

GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: Study item to discuss potential amendments to the City Code to support small businesses.

CHRONOLOGY

Planning Commission	12/19/2024	Study item scheduled
Council	01/06/2024	Study item anticipated

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PROPOSAL

The City Council proactively added a project to the 2024 Planning Commission Work Plan to study various City Code standards that are frequently applicable to small businesses. The identified goal of the project was to study amendments to these standards that would support small business formation and operations in Bloomington by lowering potential barriers. The subject project includes a focused study and discussion of the following Code standards or topics that often intersect with small businesses:

- Exterior Building Materials and Coatings (§ 21.301.24, formerly § 19.63.08);
- Parking and Loading (§ 21.301.06);
- Refuse and Recycling Storage Facilities (§ 21.301.17);
- Rooftop Equipment Screening (§ 21.301.18);
- Odor Control (§ 10.24); and
- Grease Interception (§ 11.31).

The analysis section of the report that follows provides relevant background information about the standard and potential Code amendments for decision makers to consider. Potential amendments to the Code should be evaluated on the basis of the potential positive impact to small business, but also in balance or consideration of meeting minimum health, safety, and welfare needs of the community. Considerations related to protecting the health, safety, and welfare of the public may vary greatly depending on the topic. Such considerations might include protecting public infrastructure (transportation, utilities, etc.) or limiting potential activities or site characteristics that more frequently present nuisance conditions to neighboring properties, all of which have different sensitivities to various nuisance conditions depending on land use. In light of these considerations, success for the project could look like adjusting or “right-sizing” some of the City’s Code standards applicable to business while limiting potential negative impacts on neighboring properties.

ANALYSIS

The staff report includes analysis of each project sub-topic and associated amendments proposed to the City Code as follows:

Exterior Building Materials and Coatings

The current Zoning Code does not allow painting or coating of primary exterior building materials. The provision has been in place for many decades in an attempt to avoid situations where buildings have degraded exterior materials or peeling paint. This prohibition is often questioned by businesses wanting to refresh the look of their building, particularly buildings that are brick and stucco. Painting brick or masonry can create a barrier that can trap moisture in the brick and result in spalling or disintegration of the brick, requires regular upkeep of the painted surface, and can mask the brick’s natural texture and color. There are now more brick and masonry paints and stains that allow the brick to be painted and maintain its breathability. Painted brick can also be a cost-effective way for a business to refresh an older building. With these factors in mind and to reduce costs for businesses, staff is proposing to allow coating of most exterior materials (including brick), while ensuring building maintenance standards are enforced.

The current Code allows a ratio of 85% primary building materials and 15% secondary materials on each façade or building elevation. This ratio sometimes is raised by architects and businesses as a concern in that it can limit exterior materials that are more common in current construction trends. Staff also wanted to provide more clarity about what types of exterior materials are primary and which are secondary for architects and applicants.

The changes proposed by staff would increase the secondary material allowance to 35% on each façade or building elevation. Definitions for “architectural concrete”, “architectural concrete masonry units”, and “architectural metal panel systems” were revised or added to better describe the types of patterns are permitted for concrete products and what types of metal panels are permitted. These definitions and exterior materials added were based on what staff already interpret to be permitted equivalent materials. The purpose of this change is to make it clearer to architects and

applicants which exterior building materials are permitted by City Code. Finally, fireproofing requirements for exterior insulation finishing system (EIFS) were added based on concerns from staff in the Building and Inspections and Fire Prevention Divisions.

The proposed changes also involve minor clean up to the OHO and Self-Storage Facilities sections of the Code to ensure that permitted exterior materials are consistent across Chapter 9 and Chapter 21 of the City Code. All of these proposed changes recommended by staff can be viewed in Exhibit A, showing conceptual Code amendments.

