

# Public Works Permitting Administrative Rules

## TRN – 9.07

July 2024

### CITY OF PORTLAND PUBLIC WORKS PERMITTING

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*These are administrative rules of the City of Portland's Public Works Permitting Program.*

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## **1. Applicability**

These rules apply to any person wishing or required to modify, remove, or install an improvement that serves the public and that will be or has been relinquished to the City for long-term maintenance.

## **2. Purpose**

These rules establish City decision-making, processing, and fee requirements for review and approval of certain public works permits. Additional permits may need to be obtained from other City bureaus or agencies outside of the City.

## **3. Definitions**

Certain terms used in these rules are defined by Portland City Code (PCC) Chapters 17.04 and 17.06.

## **4. Regulatory Authority**

These rules are adopted by City Council to implement the broad permitting authorities granted in PCC Chapters 17.06, 17.24, and 17.32 but may be amended from time to time by the Director of the Portland Bureau of Transportation (PBOT) in consultation with the Directors of the Portland Water Bureau (PWB) and the Bureau of Environmental Services (BES).

## **5. Permit Types**

There is a variety of public works permits that may be required for development proposals within public rights-of-way (ROW) and easements as described in the PCC. Permits may apply to projects that will result in improvements to the infrastructure of a single City bureau or multiple City bureaus. The affected bureaus will determine which permits apply to a certain project. The following is a non-exhaustive list of those permits (from simplest to most complex):

- A. BES Simplified Permit (SP). This permit is for certain sanitary sewer extensions of less than 100 feet. A development proposal that would result in any of the following is generally *not* eligible for an SP, even if the proposed sanitary sewer extension would be less than 100 feet:
  1. A location outside the public ROW;
  2. Construction in arterial streets or other locations requiring extensive traffic control;

3. Conflict with standard proximity rules pertaining to utilities;
4. A crossing of any regional utility service line or a cross-section of public ROW with a high density of utility lines;
5. Construction of a manhole 12 feet deep or greater;
6. A sewer main greater than 18 feet deep;
7. An extension from a brick manhole, or brick or clay sewer;
8. An extension from a City storm sewer, interceptor line, or combination sewer where the proposed pipe size deviates from the minimum pipe size required;
9. An excavation at or near structures or retaining walls;
10. An excavation within 50 feet of a water body or located in high groundwater areas; or
11. The need for a design variance from the standards of the City's *Sewer and Drainage Facilities Design Manual*.

**B. BES Basic Sewer Extension.** This BES permit type generally includes all candidate projects for BES separate sewer extension permits that do not meet SP criteria but that involve all of the following:

1. A proposal for only one sewer line;
2. A location within existing improved ROW;
3. A proposal for sewers that are 8 inches in diameter for sanitary sewer lines or 12 inches in diameter for stormwater or combination sewer lines;
4. A proposal for at least one excavation between 6 and 18 feet deep;
5. The need for a sewer extension of less than 300 feet in length;
6. A proposal to use standard pipe material;
7. No proposal for new outfalls; and
8. A location other than within the Central City area.

**C. PBOT Grade-and-Gravel Permit.** The grade-and-gravel permit is intended for streets that are graded at least well enough for a passenger vehicle to pass safely. The need for grading should be minor and is usually accomplished with a small motorized blade grader or rubber-tire bulldozer. Grading that requires a large excavator and involves the following would not generally be allowed under a grade-and-gravel permit:

1. Significant clearing and grubbing of trees and brush;
2. Removal of manmade obstructions such as structures, walls, or fences;
3. Major utility relocation or grade adjustments;

4. Retaining walls; or
5. An embankment building.

**D. PBOT Limited Permit.** This PBOT permit authorizes sidewalk and driveway improvements that require a minimal level of engineering review. Improvements of sidewalk corners with existing or planned Americans with Disabilities Act-compliant ramps may be allowed under a PBOT Limited Permit at the discretion of the City Engineer. A PBOT Limited Permit is only allowed when *all* of the following are true:

1. The location of the proposed development has an existing curb or some other type of public improvement (such as edge of pavement) that allows the grade and alignment of the sidewalk to be set;
2. No change in street grade or drainage pattern is proposed; and
3. The location of the proposed development has an established stormwater conveyance and disposal system, such as a stormwater inlet or swale.

