “ignores unrebutted evidence” to the contrary. *Wal-Mart Stores,*  
6 *Inc. v. City of Oregon City*, 50 Or LUBA 87, 107 (2005).

7           The only evidence in the record regarding compliance with the three off-site  
8 impact standards besides glare is the public comments submitted to the City by  
9 community organizations. Supplemental Record, S-1-S-18. These comments  
10 present contrary evidence about the risk that a freight warehouse surrounded by  
11 residential uses will cause impermissible off-site impacts for noise, odor, and  
12 vibrations. *See e.g.*, Supplemental Record, S-16 (“Due to the size of the proposed  
13 development it is certain vibrations, glare and noise will be present and felt/seen  
14 and heard beyond the property line to abutting apartment homes.”). No other  
15 material in the record attempts to rebut these comments or explain how the  
16 proposed project complies with PCC 33.140.130. Indeed, Intervenor-Respondents  
17 admit that most of the necessary information to determine compliance with the  
18 standards “does not exist.” Intervenor-Respondents’ Response to Record  
19 Objections, 2. Accordingly, it would be impossible to determine that the project

1 complies with PCC 33.140.130 — and, thus, each of the four off-site impact  
2 standards — based on the record presented.

3 Intervenor-Respondent’s claimed lack of evidence at this stage is not a  
4 defense because this permit was the only opportunity for the City to make a land  
5 use decision on the matter. A local government cannot defer compliance with  
6 standards when there is only one opportunity to make a land use determination  
7 regarding a proposed development’s ability to comply with applicable criteria.  
8 *Foland v. Jackson County*, 18 Or LUBA 731, 778-79 (1990). Thus, the City was  
9 obligated to apply the full set of standards in advance in order to determine if the  
10 project complies with PCC 33.140.130. Even without requiring the applicant to  
11 develop the information it claims does not exist, the City had multiple options to  
12 support a decision of compliance with PCC 33.140.130. Namely, it could have  
13 followed its Comprehensive Plan to “encourage building and landscape design” to  
14 ensure compliance with the standards, like the City did for the glare standard.  
15 Portland 2035 Comprehensive Plan, Policies 4.35-4.38; Record, 514.

16 The absence of support for the City’s decision that the warehouse complies  
17 with PCC 33.140.130 necessitates a remand for the City to reconsider whether the  
18 warehouse complies with all of the off-site impact standards, not just glare.

19 **C. THIRD ASSIGNMENT OF ERROR: The City Misconstrued the**  
20 **Law and Made Inadequate Findings that are Unsupported by**

1                    **Substantial Evidence in its Inconsistent Application of Chapter**  
2                    **33.262.**

3                    *i. Preservation of Error*

4                    Because the City offered no hearing or other public process, the “raise it or  
5 waive it” requirements do not apply. *Gillette v. Lincoln County*, LUBA No. 2018-  
6 054 at \*13-14 (Final Opinion and Order, June 21, 2019). Regardless, these issues  
7 were included in multiple comment letters sent to the City during its review of the  
8 permit. Supplemental Record, S-1-S-18.

9                    *ii. Standard of Review*

10                    LUBA will reverse or remand a local government’s decision that  
11 misconstrues the applicable law. ORS 197.835(9)(a)(D). Local governments are  
12 entitled to deference in interpreting their own land use regulations, but LUBA must  
13 remand a local interpretation that is “inconsistent with the express language” of the  
14 regulation, “inconsistent with the purpose” for the regulation, or “inconsistent with  
15 the underlying policy” for the regulation. ORS 197.829(1)(a)-(c). LUBA will also  
16 remand a decision that lacks adequate findings or is not supported by substantial  
17 evidence. ORS 197.835(9)(a)(C). Because this building permit was not issued  
18 pursuant to a quasi-judicial hearing, nor do Petitioners argue one was required,  
19 there is no overarching requirement that the decision include findings. However,  
20 the record still must include “enough in the way of findings or accessible material

PETITION FOR REVIEW

1 in the record [] to show that applicable criteria were applied and that required  
2 considerations were indeed considered." *Citizens Against Irresponsible Growth*,  
3 179 Or App at 16.

4 *iii. Argument*

5 The City's application of Chapter 33.262 is inconsistent with the express  
6 language of the Chapter.<sup>5</sup> PCC 33.262.010 requires that all nonresidential uses  
7 comply with the regulations of Chapter 33.262. Because the facility is a  
8 nonresidential use, it must comply with the Chapter in order to "protect all uses" in  
9 the residential zones from "certain objectionable off-site impacts" associated with  
10 the warehouse use. PCC 33.262.010. PCC 33.262.100 expressly authorizes the  
11 City to require specific, listed, pieces of documentation in advance of permitting  
12 that a project will comply with off-site impact standards whenever it is  
13 "empowered" to do so.<sup>6</sup>

14 The City erred by inconsistently applying Chapter 33.262 to require the  
15 applicant supply documentation in advance under PCC 33.262.100 to demonstrate  
16 compliance with only the glare standard. Independent of the PCC 33.140.130

---

<sup>5</sup> As LUBA noted, it is "undisputed that the city reviewed intervenor-respondent's building permit application for compliance with . . . PCC 33.262." *1000 Friends of Oregon v. City of Portland*, LUBA No. 2023-088 at 5 (Order on Mot. to Dismiss, Apr. 8, 2024).