Parking and Loading

Another project that was included on the 2024 Planning Commission Work Plan is the Refined Parking Flexibility Process. After staff reviewed both independent projects, it was determined the best course of action was to merge them based on shared goals and subject matter. Both projects are intended to reduce barriers to small business formation and operations.

The City's off-street parking requirements vary by use type as listed in § 21.301.06(d) of the City Code and typically are based on area (sq. ft.) of the building. The ordinance also includes multiple methods to reduce the minimum parking requirement, referred to as flexibility measures, all of which are in § 21.301.06(e). The seven established flexibility measures are 1) proof of parking, 2) shared parking, 3) transportation demand management (TDM) plan, 4) linkage to mass transit, 5) planned development (PD), and 6) on-street parking. All of these measures have the ability to reduce the off-street parking requirement, which can be important in establishing a new business, particularly at existing commercial or industrial sites that may be constrained in some way. It should be noted that the City does have the authority to require a parking study to support the evaluation of parking flexibility requests when deemed necessary.

Staff is recommending multiple amendments to the parking flexibility measures. Exhibit B attached to the staff report outlines recommended changes to § 21.301.06(e). Some of the recommended changes focus on clarifying which authority is empowered to approve the requested flexibility. Some of these recommendations build off some of the recent work done to streamline development approval. Other recommended changes to this section include adding a new flexibility measure for building reuse. The changes recommended in Exhibit B can be summarized as follows:

- **Proof of Parking** – Language added to note that the entity empowered to approve the site or development plan application, including the issuing authority (defined in the Zoning Code as the City Manager or their designated representative), has the authority to approve proof of parking. Administrative approval authority of proof of parking already exists, but this section is being restructured for improved organization of the overall flexibility subsection.
- **Shared Parking** – Staff proposes that the approval authority for a shared parking flexibility measure be adjusted from the City Council to whichever entity has the authority to approve the related application, including the issuing authority in cases of a new building occupancy. Planning and Traffic staff have the appropriate expertise to determine when

shared parking is a good solution. Appropriate legal agreements can be drafted by the Legal Department that outline the shared parking commitments, run with the land, and protect against inadequate parking supply. Moving this approval authority to an administrative action would help prospective tenants fill existing buildings, particularly those that are multi-tenant or immediately adjacent to other commercial sites with extra parking.

- **Transportation Demand Management (TDM) Plan** – Similar to the measure for shared parking, staff would recommend that the approval authority for Tier I TDM plans be shifted to an administrative action. Tier I TDM Plans typically involve a substantial commitment on the part of the property owner, including financial surety and ongoing reporting, to reduce vehicle trips. Staff is confident that this measure can be reviewed and approved administratively in an effective manner.
- **Linkages to Mass Transit** – Staff recommends that the approval authority for the parking flexibility related to linkages to mass transit be either the Planning Commission or City Council, whoever is empowered to approve the related site or development plan. Adding the Planning Commission as an approval authority is in line with recent changes that occurred with the streamlined development ordinance. Staff also recommends adding language clarifying as to what constitutes “linkage to mass transit”, recommending that a site be within one-half mile walking distance of a facility that provides regularly scheduled service seven days per week.
- **Planned Development (PD)** – Language is proposed to note that only the City Council has the approval to approve parking flexibility through a planned development (PD) approval.
- **On-Street Parking** – Amendments are proposed to clarify that the Planning Commission has the authority to approve parking flexibility related to nearby on-street parking supply being available to a development. Such situations are not frequent given on-street parking is uncommon in Bloomington’s commercial and industrial areas. Staff would also recommend that language be added noting that the parking must be close in proximity and safe to use. Finally, if this flexibility is granted, staff would recommend that a sidewalk linkage may be required to the street from the building if there is not one present.
- **Building Reuse** – Staff recommends adding a new parking flexibility measure related to the reuse of existing commercial or industrial buildings that are 10,000 square feet or less in size. This flexibility measure, available up to a 25% reduction in the parking requirement, would support business formation by granting more reuse opportunities for smaller buildings on constrained sites that were constructed with a smaller supply of parking. If a site does not have adequate land area in convenient locations to add Code-compliant parking, reuse opportunities can be quite narrow or limited, resulting in sometimes prolonged periods of building vacancy. The granting of such flexibility would be stipulated upon staff finding that 1) the site is constrained with limited opportunities to construct additional parking, and 2) the site has adequate vehicular access and on-site circulation so as to not cause unsafe traffic conditions nearby. In addition to these limiting factors, it should be noted that the scale of the potential parking reduction is also somewhat blunted by the fact that flexibility is limited to buildings that are 10,000 square feet or less. Finally, policies that support building reuse have positive benefits from a sustainability perspective.

