

Guide to DEH's Odor Regulations

Regulation

Denver's Department of Environmental Health (DEH) is responsible for regulating nuisance odors as defined under Denver Revised Municipal Code, Chapter 4 – Air Pollution Control, Section 4-10. Denver's ordinance specifies odors as a nuisance issue, as opposed to a health issue, to address reasonable and comfortable use and enjoyment of property.

The city ordinance for odor intensity is based upon the Colorado State law, and includes an odor definition, specific occurrences that result in a violation, affirmative defenses to a violation, and exemptions. Colorado State's Odor Control Regulation sets standards for allowable odor contaminants for different land-use areas in the state and outlines control measures that can be taken to bring violators into compliance.

Investigating Odor Complaints

Denver investigates all odor complaints received on questionable odors. This includes identifying the source, independently verifying the odor, responding to the complainant and the source, and issuing a citation if necessary.

When an odor complaint is made, an inspector contacts the complainant to gather specific information on the odor and source. As part of the investigation, the inspector may attempt to identify and determine the odor intensity using a portable odor-measuring device, called the Nasal Ranger. The Nasal Ranger provides a scientific method of quantifying odor strength in terms of 'dilution to threshold' (D/T) ratios. To make a D/T measurement, carbon-filtered air is mixed with specific volumes of odorous ambient air. The D/T ratio is a measure of the number of dilutions needed to take the odorous air to a threshold that can be detected by the odor evaluator.

While all odor complaints are investigated, administrative citations can only be issued under the following circumstances:

- If the odorous contaminants are detected and meet the threshold of the 7/1 dilution standard.
- When DEH receives five or more complaints from individual residents representing separate households within a 12-hour period and the complaints are related to a single odor source.

In 2008, the City's ordinance was modified to include the added provision of requiring five complaints from separate households to offer an additional mechanism for dealing with odors that are a significant source of complaints, but do not exceed the intensity threshold.

If multiple complaints have been filed on a single source, but the intensity threshold (D/T or complaint standard) is not met, the inspector will contact the owner/operator of the source to discuss odor mitigation measures. If the D/T or five complaints within 12 hours threshold is met and confirmed, the owner/operator will receive an administrative citation. The penalty assessed for an odor citation is based on a range of criteria, including actual or threatened impacts to public health and the environment, history of previous violations, willingness of cooperation, and other factors. The minimum penalty is \$150, maximum is \$2,000.

Marijuana Odors

Odor regulation is a complex issue. The following information is related to marijuana-specific odor complaints:

- **Odor Regulation Includes All Sources** - While the city regulates odors based on its own ordinance, this ordinance is based on the State's odor ordinance to regulate industrial sources such as manufacturing. Denver's ordinance is actually more stringent than state standards. To ensure a balanced approach to enforcement, all odors, including marijuana, are regulated according to the same standards.

- **Grow vs. Retail (smoking) Complaints** - Overall, the majority of the city's odor complaints arise from various manufacturing industries. Most marijuana-related complaints arise from grow facilities rather than a dispensary, since the odor from grow facilities are more pungent and tends to linger. Under the city's existing odor ordinance, it is unlikely that most non-industrial industries, including grow facilities, will exceed the 7/1 dilution standard.
- **Identifying A Single Source Where Multiple Exist** – The ordinance requires a single source to be clearly identified to violate the ordinance (dilution threshold or through complaints). Given that there are often multiple industries (including marijuana grow operations) in one area, this can be challenging as odors are transient and not limited to normal working hours, made up of several different chemical combinations, and at times located outside Denver's borders.

Next Steps

With the legalization of recreational marijuana on January 1, DEH expects to see an increase in marijuana-related odor complaints. Denver's existing odor regulations are limited in the ability to adequately address both existing sources and this new source of odor complaints.

To address the current and upcoming challenges, DEH has implemented the following next steps:

January 2014

- Hire a marijuana grow facility inspector to focus on managing all environmental aspects of marijuana, including odor education and mitigation.
- Develop marijuana facility recommended Best Practices Guide to include regulated facility and community outreach goals.

April 2014

- Complete a comprehensive research study on community odor issues.

June 2014

- Develop recommendations on a path forward to address odor issues, using information from research study.