**E. Public Works Residential Infill Development Permit.** This permit authorizes the construction of street improvements and stormwater facilities for infill development and can be a PBOT-only, BES-only, or joint PBOT and BES permit. This permit may only be used if the proposed development:

1. Would be served by an existing roadway identified in the Transportation System Plan as a local residential street;
2. Would be served by an existing, paved, City-maintained street;
3. Would not be located within a special street design district;
4. Has 150 feet or less of total street frontage (counting both adjacent streets for corner lots);
5. Would require no more than two stormwater management facilities;
6. Would be served by a BES-approved nearby stormwater disposal point;
7. Would not conflict with standard proximity rules pertaining to utilities and would not cross a section of public ROW containing a high density of utility lines; and
8. Would not involve:
  - a. A traffic operational change;
  - b. An alternative street or stormwater facility design; or
  - c. A storm or sanitary sewer extension.

**F. Public Works Permit.** This permit applies to all development proposals except those to which the PBOT Limited, BES Access, BES Simplified, Public Works Residential Infill, BES Basic Extension, or Public Works Complex Permits apply.

This permit is either a joint BES and PBOT permit or a stand-alone PBOT or BES permit.

**G. Public Works Complex Permit.** This permit is for projects for which a number of factors necessitate additional review. For example, a Complex Permit may be required if the proposed project would:

1. Result in a project that the City would consider “large” because it would disturb more than 800 lineal feet of frontage or of a pipeline or drainage system extension;
2. Involve an alternative design for project scope;
3. Require permitting and construction on a schedule contrary to the standard City permit and construction sequence;
4. Involve the use of special materials (e.g., porous pavement);
5. Result in a development with no approved stormwater disposal point;
6. Conflict with standard proximity rules pertaining to utilities or cross a section of public ROW containing a high density of utility lines;
7. Require special structural review (e.g., a bridge);
8. Require encroachment permits for use of City ROW;
9. Require inter-bureau or inter-agency agreements; or
10. Require permits from other jurisdictions (e.g., ODOT, Corp of Engineers).

## **6. Submittal Requirements**

The City’s public works bureaus will identify the complete submittal requirements for permit applications.

**A. Authorized Persons.** A Public Works Permit may only be issued to the owner of the property to be served or to a developer or contractor who is authorized by the owner to construct improvements. The applicant is responsible for completing the work allowed under the permit. Regardless of which party signs the permit, both the applicant and the contractor are subject to its terms and must jointly assure that its requirements are satisfied.

**B. Application Requirements.** An applicant is solely responsible for all costs associated with collecting information for a public works permit application and costs associated with errors in permit submittals.

1. *Public Works Permit Application.* A public works permit applicant must submit a Public Works application form to the City to commence a public works permit review.
2. *Concept Development.* An applicant must bring conceptual plans for the public works improvements as well as supporting information regarding the

development site and planned land uses as applicable to the project per the forms on the Public Works Permitting website. A deposit fee is required at the time of the concept development submittal.