Exhibit B provides a fairly advanced concept of what these changes to the parking flexibility would look like and how they would function. If these changes are supported, a formal ordinance document can be prepared. It should also be noted that staff is recommending a project on the 2025 Planning Commission Work Plan to evaluate the City's parking supply requirements by land use, particularly commercial and industrial uses. Changes related to the post-pandemic economy, including increased teleworking and shifting retail shopping behavior, have likely resulted in measurable decreases in overall parking demand for some commercial and industrial uses. Staff is recommending that parking requirements be reviewed in light of these dynamics.

Refuse and Recycling Facilities

The City of Bloomington has extensive performance and design standards for refuse and recycling storage areas (see § 21.301.17). These standards have evolved over time and have been established to address multiple health, safety, and welfare concerns or situations that have occurred or are commonplace related to trash facilities. These concerns are partially outlined in the purpose and intent of the refuse ordinance and include the following:

- Illegal disposal or dumping;
- Employee safety;
- Unsanitary conditions;
- Vandalism
- Odors
- Rodents
- Flies and other insects
- Leachates polluting the City's lakes and rivers; and
- Aesthetic site conditions.

In many situations, trash and recycling storage must be done in a fully enclosed facility that is attached to and accessible from within the principal building. The internal accessibility requirements can be waived in some circumstances. Food and grocery store uses must have enhanced finishes to aid in cleanup given the unique characteristics of food waste. These facilities must have washable surfaces, durable finishes and cleaning components (water source, floor drain, etc.). These design requirements are informed by Environmental Health and State requirements for food facilities. The bulk of today's standards were adopted in 2001 (Ordinance #2001-6) and have been amended over time. Prior to 2001, similar standards were frequently required through conditions of approval. Minnesota Rules (§ 4626.1225 – § 4626.1320) include provisions related to refuse and recycling facilities in the Food Code.

Planning staff conducted a survey of peer cities in the Twin Cities Region in the first quarter of 2023. The survey revealed that Bloomington's refuse standards are more detailed and prescriptive than most responding communities (11 responses). For example, most of the respondent communities allow detached trash facilities, and most do not have special design standards for restaurants. Staff can make specific response data available by request.

To assess current conditions of refuse facilities in the community and other nearby locations, Planning and Environmental Health staff conducted a tour and assessment in October of 2024. Photos and related observations collected from the tour are attached to the staff report as Exhibit C. Main takeaways from the tour are noted on the last page of Exhibit C. The tour revealed that newer construction facilities that comply with the City's existing standards function well and can be accommodated in most cases. It also demonstrated that there are many legally nonconforming refuse storage facilities that do not present significant problems. However, some nonconforming facilities are located or constructed in such a way that present significant challenges from staff's perspective. These significant challenges for refuse facilities include:

- Draining grease or other contaminants towards storm sewers;
- Located far away from the principal building with poor exterior lighting, presenting safety concerns
- Located too close to nearby residential buildings, creating odor, insect, and rodent concerns or visual impacts;
- Frequent location near multiple-family rental housing, much of which is naturally occurring affordable housing, raising equity concerns;
- Partially impeding site access; and
- Unscreened with poor aesthetic conditions.

