

TRN-8.11 - Right of Way Leasing: Fee Structure

RIGHT OF WAY LEASING: FEE STRUCTURE

Administrative Rule Adopted by Bureau of Transportation Pursuant to Rule-Making Authority

ARB-TRN-8.11

I. Background

This rule is intended to clarify and standardize program guidelines for leasing real property and public right-of-way under the existing authority of the Director of the Bureau of Transportation. Through Title 17.16.140(E), the Portland City Council has authorized the Director of the Bureau of Transportation to “rent or lease real property or public right-of-way assigned to the Bureau of Transportation which may not be needed for public use during the term of the rental or lease for any term permitted by statute.” Such leases and rentals would include but are not limited to the lease of fee owned land and the air space, subsurface, and surface of the right-of-way.

As the stewards of the right-of-way, the City has an obligation to manage the land on behalf of the public. To accomplish this, it is appropriate practice to charge developers and others who wish to alienate the public right-of-way for their own purposes. This rule will set out the methodology for determining the value of right-of-way occupied by private facilities.

While specific types of leases such as cell tower sites, ATMs and food carts may be based on market rates for that particular use, most leases are based on a formula that includes the land value of the private lands adjoining the right-of-way, the area of proposed use, the alienation factor of the right-of-way and the rate of return.

Regardless of the type of lease, the alienation of that specific leased space typically limits what can be done with the remaining space above or below ground and therefore reduces the residual value of the space not occupied by the facility. Examples would be the need to construct or access utilities; the ability to construct transit related infrastructure such as street lights, catenary poles, signage, street trees and landscaping; and the loss of light, view and open space.

Alienation rates typically vary from 25% to 100% depending on the proposed use. A surface use that effectively eliminates other uses of the land would generally have an alienation rate of 100%, while a subsurface use that allows for shallow utilities, street lights, street trees, sidewalks and other transit related facilities may be more along the lines of 50%. Air space leases frequently alienate public use considerably, both above and below grade, and therefore may

result in an alienation rate of 75%. That being said, the further the facility is from the surface of the ground, the lower the alienation rate may be due to the less restrictive nature as it pertains to the other potential uses that remain with the right-of-way. A reduction to the alienation rate may also be made when the City's special design guidelines encourage encroachments into the right-of-way, such as the arcaded section of E. Burnside Street.

II. Rule

Effective upon enactment, the following program guidelines for leasing shall be in effect and shall be adhered to unless modifications are allowed by the Director of the Bureau of Transportation:

- 1) The Bureau of Transportation may enter into 3 types of leases for the right-of-way: Air Space, Subsurface, or Surface;
- 2) Lease rates identified in this rule shall be found in the Bureau of Transportation's fee schedule. Rates not contained in the schedule are based on a methodology contained herein; however, all annual lease rates shall be no less than the minimum rate as listed on the current fee schedule;
- 3) Evaluations under TRN 8.01 – Major Encroachments in the Public Right-of-Way, TRN 8.08 – Encroachments in the Public Right-of-Way, and TRN 10.19 – Utility Permits in the Right-of-Way, shall be made by the Bureau of Transportation;
- 4) Right-of-Way leases are not granted automatically under this rule; they shall be made after analysis, and at the discretion of the Bureau of Transportation;
- 5) All leases are subject to any additional terms and conditions applied by the Bureau of Transportation.

Specific Conditions for Types of Leases

A. Air Space Lease:

Air Space Leases are divided into categories of skystructures and building encroachments. Both skystructures and building encroachments shall be evaluated for compatibility and applicability separately under TRN 8.01. Air Space Leases shall typically be long-term leases. If the use of the right-of-way includes revenue generating space (e.g. retail use), that portion of the leased area shall be at market value.

- 1) Type I, II and III Skystructures as defined under TRN 8.01 shall have a base lease rate as described in the Bureau of Transportation's fee schedule;
- 2) Building Encroachments as defined under TRN 8.01 such as building projections considered to be major encroachments per International Building Code regulations for Commercial, Office, or Residential shall have leases based on market value.

land value x area x degree of alienation factor x rate of return

ex. \$80/sf x 1,500sf x 75% x 10% = \$9,000 per year

3) Communication Devices attached to City-owned light and signal structures shall have a base lease rate as described in the Bureau of Transportation's fee schedule.