3. If the concept development submittal is approved, the City will provide a permit fee invoice for the project, an estimate of the construction inspection fees, and an estimate of the amounts and types of any financial guarantees required before the City public works bureaus will approve the development plans.
4. *Design Development.* An applicant must submit to the City detailed plans for the proposed public works improvements, all applicable permit fees, and information as applicable to the project per the forms on the Public Works Permitting website.
5. *Final Plans Review.* An applicant must submit to the City final plans for the public works improvements, all applicable fees, and information as applicable to the project per the forms on the Public Works Permitting website.
6. *Bonds and Insurance.* The City requires bonds and liability insurance for construction of public improvements.
  - a. *Performance Guarantee.* The permittee must provide a fully-executed performance guarantee in an amount equal to the estimated construction cost of the project and complete all punch-list items before the public works permit will be released and the improvements accepted by the BES Chief Engineer or the City Engineer.
  - b. *Maintenance Guarantee.* The permittee must guarantee the first two years of the operation of the installed public improvements in an amount equal to 20% of the estimated construction cost for the project, although the warranty period may be extended by the City for failure to maintain the improvements. The guarantee will be released upon formal, written acceptance of the improvements by the BES Chief Engineer or City Engineer at the end of the warranty period.
  - c. *Liability Insurance.* An insurance certificate and endorsement form listing the City of Portland as an additional insured entity must be provided, subject to the City Attorney's approval, prior to issuance of the public works permit.

## **7. Permit Review**

A permit application must satisfy all applicable City public improvement standards and construction specifications and must be determined to be complete before the City will review it.

**A. Standard Review.** Technical guidance manuals and design guidelines applicable to public works improvement permit applications include, but are not limited to, the *Street Design Guidelines*, *Pedestrian Guidelines*, *Sewer and Drainage Facilities Design Manual*, *Stormwater Management Manual*, and the Oregon Plumbing Specialty Code. Engineering calculations for sizing, depth, and other attributes will be checked to ensure that they provide adequate use estimates for City services. Constructability and maintenance issues will be verified through plan review. At a minimum, the proposed project must meet or exceed current:

1. Engineering design specifications;
2. Constructability needs;
3. Maintenance standards;
4. Environmental regulations; and
5. Permit conditions.

Requests for deviations from requirements may be made in writing to the City Engineer or BES Chief Engineer, as applicable. Appeals of the application of these rules are discussed in Section 12 below.

## **8. Inspections**

- A.** City inspectors will visit a project site multiple times during construction to assure conformance with the site's public works permits and will list any deficiencies that need to be corrected. Failure to comply with the instructions of a public works inspector may lead to City enforcement action or to delay or refusal of the City to accept a public improvement.
- B.** The applicant will be invoiced for all inspection costs separately from the public works fees described in Section 9 of these rules. BES construction management and inspection fees are described in Administrative Rules ENB-4.11. PBOT construction management and inspection fees are described in Administrative Rules TRN-10.43.
- C.** Inspections and City acceptance must occur before the performance and warranty bonds will be released.

## **9. Fees**

Permit fees are intended to allow the City to recover all of its costs for design and review services. This section describes the general criteria used to calculate fees for the permit types listed in Section 5 of these rules. Set fees and fee component rates are established on an annual basis through rate ordinances approved by City Council. There may be both PBOT and BES fees, as well as a PWB consultation fee. The applicant will be invoiced for the fees at the concept approval stage, unless the desired permit is a set-fee permit with fees due at the time of permit application

under section 10(A)(1) of this rule. The fees will be revised if there is a scope change for the project.

The methodology for calculating the public works permit fee will be published on the City's public works website and may be used by the public for estimating the fee. The appropriate permit fees will be determined by the affected bureaus during the concept phase.