If the Planning Commission and City Council wanted to allow detached refuse and recycling storage, amended code standards would need to ensure that these challenges are properly mitigated. To address these concerns, staff would recommend that detached refuse storage have the following minimum design components:

- Nearby storm water infrastructure is protected;
- Located away from residential uses with proper access and lighting for employee safety;
- The facility is enclosed on three sides with a roof for screening purposes and to limit water intrusions and resulting drainage; and
- Storage location does not impede site access and allows for efficient refuse collection.

Staff has not drafted concept Code amendments to the existing refuse standards. Allowing detached facilities as described above would necessitate a full rewrite of the existing ordinance in staff's view, as the existing section could benefit from better organization as well. Instead of presenting draft Code amendments, staff would ask the Planning Commission and City Council to give reactions and guidance on the following questions that can guide the drafting of a new refuse and recycling storage ordinance for future consideration at a public hearing. These **key questions** include:

- 1) Should new construction (restaurants and/or all multi-family and commercial uses) meet the City's existing standards (attached facilities with internal access, and special design standards for food establishments)?

- 2) Should detached refuse and recycling storage be allowed, either broadly or limited to retrofitting existing residential and commercial uses? If so:
- A) Should detached facilities be enclosed on three sides with a roof?
 - B) Should the storage location be within a certain distance of the principal building to ensure proximity for efficient refuse transport and employee safety?
 - C) Should the storage location be limited to side and rear yards of a lot, prohibiting enclosures closer to the street than principal building?
 - D) Should a buffer setback to abutting or adjacent residential sites and structures be established?
 - E) Should site lighting be compliant or upgraded to allow detached refuse storage to ensure employee safety?

Staff will present these questions as part of the staff presentation to solicit Planning Commission and Council feedback. A representative from the Environmental Health Division will be in attendance to answer any questions the Planning Commission may have. The goal of these discussions is to build consensus on changes to the City's refuse and recycling storage requirements. Staff can then draft an ordinance and schedule a subsequent public hearing if that is the desired direction.

Rooftop Equipment Screening

Some businesses need to add rooftop mechanical equipment to support operations in the building. The Zoning Code (§ 21.301.18) requires this new equipment to be screened when visible from adjacent public or private streets and sidewalks. The standard is intended to maintain a positive visual appearance in the community. Rooftop equipment screening requirements are very common throughout the Twin Cities Region and beyond. However, screening in some cases can prove to be quite costly. Staff evaluated this section of the Code to ensure that the screening requirement is reserved for situations that offer the most visual benefit in alignment with the standard's intent.

Staff recommends two modest amendments to the City's rooftop screening requirements. These proposed amendments can be viewed in Exhibit D attached to the staff report. The first amendment would clarify that the standard is applicable when the equipment is visible from ground-level. This lack of clarity in the standard now can leave some situations open to interpretation. The second proposed amendment would add an exception for exhaust pipes, which can be quite tall and difficult to screen. The wide mix of industrial uses and facilities in Bloomington have presented multiple situations where the application of the equipment screening requirement has been challenging or unclear. Adding this exception would provide more concrete guidance in these situations where screening is difficult from a construction standpoint, has more limited visual benefit, and does not meet a typical cost-benefit analysis from staff's perspective.

Odor Mitigation

Odor suppression systems are required for new or expanded food establishments and food processing plants that are located within 250 feet of properties zoned and guided residential or in a mixed-use setting (see § 10.24). The ordinance requires a system to be certified by a professional engineer. Depending on the type of system, odor suppression for food uses can be very costly to install and maintain.

The majority of cities that staff researched do not regulate or require mitigation for food odors. Most cities defer to Minnesota Pollution Control Agency (MPCA) regulations pertaining to nuisance odors. The MPCA does not regulate odors or emissions from food uses. Rather, MPCA's regulations and enforcement activities are concentrated on industrial and other emissions found to have impacts on the environment and public health. Odor management regulations adopted by MPCA specifically exempt restaurants. That being said, there are cities in the Twin Cities Region that require mitigation for odors produced by food facilities, of which Bloomington is one. Bloomington's northern neighbor Richfield is another city that regulates food odor mitigation.