<sup>6</sup> For example, the City can require an explanation of mechanisms or techniques that are proposed to restrict any hazardous or nuisance effects.

1 requirement that uses like a freight warehouse affirmatively comply with Chapter  
2 33.262 standards, PCC 33.262.100 requires the City to receive certain  
3 documentation in advance from an applicant whenever it is “empowered to require  
4 documentation in advance that a proposed use will conform with these standards.”  
5 Despite PCC 33.140.130’s cross reference to PCC 33.262, the obligations of PCC  
6 33.262 are applicable to the site independently, because the regulations of Chapter  
7 33.262 apply to all nonresidential uses that cause off-site impacts on residential  
8 uses. PCC 33.262.020. Moreover, 33.262.040 expressly states that “off-site impact  
9 standards are in addition to all other regulations in the City Code,” indicating  
10 again, a separate obligation to ensure compliance with Chapter 33.262, regardless  
11 of obligations articulated in PCC Chapter 33.140.

12 **a. First Subassignment of Error: The City’s**  
13 **Inconsistent Application of Chapter 33.262**  
14 **Misconstrues the Law.**

15 Because the City applied PCC 33.262.100 for glare, it must apply the  
16 standards for all impacts in order to comply with the purpose of Chapter 33.262.  
17 *See* PCC 33.262.010. The City applied PCC 33.262.100 for glare when it required  
18 the applicant to “demonstrate [sic] that the lighting will not exceed 0.5 foot candles  
19 of light on the abutting properties.” Record, 362. However, the City did not require

1 this documentation for the other standards of the chapter — namely noise,  
2 vibration, and odor — nor did it explain its decision not to do so.

3 By requiring the applicant to submit documentation in advance to  
4 demonstrate that the project would comply with the glare standard, the City  
5 implicitly conceded that it was indeed “empowered to require documentation in  
6 advance that a proposed use will conform with these standards” under PCC  
7 33.262.100. The plain language of PCC 33.262.100, which requires documentation  
8 for “these [PCC 33.262] standards,” makes clear that where the City is  
9 “empowered” for one of the standards, it is empowered for all of them.  
10 Accordingly, the City misconstrued the law by only requiring the applicant to  
11 provide documentation regarding one of the four standards. *Dudek*, 40 Or LUBA at  
12 424-25 (remanding a local decision that applied part of an ordinance provision, but  
13 failed to apply a relevant part of the same provision).

14 The decision to apply only one of the four off-site impact standards  
15 expressly contradicts the purpose and policies of Chapter 33.262. The impacts—  
16 which include noise, vibration, odors, and glare, “ensure that uses provide adequate  
17 control measures” so the “community is protected from health hazards and  
18 nuisances.” PCC 33.262.010. As community members articulated in their  
19 comments, the increased truck traffic from the proposed facility is likely to cause  
20 odor and noise impacts. *See e.g.*, Supplemental Record, S-1, S-10, S-14-17. These

1 impacts fall squarely within the parameters of “health hazards and nuisances”  
2 which Chapter 33.262 seeks to address. PCC 33.262.010. In turn, City’s decision  
3 to only contemplate one standard, glare, contradicts the express policy of Chapter  
4 33.262. This failure to apply all relevant ordinance provisions misconstrues and  
5 contradicts the policies of Chapter 33.262 and warrants remand.

6 **b. Second Subassignment of Error: In the Alternative,**  
7 **the City Misconstrued the Law in Determining it Was**  
8 **Not “Empowered” per 33.262.100.**

9 Petitioners believe that no matter how the City describes its action, it was in-  
10 fact “empowered” here. When the code does not define a term, its ordinary  
11 dictionary meaning applies. *Wilson Park*, 27 Or LUBA 106, 7, PCC 33.910.010  
12 (“Words used in the zoning code have their normal dictionary meaning unless they  
13 are listed in 33.910.030 below”). Merriam-Webster defines “empower” as “to give  
14 official authority or legal power to.” *Empower*, MERRIAM-WEBSTER’S DICTIONARY,  
15 <https://www.merriam-webster.com/dictionary/empower> (last visited on June 17,  
16 2024). The broad definition of empower, coupled with the lack of applicable  
17 standard or definition within the PCC, tends to suggest that the power to require  
18 documentation in advance is inherently with the City. Accordingly, Petitioners  
19 believe remand is necessary for the City to require the necessary documentation for  
20 each of the four standards.



1                                    **c. Third Subassignment of Error: If the City Asserts**  
2                                    **that it Did Not Apply 33.262.100, This Decision is Not**  
3                                    **Supported by Adequate Findings or Substantial**  
4                                    **Evidence.**

5                    To the extent that the City asserts it was not “empowered to require  
6                    documentation in advance that [the] proposed use will conform with these [PCC  
7                    33.262] standards,” which would prompt compliance with PCC 33.262.100, the  
8                    City’s decision not to apply PCC 33.262.100 is not supported by adequate findings  
9                    or material in the record. LUBA will remand a decision when findings are  
10                   insufficient to support a decision one way or another. *Doughton v. Douglas*  
11                   *County*, 15 Or LUBA 576, 582 (1987).

