



March 26, 2024

Zenith Energy
c/o Grady Reamer

DELIVERED ELECTRONICALLY

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**Notice of Determination
Warning and Letter of Education
Complaint No. 2023-4-Zenith Energy**

Dear Zenith Energy:

The City Elections Office is located within the City Auditor's Office and is responsible for enforcing the City's campaign finance and lobbying regulations. The City Elections Office received a complaint via email on August 2, 2023, alleging lobbying violations under [City Code Chapter 2.12 \(Regulation of Lobbying Entities\)](#). Our Office conducted an investigation and reviewed lobbying activity by Zenith Energy from the fourth quarter of 2021 through the first quarter of 2023.

The City Elections Office has determined Zenith Energy violated [Portland City Code Sections 2.12.030](#) and [2.12.040](#) by failing to register and file a report with the City of Portland as a lobbying entity for the third quarter of 2022. I concur with this determination.

As a result, Zenith Energy is issued a warning and letter of education. No monetary fine is being issued in this case.

I. Investigation Background

A. Investigation Timeline

The City Elections Office sent Notice of Complaint No. 2023-04-ZenithEnergy to Zenith Energy on September 7, 2023, spoke with and interviewed Grady Reamer on January 11, 2024, and issued a preliminary findings letter to Zenith Energy on February 5, 2024. Zenith Energy responded to the February 5 preliminary findings letter on February 20, 2024.

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B. Case Background

Zenith Energy is a bulk liquid storage/fuel products transloading facility that receives, stores, and distributes fuels – both renewable and nonrenewable out of a terminal in NW Portland located at 5501 NW Front St. In 2021, the Oregon Department of Environmental Quality (DEQ) notified Zenith they would need to renew their permit. DEQ's permit also requires an approved Land Use Compatibility Statement (LUCS) permitted through the Bureau of Development Services in the City of Portland (BDS).

In late 2021, Zenith was denied a LUCS permit by BDS. The Bureau declared the company's efforts did not meet the City's goals in its Climate Emergency Workplan or 2035 Comprehensive Plan. In 2022, Zenith again applied for a LUCS through BDS and was eventually granted approval. This LUCS and the communications involved in its approval were the focus of this investigation.

II. Findings of Fact

The City Elections Office investigated the complaint allegations, and the findings of fact are as follows:

A. 2022 Third Quarter Time Spent on Lobbying Activity

Table 1 includes lobbying communications from Zenith Energy to City officials during the third quarter of 2022. The table reflects Zenith Energy spent more than 8 hours in communication with City officials through in-person meetings, emails, and text messaging. Although similar communications occurred in other quarters, this investigation determined that only during the third quarter of 2022 did these communications exceed the 8-hour threshold set out in [City Code Chapter 2.12 \(Regulation of Lobbying Entities\)](#).

During this investigation, we reviewed City Official calendars, documents that included texts and emails relating to Zenith Energy, and files attached to those communications; we also interviewed the Directors of the Portland Bureau of Planning and Sustainability (BPS) and Bureau of Development Services (BDS), as well as a representative of Zenith Energy. We estimated the time Zenith spent lobbying through information gathered in interviews, average typing speed, length of communications, and reasonable assumptions about preparation required for certain activities and communications.¹

- According to interviews with Director Oliveira, Director Esau, Mr. Reamer, reviews of publicly posted calendars of both directors (**Exhibits A and B**), and email correspondence (**Exhibits C and D**), at least four meetings and one site tour took place between Zenith representatives and City Officials during the third

¹ A breakdown of the standards we used in calculating these estimates can be found in Appendix A.

quarter of 2022. As explained in section III of this letter, the meeting on August 8th is not included in our estimation of time spent lobbying. The total length of these activities including preparation is estimated at 5.25-10 hours. The subject matter of these interactions and communications are substantive in nature. See Table 1 for summaries of these activities.