To ensure that Bloomington odor mitigation provisions are reasonable and effective while balancing cost, process, construction and maintenance challenges, staff would recommend amending the odor provisions as shown in Exhibit E. Proposed changes to the ordinance included in Exhibit E can be summarized as follows:

- **Change Odor Requirements from “Suppression” to “Mitigation”** – Odors generated from food uses cannot be completely eliminated. Rather, these systems are designed to lessen the intensity of food odors and filter airborne greases produced from various forms of cooking. As such, it is important from staff's perspective to amend the wording of the overall requirement by changing it from suppression to mitigation. Odors can be mitigated, but they cannot be completely removed. Both “suppression” and “mitigation” can indicate a reduction, but project staff perceives the term “suppression” to indicate a more extensive reduction than the term “mitigation”. While a word choice may be perceived as a somewhat modest change, it is important to properly communicate a realistic expectation of the results of these systems.
- **Distance Requirement** – Staff proposes to reduce the separation distance where odor mitigation is triggered from 250 to 150 feet. This revised distance would mostly limit the odor mitigation requirement to situations where a food use directly abuts a residential use or is established in a mixed-use development. Odor impacts are more acute the closer that properties are located to the odor source. The further away properties are located, odor impact decrease and mix with other odors generated elsewhere. Reducing the distance requirement to 150 feet would reserve the costly mitigation requirement to scenarios where the impacts are more direct and necessary. The City of Richfield's odor requirement distance also triggers at 150 feet.
- **Approval Authority** – The existing ordinance requires a professional engineer to certify that a proposed system can successfully mitigate odors. The challenge with this requirement

is that it adds cost and complexity to business owners. In addition, some professional engineers are less willing to “certify” a system will successfully mitigate odors based on that fact that odors cannot be eliminated completely. Staff recommend establishing the Building Official as the approval authority of the system and removing the certification requirement. The Building and Inspections Division does have enough baseline expertise to determine whether or not a proposed system meets a threshold of adequacy for a given situation. Staff also plans to create an informational handout that can better guide business owners about the types of systems that are effective. The goal with these ordinance and operational changes is to relieve some of the burden on businesses owners who have limited experience with odor mitigation systems, whose types and costs vary greatly.

- **Removal of Type II Hood Mitigation Trigger** – The current ordinance requires odor mitigation for Type II hoods. These systems typically vent steam as opposed to airborne grease or other more intense emissions, which are typically vented by Type I hoods. Staff would recommend striking the requirement related to Type II hoods. This approach would also align with the City of Richfield’s requirements.
- **Measurement Location** – Staff recommend clarifying that the measurement distance (150 feet proposed) from the odor generating use to nearby residential structured would be measured from the exhaust location. With detailed building plans and aerial photos, staff can precisely measure from this location, as opposed to the current standard measuring from the closest wall of the restaurant space. Measurement from the wall of the restaurant space is not as precise and has less direct correlation from the odor source as the exhaust location.
- **Maintenance** – The current ordinance does not have a specific maintenance requirement. Staff would recommend a simple provision stating that these systems must be maintained according to the system manufacturer’s specifications and recommendations.
- **Updating Other Code Sections** – Other sections of the City Code will need to be adjusted related to odor mitigation updates. These include the Residential Uses in Commercial Zoning Districts section (§ 21.302.02) and Multiple-Family Dwelling Design and Performance Standards (§ 21.302.09). Similar adjustments may be needed elsewhere once staff does a more expansive search of odor-related standards throughout Code.

