



## Legislation Text

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**File #:** ID-25-19, **Version:** 1

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Department of Community Development

Reference: E-470 Hazardous Material Route Designation

**To:** Mayor Kenneth J. Kreutzer and Members of City Council

**Through:** Philip A. Rodriguez, City Manager

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**Date Prepared:** January 10, 2019

### **PURPOSE**

Per the direction of City Council at their October 23, 2018 and December 11, 2018, Study Sessions, City staff is bringing forth additional information regarding the potential designation of E-470 as a Hazardous Materials ("HazMat") route. Additionally, City staff is looking for direction from City Council as to whether or not the City of Brighton should join in petitioning the Colorado State Patrol for HazMat designation of E-470 from Interstate 25 to Interstate 76.

### **STRATEGIC FOCUS AREAS**

- Strong Regional Relationships and Partnerships
- Safe, Active and Engaged Community

### **BACKGROUND**

On December 11, 2018, City staff brought forth further information regarding nearby current HazMat routes, potential sections of highway designation, the process to designate a route, the positions of other local governmental jurisdictions, and the Brighton Fire Rescue District's position. Additionally, staff reviewed the Comprehensive Plan's designations for the areas around E-470 and presented a list of pros and cons for designation.

### **CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM**

Colorado Revised Statutes Section 42-20, 'Transportation of Hazardous and Nuclear Materials', outlines the procedures for HazMat route designation. The Authority itself is not eligible to directly petition the Patrol for designation. The Authority's member jurisdictions are empowered to petition the Patrol to designate E-470 as a HazMat route for those portions of the highway that lie within their respective jurisdictions in accordance with the statutory provisions and the Patrol's rules and regulations.

Early in 2019, Colorado Senate Bill 19-032 was proposed to allow for public highway authorities, such as the E-470 Public Highway Authority ("Authority"), to directly apply to the Colorado State Patrol ("Patrol") for a new or

modified HazMat route designation for a road or highway that it directly or indirectly maintains. If, and or when this becomes law, the Authority will not need the City of Brighton to support a petition to the Patrol.

### **SUMMARY OF FINDINGS / STAFF ANALYSIS**

From City Council's comments at the Study Session on December 11, 2018, staff comprised a list of questions that warranted further analysis. Those questions and subsequent analysis are covered in the following text.

Hazardous materials come in numerous forms as solids, liquids, or gases that can harm people, other living organisms, property, or the environment. Diamond shaped symbols are used to indicate what type of material is in the container or building where the materials are being stored. The color indicates the hazard that the materials present. Hazardous materials are divided into nine classes on the basis of the specific chemical characteristics producing the risk. The breakdown is as follows: Class 1: Explosives, Class 2: Gases, Class 3: Flammable Liquids, Class 4: Flammable Solids, Class 5: Oxidizing Agents and Organic Peroxides, Class 6: Toxic and Infectious Substances, Class 7: Radioactive Substances, Class 8: Corrosive Substances, and Class 9: Miscellaneous. Most classes have several sub-classes.

The US Hazardous Materials Transportation Act of 1975 established uniform standards for HazMat transportation. Those standards are enforced through the US Code of Federal Regulations that established a Hazardous Materials Table that designates how certain materials need to be transported nationwide. This goes in depth into the ways to ship materials and outlines quantities for allowable shipping under certain regulations. Hazardous materials in transportation must be placarded by class and have specific packaging and labelling. Some materials must always be placarded while others may only require placarding in certain circumstances.

Commercial carriers transporting hazardous materials in Colorado must obtain a permit from the Colorado Public Utilities Commission. Permitting and safety requirements for the transportation of such materials are enforced by the Colorado State Patrol (CSP). The CSP handles enforcement to ensure that routes are being followed. Their Hazardous Materials Section has officers stationed at ten locations across the state. This group is responsible for statewide HazMat routing, regulation, inspection, and reimbursement rulemaking for incidents. Vehicles carrying hazardous materials are subject to inspection by the CSP, must provide proof of liability insurance, may be taken out of service for violations, and are subject to fines and criminal penalties. Single-trip permits for hazardous materials transportation (for up to a 72-hour period) may be obtained for a port of entry from CSP. As was discussed previously, the CSP has the authority to designate which public roads may be used for hazardous materials transportation, and they must provide adequate public notice before a hazardous materials route designation.