B. Subsurface Lease:

Subsurface Leases are divided into categories of Parking Garages and Vaulted Basements, Underground Malls and Tunnels, and Utility Vaults and Utility Structures. Many subsurface encroachments are considered major encroachments and shall be evaluated under TRN 8.01 for compatibility and applicability separately. Subsurface leases shall typically be long-term leases. For Underground Malls, if the use of the right-of-way includes revenue generating space (e.g. retail use), that portion of the leased area shall be valued at market value.

1) Parking Garages and Vaulted Basements shall have leases based on the market value of the total area that encroaches into the public right-of-way. To provide buffer space around the encroachment, its dimensions will be increased by one foot on all sides of the encroachment. Said buffer space is only applicable if it's in the public right-of-way.

land value x area x degree of alienation factor x rate of return

ex. \$50/sf x 2,000sf x 50% x 10% = \$5,000 per year

2) Utility Access, Walkway, Vehicle Tunnels, and Underground Malls shall have a lease rate as described in the Bureau of Transportation's fee schedule. If use of the right-of-way contains revenue generating space (e.g. retail use), that portion of the area shall be leased at market value.

3) Utility Vaults and Utility Structures, individually or collectively known as ("UV"), to be placed or modified within the right-of-way for the benefit of the adjacent property owner, as a condition of TRN-10.19, will require a lease. The adjacent property owner benefitting from the UV shall enter into a long-term lease with the City of Portland, Bureau of Transportation. The use of the right-of-way for the lease shall be based on market value. To provide buffer space around the UV and any accessory infrastructure such as venting equipment, its dimensions will be increased by one foot on all sides of the encroachment. Said buffer space is only applicable if it's in the public right-of-way.

land value x area x degree of alienation factor x rate of return

ex. \$150/sf x 336sf x 50% x 10% = \$2,520 per year

Altering the size of an existing UV will trigger PBOT's requirement for a lease. Routine maintenance, equipment changes and new vault lids will not trigger this requirement.

A Vault fee reduction waiver of 50% may be made for qualified affordable housing projects. For the purpose of this fee reduction waiver, a qualified Affordable Housing project is defined in Title 30.01.030.B. Additionally, all projects must be City Subsidy Projects as defined in Title 30.01.030.E. To qualify for the fee reduction, the applicant must present to the Portland Bureau of Transportation, at the time of lease application, documentation from the Portland Housing Bureau that the development qualifies for the fee reduction. The applicant must also pay all administrative fees associated with the lease, which are not subject to a fee reduction.

In the event that a previously qualified affordable housing project no longer qualifies for City subsidies under the requirements of Title 30, the lease will be amended to adjust the reduced lease rate to the then market rate and calculated as described in this section. Lessee will be required to pay all administrative fees associated with this action.

C. Surface Lease

Surface Leases are divided into three categories: Fee Owned Property, Under Structure right-of-way (e.g. bridge), and Street Grade right-of-way. Fee Owned Property and Under Structure right-of-way leases may be either long- or short-term.

- 1) For Fee Owned Property leased for exclusive use, the base lease rate shall be set at market value;
- 2) For Fee Owned Property leased for wireless communications, ATMs, or other specialty uses, market value shall be determined based upon facility type and a rent study;
- 3) For Under Structure areas leased as a parking lot, the base lease rate shall be set at market value based on per space rate;
- 4) For Under Structure areas leased as storage, the base lease rate shall be set at market value based upon the total square footage.

For Street Grade right-of-way, leases shall be short-term and there are several factors that should be analyzed when this category of lease is contemplated:

- 1) The potential for use by the public, including traffic, pedestrian, bicycle and on-street parking;
- 2) Whether or not the right-of-way only serves one or a limited number of properties in support of the lease, and;
- 3) Bureau of Transportation assets including regulation of on-street parking and level of street improvements.

If analysis allows for leasing Street Grade right-of-way, the base lease rate shall be set at market value.

III. Discussion

This rule may be applied at any time upon determination of the Director of the Bureau of Transportation or designee. Fees are laid out in the rate schedule or methodology contained herein. Minor modifications to rates may be made by the Bureau of Transportation through authority granted in TRN 3.450 or through adoption of the rate schedule by City Council. For rates currently in effect, consult the Fee Schedule for the Portland Bureau of Transportation.

IV. Reference

Pursuant to Rulemaking Authority under 3.12.

Title 17.16.140

City Charter Section 1-104

HISTORY

Adopted by Assistant Director of Portland Bureau of Transportation 10/21/2015.

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Amended by Director of Portland Bureau of Transportation 6/11/2019.