12                   In light of the ambiguous language of 33.262.100, which does not define  
13                   “empowered,” the City was at least required to provide enough analysis to support  
14                   its decision that it was indeed *not* empowered to require documentation from the  
15                   applicant. *Matteo v. Polk County*, 14 Or LUBA 67, 72-74 (1985) (When a statute is  
16                   ambiguous in its application, the decisionmaker must provide analysis and make  
17                   the necessary findings to support the decision); *See also Sullivan v. City of*  
18                   *Ashland*, 27 Or LUBA 411, 416 (1994) (Remand is appropriate when the  
19                   applicable local code is ambiguous, but the challenged decision includes no more  
20                   than a conclusory statement of compliance regarding said ambiguous provision).

PETITION FOR REVIEW

1 This is especially true here since the issue was clearly raised to the City both by the  
2 fact that it required documentation in advance for glare, Record, 362, and received  
3 multiple public comment letters citing PCC 33.262.100, Supplemental Record, S-  
4 1, S-14-18. *Space Age Fuel v. Umatilla County*, LUBA No. 2014-057 at \*6-7  
5 (Final Opinion and Order, Sep. 1, 2015) (where evidence in record raises an issue,  
6 local government’s “failure to adopt findings that respond to that issue requires  
7 remand.”).

8 Petitioners respectfully request LUBA remand the City’s decision and  
9 require the City obtain the requisite documentation, or, at minimum, explain its  
10 interpretation of PCC 33.262.100. *See Griffin v. Jackson County*, 41 Or LUBA  
11 159, 164-65 (2001) (When there is uncertainty over requirements of code  
12 requirements of code requirements and a lack of adequate findings addressing the  
13 provision at issue, remand is necessary for findings explaining code provision’s  
14 applicability).

15 Dated: June 24, 2024.

Respectfully Submitted,



16  
17  
18  
19  
20  
21  
22

Eric Wriston, OSB #226130  
Crag Law Center  
3141 E Burnside St.  
Portland, OR 97214  
[eric@crag.org](mailto:eric@crag.org)

PETITION FOR REVIEW

Mary Stites

1  
2  
3  
4  
5  
6  
7  
8  
9

---

Mary Stites, OSB #225005  
Northwest Environmental Defense Center  
10101 S. Terwilliger Blvd.  
Portland, OR 97219  
[mary@nedc.org](mailto:mary@nedc.org)

*Of Attorneys for Petitioners*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that, on June 24, 2024, I filed the original and four copies of this **Petition for Review** with the Land Use Board of Appeals, at DSL Building, 775 Summer Street NE, Suite 330, Salem, Oregon 97301, by first class mail.

I further certify that, on June 24, 2024, I served a true and correct copy of this **Petition for Review** and accompanying **Appendices** on the other parties to this appeal or their attorneys, by first class mail as follows:

- Robert L. Taylor
- Lauren King
- Portland City Attorney
- 1221 SW 4<sup>th</sup> Ave. Suite 430
- Portland, OR 97204
- Attorneys for Respondent*
  
- Christen C. White
- Radler White Parks & Alexander, LLP
- 111 SW Columbia St., Suite 700
- Portland, OR 97201
- Attorney for Intervenor-Respondents*

Dated: June 24, 2024



\_\_\_\_\_  
Mary M. Stites, OSB #225005

1 **CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH, TYPE SIZE,**  
2 **AND COPY OF DECISION REQUIREMENTS**

3 Brief Length

4 I hereby certify that, (1) this brief complies with the word-count limitation in  
5 OAR 661-010-0030(2)(b) and pursuant to OAR 661-010-0030(2)(k)(A), and (2)  
6 the word count of this brief is 5,896 words.  
7

8 Type Size

9 I certify that the size of the type in this brief is not smaller than 14 point for  
10 both the text of the brief and the footnotes as required by OAR 661-010-0030(2)(e)  
11 and pursuant to OAR 661-010-0030(2)(k)(B).  
12

13 Copy of Decision

14 I certify that the petition for review contains a copy of the challenged  
15 decision, including any adopted findings of fact and conclusions of law as required  
16 by OAR 661-010-0030(4)(e).  
17  
18

19 DATED this 24th day of June, 2024.

20 

21 \_\_\_\_\_  
22 Mary M. Stites, OSB #225005  
23  
24  
25



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF DEVELOPMENT SERVICES  
1900 SW 4th Ave, Suite 5000  
Portland, OR 97201

**COMMERCIAL BUILDING PERMIT****22-123645-000-00-CO**

**Site Address: 4570 NE 122ND AVE**  
PROLOGIS SANDY

**Issued: 11/28/23**

<b>PROJECT INFORMATION</b>		<b>Occ. Group</b>	<b>Const. Type</b>
<b>Storage</b>	<b>New Construction</b>	<b>S-1</b>	<b>III-B III-B</b>

Project Description: PROLOGIS SANDY - New tilt-up concrete tilt-up semi-heated warehouse building with one office tenant space; includes associated site work \*\*\* w/22-124349-CO and 22-123648-MT \*\*\*

<b>APPLICANT</b>	<b>FASTER PERMITS *MIKE COYLE*</b>	Phone:	(503) 680-5497
<b>PROPERTY OWNER</b>	<b>RFC JOINT VENTURE &amp; HFK REALTY PARTNERS</b>	Phone:	
<b>CONTRACTOR</b>	<b>CORNICE CONSTRUCTION LLC</b>	Phone:	