Per the CSP, vehicles carrying an amount of hazardous materials that require placards, must remain on designated HazMat routes. There are four exceptions to this rule, which are as follows: the hauler may leave an authorized route in order to service a vehicle; for local pickup or delivery of hazardous materials; due to emergencies that would make continued use of the route unsafe; or when the route is closed pursuant to state statutes. Also, a HazMat hauler may make successive local pickups and deliveries without returning to the route between stops when returning to the HazMat route is unreasonable. Routing for trips is part of the submission for a permit and carriers keep with them a copy of the approved route. In Colorado, per CDOT, 90 to 95% of the transported HazMat items on roadways are fuel related.

A few of Council's unanswered questions could be fleshed out in a Hazardous Materials Routing Petition. The accompanying study to a petition needs to analyze current conditions including truck traffic, must analyze safety data, the impact on industry, proximity to population, schools, hospitals, environmentally sensitive areas, and emergency response providers. Information must also be provided that the route does not unreasonably burden interstate or intrastate commerce, that the route is not arbitrary or intended to by the petitioner merely to divert carriers to other communities, that the route will not interfere with the pickup and

delivery of hazardous materials, and that it is consistent with all application of state and federal laws and regulations. Public outreach must be demonstrated in the petition. In looking at a sample study and petition, staff finds that safety figures are provided along with current traffic conditions, but missing is any type of information on how much additional traffic a designation creates or any information on how the new route will divert trips along existing routes.

A route in Colorado has never been reversed. The process to rescind a route is the same as the one to designate, but the removal of a route cannot harm or impede business. This would leave a proposed route removal open to many objections. A major objection would be that replacing a current route with E-470 would be difficult as it is a toll road and that can be thought of to harm business as it adds an additional cost. There is no process to make one route's designation contingent on another going away.

CDOT is generally not in favor of committing resources without strong nod in the affirmative by entities in the form of being a requestor of record. This means that a lot of the analysis that will be conducted for a study will not be performed unless Brighton signals that it is supportive. However, if the Authority wishes to move forward in conducting analysis on its own at its own expense, there should be no harm in that and would likely be beneficial. Brighton may consider granting favor for moving forward with further analysis, but withhold any formal support for the designation petition until after the study and analysis is complete. Brighton should not become a 'requestor of record' until it is completely comfortable with designation.

Per the City's staff members focused on economic development and urban policy, site selection firms have voiced their concern about attracting non-manufacturing and distribution firms to sites located adjacent to HazMat routes. This is of concern as the City has significant undeveloped area adjacent to the proposed route that are planned for employment and commercial purposes. To that effect, the developers of Adams Crossing have expressed their discouragement of the possible route. In their mind, and from staff's perspective, there is a real potential that HazMat designation could negatively impact these areas and consequently destine these areas to develop with more of the same as seen along the nearby I-76 corridor.

As mentioned earlier, if the proposed piece of legislation is passed, the Authority can move forward without the City's approval. If a position is taken to oppose a designation as requested by the Authority, City representatives would have to speak up during the public outreach portion of the petition process or Council would have to submit a letter of opposition.

### **STAFF RECOMMENDATION**

As noted in the December 11<sup>th</sup> staff report and at the study session meeting, the City already has two vehicle transportation routes (US-85 and I-76) and two railroads that more than adequately serve our community and the northeast region. In fact, one may argue that Brighton already has a disproportionate amount as compared to other neighboring cities. Further, after additional research as directed by Council, there is no indication that the designation of a route on E-470 will reduce the amount of HazMat traffic on existing routes and it is highly unlikely that we would be able to petition for the removal of an existing route. Lastly, there is a potential that future employers that the Brighton desires to attract to the area, may not be desirous of sites that fall along a HazMat route. For these reasons, City staff does not support the designation of E-470 as a HazMat route.

### **NEXT STEPS**

Per the City Attorney, a formal vote would need to occur for the City to issue a letter of support or opposition to the petition. This can be done by Resolution and it could authorize the Mayor to evidence the support or opposition by sending a letter. If Council provides direction that they are generally in support or opposition of the designation, City staff will schedule the item for an upcoming City Council meeting, provide a draft Resolution, and provide a draft letter in support or opposition of designation. Council may also make a determination to not voice its support or opposition at this time in order to wait and hear further about the

proposed legislation at an upcoming Study Session.

**ATTACHMENTS**

- CDOT Map of Colorado Hazardous and Nuclear Materials Routes
- Draft City Staff PowerPoint
- City Staff's Report for Study Session on 12/11/18
- City Staff's PowerPoint for Study Session on 12/11/18
- Comprehensive Plan's Future Land Use Map
- Hazmat Opposition Letter from Adams Crossing
- Authority's Safety Summary for E-470 Near Brighton
- Authority's E-470 Quincy to I-70 Safety Analysis