- Zenith sent a written draft of a Land Use Compatibility Statement (LUCS)² to City Officials during the third quarter of 2022 that included a six-page letter discussing why the LUCS should be approved and concluding with the statement, “Simply put, this LUCS should be promptly issued.” **(Exhibit E)** The time spent drafting, editing, and sending this letter is a factor in our estimate of whether Zenith exceeded the threshold for lobbying. This time is estimated at 3-8 hours.
- Additional texts **(Exhibit F)** and emails **(Exhibit D)** indicate Zenith was communicating with City Officials for the purpose of having them take an action, in this case approving the referenced LUCS. The time spent on these texts and emails that have not already been referenced, discounting those related to clerical matters, is also a factor in our time estimate. This time is estimated at .5 to 2 hours.

TABLE 1: 2022 Third Quarter Communications

Date	Sender/ Participant	City Recipients	Type	Time	Content
Jul. 29	Zenith	Various City Officials including: Commissioners Ryan and Rubio, Chiefs of Staff, and the Directors of BPS and BDS	Site Tour	2-4 hrs	Tour of Zenith Terminal which included discussions of Zenith’s activities and plans. This estimate includes time to plan and prepare for the event. (Exhibit C)
Aug. 9	Chris West on Behalf of Zenith	Jillian Schoene	Email	.25- 1 hr	Zenith Energy and follow up to tour. The meeting organized by the Portland Business Alliance on August 8 th is not included in this estimate. ³ However, we are including the email to Jillian Schoene from

² We did not include the official LUCS filed with BDS in the evidence or in the estimation of time spent lobbying. Our estimates were related to communications involving the draft and accompanying documents.

³ See response to Zenith’s evidence regarding this communication under section III (Summary of Findings, Analysis, and Conclusion)

					Chris West on August 9 th and any meetings/preparation that is referenced in that email which may have occurred prior to August 8 th . (Exhibit D)
Aug. 23	Zenith	Commissioner Ryan's Chief of Staff and additional City staff	Email/Letter	3-8 hrs	Draft LUCS and detailed letter describing the draft, Zenith's activities, and a statement that the LUCS should be approved. (Exhibit E)
Aug. 30	Zenith	Directors Oliveira and Esau, and staff	Meeting	1.25-2 hrs	Zenith follow-up (Exhibit A and B)
Sep. 21	Zenith	Director Esau and staff	Meeting	.75-2 hrs	Zenith LUCS (Exhibit A)
Sep. 26	Zenith	Director Esau and staff	Meeting	1.25-2 hrs	Zenith LUCS (Exhibit A)
Sep. 2 – Oct. 3	Zenith	Director Esau	Text	.25-1 hr	Various texts discussing meetings and substantive information regarding the Zenith LUCS (Exhibit F)
Total Estimated Hours				8.75– 20 hrs	

B. Status and History of Registration as a Lobbying Entity

Zenith Energy has never been registered as lobbying entity with the City of Portland, including during the third quarter of 2022. At the time of this determination, Zenith Energy remains unregistered as a lobbying entity with the City.

III. Summary of Findings, Analysis, and Conclusion

The attached evidence in this investigation supports the conclusion that Zenith Energy violated [City Code Chapter 2.12](#) (Regulation of Lobbying Entities) by failing to register with the City as a lobbying entity and spending over 8 hours lobbying City officials during the third quarter of 2022.

A. Initial Findings and Analysis

During our interview with Grady Reamer of Zenith Energy, he did not dispute that Zenith engaged in the activities summarized in Table 1 above. However, during that interview and in their February 20 response **(Exhibit G)**, Zenith stated those meetings and communications did not amount to lobbying. Zenith claims their intention was simply to correct misinformation and inform City Officials about Zenith Energy as a company.

It is more likely than not that Zenith Energy participated in the above communications in order to gain approval of their LUCS. “Lobbying,” with some exceptions, means “attempting to influence the official action of City officials.” [Code Subsection 2.12.020 G](#) (Definitions). Certainty that the City official would take that action is not a requirement in determining if the communication is lobbying. Zenith Energy attempted to influence City

officials by communicating directly with City Directors and Commissioners with the ultimate purpose to gain approval of Zenith's LUCS.