- A. PBOT fees.** The PBOT portion of the fee will have a base fee plus a fee per lineal foot of curb or sidewalk improvements proposed or required:
1. *Base fees.* Infill Residential or Commercial fees will be applied, as appropriate.
  2. *Additional costs.* Each of the transportation elements (street lighting, signals, traffic, parking, & structures) will have a separate calculation methodology for review and inspection of modifications to them.
    - a. *Street Lighting.* Option C fees are charged per block face and apply to South Waterfront; the Pearl District and the Lloyd Center and Central Business Districts; and residential subdivisions. For all other areas, Option B fees are charged per light and apply to stand-alone lights on wood poles.
    - b. *Signals.* New signal systems and modifications to or relocations of existing signal systems are subject to different fees, which are based on the number of systems proposed or affected.
    - c. *Traffic.* A fee will be assessed for each lineal foot of curb in residential and commercial streets. A residential fee will be assessed for improvements on streets that are classified as local service with predominately single-family residences; a commercial fee applies elsewhere.
    - d. *Parking.* A fee will be assessed for commercial areas where parking is controlled, such as the Central Business, Pearl, South Waterfront, and Lloyd Center Districts. Other streets located in commercial districts may also require a traffic parking review.
    - e. *Structures.* Most structures that are constructed under encroachment permits will be subject to the review fees established by those permits.
- B. BES fees.** The BES portion of the PW permit fee is comprised of a base fee plus added fees for items, work, or project complexity beyond the minimum standards.
- C. Water Bureau Fees.** The PWB will charge review fees as established by the PWB annual rate ordinance.
- D. Complex Permit.** Public Works Complex Permits will be subject to a project schedule and review timelines, which will be established during the concept phase review and may include recurring meetings. A fee estimate will be provided at the completion of the concept phase and will be based on full cost recovery by the City.



- E. **Other Permits.** Fees for BES Simplified, Public Works Residential Infill, BES Basic Sewer Extension, PBOT Grade-and-Gravel, and PBOT Limited Public Works permits are established by the PBOT and BES annual rate ordinances.

## 10. Fee Collection Processes

- A. **Fees Due.** For most public works permit projects, an initial fee will be collected at the concept phase, with the full amount due at the end of the design phase:

1. *Set-Fee Permit Types.* The full fee for BES Simplified, BES Basic Sewer Extension, PBOT Limited, and Public Works Infill Permits is required at the time of permit application. If it is later determined by the City that the project meets the criteria of a different permit type, additional fees may be owed or refunded as appropriate.
2. *Public Works Permit.*
  - a. A *non-refundable* deposit must be provided with the project's concept plans.
  - b. A full permit review fee estimate will be provided to the applicant after the City approves the concept plan. This estimate will only be valid for one year from the date it is provided to the applicant.
  - b. The balance of the permit fee will be due at time of design development submittal and is non-refundable once the submittal has been deemed complete and ready for review. If the applicant elects not to pursue a permit, the applicant must submit a withdrawal request in writing to Public Works Permitting no more than 10 business days after the City deems the submittal complete and ready for review. At that point, only 50% of the fee submitted at design review may be refunded. The City will retain the remainder to recover costs related to staff time.
3. *Public Works Complex Permit.*
  - a. A *non-refundable* deposit must be provided with the project's concept plans.
  - b. A full permit review fee estimate will be provided to the applicant following the concept review meeting, during which a mutually agreed-upon schedule for review and fee submittals will be established.
  - c. If the project is cancelled, the applicant will be responsible for the City's actual costs to date. Final settlement of costs will take a minimum of 60 days. The financially responsible party will receive either a refund or a bill for any outstanding balance.

- B. **Permit Cancellation / Reactivation.** A permit may be cancelled by the applicant's written request. Additionally, a permit will expire from lack of review activity for over one year. If a permit is cancelled or expires, all fees

received to date will be nonrefundable unless otherwise specified in Section 9 of these rules. A reactivation fee will be applied if a permit is reactivated after cancellation or expiration. This fee is established in the BES and PBOT annual rate ordinances. Other permit review fees may apply.

## **11. Administrative Review**

An applicant may request reconsideration of a City determination of the appropriate type of permit and of the criteria used to establish a Public Works Permit fee.

Requests must be made in writing to the appropriate bureau's public works permit division manager and must state which City decisions were made in error. If the applicant is dissatisfied with the division manager's response, the applicant may request review by the bureau's director. This decision is final and is not appealable under section 12 of this rule.

