

Written Testimony - Agenda Item 104/82

Agenda Item	Name or Organization	Position	Comments	Attachment	Created
82	Western States Petroleum Association	Oppose		Yes	01/23/24 5:42 PM



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Via Online Written Testimony Portal

<https://www.portland.gov/council-clerk/submit-written-testimony>

Mayor Ted Wheeler and
Portland City Council
1221 SW Fourth Ave
Portland, OR 97204

Re: Opposing Agenda Item 82 – Right of Way Code Amendments

Mayor Wheeler and Members of the City Council:

I am writing on behalf of the Western States Petroleum Association (WSPA), whose members include pipeline and fuel-terminal operators in the City supplying most of the liquid fuels that Portlanders rely on daily. WSPA is a non-profit trade association that represents companies that produce and refine the fuels and create the energy we all need now and for the future, including renewables, biofuels, innovative solar and sustainable energy projects.

Pipelines within the City’s right-of-way are critical to these members’ operations, connecting the terminals in the City to Washington refineries (which supply approximately 90 percent of the fuel used in the state), the City of Eugene, Portland International Airport, and elsewhere. This infrastructure is vital to Portland’s everyday operations.

Pipelines provide the safest, cleanest, and most efficient means of transportation of liquid fuels. Proposed ROW Code § 12.15.090(1), however, interferes with the operation and maintenance of existing fuel pipelines and discourages the construction of new pipeline infrastructure. The proposed code also poses a health and safety risk to the citizens of the city. It’s important that pipeline operators are allowed to replace and provide maintenance to its pipelines as necessary, for the safe operation of equipment and protection of citizens. This proposed section mandates that licensees “operate in a manner that is consistent with City Code and Binding City Policy.” The exceptions to this unusual industry-specific section make clear that City staff plans to use this new code to interpret Resolution No. 37168 to ban new fossil-fuel pipes and many pipe alterations in

City right-of-way. Resolution No. 37168 declares City policy to oppose additions or alterations to fossil-fuel facilities that expand or increase the capacity to transport fossil fuels.

This would not only force more fuel to be transported by truck and train, but also obstruct Portland's transition to lower carbon fuels and construction of modern, pipelines and related facilities. Fuel content and emission mandates from the City of Portland, State of Oregon, and other jurisdictions will require the fuel industry to build new infrastructure to deliver lower carbon fuels. Proposed ROW Code § 12.15.090(1) will make this transition more difficult or impossible on needed projects.

The City also impermissibly attempts to implement land use regulations through draft ROW Code § 12.15.090(1). By referencing "binding city policy," City staff intends to interpret old policy to prohibit fossil-fuel pipes in the right-of-way. This fuel infrastructure ban was overturned by the Land Use Board of Appeals (LUBA) twice and is currently being litigated at the Oregon Court of Appeals and U.S. District Court for the District of Oregon in *State of Montana v. City of Portland*, Case No. 3:23-cv-00219-YY. Ensnaring the ROW code in this ongoing litigation does not seem appropriate.

These provisions are land use regulations because they implement standards¹ in the City's comprehensive plan² and impact the application of existing zoning code.³ As such, their adoption is subject to the City's code for amendments to zoning regulations and state law requirements for post-acknowledgement code amendments. PCC Ch 33.740. The City cannot avoid these LUBA decisions by merely adopting the prohibition within a new right-of-way code.

The ROW Code also states that "the Director may immediately revoke or terminate a licensee's license who expands or increases capacity to transport fossil fuels in violation of City Code and binding city policies." § 12.15.080(N)(1). This immediate revocation without hearing or appeal obviously fails to provide for constitutionally protected due process.

For the reasons outlined above, City Council should not approve the ROW Code as drafted. At a minimum, City Council should delete ROW Code §§ 12.15.090(1) and 12.15.080(N)(1).

¹ *E.g.*, "Fossil fuel distribution. Limit fossil fuels distribution and storage facilities to those necessary to serve the regional market." 2035 Comp Plan Pol'y 6.48.

² ORS 197.015(11) ("Land use regulation" means any local government zoning ordinance * * * or similar general ordinance establishing standards for implementing a comprehensive plan.").

³ See *Port of Hood River v. City of Hood River*, 47 Or LUBA 62, 68 (2004).

Thank you for your consideration of WSPA's comments.

Sincerely,



Sophia Steele
Sr. Manger, Government Affairs, NW Region

Cc: Jessica Spiegel, Sr. Director, Northwest Region