

Portland City Council Agenda  
 Written Testimony - Item 949-4/942/908

Agenda Item	Name or Organization	Position	Comments	Attachment	Created
1 908	Anonymous	Oppose	Our noise code, building code are ineffective as city agencies don't enforce	No	10/18/24 1:28 PM
2 908	Terry Harris	Oppose	For reasons outlined in the attached document, these "alignments" aren't ready for adoption.	Yes	10/22/24 10:20 AM

Terry J. Harris Comments on Code Alignments  
Council Item 908 - October 23, 2024

First and foremost, I have serious concerns about how these edits handle the City Administrator's ultimate responsibilities, particularly in administrative rulemaking, but also in other administrative duties that will almost certainly be delegated. I understand that you have a work session scheduled for the code revisions, so **I would strongly urge delay in the adoption of these titles until there is more refinement and clarity.** Specifically:

1. The edits to these code titles will necessarily depend on code elsewhere that describe the City Administrator's authority, and process, to delegate duties to DCAs, Bureau heads, and lesser officials like a "Noise Control Officer." The simplistic edits in these titles do not account for the delegations of authority so it is impossible to know how these codes are going to work in practice.
2. The simplified edits to the rulemaking authorities in these titles are legally insufficient. Simply restating the charter changes to say ONLY that "the City Administrator may adopt administrative rules as authorized by charter" is incorrect insofar as it ignores the Council's role in setting policy. This very basic separation of powers principle would require that regulations adopted by the City Administrator be constrained to the policy frameworks authorized by Council. Regulations must be anchored to, and conform with specific code chapters and sections. For this reason, the *existing* language in these titles is actually much more correct than the edited language being offered for your approval.

**In addition, I would urge remand to staff for a more careful line edit for the following reasons:**

1. There are errors in the way definitions are introduced and the scope of their application. For example, at the very outset of Title 14, definitions in ORS are said to apply to a "Chapter" when they probably actually apply to the entire "Title." I spotted confusion in definitions elsewhere between chapter and section and even subsection.
2. There are very few substantive changes in definitions, but it's unclear why there are any at all. For example, the definition of "Bicycle" in Title 14 seems utterly unnecessary for "alignment" with the charter. But more critically, for policy reasons, the definition of "bicycle" is a bad one. (E-bikes are not defined anywhere and therefore would be exempt from the restrictions in the camping ordinance, one of only two places in the code where the definition of bicycle is used as all.)
3. There are other substantive changes that go beyond mere "alignment." For example, in 14B.110.050, even if it makes complete sense (which I suspect it does), why is it necessary to delete the fee structure for amusement games and put them in an administrative rule? This has nothing whatsoever to do with alignment with the charter. (Moreover, it isn't completely clear

to me that the “corresponding administrative rule actually exists at the moment.) And you would be making this change without any reasonable notice to the regulated community.

4. On multiple occasions, the code revisions attempt to incorporate by reference other laws, standards, or regulations, but in doing so, create references that are immediately obsolete. (For example, the Harbors Title refers to a Coast Guard document that has been superseded since 2014). It is probably beyond the scope of this code revision project to correct all the obsolete references that currently exist in the code, but adding language to accommodate updates to the referenced material is a better practice. Adding something like “...or as may be updated from time to time” would keep our codes at least somewhat up to date.

5. Finally, for the record, I continue to object to the unnecessary and frequently incorrect removal of the word “shall” by replacing it with “must” or “will.” In particular, it adds ambiguity to the code where “shall” was being used to denote a duty. The vast majority of the edits in all of these code “alignments” are of this unnecessary variety.

Portland City Council Meeting  
Wednesday, October 23, 2024 - 9:30 a.m.  
Verbal Testimony

Agenda Item	Name
1 908	Terry Harris