
**VILLAGE OF SUGAR GROVE
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR
DANIELLE MARION, PLANNING & ZONING ADMINISTRATOR
SUBJECT: DISCUSSION: ZONING ORDINANCE AMENDMENT (PERFORMANCE STANDARDS)
AGENDA: MAY 2, 2023 VILLAGE BOARD MEETING
DATE: APRIL 24, 2023

ISSUE

Shall the Village Board discuss a proposed amendment of various sections of the Zoning Ordinance related to performance standards in non-residential districts.

DISCUSSION

In the course of amending the industrial uses in the Permitted Use Table in the Zoning Ordinance, there were a number of industrial accidents in the region and across the country that received media attention. Consequently, concern was raised about the use and storage of hazardous substances in industrial buildings in the Village.

Currently, there are existing businesses in Sugar Grove involving the storage of hazardous substances with little or no issues. Village staff attempted to draft regulations that provide more certainty as to what is present in the Village without impairing operation of existing businesses.

The term "hazardous substances" can conjure all sorts of scary images, however, it is important to remember that there are hazardous substances in your garage, in your car and under your sink. They are found in the grocery store, hardware store and the gas station. Additionally there are substances and materials that don't become hazardous unless they are consumed by fire and, in which case, often become toxic.

There are thousands of hazardous substances in the USDOT's Table of Hazardous Substances and the list grows as new substances are created. These range from explosive and radioactive to corrosive and infectious substances. They occur in solid, gaseous and liquid states.

For these reasons, the best approach to regulate hazardous substances is by the quantity present on the premises and to differentiate between consumer quantities to bulk quantities. Additionally, the storage, transport and use of hazardous substances are regulated by USDOT, OSHA, IEPA and the local fire department. There is a short list of hazardous substances that are prohibited regardless of quantity.

The primary concern with hazardous substances is what happens when there is an accident. The local fire department(s) are tasked with this responsibility.

The proposed performance standards amendment also includes noise, odor, smoke and vibration nuisances. All of these performance standards are referenced to the IEPA standards and regulations as they are currently. In addition to hazardous substances, sanitary sewage disposal requirements are being added to the performance standards. The Planning Commission questioned Village staff and challenged them with various what-if scenarios and were satisfied the definitions will serve the purpose. The Planning Commission recommended approval of the proposed definitions and the amendment of Section 11-4-7.

ATTACHMENTS

- Recommendation PC23-007

RECOMMENDATION

The Village Board discuss the proposed amendment and provide input and direction to Village staff in order to prepare an Ordinance amending the performance standards in the zoning regulations.

VILLAGE PRESIDENT

Jennifer Konen

VILLAGE CLERK

Alison Murphy



COMMUNITY DEVELOPMENT

VILLAGE TRUSTEES

Matthew Bonnie

Ted Koch

Heidi Lendi

Michael Schomas

Ryan Walter

James F. White

R E C O M M E N D A T I O N

PC23-007

TO: Village President and Board of Trustees
FROM: Planning Commission
DATE: Meeting of April 19, 2023
PETITION: 23-007 Text Amendment: Performance Standards

PROPOSAL

Amend the performance standards in the Zoning Ordinance to add regulations for hazardous substances and generally update the performance standards.

BACKGROUND & HISTORY

In the course of discussing an amendment of the permitted use table as it pertains to industrial uses, a concern was raised by a Commissioner concerning hazardous substances and how the Village might regulate them in the Village.

DISCUSSION

Village staff conducted research on regulating environmental factors associated with the conduct of industrial activity in the Village and found few communities had any zoning regulations concerning hazardous substances or other environmental concerns such as smoke, odor, vibration and noise. The research found most municipalities rely on the Illinois Environmental Protection Agency to regulate and enforce environmental standards.

With respect to hazardous substances, Village staff research found municipalities generally rely on the local fire department, building codes, OSHA, IEPA and USDOT regulations for the safe storage and handling of hazardous substances.

Village staff considered establishing proprietary noise, smoke and vibration standards but Commissioners questioned the burden such an approach would place on the Village and staff as special training and monitoring equipment may be needed for administration and enforcement of the such standards. There also was concern that without some scientific rational basis for the proposed standards, the Village would find itself constantly challenged to defend the standards during enforcement procedures.