B. Zenith Energy's Response

On February 20, our office received a written response from Zenith Energy addressing our preliminary findings (**Exhibit G**). Three main arguments were raised, and our analysis of those arguments is summarized here:

1. The August 8 meeting listed on the City's preliminary findings letter had nothing to do with Zenith.

Zenith provided evidence in the February 20 response that the August 8 meeting was not related to Zenith. Although the substance of the meeting may not have been directly related to the matter at hand, Chris West has on several occasions presented himself as a representative of Zenith, including in his introduction for this meeting as seen in the chat log for the meeting (**Exhibit D**). Zenith has not disputed that Chris West has represented Zenith in matters with the City of Portland.

We have taken into consideration the evidence provided by Zenith in relation to the substance of the meeting on August 8 and have accordingly reduced the estimated time for that event. However, as follow up to the August 8 meeting Chris West communicated with Jillian Schoene via email and we have included that communication in our estimate (**Exhibit D**). This email was originally included in the overall estimate for the August 8 meeting. Our estimate was reduced from 1-2 hours down to 15 minutes-1 hour. In the referenced August 9 email, Chris West states "Second, with regards to Zenith, I looped back with Sharla Moffett at OBI." The email goes on to outline this interaction and inquire about any questions stemming from the July 29 tour. This is a communication that is not merely ministerial in nature and directly references time spent preparing for the communication.

2. Listed Zenith activities do not constitute lobbying under the City's definition.

Zenith Energy argued that for several stated reasons the actions outlined in Table 1 did not constitute lobbying as defined in [City Code Subsection 2.12.020 G](#) (Definitions). Even if a communication did not directly involve an individual asking for a City official to take an action, it can still constitute lobbying. On July 29, 2022, as shown in Table 1, Zenith invited City officials to tour and discuss recent activity at the terminal. This tour took place during a time that Zenith was attempting to get a LUCS approved. A similar LUCS application from Zenith had previously been denied by the City. According to Zenith themselves, the tour was meant to correct misinformation from bad press⁴. It is more likely than not that Zenith wanted to convince City officials the terminal was a positive endeavor and that plans were

⁴ See Exhibit G for this statement that was also mentioned during the interview with Grady Reamer

moving in the right direction to gain approval for a new LUCS. We conclude that Zenith's application for the LUCS referenced in this case was a primary factor in their communications with the City during the third quarter of 2022.

In their February 20 response, Zenith mentions [ARA-15.01\(E\)\(5\)](#) (Attempts to Gain Goodwill) as an argument that the tour was an educational activity and an attempt to gain goodwill and therefore not a lobbying activity. [ARA-15.01\(E\)\(5\)](#) should not be read to exempt all attempts to gain goodwill solely because they can be found to be educational. The context and timing in this case ties the attempts to gain goodwill directly to an action that Zenith wanted the City to take and therefore can be considered lobbying even in the instance that it was also educational.

Finally, Zenith stated that estimates of preparation time should not include time to prepare required materials, specifically the LUCS document filed with BDS. They argued that "there is nothing in the City's code definition to suggest that this "preparation time" should include the time to prepare land use application materials that an applicant is *required* to prepare to receive a permit or authorization from the City." In this case, we do not include those documents in the totals we have estimated. As noted in Table 1, the communication that is considered lobbying is the draft and accompanying letter that was sent not to BDS, but directly to at-will staff of City Commissioners. This letter is not required to complete a LUCS. Instead, it is more likely than not that Zenith sent this communication because they believed that Commissioners and their staff could influence the ultimate outcome of the LUCS, whether through feedback directly or through interactions with BDS staff. During our interviews with BDS Director Esau and BPS Director Oliveira, it was made clear that the communications involved in approving this specific LUCS went beyond what they considered the standard process.