Project Details		Project Details	
# Large Trees Planted	49	# Small and Medium Trees Planted	238
# Street Trees Required	26	# Total Trees Planted	287
Alarm System Required?	Yes	Block Face 1 Type	Strip
Block Face 1 Wires	High Voltage	Code Edition (Year)	2019 OSSC
DS-Attachment of Equipment	MEP anchorage / braci	DS-Glazing	Storefront system
DS-Others	Roof access ship ladder	DS-Steel Joists	Steel joists and steel jo
DS-Steel Stairs/Handrails	Interior and Exterior St	Energy Code Edition	2021 Oregon Energy E
Final Permit Valuation	22608146	Final adj to ICC Value reason - Display Only	Calculated via Tables a
GIS Update Flag 2	10/12/18	Ground Disturbance Area (Sq. Ft.)	600000
Ground Disturbance?	Yes	Inches of Individual Trees Removed	0
Lot Area (Sq. Ft.)	294209	Number of Stories	1
Number of parking spaces added	108	Proposed # of new parking spaces	108
SI-Anchors - Adhesive	Yes	SI-Anchors - Cast in Place	Yes
SI-Anchors - Expansion	Yes	SI-Concrete Construction	Yes
SI-Seismic Force Resist. System	Structural Steel (OSSC)	SI-Soils	Yes
SI-Steel Construction	Yes	SI-Structural Observation	Yes
SI-Wood Construction	Yes	Sep.Underground Fire Mains Permit Req'd?	Yes
Separate Alarm Permit Required?	Yes	Separate ERRC Permit Required?	Yes
Separate Sprinkler Permit Required?	Yes	Smoke Detectors Required?	Yes
Sprinkler System Required?	Yes	Square Footage - Occ 1	249839
Square Footage - Occ 2	10000	Total Square Footage - Display Only	259839
Water District	City of Portland Water I	Zoning - Property (1)	EG2hx

**PI RPBA REQUIRED INSTALL TO REPLACE EXISTING PI DCVA ON EXISTING DOMESTIC WATER METER SERVICE & A NEW PI DCDA TO REPLACE THE EXISTING PI DCDA ON THE EXISTING DEDICATED FIRELINE WATER SERVICE; INSTALLATIONS PER PLAN PAGES C5.1 & C6.8 AND PER WATER BUREAU REQUIREMENTS @WWW.PORTLAND.GOV/WATER/BACKFLOW-PREVENTION/BACKFLOW-ASSEMBLY-INSTALLATION-REQUIREMENTS**

**This permit expires if, at any time, 180 days pass without an approved inspection. If you are not able to obtain an inspection approval within 180 days, you may request a one-time only extension of 180 days by calling 503-823-7303.**

**BEFORE YOU DIG** ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center. (Note: the telephone number for the Oregon Utility Notification Center is 1-800-332-2344).

<b>CITY CONTACT</b> Alvey,Chandra	Phone: 503-865-6641
E-Mail: Chandra.Alvey@portlandoregon.gov	Fax: (503) 823-4172



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF DEVELOPMENT SERVICES  
1900 SW 4th Ave, Suite 5000  
Portland, OR 97201



**INSPECTION REQUEST  
PHONE NUMBERS**

For work separately permitted by the Fire Marshal's (503) 823-1199  
Office:  
Building/Trade Inspections - Call Before 6:00 AM: (503) 823-7000

**TDD: (503) 823-6868**

**IVR Inspection Request  
Number:**

**4785002**

**Policy 4.29 Public art.** Encourage new development and public places to include design elements and public art that contribute to the distinct identities of centers and corridors, and that highlight the history and diverse cultures of neighborhoods.

## **Transitions**

These policies address transitions between areas of differing types of activity and scale of development, such as where centers and corridors interface with adjacent lower-intensity residential zones.

**Policy 4.30 Scale transitions.** Create transitions in building scale in locations where higher-density and higher-intensity development is adjacent to smaller-scale single-dwelling zoning. Ensure that new high-density and large-scale infill development adjacent to single dwelling zones incorporates design elements that soften transitions in scale and limit light and privacy impacts on adjacent residents.

**Policy 4.31 Land use transitions.** Improve the interface between non-residential uses and residential uses in areas where commercial or employment uses are adjacent to residentially-zoned land.

**Policy 4.32 Industrial edge.** Protect non-industrially zoned parcels from the adverse impacts of facilities and uses on industrially zoned parcels through the use of a variety of tools, including but not limited to vegetation, physical separation, land acquisition, and insulation to establish buffers between industrial sanctuaries and adjacent residential or mixed use areas to protect both the viability of long-term industrial operations and the livability of adjacent areas.

## **Off-site impacts**

These policies address the consideration and mitigation of off-site impacts from uses and development.

**Policy 4.33 Off-site impacts.** Limit and mitigate public health impacts, such as odor, noise, glare, light pollution, air pollutants, and vibration that public facilities, land uses, or development may have on adjacent residential or institutional uses, and on significant fish and wildlife habitat areas. Pay particular attention to limiting and mitigating impacts to under-served and under-represented communities.

**Policy 4.34 Auto-oriented facilities, uses, and exterior displays.** Minimize the adverse impacts of highways, auto-oriented uses, vehicle areas, drive-through areas, signage, and exterior display and storage areas on adjacent residential uses.