Commissioners agreed that requiring a Special Use Permit for any industrial use would only serve to frustrate potential businesses from locating in the Village. Moreover, Commissioners were of the opinion that there are currently businesses operating in the Village that have substantial quantities of hazardous substances on the premises and have demonstrated they can comply with existing regulations of the fire department, IEPA and USDOT for handling and storing hazardous substances. Commissioner felt it was reasonable to require a Special Use for exceptionally large quantities of hazardous substances on the premises and agreed with the proposal to regulate such substances by quantity.

The Planning Commission discussed the proposed text amendment at length. Commissioners posed many what-if scenarios to staff and were satisfied with the proposed performance standards.

PUBLIC RESPONSE

After due notice, the Planning Commission held a public hearing on March 15, 2023 and continued to April 19, 2023. Objectors were present and heard.

RECOMMENDATION

After careful consideration, the Planning Commission recommends the Village Board **approve** the proposed text amendment attached in Exhibit A.

AYES: Guddendorf, Wilson, Bieritz, Eckert, Sabo, Jones, Ochsenschlager

NAYES: None

ABSENT: None

Exhibit A

11-4-24: PERFORMANCE STANDARDS: (NEW)

HAZARDOUS SUBSTANCES. Hazardous substances are defined by the U.S. Department of Transportation (USDOT) in the Code of Federal Regulations (CFR), Title 49, Parts 100 to 177 (October, 1983). Specific hazardous substances are assigned to categories in the Hazardous Materials Table. Hazardous substances that are not listed in the Hazardous Material Table are assigned to categories based on the definitions of the categories.

- A. PROHIBITED USES INVOLVING HAZARDOUS SUBSTANCES. Certain substances pose high risk to public health and safety and to the air, surface and groundwater resources of the Village of Sugar Grove. Potential harm from exposure to these substances can be reduced by prohibiting large quantities of hazardous materials and hazardous waste from occurring in the Village. The following shall be prohibited in the Village of Sugar Grove:
1. Waste collection and transfer facilities which involve hazardous substances.
 2. Uses involving:
 - a. Asphaltic and petroleum-based coating and preserving materials.
 - b. Formulations of Chrome-Copper-Arsenate (CCC), pentachlorophenols (PENTA), creosote, and related chemicals.
 - c. Oils containing PCB's.
 - d. Used batteries, for recycling or processing.
 - e. Petroleum storage tanks, excluding retail gas stations and truck stops, and petroleum storage tanks for the exclusive use of on-site fleet vehicles.
 3. Primary and secondary metal industries that manufacture, produce, smelt or refine ferrous and non-ferrous metals, but excluding uses which roll, draw, extrude, cast, forge, heat treat, electroplate, plate, anodize, or color ferrous and non-ferrous metals.
 4. Agricultural application of halogenated volatile liquid organic pesticides, such as ethylene dibromide (EDB) and dibromo chloropropane (DBCP), related chemicals and their commercial formulations. Other fertilizers, plant growth retardants and pesticides are allowed if applied in accordance with State and Federal standards for accepted farming and horticultural practices.
 5. Uses involving nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.
- B. NONCONFORMING USES THAT INVOLVE HAZARDOUS SUBSTANCES. Non-conforming uses are prohibited from increasing the quantities of hazardous substances used or produced on the premises.