## **12. Public Works Permit Appeals**

A Public Works Permit applicant who (1) is denied a Public Works Permit or (2) is required to incur an expense for the alteration, repair, or construction of a facility in the public right-of-way as a condition of the grant of a Public Works Permit may request a reconsideration of that decision as follows:

**A. Exhausting Administrative Remedies.** Prior to appealing a Public Works Permit decision, the applicant must have fully exhausted all available administrative remedies, including but not limited to variances, alternative methods reviews, design exceptions, special circumstance reviews, and bureau-level administrative reviews. Once this requirement has been met, the appeal will be heard by the Public Works Board of Appeals (PWBA).

**B. Non-Appealable Items.** PCC section 17.06.050 lists the items that are not subject to appeal through the Public Works Permitting appeal process. All other decisions and matters may be appealed, except for a bureau response to a Land Use Review (LUR) if the applicant has not waived the 120-day LUR deadline requirement or if the matter is related to a final LUR decision.

### **C. Appeal Requests.**

1. All City decisions regarding Public Works Permits will be communicated to applicants in writing and, if appealable, the City will provide information on the means to request appeals.
2. *Submittal.* An appeal request must be submitted in writing to the Public Works Permitting Engineering Manager within one year of the date of the decision being appealed.
  - a. *New information.* No new or additional information may be submitted for consideration by the PWBA. If the appellant believes that new or additional information should be considered, all other administrative

options for consideration of that information must be exhausted before the PWBA will consider it (see Section 12.A of these rules).

- b. *Fee.* The appellant must pay the appeal fee when submitting the appeal request prior to the deadline indicated in the City's decision letter. Appeal fees for the PWBA are adopted by City Council as part of the annual fee schedule of the Bureau of Transportation.

#### **D. Appeal Evaluation**

- 1. Initial Completeness Evaluation.** The Public Works Permitting Engineering Manager will determine whether the appeal request is complete and complies with these rules within 7 calendar days of receiving the appeal request and fee. An incomplete request will be returned to the appellant with a brief description of the deficiencies. The appellant will then have 7 calendar days to submit an amended appeal request.
- 2. PWBA Review.** The Public Works Board of Appeals and its decision-making authority are established by PCC Chapter 17.06.
- 3. PWBA Review Meeting.**
  - a. Provided that an appeal request has been determined to be complete, a PWBA meeting will be scheduled within 30 calendar days from the City's receipt of the request, unless an alternate time is agreed to by the appellant and the City. A notice of the meeting date and time will be provided to the appellant and the public. These meetings are subject to the public meeting requirements of ORS Chapter 192.
  - b. A quorum of two members is required for meetings of the PWBA.
  - c. City subject matter experts from a variety of bureaus may be invited to provide information relevant to the appeal. The PWBA will only consider information that may be reasonably substantiated by documentary evidence and may call upon both the appellant and City staff to corroborate or refute information and arguments.
- 4. PWBA Decision.**
  - a. The PWBA will decide appeals by majority vote.
  - b. The PWBA will provide written notice and an explanation of its final decision on the appeal to the appellant within 30 calendar days after the PWBA meeting and will post it on the City website.
  - c. If the PWBA determines that more information is needed from either the appellant or City staff before a decision can be reached, the appeal may be stayed until the next regularly-scheduled meeting of the PWBA or until a date as mutually decided by the appellant and the PWBA.
  - d. The PWBA's decision is final and may only be appealed to the Circuit Court pursuant to ORS 34.010 to 34.102.

- e. If the appellant's requested relief cannot be granted without a modification of City policy, rules, or the PCC, the PWBA may, at its discretion, forward a request for a policy, rule, or PCC change to the directors of the Bureaus of Transportation, Environmental Services, and Water. If the policy or rules are changed, those revisions may only be applied to the PWBA's decision if the change occurs before the due date of the PWBA's decision. If a PCC change is required, the PWBA's decision becomes effective on the date of approval of the required change.