## DESIGN AND DEVELOPMENT

---

- Policy 4.35**    **Noise impacts.** Encourage building and landscape design and land use patterns that limit and/or mitigate negative noise impacts to building users and residents, particularly in areas near freeways, regional truckways, major city traffic streets, and other sources of noise.
- Policy 4.36**    **Air quality impacts.** Encourage building and landscape design and land use patterns that limit and/or mitigate negative air quality impacts to building users and residents, particularly in areas near freeways, regional truckways, high traffic streets, and other sources of air pollution.
- Policy 4.37**    **Diesel emissions.** Encourage best practices to reduce diesel emissions and related impacts when considering land use and public facilities that will increase truck or train traffic. Advocate for state legislation to accelerate replacement of older diesel engines.
- Policy 4.38**    **Light pollution.** Encourage lighting design and practices that reduce the negative impacts of light pollution, including sky glow, glare, energy waste, impacts to public health and safety, disruption of ecosystems, and hazards to wildlife.
- Policy 4.39**    **Airport noise.** Partner with the Port of Portland to require compatible land use designations and development within the noise-affected area of Portland International Airport, while providing disclosure of the level of aircraft noise and mitigating the potential impact of noise within the affected area.
- Policy 4.40**    **Telecommunication facility impacts.** Mitigate the visual impact of telecommunications and broadcast facilities near residentially-zoned areas through physical design solutions.

*Additional policies about environmental quality are found in Chapter 7: Environment and Watershed Health.*

### Scenic resources

Portland's signature views of Mt. Hood and other mountain peaks, bridges, and rivers are important to the city's identity. These views strengthen connections to the local and regional landscape. The policies below encourage the recognition, enhancement, and protection of public views and significant scenic resources, as designated in the Scenic Resources Inventory and Protection Plans.

- Policy 4.41**    **Scenic resources.** Enhance and celebrate Portland's scenic resources to reinforce local identity, histories, and cultures and contribute toward way-finding throughout the city. Consider views of mountains, hills, buttes, rivers, streams, wetlands, parks, bridges, the Central City skyline, buildings, roads, art, landmarks, or other elements valued for their aesthetic appearance or symbolism.

### **33.140.055 Neighborhood Contact in EX Zone**

Neighborhood contact is a set of outreach steps that must be taken before certain developments can be submitted for approval. Neighborhood contact is required as follows:

#### **A. Neighborhood contact I.**

1. Neighborhood contact I requirements. When proposed development will add at least 10,000 square feet and not more than 25,000 square feet of net building area to a site, the neighborhood contact steps of 33.705.020.A., Neighborhood contact I, are required. All the steps in 33.705.020.A. must be completed before an application for a building permit can be submitted.
2. Exemption. If the proposed development has already met the neighborhood contact requirements as part of a land use review process, it is exempt from the neighborhood contact requirements.

#### **B. Neighborhood contact II.**

1. Neighborhood contact II requirements. When the proposed development will add more than 25,000 square feet of net building area to a site, the neighborhood contact steps of 33.705.020.B., Neighborhood contact II, are required. All of the steps in 33.705.020.B. must be completed before an application for a building permit can be submitted.
2. Exemption. If the proposed development has already met the neighborhood contact requirements as part of a land use review process, it is exempt from the neighborhood contact requirements.

## **Use Regulations**

### **33.140.100 Primary Uses**

- A. Allowed uses.** Uses allowed in the employment and industrial zones are listed in Table 140-1 with a "Y". These uses are allowed if they comply with the development standards and other regulations of this Title. Being listed as an allowed use does not mean that a proposed development will be granted an adjustment or other exception to the 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.
- B. Limited uses.** Uses allowed that are subject to limitations are listed in Table 140-1 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 140-1.
  1. Household Living and Group Living uses in I zones. This regulation applies to all parts of Table 140-1 that have a [1]. Household Living and Group Living in houseboats and houseboat moorages in I zones are regulated by Chapter 33.236, Floating Structures. Household and Group Living in other structures is prohibited.

2. EG Retail Sales And Service limitation. The following regulations apply to all parts of Table 140-1 that have a [2].
  - a. Limited uses. Except for sites with historic landmarks, the net building area plus any exterior display, storage, work and other exterior activity area for Retail Sales And Service uses is limited to 20,000 square feet or the square footage of the site area, whichever is less. On sites with historic landmarks, the net building area plus any exterior display, storage, work and other exterior activity area for Retail Sales And Service uses is limited to 20,000 square feet or twice the total square footage of the site area, whichever is less.
  - b. Conditional uses. Retail Sales And Service uses that exceed the area limits in Subparagraph B.2.a. are a conditional use.
3. IG1 commercial limitation. This regulation applies to all parts of Table 140-1 that have a [3].
  - a. Limited uses. One Retail Sales And Service or Office use is allowed per site. The square footage of net building area plus the exterior display, storage, work and other exterior activity area may be up to 3,000 square feet.
  - b. Conditional uses.
    - (1) More than one Retail Sales And Service or Office Use on a site is a conditional use.
    - (2) Any Retail Sales And Service or Office Use where the net building area plus the exterior display, storage, work and other exterior activity area is more than 3,000 square feet is a conditional use.
  - c. Prohibited uses.
    - (1) Except for sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus exterior display, storage, work and other exterior activity area, taken together, may not exceed 20,000 square feet or the square footage of the site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.
    - (2) For sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus the exterior display, storage, work and other exterior activity area, taken together, may not exceed 60,000 square feet or twice the square footage of the site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.
4. IG2 commercial limitation. This regulation applies to all parts of Table 140-1 that have a [4].
  - a. Limited uses. Up to four Retail Sales And Service or Office uses are allowed per site. The square footage of the net building area plus the exterior display,