- C. OTHER USES INVOLVING HAZARDOUS SUBSTANCES. It is the intention of these regulations to allow hazardous substances in a manner consistent with the recommendations of the Village's Comprehensive Plan and the purpose of the zoning districts in the Village while maintaining the safety and welfare of the general public and protecting the environment. Hazardous substances shall be permitted by on-site quality characteristics as defined herein and in Section 11-4-24-E.
- D. ON-SITE QUANTITY CHARACTERISTICS OF HAZARDOUS SUBSTANCES
1. BULK PLANT. Hazardous substances at the bulk plant level are manufactured, collected, repackaged, stored, or distributed, but are generally not used on the site. Materials are stored in large, permanent tanks. Bulk plant quantities are larger than amounts transported in or any single shipment. Processors of hazardous substances will generally be at this level. Uses which produce hazardous substances as a by-product or accessory to another product are not in this category.
 2. BULK USE. Hazardous substances at the bulk use level are used or sold on site. The hazardous substances are incidental to the primary product or service of the use. Hazardous substances are transported to the site in an unpackaged form and are then transferred to the use's storage tank by hose, pipeline, conveyor belt, etc. On-site use of a portable tank such as rail car, tanker truck, or similar vehicle is considered to be at this quantity level. Use of containers over sixty (60) gallons in size is classified at this level.
 3. PACKAGE USE. Hazardous substances at the package use level are stored in discrete containers of sixty (60) gallons or less which are handled individually or on pallets for purposes of transportation. Package use materials are used or sold on site. Packages may include cylinders, drums, boxes, glass jars, etc.
 4. CONSUMER COMMODITIES. Consumer commodities are packaged and distributed in a form intended or suitable for sale through retail sale outlets for consumption by individuals for purpose of personal care or household use.
 5. TRAILER STORAGE. Trailers and shipping containers shall not be used for storing hazardous substances. Storage for the purpose of this section shall mean a trailer or shipping container parked on the premises for more than seventy-two (72) consecutive hours.

E. TABLE OF PERMITTED ON-SITE CHARACTERISTICS OF HAZARDOUS SUBSTANCES BY ZONING DISTRICT.

| On-Site Quantity Characteristics | | ZONING DISTRICTS | | | | | | | | | | | | |
|--|----|------------------|-----|-----|-----|----|-----|-----|-----|----|------|----|-----|-----|
| Hazardous Substance Category | | A-1 | E-1 | R-1 | R-3 | SR | B-1 | B-2 | B-3 | BP | OR-2 | DC | M-1 | I-1 |
| Uses involving Class A or B Explosives | BP | | | | | | | | | | | | | |
| | BU | | | | | | | | | | | | | |
| | PU | | | | | | | | | | | | | |
| | CC | S | | | | | | | | | | | S | |
| Uses involving poison A or B, Pyrophoric liquid | BP | | | | | | | | | | | | | |
| | BU | P | | | | | | | | S | | | S | |
| | PU | P | | | | | | | | S | | | S | |
| | CC | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Uses involving corrosives, Flammable gas or flammable liquid | BP | | | | | | | | | S | | | S | |
| | BU | | | | | | | | | S | | | S | |
| | PU | | | | | | | | | S | | | P | |
| | CC | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Uses involving flammable solids, irritating non-flammable gas, ORM A, B or E, organic peroxide, or oxidizers | BP | | | | | | | | | S | | | S | |
| | BU | P | | | | | | | | S | | | S | |
| | PU | P | | | | | | | | P | | | P | |
| | CC | P | P | P | P | P | P | P | P | P | P | P | P | P |
| Uses involving combustible liquid | BP | | | | | | | | | S | | | S | |
| | BU | P | | | | | P | P | P | P | P | P | S | S |
| | PU | P | | | | | P | P | P | P | P | P | P | P |
| | CC | P | P | P | P | P | P | P | P | P | P | P | P | P |

BP=Bulk Plant; BU=Bulk Use; PU=Package Use; CC=Consumer Commodity as defined in Section 11-4-24-D
P=Permitted Use; S=Special Use

F. FIRE PROTECTION DISTRICT STANDARDS. In addition to these regulations, all storage or use of hazardous substances must be reviewed by the Fire Protection District in which the premises are located and must conform with all appropriate fire and building codes.

FIRE AND EXPLOSION HAZARDS.