Should the Planning Commission and City Council agree with this approach, an ordinance can be prepared building off the concept changes shown in Exhibit D. As an alternative to this approach, the City could remove the odor mitigation requirements for food establishments, instead ignoring restaurant odor impacts and simply relying on State MPCA odor control standards for more industrial odor generating uses. However, this would remove any ability for the City to require odor mitigation to lessen impacts for abutting residential properties. It should be noted that impacts on residential properties are more likely for high and medium density developments, which more frequently abut commercial properties. Staff will seek guidance from decision makers on what changes, if any, to make to the City’s odor mitigation standards.

Grease Interception

The City has a legal responsibility to protect the sanitary sewer system from fats, oils and grease and other contaminants being discharged into the public sanitary sewer system. This requirement is established by the Metropolitan Council Environmental Services (MCES) Waste Discharge Rules §406.00 and Environmental Protection Agency (EPA) Federal regulations. MCES is responsible for regional wastewater treatment in the Twin Cities Region. Additionally, City Code establishes the requirement to install protection for the City's sanitary sewer system in § 11.31.

The City has established a Standard for Pretreatment of Sanitary Waste Effluent Containing Fats, Oils and Grease to apply and enforce the established regulatory rules. This standard applies to any new and/or substantial remodel of a commercial kitchen or food serving facility that contains grease laden fixtures.

When it is determined that pretreatment of the sanitary sewer discharge is required the City's current standard is for the property to install an in-ground exterior grease interceptor not less than 1,000 gallons to capture fats, oils and grease before entering the public sanitary sewer system. The benefits of installing an exterior grease interceptor of this size include having sufficient capacity to treat a significant amount of grease before the structure needs to be cleaned or emptied. It also allows for the cleaning and maintenance of the structure to take place on the exterior of the building, which eliminates the need for dirty hoses and equipment to be carried into the building to empty an interior grease interceptor system.

Although there are many benefits to installing an exterior grease interceptor, this can be cost prohibitive for many small businesses. In addition, the fats, oils and grease being produced from a site sometimes could be managed to meet regulatory requirements through other less intrusive and cost-effective methods, including interior grease interceptors or hydromechanical units installed within the kitchen area. The Utilities Superintendent can approve the use of other treatment devices outside of the recommended 1,000-gallon external grease interceptor as long as that system provides treatment that meets the regulatory requirements.

Given the need to protect the public sanitary sewer system, staff is not proposing to change the requirements related to businesses providing adequate treatment of fats, oils and grease. However, staff is proposing to update its messaging and informational handouts to clarify the regulatory requirements and the City's best management practice as it pertains to installation of an external grease interceptor while also providing clearer guidance on "right-sizing" a grease interceptor system to still meet the regulatory treatment requirements while reducing the potential cost burden to the business owner.

OUTREACH

Outreach/Notification efforts to date have included the following activities:

- **E-Subscribe Group Notification**
- **Let's Talk Bloomington Page** – Includes a participatory survey that is open through the end of 2024 to collect business owner/operator feedback.
- **Meetings with Interested Groups**
 - **Minneapolis Regional Chamber of Commerce Event** – Planning staff briefly presented at the Bloomington Business Connections meeting that was held at Nine Mile Brewing Company on October 23, 2024.
 - **Port Authority Annual Broker's Breakfast** – The Planning Manager provided an update about the project and encouraged interested parties to participate in the project survey hosted on the online engagement page.

Staff welcomes continued engagement on the project from interested parties. It should be noted that the Port Authority is considering tracking policy or code change requests that are submitted by the business community for evaluation and continuous improvement purposes. This process could look like another version of Miscellaneous Issues Ordinance that occurs on an annual or somewhat regular basis. If the Port Authority were to pursue such a routine process, Planning Division and other Community Development staff would be involved in determining what City policies or Code standards would be recommended to be revised.

RECOMMENDATION

No formal motion is required at this time. Staff is seeking Planning Commission and City Council feedback on proposed City Code Amendments in support of small business formation and operations.