- storage, work and other exterior activity area may be up to 3,000 square feet per use.
- b. Conditional uses.
    - (1) More than four Retail Sales And Service or Office uses on a site is a conditional use.
    - (2) Any Retail Sales And Service or Office use where the net building area plus the exterior display, storage, work and other exterior activity area is more than 3,000 square feet is a conditional use.
  - c. Prohibited uses.
    - (1) Except for sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus the exterior display, storage, work and other exterior activity area, taken together, may not exceed 20,000 square feet or the square footage of the site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.
    - (2) For sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus the exterior display, storage, work and other exterior activity area, taken together, may not exceed 60,000 square feet or twice the square footage of site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.
5. IH commercial limitation. This regulation applies to all parts of Table 140-1 that have a [5].
- a. Limited uses. Up to four Retail Sales And Service or Office uses are allowed per site. The square footage of the net building area plus the exterior display, storage, work and other exterior activity area may be up to 3,000 square feet per use.
  - b. Conditional uses.
    - (1) More than four Retail Sales And Service or Office use on a site is a conditional use.
    - (2) Any Retail Sales And Service or Office use where the net building area plus the exterior display, work and other exterior activity storage area is more than 3,000 square feet is a conditional use.
  - c. Prohibited uses.
    - (1) Except for sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus the exterior display, storage, work and other exterior activity area, taken together, may not exceed 12,000 square feet or the square footage of the site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.

- (2) For sites with a historic landmark, the net building area of all the Retail Sales And Service and Office uses on a site plus the exterior display, storage, work and other exterior activity area, taken together, may not exceed 25,000 square feet or twice the square footage of site area, whichever is less. Retail Sales And Service and Office uses that exceed these area limits are prohibited.
6. Self-Service Storage limitation. This regulation applies to all parts of Table 140-1 that have a [6]. The limitations are stated with the special regulations for these uses in Chapter 33.284, Self-Service Storage.
7. Waste-Related limitation. This regulation applies to all parts of Table 140-1 that have a [7]. All Waste-Related uses are conditional uses, unless they meet all of the following conditions in which case they are allowed by right.
  - a. The use must be approved by Metro under their authority as prescribed in ORS 268.317;
  - b. Metro's approval of the use must include a mitigation plan. The requirements for the mitigation plan must be approved by the City Council through an intergovernmental agreement with Metro, adopted prior to Metro's approval of the use; and
  - c. The location of the use must be in conformance with Metro's Regional Solid Waste Management Plan.
8. Community Service uses in E zones. This regulation applies to all parts of Table 140-1 that have a [8]. Most Community Service uses are allowed by right. Short term, mass, and outdoor shelters are regulated by Chapter 33.285, Short Term, Mass, and Outdoor Shelters.

<b>Table 140-1 Employment and Industrial Zone Primary Uses</b>						
<b>Use Categories</b>	<b>EG1</b>	<b>EG2</b>	<b>EX</b>	<b>IG1</b>	<b>IG2</b>	<b>IH</b>
<b>Residential Categories</b>						
Household Living	N	N	Y	CU [1]	CU [1]	CU [1]
Group Living	N	N	Y	CU [1]	CU [1]	CU [1]
<b>Commercial Categories</b>						
Retail Sales And Service	L/CU [2]	L/CU [2]	Y	L/CU [3]	L/CU [4]	L/CU [5]
Office	Y	Y	Y	L/CU [3]	L/CU [4]	L/CU [5]
Quick Vehicle Servicing	Y	Y	N	Y	Y	Y
Vehicle Repair	Y	Y	Y	Y	Y	Y
Commercial Parking	CU [13]	CU [13]	CU [13]	CU [13]	CU [13]	CU [13]
Self-Service Storage	L [6]	L [6]	L [6]	Y	Y	Y
Commercial Outdoor Recreation	Y	Y	Y	CU	CU	CU
Major Event Entertainment	CU	CU	CU	CU	CU	CU
<b>Industrial Categories</b>						
Manufacturing And Production	Y	Y	Y	Y	Y	Y
Warehouse And Freight Movement	Y	Y	Y	Y	Y	Y
Wholesale Sales	Y	Y	Y	Y	Y	Y
Industrial Service	Y	Y	Y	Y	Y	Y
Bulk Fossil Fuel Terminal	L [15]	L [15]	N	L [15]	L [15]	L [15]
Railroad Yards	N	N	N	Y	Y	Y
Waste-Related	N	N	N	L/CU [7]	L/CU [7]	L/CU [7]

Y = Yes, Allowed

L = Allowed, But Special Limitations

CU = Conditional Use Review Required

N = No, Prohibited

Notes:

- The use categories are described in Chapter 33.920.
- Regulations that correspond to the bracketed numbers [ ] are stated in 33.140.100.B.
- Specific uses and developments may also be subject to regulations in the 200s series of chapters.