- A. The storage, utilization or manufacture of materials or products ranging from free or active burning to intense burning (as determined for liquids by a closed cup flash point of less than one hundred eighty-seven degrees Fahrenheit (187°F), but not less than one hundred five degrees Fahrenheit (105°F)) is permitted, providing the following conditions are met:
 - 1. Said materials or products shall be stored, utilized or produced within completely enclosed buildings or structures having exterior walls of non-combustible construction, in accordance with the building code of the Village.
 - 2. Buildings in which such materials or products are stored, utilized or produced shall be set back at least one hundred (100) feet from lot lines, or in lieu thereof, all such buildings or structures shall be protected throughout by an appropriate fire suppression system for products and materials stored in accordance with the Village's Building Code and standards prescribed by the National Fire Protection Association (NFPA).
- B. The storage, utilization or manufacture of materials or products ranging from incombustible to moderate burning (as determined for liquids by a closed cup flash point of not less than one hundred eighty-seven degrees (187°F)) is permitted.
- C. The utilization in manufacturing processes of materials which produce flammable or explosive vapors or gases (as determined for liquids by a closed cup flash point of less than one hundred five degrees Fahrenheit (105°F)) shall be permitted in an Industrial District, provided that;
 - 1. The final manufactured product does not itself have a closed cup flash point of less than one hundred eighty-seven degrees (187°F) Fahrenheit.
 - 2. The use and storage of such materials shall be in conformity with standards prescribed by the NFPA and with requirements of other ordinances of the Village.
 - 3. The storage of said material shall be prohibited above ground.
- D. Detonable materials shall not be stored within two hundred (200) feet of a lot line in any industrial district, and not within one thousand (1,000) feet of any residential district.

RADIATION HAZARDS. The handling of radioactive materials, the discharge of such materials into air and water, and the disposal of radioactive wastes shall be in conformance with applicable regulations of the Atomic Energy Commission, and the applicable regulations of an instrumentality of the State of Illinois.

SOURCES OF ILLUMINATION. Outdoor illumination on the premises shall comply with the regulations of Chapter 18, Outdoor Illumination, of this Title.

INDUSTRIAL WASTEWATER DISPOSAL. Where a use produced industrial sewage waste, the Fox Metro Sanitary District is responsible for reviewing and approving the connection, design and requirement for pre-treatment if necessary. Industrial wastewater is herein defined as the wastewater resulting from production, or resulting from the washing of equipment and vehicles, or resulting from similar activities. All industrial wastewater disposal must be approved by the Fox Metro Sanitary District prior to issuance of a Zoning Certificate.

STORM WATER DISPOSAL. All storm water, groundwater, and run-off from the watering of landscaping must be discharged into an adequate watercourse, water body, storm sewer or into an approved on-site disposal system. Storm water and groundwater disposal methods and the determination of the adequacy of the receiving systems require the approval of the Village Engineer prior to issuance of a zoning certificate.

ALL OTHER HAZARDS AND NUISANCES

Noise, glare, vibration, odor, and others, shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency.

CERTIFICATE OF COMPLIANCE

- A. No use permitted in any manufacturing district shall be issued a zoning certificate until a certified statement has been signed by a qualified professional engineer and a responsible agent for the proposed use stating that all provisions of the performance standards set forth in this Article will be met.
- B. No use permitted in any manufacturing district shall be issued a certificate of compliance until all provisions of this Ordinance have been complied with and tests on operating equipment made under normal operating conditions have been performed indicating full compliance with all performance standards. Such statement shall be certified and signed by a qualified professional engineer and a responsible agent for the operating use.

ENFORCEMENT. The Zoning Administrator shall enforce the provisions of this Section. Upon confirmation of a violation, enforcement and penalty provisions of Section 11-13-15 shall prevail. In addition, the Zoning Administrator may require of the offending business or industry the installation, maintenance, and operation of continuous measuring or recording instruments to demonstrate the operation and to ensure continuous compliance with the prescribed standards.

VIOLATIONS. Established uses found to be in noncompliance will be liable for inspection fees and costs as well as penalties imposed by a court. In the event no due cause is found, the challenger will be liable for the fees and costs.

In the following Sections, the current performance standards are replaced with a reference to the new Section 11-4-24

11-6-6: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the A-1 District shall comply with the performance standards in Section 11-4-24.

11-8-1-E: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the Commercial Districts shall comply with the performance standards in Section 11-4-24.

11-9-8: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the BP District shall comply with the performance standards in Section 11-4-24.

11-10-8: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the M-1 District shall comply with the performance standards in Section 11-4-24.

11-10A-8: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the I-1 District shall comply with the performance standards in Section 11-4-24.

11-10B-9: PERFORMANCE STANDARDS: ~~Noise, glare, vibration, odor, etc., shall be regulated according to standards established by the Illinois Pollution Control Board of the Environmental Protection Agency, as may be amended from time to time.~~ All uses in the DC District shall comply with the performance standards in Section 11-4-24.