3. Estimation of time for communications is not accurate.

Our methodology for determining time estimates in this case can be found in **Appendix A**. These standards take into account industry expertise, contextual details, and default to conservative estimates. It is more likely than not that some amount of preparation takes place for any meeting that involves an industry expert speaking to a City official. In some cases, this preparation is not clearly attached to a specific meeting. In this case, it is very unlikely that Zenith attended meetings with City Officials with no preparation.

In their February 20 response, Zenith gave an example of a communication on August 30 (noted in Table 1 above) in which they believe the listed 1-2 hours was overestimated. Zenith stated that no preparation took place for this meeting and the meeting itself was only 1 hour. Per our standard shown in **Appendix A**, we apply 15 minutes of preparation time to every hour of meeting time. We did not consider Zenith's statement evidence that no preparation was required. Final determinations of whether the 8-hour threshold was exceeded were based on the minimum possible estimate, not the maximum.

C. Conclusion

It is our conclusion that Zenith Energy exceeded the 8-hour threshold of lobbying in the third quarter of 2022 and should have registered and reported activity to the City of Portland in accordance with [City Code Chapter 2.12](#) (Regulation of Lobbying Entities).

Mitigating factors in this case include:

- No prior warnings or violations by Zenith Energy.
- Zenith Energy's full and timely cooperation with Auditor's Office staff at every point in the investigation.
- A low volume of lobbying activity during the violating quarter.

Based on these mitigating factors and facts of the case, the City is not issuing a monetary fine at this time for violations of the Lobbying code. This warning letter recommends participation in lobbying regulation training should further communications take place between Zenith Energy and Portland City officials.

IV. Additional Training Recommended

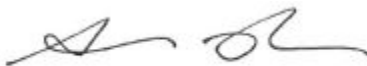
Zenith Energy staff, officials, and lobbyists who interact with Portland City officials on a regular basis are encouraged to review lobbying regulation requirements and participate in training provided by the Auditor's Office. Lobbying regulation resources are available on our [Report Lobbying Activities](#) and [Lobbyist and Political Consultant Resources](#) webpages. Virtual training sessions may also be coordinated by contacting our office.

V. Reconsideration and Appeal

Any individual or entity against whom a civil penalty has been issued may request a reconsideration and appeal a decision on reconsideration as provided for in [ARA 15.03\(H\) \(Regulation of Lobbying Entities: Enforcement and Civil Penalties\)](#).

If you have any questions, please contact James Eccles (james.eccles@portlandoregon.gov), at your earliest convenience.

Sincerely,



Simone Rede
City Auditor

Please note that the information in this matter will be retained and may be considered in future reviews of compliance with the City's lobbying regulations.

APPENDIX A

In determining whether Zenith Energy exceeded the 8-hour lobbying thresholds set out in [City Code Chapter 2.12](#) (Regulation of Lobbying Entities), the City Elections Office used the following standards:

1. If a meeting was determined to be a lobbying communication, outside of written evidence to the contrary, the entire duration of the meeting is added to the total estimate. This is true even if portions of that meeting may not have been lobbying.
2. When determining preparation for the meetings in subsection (1) above, a minimum estimate of 15 minutes preparing for every 1 hour of meeting is assumed. Additional time may be added when context or evidence suggests more preparation was conducted.
3. When determining the time spent on a written communication, a minimum estimate is based on an average typing speed of 40 words per minute⁵ and 15 additional minutes of editing/research/review per page of writing.
4. As much as is possible, time estimates are confirmed during interviews. Information is also gathered during interviews relating to any circumstances that may increase or decrease time estimates.
5. Specific estimates may vary from one communication to the next as complexity and method differ.
6. When determining whether a threshold resulting in a violation of Portland City Code has been exceeded, the minimum estimate of time is used. The upper threshold of the estimate can be used in considering aggravating or mitigating factors.

⁵ According to [The American Society of Administrative Professionals](#)