<b>Table 140-1 Employment and Industrial Zone Primary Uses</b>						
<b>Use Categories</b>	<b>EG1</b>	<b>EG2</b>	<b>EX</b>	<b>IG1</b>	<b>IG2</b>	<b>IH</b>
<b>Institutional Categories</b>						
Basic Utilities	Y/CU [10]	Y/CU [10]	Y/CU [10]	Y/CU [11]	Y/CU [11]	Y/CU [11]
Community Service	L/CU [8]	L/CU [8]	L/CU [8]	L/CU [9]	L/CU [9]	L/CU [9]
Parks And Open Areas	Y	Y	Y	Y	Y	Y
Schools	Y	Y	Y	N	N	N
Colleges	Y	Y	Y	N	N	N
Medical Centers	Y	Y	Y	N	N	N
Religious Institutions	Y	Y	Y	N	N	N
Daycare	Y	Y	Y	L/CU [9]	L/CU [9]	L/CU [9]
<b>Other Categories</b>						
Agriculture	L [14]	L [14]	L [14]	L [14]	L [14]	L [14]
Aviation And Surface Passenger Terminals	CU	CU	CU	CU	CU	CU
Detention Facilities	CU	CU	CU	CU	CU	CU
Mining	N	N	N	CU	CU	CU
Radio Frequency Transmission Facilities	L/CU [12]	L/CU [12]	L/CU [12]	L/CU [12]	L/CU [12]	L/CU [12]
Rail Lines And Utility Corridors	Y	Y	Y	Y	Y	Y

Y = Yes, Allowed

L = Allowed, But Special Limitations

CU = Conditional Use Review Required

N = No, Prohibited

Notes:

- The use categories are described in Chapter 33.920.
- Regulations that correspond to the bracketed numbers [ ] are stated in 33.140.100.B.
- Specific uses and developments may also be subject to regulations in the 200s series of chapters.

9. Daycare and Community Service in the I zones. This regulation applies to all parts of Table 140-1 that have a [9].
  - a. Short term and mass shelters are prohibited. Outdoor shelters are regulated by Chapter 33.285, Short Term, Mass, and Outdoor Shelters.
  - b. Daycare and all other Community Service uses up to 3,000 square feet of net building area are allowed. Uses larger than 3,000 square feet of net building area are a conditional use.
10. Basic Utilities in E zones. This regulation applies to all parts of Table 140-1 that have a [10]. Public safety facilities that include Radio Frequency Transmission Facilities are subject to the regulations of Chapter 33.274. All other Basic Utilities are allowed.
11. Basic Utilities in I zones. This regulation applies to all parts of Table 140-1 that have a [11]. Public safety facilities that include Radio Frequency Transmission Facilities are subject to the regulations of Chapter 33.274. Public safety facilities which have more

than 3,000 square feet of floor area are a conditional use. The approval criteria are in Section 33.815.223. All other Basic Utilities are allowed.

12. Radio Frequency Transmission Facilities. This regulation applies to all parts of Table 140-1 that have a [12]. Some Radio Frequency Transmission Facilities are allowed by right. See Chapter 33.274.
  13. Commercial Parking. This regulation applies to all parts of Table 140-1 that have a [13]. Except where plan district provisions supersede these regulations, Commercial Parking is a conditional use in the E and I zones. Within plan districts, there may be special regulations.
  14. Agriculture. This regulation applies to all parts of Table 140-1 that have a [14]. Agriculture is an allowed use. Where the use and site meet the regulations of Chapter 33.237, Food Production and Distribution, the applicant may choose whether it is allowed as a Market Garden.
  15. Bulk Fossil Fuel Terminals. This regulation applies to all parts of Table 140-1 that have a [15].
    - a. Existing Bulk Fossil Fuel Terminals. Bulk Fossil Fuel Terminals that existed on August 31, 2022 are allowed, but the total amount of fossil fuel that can be stored on the site in storage tanks is limited to the fossil fuel storage tank capacity that existed on August 31, 2022. Total fossil fuel storage tank capacity on the site in excess of the capacity that existed on August 31, 2022 is prohibited. Adding storage tank capacity exclusively for renewable fuels or to comply with the Renewable Fuel Standard (PCC Chapter 16.60 Motor Vehicle Fuels) is not considered an increase in capacity. Storing coal on the site is prohibited.
    - b. New Bulk Fossil Fuel Terminals are prohibited.
- C. Conditional uses.** Uses which are allowed if approved through the conditional use review process are listed in Table 140-1 with a "CU". These uses are allowed provided they comply with the conditional use approval criteria for that use, the development standards, and other regulations of this Title. Uses listed with a "CU" that also have a footnote number in the table are subject to the regulations cited in the footnote. In addition, a use or development listed in the 200s series of chapters is also subject to the regulations of those chapters. The conditional use review process and approval criteria are stated in Chapter 33.815, Conditional Uses.
- D. Prohibited uses.** Uses listed in Table 140-1 with an "N" are prohibited. Existing uses in categories listed as prohibited may be subject to the regulations of Chapter 33.258, Nonconforming Uses and Development.

**33.140.110 Accessory Uses.** Uses that are accessory to a primary use are allowed if they comply with specific regulations for the accessory uses and all development standards.

#### **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.

### **33.140.140 On-Site Waste Disposal**

On-site disposal of solid wastes generated by a use is subject to the same regulations as for uses in the Waste-Related use category. See Table 140-1.

## **Development Standards**

### **33.140.200 Lot Size**

Lot size regulations are in Chapters 33.614 and 33.615.

### **33.140.205 Floor Area Ratio**

- A. Purpose.** Floor area ratios (FARs) regulate the amount of use (the intensity) allowed on a site. FARs provide a means to match the potential amount of uses with the desired character of the area and the provision of public services. FARs also work with the height, setback, and building coverage standards to control the overall bulk of development.
- B. The floor area standards.** The FARs are stated in Table 140-2. The FAR standards of plan districts supersede the FAR standards of this chapter.
- C. Bonus FAR.** In the EX zone, bonus FAR is allowed as follows. Sites in the other employment and industrial zones are not eligible to use the bonus options. Adjustments to this Subsection, or to the maximum floor area allowed through the following bonuses, are prohibited:
1. **Mandatory inclusionary housing.** Bonus FAR is allowed up to the maximum FAR with inclusionary housing bonus stated in Table 140-2 for development that triggers the requirements of 33.245, Inclusionary Housing. The amount of bonus floor area allowed is an amount equal to the net building area of the building that triggers 33.245, up to the maximum FAR with bonus stated in Table 140-2. To qualify for this bonus, the applicant must provide a letter from the Portland Housing Bureau certifying that the regulations of 33.245 have been met.
  2. **Voluntary inclusionary housing.** Bonus FAR up to the maximum FAR with inclusionary housing bonus stated in Table 140-2 is allowed when one of the following is met:
    - a. Bonus FAR is allowed for projects that voluntarily comply with the standards of 33.245.040 and 33.245.050. The amount of bonus floor area allowed is an amount equal to the net building area of the building that complies with 33.245.040 and .050, up to the maximum FAR with bonus stated in Table 140-2. To qualify for this bonus, the applicant must provide a letter from the Portland Housing Bureau certifying that the regulations of 33.245 have been met. The letter is required to be submitted before a building permit can be issued for development, but is not required in order to apply for a land use review; or
    - b. Bonus FAR is allowed in exchange for payment into the Affordable Housing Fund. For each square foot of floor area purchased a fee must be paid to the Portland Housing Bureau (PHB). The Portland Housing Bureau collects and administers the

## 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

### **33.262.010 Purpose**

The regulations of this chapter are designed to protect all uses in the R, C, CI, IR, and OS zones from certain objectionable off-site impacts associated with nonresidential uses. These impacts include noise, vibration, odors, and glare. The standards ensure that uses provide adequate control measures or locate in areas where the community is protected from health hazards and nuisances. The use of objective standards provides a measurable means of determining specified off-site impacts. This method protects specific industries or firms from exclusion in a zone based solely on the general characteristics of similar industries in the past.

### **33.262.020 Applying These Regulations**

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

### **33.262.030 Exemptions**

The off-site impact standards do 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.

### **33.262.040 Relationship to Other Regulations**

The off-site impact standards are in addition to all other regulations of the City Code. The standards do not replace or supersede regulations of the Department of Environmental Quality (DEQ), relevant county regulations, or standards such as the Uniform Fire Code.

### **33.262.050 Noise**

The City noise standards are stated in Title 18, Noise Control. In addition, the Department of Environmental Quality has regulations which apply to firms adjacent to or near noise sensitive uses such as dwellings, religious institutions, schools, and hospitals.

### 33.262.060 Vibration

- A. **Vibration standard.** Continuous, frequent, or repetitive vibrations which exceed 0.002g peak may not be produced. In general, this means that a person of normal sensitivities should not be able to feel any vibrations.
- B. **Exceptions.** Vibrations from temporary construction and vehicles which leave the site (such as trucks, trains, airplanes and helicopters) are exempt. Vibrations lasting less than 5 minutes per day are also exempt. Vibrations from primarily on-site vehicles and equipment are not exempt.
- C. **Measurement.** Seismic or electronic vibration measuring equipment may be used for measurements when there are doubts about the level of vibration.

### 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.

### 33.262.080 Glare

- A. **Glare standard.** Glare is illumination caused by all types of lighting and from high temperature processes such as welding or metallurgical refining. Glare may not directly, or indirectly from reflection, cause illumination on other properties in excess of a measurement of 0.5 foot candles of light.
- B. **Strobe lights.** Strobe lights visible from another property are not allowed.

### 33.262.090 Measurements

- A. Measurements for compliance with these standards are made from the property line or within the property of the affected site. Measurements may be made at ground level or at habitable levels of buildings.
- B. If the City does not have the equipment or expertise to measure and evaluate a specific complaint, it may request assistance from another agency or may contract with an independent expert to perform such measurements. The City may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source. If the City contracts to have measurements made and no violation is found, the City will bear the expense, if any, of the measurements. If a violation is found, City expenses will be charged to the violator. Nonpayment of the costs is a violation of the Code, and enforced through the provisions of Title 22.

### 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.

---

*(Amended by: Ord. No. 165376, effective 5/29/92; Ord. No. 174263, effective 4/15/00; Ord. No. 174743, effective 7/21/00; Ord. No. 176469, effective 7/1/02; Ord. No. 188177, effective 5/24/18; Ord. No. 188958, effective 5/24/18.)*